



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

# Physical Therapy Board of California

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## Physical Therapy Board of California APPROVED Meeting Minutes

Wednesday, May 11, 2011 – 9:00 a.m.

Thursday, May 12, 2011 – 9:00 a.m.

**Mount Saint Mary's College, Doheny Campus  
10 Chester Place, Rose Hill Auditorium  
Los Angeles, CA 90007**

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.

### 1. 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. Donald A. Chu, PT, Ph.D., ATC, CSCS
- Mr. James E. Turner

Dr. Sara Takii, Physical Therapist, President	May 11, 2011 - Present May 12, 2011 - Present
Dr. Debra J. Alviso, Physical Therapist, Vice-President	May 11, 2011 - Present May 12, 2011 - Present
Ms. Marty Jewell, PT, Ph.D.	May 11, 2011 - Present May 12, 2011 - Present
Mr. Donald A. Chu, PT, Ph.D., ATC, CSCS	May 11, 2011 - Present May 12, 2011 - Present
Mr. James E. Turner	May 11, 2011 - Present May 12, 2011 - Present

The Physical Therapy Board of California (Board) May 2011 meeting was called to order by Dr. Takii, Physical Therapist, at 9:15 a.m., May 11, 2011. All members were present and a quorum was established.

### 2. Approval of Minutes

#### (A) February 16 & 17, 2011

The Board determined the minutes appropriately reflect the discussions at the meeting, and did not request changes.

**MOTION:** To adopt the draft minutes from the February 16 & 17, 2011 meeting.

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

**SECOND:** Mr. Turner

**VOTE:** 5-0 Motion carried

**(B) March 1, 2011**

Corrections were made to the minutes as follows:

Page 1, Line 41

*This request was put forward because the Acting Director for DCA perceived inconsistencies with prior discussions of the Board.*

**MOTION:** To adopt the draft minutes from the March 1, 2011 teleconference as amended.

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

**SECOND:** Dr. Alviso, Physical Therapist

**VOTE:** 5-0 Motion carried

**(C) March 17, 2011**

The Board determined the minutes appropriately reflect the discussions of the meeting and did not request any changes.

**MOTION:** To adopt the draft minutes from the March 17, 2011 meeting.

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

**SECOND:** Mr. Chu, PT, Ph.D.

**VOTE:** 5-0 Motion carried

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

- (A) Statistics**
- (B) Disciplinary Summary**
- (C) Performance Measure Recommendations**

Ms. Elsa Ybarra reported on all items, 3(A), 3(B) and 3(C). Ms. Ybarra explained the Consumer Protection Services Unit (CPS) is meeting the case processing goals set forth by the Department of Consumer Affairs (DCA); therefore, recommendations for improvement are

not being presented at this time. The Board commended Ms. Ybarra and the CPS Unit for their contributions to meeting DCA's goals and for the clear reports presented. Mr. Steven. K. Hartzell added the public will soon be able to access the third quarter Performance Measures on DCA's Web site.

#### **4. Application & Licensing Services Report – Jason Kaiser**

##### **(A) Statistics**

The Board inquired as to how California candidates compare to candidates from other states in passing the National Physical Therapy Exam (NPTE). Mr. Jason Kaiser responded California candidates are in-line with the National average.

##### **(B) Continuing Competency Audits**

The Licensing Unit is currently conducting audits on those licensees who submitted their license renewal in October 2011. The audits are based on the month the license renewals are received, not by the month of license expiration. In looking at the data collected on continuing competency audits since commencement of the program in October 2010, staff has found an approximate non-compliance rate of 20%. Approximately 10% of the license renewal population for each month has been audited; however, given the elevated non-compliance numbers, staff has determined an increase in the audit population to 20% of all licensees who renew each month is necessary.

Mr. Kaiser explained when a licensee is chosen for an audit, staff struggles to obtain proof that those licensees completed courses that qualify to meet continuing competency requirements. Mr. Hartzell explained in looking towards the future of this program, it takes approximately 24 months for the entire licensee population to renew their license, so staff will have more substantial data in October 2012 as to how the continuing competency audit program is functioning.

##### **(C) FSBPT increasing test fees effective January 1, 2013**

Mr. Hartzell reported the Federation of State Boards of Physical Therapy (FSBPT) Board of Directors voted to increase the NPTE fee for both physical therapists and physical therapist assistants. The fee will be increased from \$370 to \$400 effective January 1, 2013.

#### **5. President's Report – Dr. Sara Takii, Physical Therapist**

##### **(A) Resignation of Ms. Karen Pines**

Dr. Takii, Physical Therapist, announced Ms. Karen Pines, LMFT has resigned from the Board.

##### **(B) Report on DCA Monthly Teleconference of Board Presidents**

Dr. Takii, Physical Therapist, reported two main discussion topics from the teleconferences were BreEZe and the rewrite of the Executive Officer (EO) evaluation form. Negotiations began between a vendor and DCA for BreEZe. Dr. Takii, Physical Therapist, reported on the rewrite of the Form under agenda item 5(C).

### **(C) DCA Executive Officer Evaluation Form Committee**

Dr. Takii, Physical Therapist, reported on the status of rewriting the EO evaluation form. Rewriting the form has been completed by the DCA Executive Officer Evaluation Form Committee comprised of board presidents, executive officers and staff. The form is now being reviewed by all board presidents. The improvements made to the form, and overall evaluation procedure, include the board reviewing prior evaluations as well as the duty statement and salary information. In addition the form will be computerized and includes a space for goal setting. The committee determined it would be advantageous for the DCA, Executive Office and the Executive Officer him/herself to complete an evaluation as well. The overall evaluation has been refocused to evaluate skills demonstrated rather than on tasks. Mr. Hartzell added the committee has also discussed including considerations of staff turnover rate and grievances filed.

### **(D) 2011 PTBC Meeting Dates**

Mr. Hartzell explained the Governor has issued Executive Order B-06-11 restricting all non-mission critical travel. Although the Board has been responsible with its travel, further reductions are still required. It appears Board staff will definitely not be able to attend the 2011 CPTA Annual Conference; however, attendance at the 2011 FSBPT Annual Conference is contingent upon the Governor approving out-of-state travel. In addition, the Board may have to hold all future meetings in Sacramento until the Executive Order is lifted. Board staff will further verify this information because the Board is statutorily required to hold meetings in the Sacramento, San Francisco and Los Angeles areas each year. Board staff will be in communication with DCA to determine how mission critical is being defined and if this Executive Order precedes the Boards statutory requirements. Ms. Marco asked the Board if the meeting dates should be changed to Thursday and Friday meetings since staff is no longer furloughed. The Board decided to maintain the Wednesday and Thursday meetings.

### **(E) 2012 Proposed PTBC Meeting Dates**

The Board requested staff change all proposed meeting dates from Thursday and Friday to Wednesday and Thursday. Mr. Hartzell recommended moving the November meeting to the 7<sup>th</sup> and 8<sup>th</sup> instead of October 31<sup>st</sup> and November 1<sup>st</sup>. The Board agreed to move the November meeting to November 7<sup>th</sup> and 8<sup>th</sup>.

