



Physical Therapy Board of California

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Physical Therapy Board of California

PHYSICAL THERAPY BOARD OF CALIFORNIA APPROVED MEETING MINUTES

Tuesday, November 2, 2010 11:00 a.m.
Wednesday, November 3, 2010 9:00 a.m.

**Department of Consumer Affairs
Hearing Room – S102
1625 North Market Boulevard
Sacramento, CA 95834**

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

Call to Order and Roll Call

Dr. Sara Takii, Physical Therapist, President
Dr. Debra J. Alviso, Physical Therapist, Vice President
Ms. Marty Jewell, PT, Ph.D.
Mr. James E. Turner
Ms. Karen B. Pines, LMFT

The Physical Therapy Board of California (Board) November 2010 meeting was called to order by Dr. Takii, Physical Therapist at 11:12 a.m. All members were present and a quorum was established.

1. Board Meeting Protocols

Mr. Steven K. Hartzell, Executive Officer explained the Department of Consumer Affairs (DCA) is trying to maintain consistent board meeting protocols ensuring meetings are in keeping with the Bagley-Keene Open Meeting Act. Dr. Takii, Physical Therapist shared she appreciated DCA providing the hearing script and would like to see more scripts for other board meeting tasks.

2. Special Order of Business – Tuesday, November 2, 2010, 1:00 p.m. Hearing on Petition for Reinstatement – Suresh Ahuja

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

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

3. Disciplinary Decisions

The Board convened in CLOSED SESSION to deliberate on disciplinary actions pursuant to Government Code Section 1126 (c) (3).

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

4. Evaluation of Executive Officer

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

5. Approval of Minutes

(A) October 11, 2010 Teleconference Minutes

Corrections were made to the minutes as follows:
Page 1, Lines 29-30

Prior to discussion of agenda item #2, Mr. Hartzell introduced Mr. Spencer Walker as incoming legal counsel for the Board in the upcoming absence of Ms. Claire Yazigi.

As written, it appeared Ms. Yazigi was absent at the meeting, but she was not.

Page 1, Lines 39-41

Ms. Yazigi responded the FSBPT's letter does not affect the legal analysis in the Board's position letter because the FSBPT has not provided evidence in contrary to the Board's position that the actions taken in response to the security breach of the NPTE are discriminatory.

Ms. Yazigi, Legal Counsel wanted to clarify that she explained the Federation of State Boards of Physical Therapy (FSBPT)'s response did not affect the *legal analysis* in the Board's letter, not that she explained it did not affect the Board's position because she does not have the authority to make that judgment.

Page 1, Lines 48-51

~~*Ms. Yazigi added in looking at the demographics of the schools in which the graduates are from, no further evidence is needed to prove the action taken by the FSBPT is discriminatory. The number of students attending the schools of each of the four specified countries whose national origin is that of the country where the school is located is an overwhelming majority.*~~

Ms. Yazigi added in situations where you have overwhelming statistics, no further evidence is needed in attempts to discriminate; anything less than that would require additional evidence.

Ms. Yazigi explained the minutes incorrectly captured what she meant, which was that if there is overwhelming statistics, nothing further is needed, otherwise, additional evidence would be required.

MOTION: To adopt the draft minutes from the October 11, 2010 teleconference as amended.

MOVED: Dr. Alviso, Physical Therapist

SECOND: Ms. Pines, LMFT

VOTE: 5-0 Motion carried

(B) July 28, 2010 Board Meeting Minutes

Corrections were made to the minutes as follows:

Page 1, Lines 34-36

BreZE is a new computer system ~~the~~ that will replace three of DCA's current computer systems: CAS, ATS, and iLicensing.

Page 6, Lines 297-299

Due to additional consideration, and the recommendations provided by Mr. Hartzell, Ms. Jewell, PT, Ph.D. withdrew the motion to adopt 1399.15 and Mr. Turner withdrew the second to that motion.

