



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, November 2, 2011 – 1:00 p.m.

Thursday, November 3, 2011 – 8:30 a.m.

**Ohlone College Newark Campus  
39399 Cherry Street Room NC 1100  
Newark, CA 94560**

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.

Sara Takii, PT, D.P.T., M.B.A, President  
Debra J. Alviso, PT, D.P.T., Vice-President  
Donald A. Chu, Ph.D., PT, ATC, CSCS  
Marty Jewell, Ph.D., PT  
James E. Turner, M.P.A.  
Carol Wallisch, M.A., M.P.H.

Sara Takii, PT, D.P.T, M.B.A, President	November 2, 2011 – Present November 3, 2011 – Present
Debra J. Alviso, PT, D.P.T, Vice-President	November 2, 2011 – Present November 3, 2011 – Present
Donald A. Chu, Ph.D., PT, ATC, CSCS	November 2, 2011 – Present November 3, 2011 – Present
Marty Jewell, Ph.D., PT	November 2, 2011 – Present November 3, 2011 – Present
James E. Turner, M.P.A.	November 2, 2011 – Present November 3, 2011 – Present
Carol Wallisch, M.A., M.P.H.	November 2, 2011 – Present November 3, 2011 – Present

The Physical Therapy Board of California (Board) November 2011 meeting was called to order by Dr. Takii at 1:11 p.m. All members were present and a quorum was established. In the absence of Shela Barker, Board Legal Counsel, Anita Scuri, Supervising Senior Counsel, was present. The following Board staff members were in attendance: Sarah Conley, Liz Constancio, Jason Kaiser, Rebecca Marco and Elsa Ybarra.

### 2. Sunset Review Report – Sarah Conley

Sarah Conley presented the final draft of the 2012 Sunset Review Report to the Board. Prior to submitting the report to the Senate Business, Professions and Economic

Development Committee (BP&ED), the Board directed staff to make the following changes:

Page 2

Identify academic degrees for the public members.

Page 8

The Board members' roster should reflect that Mr. Turner has been reappointed with a term expiration date of June 1, 2015.

Page 24

In the chart demonstrating the PTBC Board members' participation in FSBPT activities, the following events should be removed:

Sara Takii, PT, DPT:	Annual Meeting 2010: Alternate Delegate
James Turner:	Annual Meeting 2008: Alternate Delegate
	Annual Meeting 2010: Alternate Delegate
	Annual Meeting 2011: Alternate Delegate

**MOTION:** To adopt the 2012 Sunset Review Report as amended.

**MOVED:** Dr. Jewell

**SECOND:** Dr. Chu

**VOTE:** 6-0 Motion carried

Ms. Conley thanked the Board for their involvement and assistance in completing the 2012 Sunset Review Report.

**3. Adoption of PTBC Administrative Manual – Sarah Conley**

Ms. Conley presented the final draft of the Board Administrative Manual to be included with the 2012 Sunset Review Report. After discussion, the Board identified numerous edits and charged staff with incorporating these edits prior to submission with the 2012 Sunset Review Report. Dr. Chu directed staff to research if a system can be developed for Board members to report per diem electronically.

**MOTION:** To adopt the Physical Therapy Board of California Administrative Manual as amended.

**MOVED:** Dr. Jewell

**SECOND:** Mr. Turner

**VOTE:** 6-0 Motion carried

**4. Disciplinary Decisions –**

The Board will convene in CLOSED SESSION to deliberate on disciplinary actions pursuant to Government Code Section 11126(c)(3).

The Board had no closed session items.

5. **Approval of Minutes**

**(A) August 3 & 4, 2011 Board Meeting**

Corrections were made to the minutes as follows:

Page 1, Line 15

Mr. Turner requested staff identify Legal Counsel in attendance.