**MOTION:** To approve all meeting dates for 2012.

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

**SECOND:** Mr. Turner

**VOTE:** 5-0 Motion carried

### **6. Executive Officer's Report – Steven K. Hartzell**

#### **(A) FY 2010/2011 Budget**

Mr. Hartzell explained the Board may need to invest in new computers in the next 3-5 years, which will be a large cost. Also, Mr. Hartzell noted the Board is now on DCA's server and DCA

provides the Board's technical support for most computer needs.

**(B) FY 2011/2012 Budget**

Minutes on agenda items 6(B) and 6(C) have been combined; see agenda item 6(C).

**(C) Update on PTBC Staffing/Discussion of Budget Change Proposal (BCP)**

Mr. Hartzell reported staff is working on two budget changes, additional staffing for each unit and augmenting the Attorney General's line item. The Board's budget is in good condition with room to grow. If the Board should ever need additional funds, the license renewal fee may be increased from the current \$200 to the statutory cap of \$300 and, the Board may wish to implement a processing fee for continuing competency audits as the program develops. Although the Board's budget is in good condition, this may not be reflected on paper. The State previously borrowed money from the Board to be paid back in 2013. This hole in the funds may be problematic when justifying the Board's ability to financially support the new Budget Change Proposals (BCPs) submitted by the Board since no new monies are being requested. Instead, current funds are being reorganized.

The BCPs will be sent to DCA for approval and then forwarded to the State and Consumer Services Agency (Agency). Agency will look for any structural imbalances such as funds being paid out are larger than funds received. This is done by reviewing the Board statistical data on which all justifications are based. If Agency approves the BCPs, they will go to the Department of Finance (DOF) who ensures that funds are adequate for the proposed changes. The projected timeline for the BCPs is to be approved by Agency in August, then by the DOF in October. The goal of the staffing BCPs is to create full-time, permanent positions temporary and/or reduced time base employees.

**(D) Regulations to Implement Chapter 548, Statutes of 2008 (SB 1441)**

Mr. Hartzell explained the language for the regulation to implement Chapter 548, Statutes of 2008 (SB 1441) is incorporated with agenda item 12(c), so the Board may review the language when 12(C) is discussed.

**7. Review of Strategic Plan – Rebecca Marco and Dr. Sara Takii, Physical Therapist**

Ms. Rebecca Marco presented the current Strategic Plan and what items have been accomplished since its implementation in 2009. The Board members commended Ms. Marco for how the information was presented and shared they would like to see more of this at future meetings. The Board discussed reviewing the Strategic Plan for what needs to be updated, such as ensuring staff understands the Board's intent of objectives; however, they concluded, since it is a four-year plan to expire August 2012, a major revision would wait until that time. In addition, the Board is up for Sunset Review by the Legislature in the beginning of 2012 and recommendations from the Sunset Review Committee will be a useful guide for the next Strategic Plan.

Mr. Hartzell recommended the Board may wish to direct staff to arrange for a DCA facilitator in 2012, ensuring availability. The Board directed staff to, until the Strategic Plan review occurs, bring any specific issues or concerns from the current Strategic Plan for Board consideration and to arrange for a DCA facilitator in 2012.

8. **Special Order of Business** – Wednesday, May 11<sup>th</sup> 2011, 1PM  
Regulatory Hearing on the Proposed Language for the following sections of California Code of Regulations, Title 16, Division 13.2:  
(A) Article 1, Section 1398.4 Delegation of Function, Article 8, Section 1399.23  
Required Actions for Sex Offenders and Section 1399.24 Unprofessional Conduct

Please see attached transcripts for this agenda item.

9. **Outreach** – *Rebecca Marco*

**(A) Board's Web site**

The Board considered if staff should continue providing the Web site "hit" statistics. All members agreed the information is helpful and staff should continue to provide the report. Mr. Chu, PT, Ph.D., inquired if it would be possible to add a continuing competency provider search engine to the Board's Web site. Mr. Kaiser responded there are two concerns: there are numerous agencies, which could have numerous providers under them, and the search would depend highly on spelling and punctuation. Mr. Hartzell added such a feature would deviate from the original continuing competency plan. Dr. Alviso, Physical Therapist, asked staff to provide statistics on how many people sign up for the mailing and electronic mailing lists and how many people view the Board meeting webcast. Staff will look into gathering data for both items and will present their data at the next Board meeting.

**(B) Facebook/Twitter**

Ms. Marco presented statistics regarding the Board's Facebook page and Twitter account.

**(C) Newsletter**

Ms. Marco informed the Board the newsletter was sent out with the incorrect glossary of codes for the 2600 series of the Business and Professions Code; the glossary has been replaced with the current codes.

Ms. Ellen Wilson, PT, requested the Board not include disciplinary decisions in the newsletter. Mr. Hartzell explained this may be the last printed newsletter since the Board voted at a previous meeting to look at faster, more efficient means of communication. Ms. Marco shared at the last Board meeting the Board voted to post all disciplinary decisions on Facebook, which would be a more current posting than including all decisions quarterly in the newsletter. Ms. Scuri shared the Board could direct staff to hold the prior decision of posting disciplinary decisions on Facebook for a later date if they would like to reconsider. The Board directed staff to refrain from posting disciplinary decisions on Facebook at this time.

10. **Consumer and Professional Associations and Intergovernmental Relations Report**

**(A) California Physical Therapy Association (CPTA)**

Representatives from the CPTA indicated they had nothing to report or discuss; however, they

did want to congratulate Mr. Hartzell on his retirement and thanked him for the work he has done.

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

1. NPTE Summit Invitation

Mr. Hartzell invited those members who serve on FSBPT committees to share any updates they may have. The members indicated they had no updates at this time.

Mr. Hartzell shared some Board members received an invitation to the upcoming FSBPT NPTE Summit (Summit). The purpose of the Summit is to focus on policy implications for physical therapist licensure in light of the recent NPTE security breaches. Mr. Hartzell clarified the Board members' attendance at the Summit will be as individuals, and they will not be representing the Board. The outcome of the Summit may be shared with members of the FSBPT, of which the Board is a member.

**(C) DCA Director's Report – DCA Representative**

Ms. Kirchmeyer congratulated Mr. Hartzell on his retirement and thanked him for his service. In addition, she also thanked Dr. Takii, Physical Therapist, and Mr. Hartzell for their contributions in revising the EO Evaluation form.

Ms. Kirchmeyer updated the Board on the approval of the Interim Executive Officer position for Ms. Marco. The request was submitted to the Governor's office on May 3, 2011 and is awaiting his signature. Ms. Kirchmeyer explained, as Mr. Hartzell previously shared, the Governor issued Executive Order B-06-11 restricting non-mission critical travel. Currently, DCA is waiting for a letter from DOF to clarify what may be exempt. In addition, the Governor's Executive Order which placed a hiring freeze on state jobs is still in place. DCA has submitted exemption requests to the Governor, 34 of which were approved based on specific statistical data.

DCA will be posting the enforcement statistics for the 3<sup>rd</sup> quarter on DCA's Web site. Ms. Kirchmeyer complimented the Board on the great enforcement data included in the Board meeting agenda book. Ms. Kirchmeyer thanked the Board for moving forward with the Consumer Protection Enforcement Initiative (CPEI) regulations and encourages the Board to do the same with the regulations which stemmed from Chapter 548, Statutes of 2008 (SB 1441) regarding substance abuse.