Dr. Alviso, Physical Therapist recommended to bold this section for ease of reading, making it clear the motion was withdrawn. In addition to making the font bold, a note should be added the motion was withdrawn.

MOTION: To adopt the draft minutes from the July 28, 2010 meeting as amended.

MOVED: Mr. Turner

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried

(C) January 28 & 29, 2010 Board Meeting Minutes

Corrections were made to the minutes as follows:

Page 6, Lines 277-280

AB 1152: The bill put forward by ~~that podiatrist~~ and physical therapists would be added to under the list of who can be employed: a shareholder, director, or employee of a ~~podiatrist~~ podiatric, medical, or chiropractic corporation. The bill died in the Senate Business, Professions and Economic Development Committee, though reconsideration may be granted.

The minutes incorrectly reflected the subject of the bill. The bill would add physical therapists to the list of who can hold certain positions within a podiatric, medical, or chiropractic corporation, not that physical therapists brought forth the bill.

MOTION: To adopt the draft minutes from the January 28 & 29, 2010 meeting as amended.

MOVED: Ms. Jewell, PT, Ph.D.

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried

6. President's Report – Dr. Sara Takii, Physical Therapist

(A) 2011 PTBC Meeting Dates

Dr. Takii, Physical Therapist congratulated Dr. Alviso, Physical Therapist on receiving the Outstanding Service Award at the 2010 FSBPT Annual Meeting for all of her contributions to the FSBPT. The Board reviewed the proposed 2011 meeting calendar. Mr. Hartzell stated that the Board will have the opportunity to sit with an Administrative Law Judge (ALJ) during a hearing on January 20, 2011 and assist in writing a proposed decision, which normally the members receive from the ALJ after the hearing. The hearing will be noticed; however, no Board business will take place except for possible closed session items.

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

(A) Update on PTBC Staffing

Minutes on agenda item 7 (A) and 7 (B) have been combined; see item 7 (B).

(B) FY 2010-2011 Budget

Mr. Hartzell explained the hiring freeze Governor Schwarzenegger implemented applies to staff and the appointment of new board members and will continue through the end of Governor Schwarzenegger's term. The Board was scheduled to receive several positions associated with DCA's Consumer Protection Enforcement Initiative (CPEI) which included an analyst, non-sworn peace officer and a manager position; however, the positions were not filled prior to the hiring freeze. Normally, if a position has been vacant for six months or longer the position is eliminated; however, Mr. Hartzell said the Department of Finance may allow the Board to renew the positions. A Budget Change Proposal (BCP) was submitted for one analyst and one clerical position for the workload associated with the newly implemented continuing competency requirement. The Board must eliminate 5% spending, so one of those positions must be eliminated and that will affect the continuing competency audits. Mr. Hartzell explained the Board will have to prioritize its activities. Licensing and working enforcement cases are on the top of that priority list.

(C) Update on PTBC Outreach

Mr. Hartzell reported the newsletter was not mailed out due to delays within DCA and budget restraints. It is approximately a three month process from submitting the newsletter articles to DCA until it is mailed out. Dr. Alviso, Physical Therapist was concerned about getting information out regarding continuing competency, so the Board and staff discussed various alternatives to reach licensees in ways other than the printed newsletter. The ideas included posting news on the website, including news inserts with renewal notices and e-mailing licensees. Ms. Kim Kirchmeyer, Deputy Director for Board and Bureau Relations supported the idea of e-mailing the licensees and said many boards are using e-mail as a main source of communication. Staff will look into the communication alternatives and how to begin implementing new procedures for contacting the public.

Dr. Takii, Physical Therapist shared about her recent trip to Armenia. Currently Armenia does not have a physical therapy program, so Dr. Takii, Physical Therapist has been working over the past five years in conjunction with the FSBPT to create a physical therapy program. The physical therapy school will be located at Yerevan State Medical University, in Armenia. Dr. Takii, Physical Therapist has established a non-profit corporation to finance the faculty salaries. The school will hopefully open in the fall of 2012.

