



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 February 8 & 9, 2012

Wednesday, February 8, 2012 8:30 a.m.
Thursday, February 9, 2012 8:30 a.m.

University of St. Augustine, San Diego Campus
700 Windy Point Drive, Building C, Room 113C
San Marcos, CA 92069

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.

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

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| Debra J. Alviso, PT, D.P.T., President | February 8, 2012 – Present February 9, 2012 – Present |
| Marty Jewell, Ph.D., PT, Vice-President | February 8, 2012 – Present February 9, 2012 – Present |
| Donald A. Chu, Ph.D., PT, ATC, CSCS | February 8, 2012 – Present February 9, 2012 – Present |
| Sara Takii, PT, D.P.T., M.P.A | February 8, 2012 – Present February 9, 2012 – Present |
| James E. Turner, M.P.A. | February 8, 2012 – Present February 9, 2012 – Present |
| Carol Wallisch, M.A., M.P.H. | February 8, 2012 – Present February 9, 2012 – Present |

The Physical Therapy Board of California (Board) February 2012 meeting was called to order by Dr. Alviso at 8:35 a.m. All members were present and a quorum was established. Also present at the meeting were Shela Barker, Legal Counsel; Rebecca Marco, Executive Officer; and other Board staff, including, Sarah Conley, Liz Constancio, Jason Kaiser and Elsa Ybarra.

2. Disciplinary Decisions – CLOSED SESSION

(A) Pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary actions

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

**(B) Pursuant to Government Code section 11126(e)
US Equal Employment Opportunity Commission (EEOC) Charge
Number: 555-2012-00027**

The Board convened in closed session to discuss US Equal Employment Opportunity Commission (EEOC) Charge Number: 555-2012-00027 pursuant to Government Code section 11126(e).

3. Approval of November 2 & 3, 2011 Meeting Minutes

Corrections were made to the minutes as follows:

Page 6, Lines 255-257

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 goals as set in the 2009 Strategic Plan.

Page 6, Lines 273-275

DCA wants the Board to move in to the vacant space at the North Market location, but discussions were put on hold because staff has been focused on completing the Sunset report.

Page 8, Lines 377-378

*PTA – Equivalency Training and Experience: Amend California Code of ~~Regulations~~
Regulations section 1398.47: Priority 3 2*

Page 11, Lines 522-527

The Board indicated the minutes did not accurately reflect Lauren Robertson's concern that approval agencies could also be course providers creating a conflict of interest. Ms. Robertson suggested the Board create another level of approval for course providers.

Regulatory Hearing Transcripts, Page 3, Line 9

The record indicates Ms. Barker was present at the meeting when she was not.

Regulatory Hearing Transcripts

In the record, the Senate Committee on Business, Professions and Economic Development, is referred to as the BMP Committee instead of the B&P Committee.

Staff will return the transcripts for editing.

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

MOVED: Dr. Takii

SECOND: Ms. Wallisch

VOTE: 6-0 Motion carried

4. Application & Licensing Services Report – Jason Kaiser

(A) Statistics

Dr. Jewell clarified that she requested 1) data on how many foreign educated physical therapists apply for physical therapist assistant licensure, 2) separate foreign application received data; and, 3) separate foreign educated physical therapist assistant exam data based on qualification method. Mr. Kaiser responded the data is available, but must be collected manually.

Mr. Turner inquired whether a delinquent license is considered an active license and how a licensee obtains inactive status. Mr. Kaiser explained variables contributing to the renewal data provided, and that data pertaining to renewals is dependent upon the date the data is collected. The renewal data changes on a day to day basis with licensees continually submitting renewal payment. The Board questioned whether licensees holding a delinquent license are practicing. Mr. Kaiser noted licensees are not permitted to work with a delinquent license; however, the Board may not be aware of a licensee practicing with a delinquent license without specific notification.

Mr. Kaiser also explained a licensee must have a valid license to be placed on inactive status and to obtain inactive status, the licensee must submit notification to the Board. Inactive status exempts licensees from the requirement to complete continuing competency hours, but does not exempt licensees from submitting the renewal payment. A licensee who has requested inactive status may not practice until he or she submits the current renewal fee and completes the required continuing competency hours. Mr. Kaiser informed the Board approximately two percent of the licensing population has requested inactive status.

Dr. Alviso requested staff provide the National Physical Therapy Examination (NPTE) test dates since data is no longer being provided monthly due to fixed-date testing.