The BreEZe project continues to move forward. The final proposals were submitted to DCA in March. The costs ended up being higher than originally anticipated. Currently, DCA is in negotiations with a vendor and hopes to have the system in place to bring boards on-line in August 2011. DCA has a contract to research EO positions for determining a pay range increase.

**11. Sunset Review Pursuant to Business and Professions Code Section 2602 –  
Steven K. Hartzell**

The Board's Sunset Review report is due to the Legislature in November 2011. Mr. Hartzell stated he just received the Sunset Review questions, but suggested holding discussions for another date since staff, nor the Board members have had an opportunity to review the

questions. The Board concurred.

## 12. Rulemaking – *Rebecca Marco*

### (A) Rulemaking in Progress

Minutes on agenda items 12(A) and 12(B) have been combined; see agenda item 12(B).

### (B) 2011 Rulemaking Calendar

Ms. Marco presented the 2011 Rulemaking Calendar. The rulemaking file for authority to fingerprint applicants is in progress and should be ready for review at the next Board meeting. Dr. Alviso, Physical Therapist, inquired about the status of the rulemaking file to update the regulations for assistive personnel. Ms. Marco explained Agency expressed concern the new regulation has an economic impact, so an addendum was written justifying the Board's initial response stating there is not an economic impact. Agency signed off on the file and has submitted it to the Office of Administrative Law (OAL) for review. OAL has 30 days to review the file and then the file is sent to the Secretary of State (SOS) for filing. A regulation typically goes into effect 30 days after filing with the SOS; so the regulation will hopefully go into effect in approximately 60 days.

Ms. Marco informed the Board the rulemaking file regarding credential evaluation reports was recently submitted to DCA for review. Also, the rulemaking file regarding sponsored free health care events has been amended significantly, so the updated language will be presented at the next Board meeting.

Dr. Alviso, Physical Therapist, questioned the point at which the rulemaking files are removed from the Rulemaking Calendar. Ms. Marco explained the Rulemaking Calendar is the document submitted to OAL outlining what the Board intends to introduce during the year. Rulemaking files for which the Board has approved language are removed from the Rulemaking Calendar. The Board requested all rulemaking files in progress be added to the Rulemaking Calendar and remain there until the completion of the file.

### (C) Model Guidelines for Issuing Citations and Imposing Discipline, California Code of Regulations Subsection 1399.15

Ms. Anita Scuri presented draft language for the CPEI regulation, California Code of Regulations (CCR) section 1399.15. The current proposed language uses "substance-abusing licensees"; however, this term does not have a specific meaning as used in statute. Therefore, burden is placed on the Board to prove the licensee is a "substance-abusing licensee" without a clear definition of what the term means. Ms. Scuri recommended adding language which includes "triggers" as to what constitutes substance-abusing and would place the burden on the licensee to prove otherwise. Dr. James Dagostino, Physical Therapist, CPTA, expressed concern this would be guilty until proven innocent and questioned the rationale behind the language. Ms. Scuri responded with the way the law is written, there may be no evidence to prove a licensee is a "substance-abusing licensee." The proposed language provides the Board an avenue to pursue action against a licensee by defining the term. Ms. Jewell, PT, Ph.D., added these licensees of concern are already guilty, for example, the licensee has already received multiple DUIs, but now the Board determines the extent of abuse.

Dr. Cheryl Resnik, Physical Therapist, CPTA, shared a concern regarding Probation Conditions Specific to Violation, section I. Restriction of Practice Prohibition from Performing Specified Physical Therapy Procedures. If in a case where a physical therapist is the best to perform a specific procedure, but has been disciplined so he/she is subject to this term, the physical therapist cannot perform such a procedure and the patient, then, is not getting the best care possible. Mr. Hartzell replied the section applies to specific procedures for specific populations depending on the violation. The Board has the discretion to not include this provision as a term when imposing discipline, based on the situation. Ms. Jewell, PT, Ph.D., added it would be hard for the Board to establish "best care." The Board would have to, then, look at sub-standard care, which would be a discussion of ethics versus law.

The Board discussed the most recent revision of the Model Guidelines for Issuing Citations and Imposing Discipline.

Page 6

Ms. Scuri identified the introduction paragraph under Uniform Standards Related to a Substance Abuse to be in conflict with the proposed language defining "substance-abusing licensee." Ms. Scuri suggested, for consistency, the whole introduction paragraph be replaced with the following language:

*The following standards govern, in all cases, a substance-abusing licensee.*

Page 12

Ms. Scuri recommended language under the heading of Demonstration of Rehabilitation be removed and, instead, included in sections 1399.21 and 1399.22 of existing regulation.

Page 13

Ms. Scuri recommended language under the heading of Evidence of Mitigation be removed and, instead, included in section 1399.21 and 1399.22 of existing regulation.

Dr. Alviso, Physical Therapist, shared a concern the section addressed substance abuse only, not mental illness. Ms. Scuri explained the language is still in progress and the issue will be addressed prior to the final review.

Page 20

The Board inquired as to why the maximum fine for an address change violation was changed from \$5,000 to \$1,000. Mr. Hartzell responded the task force could not justify a maximum fine of \$5,000 for an address change violation, so it was reduced to \$1,000.

Page 23

The following title was amended:

*False Statements in Application Documents or Writings B&P Code 583*

Page 29

Dr. Alviso, Physical Therapist, inquired as to why there is a 5 year minimum probation for Self Abuse of Drugs or Alcohol B&P Code 2239, 2660(h) instead 3 years as for other violations. Ms. Scuri clarified this section addresses self-use versus transporting and 5 years of probation is in keeping with the Diversion Program.

Page 34

Dr. Alviso, Physical Therapist, questioned why the previous version of Certification to Penetrate Tissue for the Purpose of Neuromuscular Evaluation B&P Code 2620.5 included a restriction on patient type, but this current version does not. Ms. Ybarra explained the task force removed the restriction during their review.

Page 51

Mr. Hartzell and Mr. Chu, PT, Ph.D., informed staff the section on Continuing Competency Required CCR 1399.91 needs to be added.

Page 57

Ms. Jewell, PT, Ph.D., shared a concern Restriction of Practice – Clinical Instructor of Physical Therapy Interns or Foreign Educated Physical Therapist License Applicants Prohibited does not include a restriction to supervise applicants with Physical Therapist License Applicant (PTLA) status. Mr. Hartzell explained applicants with PTLA status have completed clinical work and are ideally ready to practice, but only waiting on passing the required exams, as opposed to an untrained intern, or foreign educated applicant who requires further instruction.

Page 61

Ms. Scuri explained she believes the proposed language under the heading of Restriction of Practice – Presence of Physical Therapist is not as clear as existing language, so this section will need to be edited.

Restriction of Practice – Solo Practice conditions are currently listed within the section; therefore, if the section is deleted the conditions will be as well. The Board determined the section shall remain.