8. Consumer Protection Services Enforcement Report – *Elsa Ybarra*

(A) Statistics

Minutes on agenda items 8 (A) and 8 (B) have been combined; see agenda item 8 (B).

(B) Disciplinary Summary

Ms. Elsa Ybarra updated the Board on the status and processing time of enforcement cases. For most cases, staff is meeting the 18 month timeline set by DCA to complete complaint investigations; however, it is taking slightly longer than 18 months to resolve discipline.

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

(A) Statistics

Dr. Alviso, Physical Therapist commented that staff should remain cognizant of licensees, whose licenses are delinquent because it does not exempt licensees from action being taken against them. For example, it is illegal for a licensee to continue working with a delinquent license. Ms. Jewell, PT, Ph.D. requested staff monitor the exam passing score of foreign educated physical therapists because the statistics show that the pass rate in California is currently below the national average.

10. Consumer and Professional Associations and Intergovernmental Report –

Steven K. Hartzell

(A) California Physical Therapy Association (CPTA)

Representatives from the CPTA indicated they had nothing to report or discuss that is not elsewhere on the agenda.

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

Dr. Alviso, Physical Therapist shared the FSBPT is working on resource papers for dry needling and musculoskeletal ultrasound imaging. The Board may want to keep this in mind should these topics be considered in the future. In addition, Dr. Alviso, Physical Therapist recommended adding environmental assessment to the Board's agenda. Environment assessment allows the Board to be proactive by considering current trends and issues addressing various aspects of each in the event action or a position needs to be taken.

Mr. Hartzell shared information from a session he attended at the 2010 FSBPT Annual Meeting, presented by the Citizen Advocacy Center, regarding allowing scope of practice expansion specifically for pilot programs. This would be coordinated through the Office of Statewide Health Planning and Development (OSHPAD). Mr. Hartzell has discussed this idea with the CPTA and is hoping to bring back some concepts within physical therapy that may be applied through this program.

Mr. Hartzell said most motions presented to the FSBPT Assembly of Delegates will be addressed under agenda item # 18; however, there was one motion which did not fall under that category. The motion regarding the FSBPT adding a summary of discussion of each agenda item and a roll call of those in attendance to the meeting minutes, which is not currently done. The FSBPT disagreed with the Board's proposed motion stating the meeting minutes and are in compliance adding the minutes are not public because the FSBPT is a private organization. Mr. Hartzell will continue to work with the FSBPT regarding this matter.

Mr. Hartzell recommended adding discussion on possible motions for the 2011 FSBPT Annual Meeting to the next two Board meeting agendas. The FSBPT requires all motions to be presented at the annual meeting be submitted 90 days prior to the meeting, otherwise a two-thirds vote is required from the FSBPT Assembly of Delegates to discuss a motion at the meeting.

Dr. Takii, Physical Therapist provided an updated on the FSBPT Foreign Educated Standards Committee (FESC) projects. The FESC is comparing the current coursework tool with the Commission on Accreditation in Physical Therapy Education (CAPTE) language to ensure they are compatible. In addition, the FESC is working on developing a tool for clinical instructors of foreign educated physical therapist applicants. Currently, clinical instructors are using the form provided by the American Physical Therapy Association (APTA), but there is doubt, whether the form is addressing all the factors necessary to meet the minimum requirements to practice as a licensed physical therapist. For example, there is concern foreign educated physical therapists are not able to appropriately communicate with their patients and they may not fully understand the U.S. healthcare system, which are both key to physical therapy practice.

Dr. Alviso, Physical Therapist and Ms. Jewell, PT, Ph.D. discussed the withdraw of the Board's proposed motion regarding adding a clause to the FSBPT bylaws which prohibits discrimination of any nature. The FSBPT's position was that the FSBPT does not discriminate in anyway, ever, and the clause should not have to be added to the bylaws to ensure this from happening.