(B) Continuing Competency Audit Monthly Statistics

The Board requested staff further breakdown the "Failed Audit" category of the continuing competency compliance statistics to include the various reasons licensees fail the audit. Dr. Alviso inquired as to whether the "Pending Review" category referred to pending internally, or pending due to the licensee. Mr. Kaiser responded the "Pending Review" includes both the internal backlog and unresponsive licensees; however, with redirection of resources to the Continuing Competency program, the number of pending audits due to internal backlogs is decreasing. Dr. Jewell requested staff rank violations from most to least egregious.

(C) Photo Licenses

Mr. Kaiser presented research on photo licenses. Ms. Wallisch questioned whether staff has

evidence of license fraud. Mr. Kaiser responded there is no substantial evidence of license fraud; however, the intent of updating the license material and format is to move away from outdated "security" paper and towards more advanced, secure licenses. Moreover, photo licenses may also be used for other purposes, such as identification and as a way to provide required information pertaining to the licensee. Mr. Kaiser explained at this time staff is determining what options are available with BreEZe because although this feature will be initially unavailable, the potential for photo licenses exists. Ms. Marco shared staff is seeking the Department of Consumer Affairs' (DCA) involvement with this project. After considering the necessity of the project, the Board directed staff to continue its research.

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

(A) Performance Measures

Elsa Ybarra presented the Performance Measure data and explained the Consumer Protection Services program lost two analysts, which has and will affect staff's ability to meet Performance Measure goals. Ms. Ybarra noted the high number of pending cases in the enforcement statistics is due to temporary staff assisting for a few days by opening numerous cases and the analysts have not had the opportunity to assign all those cases.

(B) Disciplinary Summary

Ms. Ybarra explained this agenda item is a list of disciplinary actions taken by the Board which are reported to the DCA and posted to the Board's Web site.

6. President's Report – *Dr. Debra Alviso*

(A) 2013 Proposed PTBC Meeting Dates and Locations

Dr. Alviso thanked Dr. Takii for her previous service as Board President. Dr. Alviso reported the Federation of State Boards of Physical Therapy (FSBPT) and the American Physical Therapy Association (APTA), though each have similar, but different missions, released a joint statement regarding the model continuing competency program. California was noted as one of the five states who require continuing competency in lieu of continuing education as a condition of renewal.

The Board reviewed the meeting dates and locations for 2012 and 2013. All members indicated they are available for the set meeting dates.

7. Legal Counsel Report – *Shela Barker*

(A) Practice Issues

Ms. Barker expressed concern with staff responding to practice issue questions. Ms. Barker advised against the Board taking a position on practice issues unless regulations are adopted. Additionally, after reviewing common practice issue responses on the Board's Web site, Ms. Barker found some responses to be carefully drafted as to not create an underground regulation; however, other responses could be considered underground regulation.

The Board has the authority to define the scope of physical therapy in conjunction with the definition of physical therapy in statute, but there are some limitations. Also, when an answer to a practice issue question requires professional judgment, Ms. Barker recommends staff provide a standard response informing the licensee he or she will have to make that determination using his or her own professional judgment. Ms. Barker explained, if a practice issue question is clearly answered by law or regulation, she would advise that staff may respond based on the law or regulation; however, Ms. Barker noted there are very few of those types of responses based on the laws and regulations governing physical therapy practice. If the issue in question is causing problems between an employee and an employer, it is an employment issue and not an issue to be resolved by the Board.

The Board determined this issue will be discussed further at the next meeting.

(B) Board Audit Confidentiality Requirements

Ms. Barker presented information regarding the Bureau of State Audits' (BSA) access to confidential information and the prohibition of the Board to discuss the audit during the investigation. The BSA warned Board members and Management shall not interfere with the audit investigations and if there is any appearance of impropriety, the auditors will make note of that in the report and the report will be provided to the Legislature; therefore, Ms. Barker advised the Board heed the warning and refrain from any conduct that could be mistaken for interference with staff's responses to the BSA staff while the investigation is taking place.

Mr. Turner inquired as to the last time the Board was audited. Ms. Marco replied the Board has never before been audited by the BSA.