Page 62

Ms. Scuri expressed concern that ownership interest has nothing to do with monitoring practice under the heading of Restriction of Practice – Monitoring. Mr. Hartzell responded the practice monitor would be a physical therapist, but this section needs to be rewritten.

Page 64

Dr. Alviso, Physical Therapist, suggested, for Restriction of Practice – Prohibition from Performing Physical Therapy Procedures, requiring the log of patient notifications be kept in a file separate from the patient file so the probation monitor may access the information.

Ms. Scuri recommends the following language be stricken from section Diversion Program because it is not consistent with the Administrative Procedures Act (APA):

~~Respondent will not qualify to petition for termination of probation until the board has received written notice from the Diversion Program of Respondent's completion of the Diversion Program. If the probationary period ends prior to completion of the Diversion Program, the probation will automatically be extended until the board receives written notice from the Diversion Program of respondent's completion.~~

Staff will research whether the Board has authority to automatically suspend a probationer's license if the probationer does not complete educational courses required by the Board in the probation terms.

**13. Legislation Update – Rebecca Marco**

**(A) Revisions to the Physical Therapy Practice Act Update**

**(B) 2011 Legislation**

Ms. Jewell, PT, Ph.D., inquired as to when would be an appropriate time for the Board to take positions on the legislation being presented. Mr. Hartzell explained at this time the Board may wish to be cautious with the positions it takes given the current political climate. In general, the Board may wish to take a watch position for most legislation, unless a specific bill affects the regulation of the practice of physical therapy and will either benefit or negatively impact the consumer. Mr. Hartzell invited Dr. Dagostino, Physical Therapist, CPTA, to participate in the Board's discussion of legislation.

1. AB 374 - Athletic trainers - Author(s): Hayashi

Dr. Dagostino, Physical Therapist, reported AB 374 is scheduled to be heard by the Assembly Appropriations Committee on May 18<sup>th</sup>. The CPTA has taken an opposed position on this bill. Mr. Hartzell recommended a watch position.

2. AB 675 - Continuing education - Author(s): Hagman

Dr. Dagostino, Physical Therapist, informed the Board this bill would prohibit licensees from earning continuing competency credit by participating in activities such as promoting a profession and being politically involved with matters concerning a profession. Mr. Hartzell recommended a watch position.

3. AB 783 - Professional corporations: licensed physical therapists -  
Author(s): Hayashi

Mr. Hartzell informed the Board AB 783 would permit physical therapists to be employed by physicians and it currently has passed the Assembly floor with a vote of 51-0. AB 783 was

originally an urgency bill which would require a 2/3 vote and would go into effect upon signature by the Governor; however, that is no longer the case, so only a majority vote is needed for the bill to pass. Mr. Hartzell shared he has testified at hearings only to clarify facts regarding the history of the employment arrangement between physical therapists and physicians and the Board's recent actions. Mr. Hartzell recommended a watch position.

4. AB 800 - Boards and commissions: time reporting - Author(s): Huber

AB 800 would require board or commission members to submit time reports to the board or committee chair. The chair would then submit a quarterly report to include all the time reports from board or committee members to the Legislature. Mr. Hartzell recommended a watch position.

5. AB 958 - Regulatory boards: limitations periods - Author(s): Berryhill, Bill

AB 958 would require the Board to file accusations within one year of acknowledging a complaint. Mr. Hartzell informed the Board the current processing time for the Board to complete disciplinary cases is 18 months. Mr. Hartzell expressed concern the Board may be prohibited from filing an accusation if not done within one year, so further analysis is needed and he recommended a watch position.

6. AB 991 - State government: license: California Licensing and Permit Center - Author(s): Olsen

AB 991 would establish a central licensing center for the State of California. Mr. Hartzell recommended a watch position based on the complexity of the subject and with the upcoming implementation of BreZE.

7. AB 1273 - Boards and commissions - Author(s): Grove

AB 1273 would codify Governor Schwarzenegger's "Governor's Reorganization Plan 1: Reforming California's Boards and Commissions." Mr. Hartzell explained this bill could ultimately eliminate the Board, so he recommended a watch position.

8. SB 103 - State government: meetings - Author(s): Liu

SB 24 would require a state body to hold teleconferences instead of meetings in person, unless the teleconference is found to cost more. In addition, SB 24 would require a state body which maintains a Web site to broad cast board meetings on the site. Mr. Hartzell recommended a watch position.

9. SB 227 - Business and professions: licenses - Author(s): Wyland

Ms. Marco informed the Board SB 227 would make non-substantive changes to Business and Professions Code sections that provide for the regulation and licensure of various professionals, so she recommends a watch position.

10. SB 541 - Contractors' State License Regulatory boards: expert consultants - Author(s): Price

Mr. Hartzell updated the Board that the Board President, prior to the meeting, authorized a support position for SB 541. SB 541 is an urgency bill, which would take effect immediately simplifying the process for the board to contract with an expert consultant.

11. SB 544 - Professions and vocations: regulatory boards

Ms. Marco explained SB 544 is language taken from the original CPEI bill, SB 1111 in 2010; however the language has been revised eliminating areas of concern from the initial introduction. SB 544 includes a provision which would allow the Executive Officer of a board to settle discipline without Board involvement. The Board would review the decision after it was adopted. The Board would be able to; however, use its discretion in implementing the provisions, if the bill were to pass. Mr. Hartzell recommended a support position.

12. SB 924 - Physical therapists: direct access to services - Author(s): Walters

Dr. Dagostino, Physical Therapist, informed the Board SB 924 is due to be heard by the Senate Appropriations Committee on May 23<sup>rd</sup>. Recently, the author accepted amendments including if patient care is not terminated within 30 days, the physical therapist must notify the patient's physician. The CPTA does not believe SB 924 has a fiscal impact on the State. Dr. Dagostino, Physical Therapist, explained the CPTA has researched other states that permit direct access to physical therapy services such as Arizona and Nevada and the data shows no increase in malpractice lawsuits, or complaints. Dr. Dagostino, Physical Therapist, on behalf of the CPTA, asked the Board for a support position. Mr. Hartzell recommended a watch position based on the Board's mission to enforce laws regulating the practice of physical therapy. The Board concurred with Mr. Hartzell's recommendation.

13. Miscellaneous Legislation regarding the review and repeal of existing regulations

Ms. Marco explained SB 366, SB 396, SB 400, SB 401, SB 560, SB 591 and SB 688 will be combined into one bill requiring the Board to review all regulations to determine the necessity of each one. This has been required of the Board by prior Governors. Mr. Hartzell recommended a watch position.

In addition to the bills listed above, Mr. Hartzell reported on AB 415. AB 415 would amend the Medical Board of California's statute to include telehealth instead of telemedicine. Since the term telehealth is replacing telemedicine, the California Board of Occupational Therapy is requesting to be added in the language so occupational therapists may practice telehealth. Dr. Dagostino, Physical Therapist, informed the Board the CPTA has taken a strong watch position on AB 415. Although AB 415 primarily addresses telehealth billing, the Board directed staff to pursue physical therapy inclusion in the bill with the intent to permit the practice of telehealth by physical therapists. The Board took a support position, if AB 415 is amended to include the authority for physical therapists to practice telehealth.