(C) DCA Director's Report

Ms. Kirchmeyer explained DCA has finalized the standards which stemmed from SB 1441 - Chapter 548, Statutes of 2008. Mr. Hartzell said staff has not moved forward with regulations based on the standards because there is no clinical support for the number of drug tests per year for licensees on

probation. Ms. Kirchmeyer responded that other boards have worked on regulations despite not having confirmed information on the number of drug tests. The boards will add that language when there has been a resolution.

11. Legislation Update – Sarah Conley

(A) Summary of 2010 Legislation

Ms. Sarah Conley provided a summary of 2010 legislation, and specifically addressed legislation that will directly impact the practice of physical therapy or Board requirements and/or procedures.

AB 2382 - Chapter 425, Statutes of 2010

AB 2382 will go into effect January 1, 2011. The California State University (CSU) campuses which have a physical therapy program will be authorized to award the Doctor of Physical Therapy degree.

SB 1172 - Chapter 517, Statutes of 2010

SB 1172 will go in to effect January 1, 2011. If a licensee tests positive for any substance prohibited by his/her probation terms, or is required to undergo a clinical diagnostic evaluation, the licensee must cease practice for a specified period of time prescribed by the Board.

AB 583 - Chapter 436, Statutes of 2010

AB 583 will go into effect January 1, 2011. All healthcare practitioners as defined in the bill are required to either post in a clearly visible location within the office, or present to the patient at the initial visit the following information: practitioner's name, license type, and highest level of education.

AB 2699 - Chapter 270, Statutes of 2010

AB 2699 will go into effect January 1, 2011. Healing arts licensees from other states may perform voluntary services at events in California sponsored by non-profit organizations by obtaining authorization to do so by the appropriate licensing authority. DCA is working on basic regulation language, then the boards may add language specific to their requirements. Mr. Richard Woonacott, Deputy Director of the Division of Legislative and Policy Review provided information and the status of writing the regulation language to the Board regarding AB 2699.

(B) Suggestions for 2011 Legislation, including Revision of Physical Therapy Practice Act

Mr. Hartzell provided the Board with some background information on the revisions to the Physical Therapy Practice Act (Act), then asked the Board for feedback.

The Board made the following amendments:

Chapter 5.7 PHYSICAL THERAPY

Article 1. Administration and General Provisions

2603. The members of the Physical Therapy Board of California shall consist of the following: four physical therapists, one of whom shall be involved in the physical ~~therapy~~ therapist education, and three public members.

MOTION: To amend Section 2603 of the Physical Therapy Practice Act by replacing "therapy" with "therapist."

MOVED: Ms. Jewell, PT, Ph.D.

SECOND: Ms. Pines, LMFT

VOTE: 5-0 Motion carried

Mr. Bryan Coleman Salgado, a member of the public brought the Board's attention to the phrase "involved in" referring to one Board member being in the education of physical therapists. He asked for clarification as to the intent of "involved in." Ms. Jewell, PT, Ph.D. shared her interpretation is a faculty member involved with instruction. Mr. Coleman Salgado asked if this included clinical instructors and adjunct faculty. The Board discussed defining "involved in." Mr. Hartzell recommended leaving the language as is because if the member that meets this criteria has a professional status change, and the language is too restrictive to encompass that change the member may no longer be able to serve even if his/her term has not expired.

Ms. Jewell, PT, Ph.D. said the grammatical error on page 8, Section 2608.5 should be corrected by deleting the term "Each" at the beginning of the paragraph.

The Board discussed language to define how many aides may be utilized by a physical therapist and whether this language should be in statute or regulation. No action was taken on the content of Section 2630.4 regarding the number of aides that may be utilized; however, the Board did make the following amendment:

(b) A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to ~~assist~~ aide the physical therapist in his or her practice of physical therapy.

Mr. Woonacott shared he and staff met with staff from the Board, and DCA is willing to assist the Board in getting the revisions to the Act in statute in the 2011 legislative session.