Page 5, Lines 200-201

*The professors were confused as to what the students should study to prepare for the exam CLE.*

Page 5, Lines 238-239

*Mr. Stiger petitioned the Board to postpone taking action on complaints received against physical therapist working for physicians.*

Page 7, Lines 303-304

*Mr. Turner shared his experience ~~in~~ working with in the Legislature and suggested it may be politically advantageous for the Board to support Mr. Stiger's recommendations.*

**MOTION:** To adopt the draft August 3 & 4, 2011 Board meeting minutes as amended.

**MOVED:** Dr. Alviso

**SECOND:** Dr. Jewell

**VOTE:** 6-0 Motion carried

**(B) September 21, 2011 Board Meeting**

Corrections were made to the minutes as follows:

Agenda Item 2

*At the conclusion of closed session the Board announced the appointment of Rebecca Marco as Executive Officer. Ms. Marco was serving ~~was~~ as the Board's Interim Executive Officer.*

**MOTION:** To adopt the draft minutes of the September 21, 2011 Board meeting as amended.

**MOVED:** Dr. Jewell

**SECOND:** Dr. Alviso

**VOTE:** 6-0 Motion carried

**(C) October 13, 2011 Board Meeting**

The Board determined the minutes accurately reflect the actions of the Board.

**MOTION:** To adopt the draft minutes of the October 13, 2011 Board meeting as presented.

**MOVED:** Dr. Jewell

**SECOND:** Ms. Wallisch

**VOTE:** 6-0 Motion carried

**6. Application & Licensing Services Report – Liz Constancio**

**(A) Statistics**

**(B) Continuing Competency Audits**

Rebecca Marco, Executive Officer (EO), introduced Liz Constancio who was recently appointed as Staff Services Manager to the Licensing and Application Services Program. Ms. Constancio reported application and licensing statistics for the first quarter of the current fiscal year. Dr. Jewell requested again that staff separate statistics on physical therapist applications submitted from foreign educated physical therapist assistant applicants and foreign educated physical therapist applicants who downgrade to a physical therapist assistant application. Dr. Alviso brought to staff's attention the years in the tables need to be updated to reflect the current fiscal year.

Ms. Marco explained a Continuing Competency audit backlog has occurred due to staffing shortages.

**7. Consumer Protection Services Enforcement Report – Jason Kaiser**

**(A) Performance Measures**

**(B) Disciplinary Summary**

Ms. Marco shared Jason Kaiser was recently appointed as Staff Services Manager to the Consumer Protection Services (CPS) Program. Mr. Kaiser previously served as the Interim Lead of the Licensing and Application Services Program. While CPS is still in transition, CPS Lead, Elsa Ybarra, presented statistics for the CPS program. Ms. Ybarra explained in the enforcement statistics report, the "YTD" column was fixed to reflect averages instead of a total sum. Additionally, Ms. Ybarra updated Performance

Measure targets for case intake, from five to nine days, and probation intake, from five to ten days. Ms. Ybarra changed these targets at the request of the Board at the October 13, 2011 Board meeting after staff explained the current targets do not take into consideration hours of operation (items received after close of business on last target day), weekends, holidays and staff absences. The Board requested staff add a footnote to explain why the number of "complaints received" and the number of "complaints assigned for investigation" are not the same.

## **8. President's Report – Dr. Sara Takii**

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

Dr. Takii shared the following boards are involved with the monthly Department of Consumer Affairs (DCA) teleconference: Acupuncture Board, Board of Behavioral Sciences, Dental Board, Dental Hygiene Committee, Medical Board, Naturopathic Medical Board, Occupational Therapy Board, Optometry Board, Osteopathic Medical Board, Pharmacy Board, Physical Therapy Board, Physician Assistant Committee, Board of Podiatric Medicine, Psychology Board, Board of Registered Nursing, Speech-Language Pathology and Audiology Board, and Vocational Nursing and Psychiatric Technicians Board.

Dr. Takii reported Brian Stiger, DCA Acting Director, explained at the September teleconference, enforcement is top priority for Governor Brown. Mr. Stiger provides a monthly report to Governor Brown regarding boards' enforcement programs. Also, during the teleconference, boards were notified Governor Brown is making appointments; however, the focus is specifically on boards lacking a quorum.

Dr. Takii shared there has been some relief from the hiring freeze. Ms. Marco explained DCA, boards and bureaus who submitted freeze exemptions are no longer required to go to the Department of Finance (DOF) and the Governor's Office, but continue to require approval by the State and Consumer Services Agency (SCSA). This relief was provided to DCA, boards and bureaus since all achieved a 5% reduction of their individual budgets.

Dr. Takii shared the BreEZe project is on track and the Board is scheduled to have BreEZe in spring 2013.