**MOTION: To adopt all recommended legislative positions.**

**MOVED: Dr. Alviso, Physical Therapist**

**SECOND: Mr. Chu, PT, Ph.D.**

**VOTE: 5-0 Motion carried**

- 14. Special Order of Business- Thursday, May 12, 2011, 9:30 a.m.  
Hearing on Petition for Early Termination of Probation  
(A) Andrew Ramirez, PT  
(B) Scott Brown, PT**

After submission of the matters, 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 Web site at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

**15. 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 Web site at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

**16. Amend Administrative Policy Regarding Board Member \$100 per day per diem**

Mr. Hartzell explained Board members are not considered employees of the Board; therefore, they are not covered under the Fair Labor Standards Act (FLSA); however, Mr. Hartzell recommended the Board be consistent with the FLSA in adopting a \$100 per day per diem policy. The FLSA authorizes payment for the day if the individual completed a productive work day. Ms. Jewell, PT, Ph.D., expressed concern regarding "productive" work day and suggested the Board define "productive." In addition, Dr. Takii, Physical Therapist, suggested including the requirement for Board members to maintain a work log. Since the Board does not have a Board member \$100 per day per diem policy in place, the Board directed staff to draft a policy for consideration at the next Board meeting.

**MOTION: To direct staff to create a Board member \$100 per day per diem policy using the FLSA as a guide.**

**MOVED: Mr. Chu, PT, Ph.D.**

**SECOND: Mr. Turner**

**VOTE: 5-0 Motion carried**

- 17. Animal Physical Rehabilitation - Steven K. Hartzell**  
Proposal by CVMA to VMB regarding animal physical rehabilitation by persons other than veterinarians

Mr. Hartzell informed the Board the Veterinary Medical Board, Interdisciplinary Committee is still working on the proposed regulatory language for animal physical rehabilitation by persons other than veterinarians; therefore, he has not received language for the Board to review. This item will be added to the next Board meeting agenda if staff has received the proposed regulatory language.

## 18. National Physical Therapy Exam

### **(A) Report and recommendations regarding examination validity and security review**

The Board convened in CLOSED SESSION to discuss this agenda item per Government Code Section 11126(c)(1).

Mr. Hartzell shared with the public the Board reviewed the report and recommendations from Dr. Norman Hertz and has directed staff to request consent from the FSBPT to make the report public.

### **(B) Implementation of Fixed Date Testing vs. Suspension of Testing**

Mr. Hartzell reported the NPTE will no longer be continuously administered for applicants. The FSBPT announced it will be implementing fixed-date testing to maintain security by reducing test exposure. There are three test dates scheduled for the remainder of the year, and five to be scheduled for next calendar year.

Further discussions on the impact of fixed-date testing were discussed under agenda item 19.

### **(C) Analysis of Practice**

At the last meeting, the Board directed staff to contact physical therapy boards in other states to identify if there would be an interest in using an exam written by the Board, in lieu of the FSBPT NPTE. Mr. Hartzell shared that the Board President and he determined pursuing such action may create hostile relations for the upcoming 2011 FSBPT Annual Meeting, so other state boards were not contacted on this issue. Mr. Hartzell explained for the Board to write its own exam, it would need to conduct an analysis of practice, which is a lengthy process with an unknown cost. The FSBPT maintains current information on the practice already. Mr. Hartzell recommended the staff organize a presentation on an analysis of practice provided by Professional Examination Services (PES) for the next Board meeting. The Board concurred with this recommendation.

### **(D) Proposed Amended Language for FSBPT National Exam Contract**

Mr. Hartzell informed the Board the FSBPT contract expires on June 30, 2011. The FSBPT contract has been modified to extend an additional year; however, the new contract draft includes a provision which allows the FSBPT to, with 24 hours notice, terminate the contract at any time. It is likely this provision will be addressed by DCA, Contracts Office and will have to be removed.

**MOTION:** To direct legal counsel to be consistent with gaining approval from DCA when negotiating the updated FSBPT testing contract.

**MOVED:** Mr. Chu, PT, Ph.D.

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

**VOTE: 5-0 Motion carried**

**(E) Actions by the Board**

The Board did not take any additional action regarding the NPTE.

**19. Discussion and Actions Regarding License Applicant Status pursuant to Business & Professions Codes: 2639-2640 & 2655.91**

As recorded under agenda item 18(B), the FSBPT will be implementing fixed-date testing.

Currently, B&P Code section 2640 reads if the Board uses computerized testing, the Board may only authorize an applicant to have PTLA for 90 days. This will adversely affect those applicants' PTLA status if the NPTE test dates fall outside the 90 days. B&P Code section 2639 does not specify the length of time an applicant can have PTLA status; however, it cannot be referenced simultaneously with B&P Code section 2640 which is specific to computerized testing. Mr. Hartzell and Mr. Kaiser recommend amending current statute to allow the Board more flexibility in issuing PTLA status because although staff has determined this is not an immediate concern and few, if any, will be affected by this, the issue may arise in the future.

Mr. Kaiser presented two possible options for consideration. The Board could extend the statutory restriction of 90 days for PTLA status to 120 days, or eliminate the B&P Code section 2640 completely, then the statutory authority for the Board to issue PTLA status to B&P Code section 2639 which does not have a specified time for PTLA status.

Mr. Hartzell recommended changing statute to not only provide the Board with more flexibility with PTLA status, but to also specifically add Physical Therapist Assistant License Applicant (PTALA) status, which is not currently in statute.

**MOTION: To direct staff to seek a statutory change for more flexibility in issuing PTLA and PTALA status.**

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

**SECOND: Mr. Turner**

**VOTE: 5-0 Motion carried**

**20. Practice of Physical Therapy in Corporate Settings - Steven K. Hartzell**

Mr. Hartzell informed the Board DCA has issued a legal opinion regarding the practice of physical therapy in corporate settings, which is in keeping with Legislative Counsel's opinion and validates the Board's recent actions regarding this issue.

The DCA legal opinion has established that the Board may take action against those licensees who violate the Moscone-Knox Professional Corporations Act. The Board has received approximately 200 complaints against licensees who are employed by physicians. Mr. Hartzell recommended the Board direct staff to first determine whether or not the complaints

have merit. The licensees who are subject to these complaints may be in a legal business arrangement with the physician. The licensees should be contacted and provided an opportunity to explain their business relationship with the physicians, if such is the case.

Dr. Alviso, Physical Therapist, questioned the status of these complaints. Mr. Hartzell responded staff has acknowledged receipt of the complaints, but since DCA requested the Board postpone action until the legal opinion regarding this matter was issued, staff has not initiated any investigations. In addition, the Board, due to limited resources, must prioritize its responsibilities and although enforcement is a high priority, these complaints are not because there is no immediate, grave threat to patients.

Dr. Takii, Physical Therapist, suggested, while the Board has had reason to delay taking action, the Board should wait no longer. Mr. Hartzell recommended, if the Board wishes for staff to initiate the investigation process, staff should send a letter to the licensees requesting a written explanation of their employment situation, but also include in the letter information informing the licensees this issue is being considered by the Legislature, so no action will be taken at this time. At this time, the goal should be to seek compliance.