12. Office of Statewide Health Planning and Development's Request for DCA Boards and Bureaus to Conduct a Survey of Licensee Geographic Employment Distribution – Steven K. Hartzell

OSHPAD requested that all DCA boards and bureaus survey all licensees for employment information. Mr. Hartzell is looking to work with the Medical Board of California (MBC) for survey formatting and questions. Ms. Kirchmeyer shared DCA supports OSHPAD and the survey request. Dr. Takii, Physical Therapist added the APTA is performing a parallel study and has offered to interpret the data. The Board's data would help the APTA develop national information as well.

13. Probation, Process, Expectations, and Staff Responsibilities Presentation – Monny Martin

Mr. Monny Martin presented the Board with information regarding the Board's probation monitoring program. One recent significant change is that Mr. Martin reviews a copy of all proposed decisions after they are adopted, but before they are in effect so he may provide input. Mr. Martin explained he interviews each probationer quarterly and requires that they submit a self-completed quarterly report. The overall cost of being enrolled in the diversion program is approximately \$1,300 per month to be paid to the contracted diversion program, Maximus, by the probationer. Many probationers find it difficult to pay the cost.

The Board asked Mr. Martin to share what are some difficulties in probation monitoring and what are the key reasons for non-compliance. Physically visiting each probationer is very difficult and it is the biggest restriction. He monitors approximately 60 probationers throughout California, which makes it difficult to physically visit each probationer more than quarterly. He conducts phone interviews to supplement monitoring the probationers. Also, Mr. Martin is unable to travel when the State does not have a budget, so he is guaranteed not to be able to travel at least two months out of the year.

The Board continued to discuss various aspects of the probation monitoring process. The Board requested that current, detailed information is gathered on probationers. There have been situations where the Board has not received all inclusive information regarding a probationer that has petitioned for hearing. Mr. Martin and Mr. Hartzell explained the Deputy Attorney General (DAG) is responsible for the hearing. Though Mr. Martin provides the information to the DAG, the DAG may not present it for

the hearing. Ms. Jewell, PT, Ph.D. asked if the Board could call Mr. Martin to question him at the hearings in the event the DAG does not provide information collected by Mr. Martin. Mr. Spencer Walker, Legal Counsel advised the Board may ask the ALJ if Mr. Martin may be questioned.

Dr. Alviso, Physical Therapist said there seems to be a lot of probationers who misunderstand the terms of probation. She questions whether there is a way to resolve this issue. Mr. Martin reported the two terms of probation that are most confusing for probationers are community service and supervision. Probationers ask for clarification as to what constitutes community services. In addition, probationers who are required to be supervised and have a practice monitor do not understand why they have two supervisors. The Board will consider these issues and thanked Mr. Martin for his presentation.

14. Maximus Diversion Program Audit Report – Steven K. Hartzell

On September 8, 2010 DCA was notified Maximus was not using the appropriate threshold for drug testing licensees. DCA is seeking correction to this error; Maximus is re-testing all licensees that were incorrectly tested.

**15. Special Order of Business – Wednesday, November 3, 2010, 9:00 a.m.
Regulatory Hearing on the Proposed Language for the Following Sections of California Code of Regulations, Title 16, Division 13.2:**

(A) Article 2, Application and Examinations, Section 1398.26.1

The hearing began at approximately 9:08 a.m. There was no public comment at the hearing, nor were any written comments received by the Board regarding the proposed language. The hearing was closed at 9:12 a.m.

16. Draft Regulatory Language for Board Consideration and Possible Action for the Following Sections of Division 13.2 of Title 16 of the California Code of Regulations (Physical Therapy Board of California) – Claire Yazigi

(A) Proposed Language to be Added to Section 1399.15 Regarding the Treatment of Sex Offenses in Proposed Decisions

Ms. Yazigi explained Business and Professions Code Section 1399.15 regarding the treatment of sex offenses in proposed decisions was part of the CPEI. At the May 2010 meeting the Board moved forward with four of the five regulations. The proposed language for Section 1399.15 referenced the Education Code, so the Board reviewed the Education Code at the July 2010 meeting. Due to the Education Code containing extensive reference to other codes, specifically the Penal Code, the Board directed Ms. Yazigi to eliminate the reference to the Education Code within Section 1399.15 and instead include a summarized version of those references.