### **(B) 2012 PTBC Meeting Dates**

The Board discussed a location for the February 2012 Board meeting. Ms. Marco informed the Board, staff is awaiting a response from University of St. Augustine whether the meeting may be held there. San Diego Mesa College is having accreditation issues preventing them from hosting the Board meeting. James Dagostino, PT, D.P.T., will graduate its first class in fall 2012, which may permit an outreach opportunity at that time. Staff researched holding meetings at hospitals; however, hospital schedules would not allow for interested parties to attend the Board meeting.

Ms. Marco informed the Board the sunset hearings may occur around that same time as the February Board meeting; therefore, it may be helpful to hold the meeting in

Sacramento.

Ms. Scuri explained the basis of holding Board meetings within 100 days of each other. Discipline cases held for discussion at Board meetings must be within 100 otherwise the proposed decision is automatically effective if the Board does not act before the 101<sup>st</sup> day.

### **(C) 2013 Proposed PTBC Meeting Dates**

The Board discussed the proposed 2013 Board meeting calendar and all members indicated they had no conflicting engagements with the proposed dates. Ms. Conley explained the first meeting in 2013 will fall outside the 100 window in which meetings are routinely scheduled in the event a discipline case is held for discussion. Ms. Conley recommended the Board keep the proposed dates for 2013 despite the extended time between the November 2012 Board meeting and the February 2013 Board meeting, and in the event a discipline case is held for discussion between, a teleconference may be held to resolve the matter. The Board concurred with Ms. Conley's recommendation.

The Board assessed its current practice of meeting at schools with physical therapist or physical therapist assistant programs and if it is facilitating the Board's outreach goal as set in the 2009 Strategic Plan. The Board permitted staff to explore holding meetings at schools that are not located in the areas in which regular meetings are held, but still in the surrounding region; however, if staff cannot coordinate with a school, the alternative location should be the most cost efficient. The Board directed staff to contact California State University, Long Beach and California State University, Northridge as potential meeting locations for the February 2013 Board meeting.

### **9. Executive Officer's Report – Rebecca Marco**

Dr. Jewell requested background on the Board's need to comply with the Financial Integrity and State Managers Accountability Act (FISMA). Ms. Marco replied the DCA previously responded on behalf of the boards, but is no longer doing this. The Board will report to the DCA and the DCA will forward all boards' report to the Department of Finance (DOF). The Board directed staff to include the issue of the General Fund loan in the FISMA report.

Ms. Marco provided an update on relocation negotiations with DCA. The DCA wants the Board to move into the vacant space at the North Market location, but discussions were put on hold because staff has been focused on completing the Sunset report. Additionally, Ms. Marco provided an updated on the audit of the Board, ordered by the Joint Legislative Audit Committee. The audit cost is incorporated in the Board's budget for two fiscal years; half of the cost will be paid this fiscal year (FY) 2011/12 and the remaining balance in FY 2012/13. While the audit is funded initially by the General Fund, the Board must repay the General Fund for the full cost of the audit. Finally Ms. Marco reported the Board contracted with the Office of Professional Exam Services (OPES) to review and update the California Law Exam (CLE). OPES has held three workshops with Subject Matter Experts (SME) to compare the current CLE to the current laws and regulations and OPES anticipates review will be completed by April 2012. Additionally, the Board is under negotiations with OPES to establish a multi-year contract to annually review and update the CLE and to complete a one-time review of

the Electromyography exams.

The Board expressed appreciation for Ms. Marco's written Executive Officer's report.

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

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

Dr. Dagostino, representing the CPTA, shared a record 1,200 physical therapists attended the CPTA Annual Conference. The Board's attendance was missed. Dr. Dagostino requested, on record, the Board attend all future CPTA Annual Conferences. The 2012 CPTA Annual Conference will be held in Santa Clara, California. Ms. Marco shared the Board appreciates the opportunity to participate in the CPTA Annual Conferences providing as a great outreach opportunity.

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

Dr. Jewell indicated she was unable to attend the FSBPT Annual Meeting due to the State's travel restriction; however, an Executive Summary of the Annual Meeting is available on the FSBPT's Web site.

## **11. Update on Practice of Physical Therapy in Corporate Settings**

### **(A) Chapter 448, Statutes of 2011 (SB 543)**

Ms. Marco updated the Board on the status of employment settings of physical therapists. As of January 1, 2012, the Board is prohibited from taking action on complaints received against physical therapist working for physicians working for medical, podiatric medical, and chiropractic corporations. At the August 2011 Board meeting, Dr. Chu requested demographic information on the complaints received based physical therapists employed by physicians. Although the motion failed, Ms. Ybarra reported the information she was able to obtain on those complaints received since the August 2011 Board meeting.