**MOTION:** To direct staff to move forward with processing the complaints received against physical therapists working for physicians.

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

**SECOND:** Dr. Alviso, Physical Therapist

**VOTE:** 5-0 Motion carried

## 21. 2011 FSBPT Annual Meeting

### (A) Motions

The Board indicated it did not have any motions to present at the 2011 FSBPT Annual Meeting.

### (B) Clarification of Executive Officer Representative

Mr. Hartzell suggested the Board clarify the delegation to the Executive Office to represent the Board at the 2011 FSBPT Annual Meeting should also apply to an individual who is serving as an Interim Executive Officer.

**MOTION:** The delegation to the Executive Officer to represent the Board at the FSBPT annual meeting also to applies to the Interim Executive Officer.

**MOVED:** Mr. Turner

**SECOND:** Dr. Alviso, Physical Therapist

**VOTE:** 5-0 Motion carried

**22. Public Comment on Items Not on the Agenda**

There were no additional public comments.

**23. Agenda Items for Next Meeting - Wednesday & Thursday, August 3 & 4, 2011**  
Department of Consumer Affairs - Sacramento, CA

The Board directed staff to review the minutes for August agenda items.

**24. Adjournment**

The meeting adjourned at 4:22 p.m. on May 12, 2011.

**MOTION: To adopt the draft minutes from the May 11 & 12, 2011 Board meeting.**

**MOVED: Mr. Chu, PT, Ph.D.**

**SECOND: Dr. Alviso, Physical Therapist**

**VOTE: 5-0 Motion carried**

---

**Dr. Sara Takii, Physical Therapist**

**Date**

PHYSICAL THERAPY BOARD OF CALIFORNIA

DR. SARA TAKII, PRESIDENT

In the Matter of the )  
Public Hearing re: )  
AGENDA ITEM NUMBER 8 )  
\_\_\_\_\_ )

CERTIFIED  
COPY

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, May 11, 2011

Reported by:

MARCENA M. MUNGUIA,  
CSR No. 10420

Job No.:  
B6969MSA

*Kennedy*

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PHYSICAL THERAPY BOARD OF CALIFORNIA

DR. SARA TAKII, PRESIDENT

In the Matter of the )  
Public Hearing re: )  
AGENDA ITEM NUMBER 8 )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS, taken at  
Mount Saint Mary's College, Doheny Campus,  
10 Chester Place, Rose Hill Auditorium,  
Los Angeles, California, commencing at  
1:08 p.m. on Wednesday, May 11, 2011,  
heard before the PHYSICAL THERAPY BOARD  
OF CALIFORNIA, reported by MARCENA M. MUNGUIA,  
CSR No. 10420, a Certified Shorthand Reporter  
in and for the State of California.

APPEARANCES:

PRESIDENT: Dr. Sara Takii,  
Physical Therapist

VICE PRESIDENT: Dr. Debra J. Alviso,  
Physical Therapist

BOARD MEMBERS: Ms. Marty Jewell, PT, Ph.D.  
Mr. Donald A. Chu, PT,  
Ph.D., ATC, CSCS  
Mr. James E. Turner

EXECUTIVE OFFICER: Steven K. Hartzell

ASSISTANT EXECUTIVE  
OFFICER: Becky Marco

I N D E X

ITEM NUMBER	PAGE
8 - Regulatory Hearing on the Proposed Language for the following sections of California Code of Regulations, Title 16, Division 13.2: (A) Article 1, Section 1398.4 Delegation of Function, Article 8, Section 1399.23 Required Actions for Sex Offenders and Section 1399.24 Unprofessional Conduct	5
Kimberly Kirk	16

1 Los Angeles, California, Wednesday, May 11, 2011

2 1:08 p.m.

3  
4  
5 DR. TAKII: My name is Sara Takii and I am the  
6 president of the Physical Therapy Board and I will be  
7 presiding over this hearing.

8 This is the time and place set for the Physical  
9 Therapy Board to conduct a public hearing on the proposed  
10 regulatory changes to Title 16, Division 13.2 of the  
11 California Code of Regulations, as described in the  
12 notice published in the California Regulatory Notice.

13 I'll ask legal: Am I supposed to be, at this  
14 point, giving a description of the regulation?

15 MS. SCURI: You don't need to.

16 DR. TAKII: Okay. Thank you.

17 For the record, today's date is May 11th, 2011,  
18 and this hearing is beginning at approximately 1:08 p.m.

19 Okay. Will you please call the roll to  
20 establish for the record that a quorum is present.

21 MR. HARTZELL: Sara Takii.

22 DR. TAKII: Here.

23 MR. HARTZELL: Debra Alviso.

24 DR. ALVISO: Here.

25 MR. HARTZELL: Marty Jewell.

1 MS. JEWELL: Here.

2 MR. HARTZELL: Donald Chu.

3 MR. CHU: Here.

4 MR. HARTZELL: James Turner.

5 MR. TURNER: Here.

6 MR. HARTZELL: All five members are present and we do  
7 have a quorum.

8 DR. TAKII: Thank you.

9 No written comments have been received by the  
10 Physical Therapy Board regarding the proposed  
11 regulations.

12 The Board will not be responding to comments  
13 during the hearing, but will consider your comments of the  
14 public in making its decision. So we'll probably repeat  
15 it again, but please limit your comments to five minutes.

16 At this time, the hearing will be opened to take  
17 oral testimony and/or documentary evidence by any person  
18 interested in these regulations for the record, which is  
19 now being made by a tape-recorder.

20 All oral testimony and documentary evidence will  
21 be considered by the Physical Therapy Board, pursuant to  
22 the requirements of the Administrative Procedures Act,  
23 before the Board formally adopts the proposed amendments  
24 to these regulations or recommends changes which may  
25 evolve as a result of this hearing.

1           At this time, I'd like to call on Ms. Scuri, our  
2 legal counsel, to describe some changes

3           MS. SCURI: Yes. Thank you.

4           And I'm going to recommend that you do separate  
5 motions for each of the three regulations sections  
6 because the motions will be different for two of them  
7 perhaps.

8           If you look in your packet at the text of  
9 Section 1398.4, which is the last page before Agenda  
10 Item 9, there are some suggested changes to this and the  
11 current proposed changes are shown in underline and  
12 strike-out, and because we are going to recommend, from a  
13 legal point of view, some changes to the next -- this  
14 section and the following section, a special motion will  
15 be necessary in order to stay within the lines of the  
16 Administrative Procedures Act that governs regulations  
17 and the regulatory process. If substantive changes are  
18 made, then we must have a comment period and so we will  
19 need to reflect that in the motion.

20           So for the first section, 1398.4, if you look at  
21 three lines from the bottom on the text --

22           MS. JEWELL: Page?

23           MS. SCURI: Page one of the text, which is the last  
24 page before Item 9.

25           And I apologize, we were unable to get these to

1 you earlier, but I had to go to a Medical Board meeting  
2 last week so I didn't get it back until recently.

3 The third line from the top where you see the  
4 underlined phrase "including, but not limited to," that  
5 phrase would be not added. It would be stricken. A  
6 period would be placed right after the word "Board,"  
7 which immediately precedes that clause.