Due to the number of references in the Education Code to the Penal Code where most sexual offense violations are defined, there was no way to create an all inclusive summary of these violations. Therefore, Ms. Yazigi modified the proposed language for Section 1399.15 and included just the titles of appropriate Education Code and Penal Code references, which she feels sufficiently represents the same information without including all the reference language.

The Board shared a concern that it may not be appropriate to revoke a license for lesser violations. Ms. Yazigi said the Board may non-adopt the proposed decision if they determine revocation is too harsh and provide a justification as to why revocation is not necessary.

MOTION: To adopt 1399.15 as presented.

Moved: Ms. Jewell, PT, Ph.D.

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried

MOTION: To direct staff to proceed.

MOVED: Ms. Jewell, PT, Ph.D.

SECOND: Mr. Turner

VOTE: 5-0 Motion carried

17. Adoption of the 2011 Rulemaking Calendar – *Rebecca Marco*

Ms. Rebecca Marco presented the proposed 2011 rulemaking calendar adding that the substance abuse standards and requirement for fingerprinting is not reflected on the calendar, but will to be added. The Board already has the authority to fingerprint applicants, but it needs to be put into regulation. Dr. Takii, Physical Therapist requested adding telemedicine to the proposed 2011 rulemaking calendar. Mr. Hartzell recommended adding telemedicine to the proposed 2011 rulemaking calendar in the event the Board is unable to add it in statute. If telemedicine did get added in statute, it would then be added to the proposed 2012 rulemaking calendar. Dr. Alviso, Physical Therapist requested adding the clarification of the use of the Doctor of Physical Therapy title with regards to licensing to the calendar.

MOTION: To adopt the proposed 2011 rulemaking calendar as amended.

MOVED: Ms. Pines, LMFT

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried

18. Actions by the FSBPT to Suspend Testing for NPTE Candidates from Specific Countries

Ms. Jewell PT, Ph.D. shared a presentation given by the FSBPT regarding the suspension of testing, due to cheating, for graduates from the following four countries: Philippines, Egypt, Pakistan, and India. One concern was that the FSBPT did not have enough test questions to replace those which were compromised. The FSBPT has an abundance of test questions pre-written, but they must be pre-tested on the official exam before they are added and there is a limit on the number of pre-test questions that can be included on the official exam. The FSBPT addressed the issue surrounding the four specified countries which were identified to be involved. Given the processes used, there is less than 1 in 500 million chance that the flagged groups have been wrongly identified. Also, The FSBPT uses secret shoppers to visit websites that share testing information to find out how people gain access to the website and what information is available to those who use it; some websites are limited to specific groups.

After the presentation the Board considered possible action that may be taken. Mr. Walker and Ms. Yazigi both agreed the Board cannot terminate the testing contract with the FSBPT primarily because of the length of time it would take to create a new exam, leaving a large number of applicants unable to test. This would prevent them from obtaining licenses and beginning work. In addition, the Board cannot sue the FSBPT because the Board did not suffer any injuries due to the testing suspension. However, applicants from the specified countries have sustained injuries and they could sue the Board. If the Board was sued by applicants affected by the testing suspension, then the Board would suffer injury based on actions taken by the FSBPT. At that point the Board could sue the FSBPT

Dr. Alviso, Physical Therapist said there is an obvious inequity allowing all but the applicants from the four specified countries to test everyday; whereas the applicants from those countries may test only two times per year. The Board questions whether the FSBPT testing contract could be modified so all applicants would test only two times per year to maintain equality, which is a primary concern of the Board.