The Board staff expressed concern that the numerous cases opened based on physical therapists working for physicians are sitting open, thus negatively skewing the Board's enforcement performance measure data. The Board discussed ways to address these cases; however, Ms. Scuri advised the Board cannot provide specific direction to staff on how to proceed with enforcement cases. The Board acts as the judge in enforcement matters and the Executive Officer acts as the prosecutor. It is inappropriate for the judge, i.e. the Board, have any involvement, or direct the EO in any way during the investigation prior to imposing discipline.

The Board recognized the motion it made the August 2011 Board meeting did not capture its true intent since the Board did not intend for cases to be left open; therefore, it revisited the original motion which is as follows:

*I move, in consideration of the recommendation made by Acting Director Stiger, that where complaints arise as a result of allegations solely of violations of the*

*Moscone-Knox Professional Corporation Act, that the Board staff not conclude any investigation of such complaints until the Legislature clarifies the law regarding the employment of licensed physical therapists in a corporate practice setting. This issue shall be placed on each agenda until such time as the board decides that the issue is resolved.*

Dr. Chu opposed the original motion at the August 2011 Board meeting; which permitted him to put forth a new motion for the Board.

**MOTION:** To comply with Chapter 448, Statutes of 2011 (SB 543) that will take effect January 1, 2012 and that this item be on the agenda at future meetings and watch progress of the issue.

**MOVED:** Dr. Chu

**SECOND:** Ms. Wallisch

**VOTE:** 6-0 Motion carried

**12. Adoption of 2012 Rulemaking Calendar– Sarah Conley**

Ms. Conley presented the 2012 Rulemaking Calendar.

Dr. Jewell inquired how the Board may assist in facilitating the completion of items on the 2012 Rulemaking Calendar. Ms. Marco responded that if the Board members are interested, it would be helpful to assign a Board member to each rulemaking file to assist staff. The members expressed interest in assisting staff with rulemaking files to facilitate completion of the 2012 Rulemaking Calendar. Ms. Marco explained some of the items may be included in one rulemaking package. Dr. Jewell recommended grouping the proposed rulemaking items to reflect how the items will be filed.

The Board changed the priority on the following rulemaking items:

- *PTA – Equivalency Training and Experience: Amend California Code of Regulations section 1398.47: Priority 3 2*
- *Fees: Add new CCR section (Application and Licensing fees previously CCR section 1399.50 & 1399.52): Priority 2 1*
- *Pathways for recovery: Add new CCR section: Priority 2 1*
- *Continuing Competency: Amend CCR section 1399.94: Priority 3 2*

**MOTION:** To adopt the 2012 Rulemaking Calendar as modified.

**MOVED:** Dr. Chu

**SECOND:** Dr. Jewell

**VOTE:** 6-0 Motion carried

13. **Special Order of Business – November 3, 2011 9:00 a.m.**  
**Regulatory Hearing on Proposed Language for Sponsored Free Health Care Events from Chapter 27, Statutes of 2010 (AB 2669), Sections 1400-1400.3 of Division 13.2 of Title 16 of the California Code of Regulations**

Please see attached transcripts for this agenda item.

14. **Special Order of Business –November 3, 2011 9:15 a.m.**  
**Regulatory Hearing on Proposed Language for Model Guidelines for Issuing Citations and Imposing Discipline, Section 1399.15 of Division 13.2 of Title 16 of the California Code of Regulation**

Please see attached transcripts for this agenda item.

15. **Legislation Matrix Update – Sarah Conley**

**(A) Summary of 2011 Legislation**

Ms. Conley presented a summary of proposed legislation followed by the Board in 2011. Since the Board adopted new positions on legislation, Ms. Conley inquired if the Board wished to change its position on any of the 2-year bills. The Board did not change its position on any of the 2-year bills; the positions remain as Watch.