8 DR. TAKII: I'm sorry. I'm not seeing where you are.

9 MS. SCURI: Third line from the bottom of the text of  
10 the regulation.

11 DR. TAKII: Okay. Up here (indicating)?

12 MS. SCURI: Yes.

13 So the sentence would -- the printed portion of  
14 the sentence would read:

15 "The delegation as to the Assistant  
16 Executive Officer of the Board or other  
17 designee of the Executive Officer, all  
18 functions necessary to the dispatch of  
19 business of the Board in connection with  
20 investigative and administrative proceedings  
21 under the jurisdiction of the Board,"

22 period. And then we're going to add some language.

23 "The Board further delegates to the Executive  
24 Officer, Assistant Executive Officer, or other  
25 designee of the Executive Officer, the ability

1 to approve settlement agreements."

2 That language would remain the same, and at the  
3 end of that sentence where it says "this ability," the  
4 word "ability" would be replaced with the word  
5 "delegation." So it would say:

6 "This delegation shall not include  
7 disciplinary decisions where revocation is  
8 ordered then stayed."

9 And I'd be happy to read that again if you'd  
10 like me to.

11 DR. TAKII: Please do.

12 MS. SCURI: Okay. So the regulation, if you approve  
13 the changes, would read:

14 "Except for those powers reserved  
15 exclusively to the agency itself under the  
16 Administrative Procedure Act," and the  
17 citation of the Government Code, "the Board  
18 delegates and confers upon the Executive  
19 Officer of the Board, or in his or her  
20 absence, the Assistant Executive Officer of  
21 the Board or other designee of the Executive  
22 Officer, all functions necessary to the  
23 dispatch of the business of the Board in  
24 connection with the investigative and  
25 administrative proceedings under the

1 jurisdiction of the Board. The Board  
2 further delegates to the Executive Officer,  
3 the Assistant Executive Officer, or other  
4 designee of the Executive Officer, the  
5 ability to approve settlement agreements for  
6 revocation or surrender of a license or  
7 interim license suspension. This delegation  
8 shall not include disciplinary decisions  
9 where revocation is ordered then stayed."

10 So they're kind of technical changes. Do you  
11 have questions about any of the changes? If -- after you  
12 have -- take public comment, I'd be happy to, if you wish  
13 to move forward with this, give you the technical  
14 language of the motion that you would need to make in  
15 order to adopt these in compliance with the  
16 Administrative Procedure Act.

17 DR. TAKII: Okay. So we are taking these one, two,  
18 and three separately and having public comment between  
19 each section; right?

20 MS. SCURI: I recommend that because of the nature of  
21 the motions that you might have to make.

22 DR. TAKII: If any interested person desires to  
23 provide oral testimony, it'll be appreciated if he or she  
24 will stand or come forward and give his or her name and  
25 address and if he or she represents an organization, the

1 name of such organization, so that we will have a record  
2 of all those who appear.

3 It is the desire of the Board that the record of  
4 the hearing may be clear and intelligible and that the  
5 hearing itself may be orderly, this providing all parties  
6 with fair and ample opportunity to be heard.

7 Okay. I guess maybe there's another sentence I  
8 should read here. Are there any questions concerning the  
9 nature of the procedures -- proceedings or procedures to  
10 be followed here before we begin?

11 Okay. Then we will -- is there anyone who would  
12 like to speak?

13 Okay. So I guess let it be known under  
14 testimony there was no one who offered public testimony  
15 on this first section. Okay. Since no one else is --

16 MS. SCURI: So this hearing of the section --

17 MR. HARTZELL: It should also be noted for the record  
18 that we did not receive any written comments.

19 DR. TAKII: I think I said that earlier.

20 MS. SCURI: Yeah.

21 DR. TAKII: I said that earlier.

22 Okay. Since no one else wishes to speak, then  
23 we'll close the hearing of this portion.

24 MS. SCURI: Thank you. If you wish to adopt these  
25 changes, the appropriate motion in order to be in

1 compliance with the further requirements of the  
2 Administrative Procedure Act would be to delegate to your  
3 Executive Officer the authority to adopt the regulations  
4 at the expiration of the 15-day comment period that's  
5 required if there are no adverse comments.

6 The Office of Administrative Law, which is the  
7 control agency that reviews these packages, will accept  
8 the delegation so long as there are no adverse comments.  
9 If there are adverse comments, which I'm not expecting  
10 there will be in this situation, then the matter would  
11 have to come back to the Board. So that's the reason for  
12 the phrasing of the motion.

13 DR. TAKII: Okay. Are there any comments from the  
14 Board?

15 Okay. Is there someone who'd care to make a  
16 motion?

17 There's no further comments, so we're ready to  
18 take a motion; right?

19 MS. SCURI: Yes, of this one.

20 MS. JEWELL: I'd move what Ms. Scuri said.

21 MS. SCURI: So the motion would be to authorize the  
22 Executive Officer to adopt the proposed regulations, as  
23 amended, at the expiration of the 15-day comment period  
24 if there are no adverse comments.

25 MS. JEWELL: That's exactly what I said.

1 DR. TAKII: Yeah. And there being no adverse  
2 comments, so is there a second?

3 MR. CHU: Second.

4 DR. TAKII: Okay. Is there any comment, any public  
5 comment?

6 Okay. All in favor, say "aye."

7 MR. TURNER: Aye.

8 MS. JEWELL: Aye.

9 MR. CHU: Aye.

10 DR. ALVISO: Aye.

11 DR. TAKII: Opposed? No opposed.

12 Okay. So we're past that section.

13 MS. SCURI: The next section is 1399.23.

14 As I understood from discussions with staff this  
15 morning, the purpose of this was to require that you  
16 receive from an Administrative Law Judge in a Proposed  
17 Decision a denial or revocation or a refusal to reinstate  
18 a license where the individual was required to register  
19 as a sex offender.

20 So the changes that we would propose to  
21 implement that would be to modify the beginning of (a)  
22 and to strike number 1. The reason you would strike  
23 number 1 is because it's already in your statute and  
24 there's a standard that regulations are measured by which  
25 does not allow for duplication. It's called the

1 nonduplication standard. So if a regulation would  
2 duplicate statute, they prefer that you not have that in  
3 the regulation.

4 So the proposal would be to modify new proposed  
5 Section (a) to read:

6 "Except as otherwise provided, if an  
7 individual is required to register as a sex  
8 offender pursuant to Section 290 of the  
9 Penal Code, or the equivalent in another  
10 state or territory, or military or federal  
11 law, the Administrative Law Judge, in a  
12 Proposed Decision, shall" -- and then it  
13 would start: "1, Promptly revoke license;  
14 2, Not reinstate or reissue."

15 We're going to recommend that certain referenced  
16 citations be added, but that's not the substantive  
17 content of the regulation.

18 Are there any questions about these changes?

19 MR. TURNER: The current law is permissive, "may" as  
20 opposed to "shall"?

21 MS. SCURI: Current law, as I understand it, is  
22 mandatory with respect to denial of a license, permissive  
23 with respect to revocation or reinstatement of a license.