Mr. Hartzell explained the Board has the option to stop approving applicants to take the exam. The FSBPT would have already received payment, but all the candidates would remain in the FSBPT's system until the Board approved them. Ms. Pines, LMFT shared the Board of Behavioral Science was transitioning from oral examinations strictly computer-based testing, which required the board stop offering that exam for a specific amount of time. The applicants were outraged at having to wait to take the exam. Ms. Jewell, PT, Ph.D. added that some schools have alternate graduation dates, which may delay some applicants ability to take the exam even longer. Ms. Jewell, PT, Ph.D. said a main concern is those, whose tests were invalidated, may still be practicing. Mr. Hartzell responded he has not been notified that any licensees from California are in this situation.

Mr. Hartzell recommended, instead of developing a new exam, continue with research which would include an analysis of physical therapy practice. An analysis of the practice would have purpose beyond just the development of a new exam, for example, it could be applied to continuing competency. In addition, Mr. Hartzell recommended asking legal counsel to notify the FSBPT that there was a breach of contract.

The Board directed Mr. Hartzell to send the questions Ms. Yazigi, legal counsel had been working on regarding the testing suspension to the FSBPT. In addition, the Board directed Mr. Hartzell to send a second letter requesting input on how all exam candidates may have an equal opportunity at the exam. The Board agreed representatives from California need to go to Alexandria, West Virginia to meet with the FSBPT in person. The Board requested sending psychometricians to represent the Board, but in the event that is not possible, a third party may be sent. The Board informally directed Mr. Hartzell to move forward with the analysis of practice; however, Mr. Hartzell requested the Board make a formal motion for this direction.

MOTION: To move forward with an analysis of physical therapy practice.

MOVED: Mr. Turner

SECOND: Ms. Jewell, PT, Ph.D.

VOTE: 5-0 Motion carried

19. Legality of Physical Therapy Corporation Ownership by a Layperson – *Steven K. Hartzell*

Mr. Hartzell presented the issue of a layperson owning a physical therapy corporation. In 1990 the same issue was addressed and at that time a resolution was made allowing laypersons to own a physical therapy corporation; however, this is currently against the law. If the resolution remains in effect, it would be considered an underground regulation because the Board does not have statutory authority for the resolution. Mr. Hartzell recommended the Board rescind the resolution and adopt a new resolution stating the previous resolution was against the law; however, if ownership of the physical therapy general corporation was obtained prior to November 3, 2010, the owner may retain his/her status and continue to operate the corporation.

Mr. Walker explained the Board would only need to rescind the resolution; the Board does not need to adopt a new resolution because it is already law that a physical therapy corporation must be formed as a professional corporation, not a general corporation. The current resolution is in conflict with the Moscone-Knox Corporation Act, and in such a case as this, the Moscone-Knox Corporation Act is the final word. Ms. De Foe urged the Board to rescind the resolution.

MOTION: To rescind the 1990 resolution regarding physical therapy corporation ownership by a layperson.

MOVED: Ms. Jewell, PT, Ph.D.

SECOND: Mr. Turner

VOTE: 3 in favor, 1 abstained, 1 opposed
Motion carried

20. Recommendations for Use of the Doctor of Physical Therapy Title – Marty Jewell, PT, Ph.D.

Ms. Jewell, PT, Ph.D. provided the Board with a briefing paper with recommendations for use of the Doctor of Physical Therapy title, which included California statutes and regulations pertaining to the issue and other state laws and regulations that specifically address the issue. The recommendations were intended to address when a licensee uses the title Doctor, not if an individual uses the abbreviation “DPT” after his/her name. Mr. Hartzell shared the MBC, Physicians Committee is against physical therapist using the title “Doctor.” The Legislature permitted the use of the title “Doctor” only if “Physical Therapist” followed the licensee’s name.

Given the circumstances surrounding the issue, the Board did not take action; however, though not the focus, the use of DPT was discussed. Section 2633 of the Business and Professions Code does not allow an individual to use DPT unless he/she is licensed. This led to consideration of adding an alternative licensure status, for example, no longer practicing or retired. Staff will further research alternative licensure status implementation and report back to the Board.