**(B) Proposed Definitions of Legislation of Legislation Positions**

The Board amended the legislation positions as follows:

Oppose: ~~*The Physical Therapy Board of California (PTBC) opposes the addition/amendment/repeal of the statutory provision(s) set for by the bill.*~~

*The Board will actively oppose proposed legislation and demonstrate opposition through letters, testimony and other action necessary to communicate the oppose position taken by the Board.*

Oppose, unless amended: ~~*The PTBC opposes the addition/amendment/repeal of the statutory provisions(s) set forth by the bill unless amendment are made to the bill as specified by the PTBC.*~~

*The Board will take an opposed position and actively lobby the legislature to amend the proposed legislation.*

The Neutral position was not amended.

The Watch position was re-defined.

Watch: *The watch position adopted by the Board will indicate interest regarding the proposed legislation. The Board staff and members will closely*

monitor the progress of the proposed legislation and amendments.

Support, if amended:

~~The PTBC supports the addition/amendment/peal of the statutory provision(s) set forth by the bill if amendments are made to the bill as specified by the PTBC.~~

The Board will take a supportive position and actively lobby the legislature to amend the proposed legislation.

Support: ~~The PTBC supports the addition/amendment/peal of the statutory provision(s) set forth by the bill.~~

The Board will actively support proposed legislation and demonstrate support through letter, testimony and any other action necessary to communicate the support position taken by the Board.

**MOTION:** To adopt the legislation positions as amended.

**MOVED:** Dr. Jewell

**SECOND:**

**VOTE:** 6-0 Motion carried

## **16. National Physical Therapy Exam and California Law Exam Contract Update**

Ms. Marco reported Ms. Barker is continuing to work with the FSBPT to address the Department of General Services' concerns with the contract.

## **17. Elections**

### **(A) President**

Dr. Chu nominated Dr. Alviso for Board President. Dr. Alviso accepted the nomination.

**MOTION:** To nominate Dr. Alviso for Board President

**MOVED:** Dr. Chu

**SECOND:** Mr. Turner

**VOTE:** 6-0 Motion carried

### **(B) Vice-President**

Dr. Takii nominated Dr. Jewell for Board Vice-President. Dr. Jewell accepted the nomination.

**MOTION:** To nominate Dr. Jewell for Board Vice-President

**MOVED:** Dr. Takii

**SECOND:** Mr. Turner

**VOTE:** 6-0 Motion carried

(C) FSBPT Delegate

(D) FSBPT Alternate Delegate (Primary)

(E) FSBPT Alternate Delegate (Back-up)

**MOTION:** To appoint the Board President as the FSBPT Delegate, the Board Vice-President as the FSBPT Alternate Delegate (Primary), and, in order, Board members, Legal Counsel, then the Executive Officer as the FSBPT Alternate Delegate (Back-up).

**MOVED:** Dr. Chu

**SECOND:** Mr. Turner

**VOTE:** 6-0 Motion carried

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

Lauren Robertson, PT, expressed concerns regarding the Board's Continuing Competency program. Ms. Robertson requested the Board consider 1) prohibiting approval agencies from being course providers, 2) addressing conflict of interest issues with commercial support of specific courses 3) requiring approval agencies staff a health care provider to assist in development and/or assessment of courses; and, 4) not implementing a per course fee for approval agencies.

**19. Agenda Items for Next Meeting – February 8 & 9, 2012  
San Diego, CA**

The Board directed staff to include clarification of the motion pertaining to complaints received against physical therapist working for physicians made at the August 2011 Board meeting. This agenda item shall include 1) physical therapists working for professional corporations other than physical therapy corporations and 2) physical therapy corporations formed as a general corporation.

Dr. Jewell will work with staff to prepare an issue paper on implementation and emerging issues in Continuing Competency for the February 2012 Board meeting. All other Board members will provide their concerns in writing to the EO.

Dr. Alviso directed staff to include proposed language for CCR 1398.4, Delegation of Functions, for Board reconsideration. Dr. Alviso will prepare an issue paper.

Dr. Takii will submit a letter to the EO regarding how medication knowledge applies in physical therapy practice and what is being taught to current physical therapist students on this issue.

Ms. Wallisch and staff will draft an issue paper regarding pathways for recovery to initiate progress on the rulemaking file.

**20. Adjournment**

The meeting adjourned at 10:43 a.m. on Thursday, November 3, 2011.

**MOTION:** To adopt the November 2 & 3, 2011 meeting minutes as amended.

**MOVED:** Dr. Takii

**SECOND:** Ms. Wallisch

**VOTE:** 6-0 Motion carried

  
Dr. Sara Takii, Physical Therapist, Board President

6/13/12  
Date