24 MR. TURNER: Uh-huh.

25 MS. SCURI: The proposed text left it permissive,

1 which means you don't really need a regulation because  
2 you already have that authority. So if the intent is to  
3 make it mandatory upon an administrative law judge to  
4 give you a Proposed Decision that revokes or denies  
5 reinstatement, then this regulation should have that  
6 effect..

7 DR. TAKII: Are there any --

8 DR. ALVISO: And it removes the word "may"?

9 MS. SCURI: Yes. It replaces the words "The Board  
10 may" with the words "The Administrative Law Judge, in a  
11 Proposed Decision, shall."

12 MR. TURNER: Okay.

13 MS. SCURI: So that retains your discretion. There  
14 are some legal issues with respect to whether you can  
15 bind yourselves mandatorily without an underlying  
16 statute. Some boards have an underlying statute. You do  
17 not have that with respect to revocation or  
18 reinstatement, so we recommend that you bind the  
19 administrative law judge and then exercise your  
20 discretion. Even if your discretion each time is to  
21 revoke or not reinstate, that would be your prerogative.

22 DR. TAKII: Is there any -- are there any other --

23 MS. SCURI: You still have the discretion, yes.

24 DR. TAKII: Are there any other community comments?

25 Okay. Then we would be under public comments

1 and we'd be ready for a motion.

2 Wait. We have a --

3 MR. HARTZELL: You may have a public comment on the  
4 entire, not just the change we made.

5 MS. KIRK: Good afternoon. Kimberly Kirk, and I'm  
6 with the Department of Consumer Affairs. I'm just going  
7 to make one comment on this one.

8 When this was originally proposed as a  
9 recommendation for the boards and bureaus to draft this  
10 regulation and to move forward, as you'll remember, we  
11 actually had recommended that you use the language  
12 similar to what Ms. Scuri has stated except for that it  
13 would be both the Board and the ALJ would have to put  
14 forward a revocation or a reinstatement, and I just want  
15 to go on record to say that that was the original  
16 recommendation.

17 I understand now that legal counsel has  
18 additional information, but I just wanted to go on record  
19 to state that we had recommended that neither the Board  
20 nor the administrative -- the administrative law judge  
21 nor the Board would have that discretion to do anything  
22 other than to revoke the license and not reinstate the  
23 individual, and it looks like that's what even the  
24 recommendation is in your statute for an applicant, so  
25 I'm just not sure why the Board wouldn't follow suit with

1 a licensee, and that's my statement.

2 MS. SCURI: I'll be happy to answer that, if you'd  
3 like.

4 DR. TAKII: Yes.

5 MS. SCURI: We'll wait until you close the hearing.

6 DR. TAKII: Okay. So we can't have any other  
7 information before we choose to vote on that?

8 MS. SCURI: Yes. After you close the hearing, before  
9 you have a motion, I'd be happy to answer that.

10 DR. TAKII: Okay. So then we're not having a motion  
11 on this right now.

12 MS. SCURI: Are there any other public comments?

13 DR. TAKII: Well, yeah, the public comment -- there  
14 is none and there was none here.

15 MS. SCURI: So we'll close the hearing.

16 DR. TAKII: Okay. That's it then. Okay. So the  
17 hearing is now closed.

18 MR. CHU: And this is just on 1399?

19 MS. SCURI: The reason you would do something  
20 differently potentially with licensees rather than with  
21 applicants is, as I explained before, you have statutory  
22 authority that mandates it for a denial of licenses. You  
23 do not have similar statutory authority for license  
24 revocation and denial of reinstatement.

25 So if you wanted to bind yourself, technically

1 that would be the province of the legislature to bind  
2 your discretion, to remove that discretion from you. You  
3 can choose to remove the discretion from the  
4 administrative law judge, which is what this change would  
5 do. It retains your discretion. How you exercise that  
6 discretion would be on a case-by-case basis.

7 DR. TAKII: Are there any questions or further  
8 comments?

9 Questions from the public? Okay. So --

10 MS. SCURI: You would need the same kind of a motion,  
11 which would be to authorize your Executive Officer to  
12 adopt the proposed changes at the expiration of the  
13 15-day comment period if there are no adverse comments.

14 DR. TAKII: Okay.

15 DR. ALVISO: I move.

16 DR. TAKII: Okay.

17 MR. TURNER: And I'll second.

18 DR. TAKII: Okay. It's been moved and seconded then  
19 to move the language of our legal counsel.

20 Are there any comments?

21 Any public comments? Okay.

22 All in favor, say "aye."

23 MR. TURNER: Aye.

24 MS. JEWELL: Aye.

25 MR. CHU: Aye.

1 DR. ALVISO: Aye.

2 DR. TAKII: And opposed? Okay. So it passes.

3 MS. SCURI: You have one last section, and I'm happy  
4 to report we have no recommended changes to that.

5 DR. TAKII: So do we have to -- we don't have to do  
6 anything?

7 MS. SCURI: You still need to call for public  
8 comment --

9 MR. HARTZELL: Open the public hearing.

10 MS. SCURI: -- and if you have no public comment, the  
11 regular motion would be to adopt the item with proposed  
12 changes --

13 DR. TAKII: For all, everything?

14 MS. SCURI: -- for that single section.

15 DR. TAKII: Okay. Are there any public comments?  
16 Any comments from the Board? I didn't ask that  
17 first.

18 Okay. Then we need a motion then to adopt this  
19 particular section.

20 MR. CHU: I'll move.

21 DR. TAKII: Okay. And second?

22 MS. JEWELL: Second.

23 DR. TAKII: Okay. Any more comment from the Board?  
24 Any public comment?

25 Okay. All in favor, say "aye."

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MR. TURNER: Aye.

MS. JEWELL: Aye.

MR. CHU: Aye.

DR. ALVISO: Aye.

DR. TAKII: Opposed? Then we've adopted this last  
final section.

Okay. Is that it?

MS. SCURI: Yes, thank you.

DR. TAKII: Because we had already closed the  
hearing. Okay.

(Public Hearing concluded at 1:25 p.m.)

REPORTER'S CERTIFICATE

I, MARCENA M. MUNGUIA, CSR NO. 10420, A CERTIFIED  
SHORTHAND REPORTER FOR THE STATE OF CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT OF PROCEEDINGS WAS  
TAKEN BEFORE ME ON May 11, 2011  
AT THE TIME AND PLACE THEREIN SET FORTH, WAS TAKEN DOWN  
BY ME IN SHORTHAND, AND THEREAFTER TRANSCRIBED INTO  
TYPEWRITING UNDER MY DIRECTION AND SUPERVISION;

AND I HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT  
OF PROCEEDINGS IS A FULL, TRUE AND CORRECT TRANSCRIPT OF  
MY SHORTHAND NOTES SO TAKEN.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR NOR  
RELATED TO ANY PARTY TO SAID ACTION, NOR IN ANYWISE  
INTERESTED IN THE OUTCOME THEREOF.

IN WITNESS THEREOF, I HAVE HEREUNTO SUBSCRIBED MY  
NAME THIS 25<sup>th</sup> DAY OF May, 2011

Marcena Munguia  
MARCENA M. MUNGUIA, CSR NO. 10420  
CERTIFIED SHORTHAND REPORTER  
FOR THE STATE OF CALIFORNIA