21. Request for Board to Consider Physical Therapy in Veterinary Medicine

Currently the Act limits physical therapy to humans and proposed language for the revision of the Act include granting the Board authority to take action against a licensee that violates the Veterinary Medicine Practice Act. There was a written request from the public that Mr. Hartzell work with the Veterinary Medical Board (VMB) for regulations regarding this topic. Mr. Hartzell attended the VMB meeting on October 20, 2010. In discussion with the VMB, it was explained registered veterinary technicians can receive a specialization to perform physical therapy on animals. The VMB has created a task force to further consider animal physical therapy; Mr. Hartzell requested the VMB include language in regulation addressing physical therapists’ role with animal physical therapy.

Anne Howard, PT from Santa Cruz, CA was representing a special interest group with the APTA that is interested in animal physical therapy and how physical therapists may be involved with this practice. Ms. Howard’s concern was that VMB took language directly from the Act and put it in AB 1980 - Chapter 538, Statutes of 2010, but veterinarians and registered veterinary technicians have not had the appropriate education in physical therapy. To allow physical therapists to work with veterinarians and registered veterinary technicians, Ms. Howard requested the Board revise the definition of physical therapy within the Act changing “person” to “client,” or “patient.” Ms. Howard said the biggest misconception is that physical therapists interested in animal physical therapy want to be veterinarians, which is not the case. They want to ensure animals are receiving proper treatment with regards to physical therapy. Other states such as Colorado have already addressed this issue with specific language, which the Board may wish to consider.

After further discussion, the Board determined it does not have the resources to take action on this issue; it is too controversial to include in the revision of the Act. The CPTA may be a resource to utilize to address this issue.

22. Practice of Wellness by Physical Therapists

Dr. Takii, Physical Therapist wanted to address on record “wellness” within the practice of physical therapy as it currently stands legally. Ms. Yazigi explained “wellness” is addressed in Business and

Professions Code Section 2620. Current documentation and supervision requirements for physical therapy also apply to “wellness.”

Previously the Board created a task force to consider several issues, briefly including “wellness” as it relates to physical therapy. Those on the task force could not agree. Some physical therapists said “wellness” should have fewer restrictions. Dr. Alviso, Physical Therapist shared the “wellness” issue is also being considered by the FSBPT and the same difficulty in defining “wellness” exists. Again, at this time, “wellness,” as practiced by physical therapists, is still governed by the Act and existing codes. No changes have been made to date. When budget constraints are resolved, allowing time for further study, the Board will consider further action on this issue.

23. Elections

- (A) PTBC President**
- (B) PTBC Vice-President**
- (C) FSBPT Delegate**
- (D) FSBPT Alternate Delegate (Primary)**
- (E) FSBPT Alternate Delegate (Back-up)**

Motion: To continue with current Board officer positions.

MOVE: Mr. Turner

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried

Dr. Takii, Physical Therapist will remain as President. Dr. Alviso, Physical Therapist will remain as Vice-President. Ms. Jewell, PT, Ph.D. will remain as FSBPT delegate. Dr. Alviso, Physical Therapist will remain as FSBPT alternate delegate (primary). All Board members, the Executive Officer and legal counsel all remain as FSBPT alternate delegates (back-up).

24. Public Comment on Items not on the Agenda

There were no additional public comments.

25. Agenda Items for Next Meeting – Wednesday and Thursday, February 16 & 17, 2011 – San Diego, CA

- Dr. Takii, Physical Therapist suggested adding telemedicine to the February Board meeting agenda.
- Dr. Alviso, Physical Therapist suggested adding compacts to a future Board meeting agenda.
- The Board requested staff provide an update of the FSBPT testing issue at the February Board meeting.
- The Board requested staff coordinate with Maximus to arrange a presentation on the diversion program, focusing on expectations of licensees.

MOTION: To adopt the draft minutes from the November 2 & 3, 2010 meeting as amended.

MOVED: Ms. Jewell, PT, Ph.D.

SECOND: Dr. Alviso, Physical Therapist

VOTE: 4-0, 2 absent
Motion carried