Ms. Wallisch inquired as to the process of reviewing the draft audit report. Ms. Barker explained pursuant to statute, the Board would hold a special meeting to review the draft audit report. Staff is maintaining contact with the BSA in hopes ample notice is provided by the BSA to staff so that a special meeting can be quickly arranged in compliance with the Bagley-Keene Open Meeting Act. The special meeting will likely be held via teleconference and though it will be publically noticed, discussions of the draft audit report will be in closed session.

Ms. Marco shared the BSA indicated the draft audit report is anticipated to be released in May.

Ms. Barker explained the BSA cannot access criminal offender record information (CORI) because CORI is protected by both state and federal law and to access this information, the BSA staff working with the Board would need to obtain background clearance via LiveScan fingerprinting. Board staff has removed CORI from all files reviewed by the BSA and notified the BSA staff the CORI has been removed.

(C) National Physical Therapy Exam and California Law Exam Contract Update

Ms. Barker reported she recently received the final draft of the contract from the FSBPT and is prepared to send it to Board staff for submission to the DCA. Ms. Barker explained the FSBPT agreed to amend the contract to comply with State law.

8. Executive Officer's Report – Rebecca Marco

Ms. Marco informed the Board her report included an update on Board activities since the last meeting, then Ms. Marco addressed specific items from the report. The funding for the Consumer Protection Enforcement Initiative (CPEI) positions were not extended by the Department of Finance (DOF); therefore, the funding for the positions ends September 30, 2012. Staff in these positions are concerned about the limited-term funding and one employee has sought another permanent full-time employment opportunity. For this reason, and others, the enforcement program processing time may increase which will appear in the Performance Measure data. Dr. Alviso inquired as to the future of the CPEI positions. Ms. Marco is hopeful the Board has sufficient funds to absorb the CPEI positions.

Ms. Marco reported it is anticipated the Board will exceed Attorney General (AG) costs; therefore, a deficiency letter has been sent to the DCA Budget Office and will eventually be submitted to the DOF. The DOF will provide the Board with a response as to whether the budget augmentation will be granted in approximately thirty days. It is Ms. Marco's understanding the DCA Budget Office is supporting the Board's efforts for a budget augmentation. If the budget augmentation is not granted, all AG work on enforcement cases will cease until the Board's budget can support the AG's services again.

Ms. Marco and Dr. Alviso met with the staff of the Senate BP&ED Committee, Bill Gage, Chief Consultant, and Rosielyn Pulmano, Consultant, regarding the Board's Sunset Report and hearing. Ms. Pulmano who was assigned to review the Board's Sunset Report has been relocated; however, she will still be reviewing the Board's report. The Board's sunset hearing is scheduled for March 19, 2012 and Ms. Pulmano indicated Board staff should receive questions regarding the report approximately two weeks prior to the hearing. At the hearing on March 19th, Board members are welcome to attend as are any interested parties; however, the Board President and the Executive Officer will be the individuals testifying on behalf of the Board. The Senate BP&ED Committee has not indicated what time the hearing will be scheduled, but when an agenda has been established the Committee requested the Board mail the agenda to all individuals on the Board's mailing list. James Dagostino, PT, CPTA, stated representatives from the CPTA will be present at the Board's sunset hearing on March 19th and if asked to provide comment, will be in support of the Board.

Mr. Turner requested Ms. Marco elaborate on the Board establishing a zero-based budget. Ms. Marco shared at the January monthly teleconference of the DCA Director and Board Presidents, it was announced the Governor has requested the Department of Finance develop a plan for zero-based budgeting of select departments statewide. Ms. Marco believes this may be the opportunity the Board needs to address its budget issues.

Ms. Marco informed the Board the newsletter scheduled to be released the middle of February will be delayed due to limited resources.

9. Consumer and Professional Associations and Intergovernmental Relations Report

(A) California Physical Therapy Association (CPTA)

Dr. Dagostino, CPTA, indicated the CPTA had no comments at this time; however, will comment on agenda item #11.

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

i. 2012 National Physical Therapy Examination Policies

Dr. Alviso asked for comment on FSBPT's 2012 NPTE Policies. Dr. Jewell brought to the Board's attention changes made to *Approval for Candidates to Sit for the NPTE*. A provision has been added permitting candidates to sit for an exam no more than 90 days prior to graduation which differs from State policy that the candidate must complete all educational requirements and have graduated prior to sitting for the exam. Dr. Jewell speculated this language was added to alleviate the issues with fixed-date testing.

Ms. Barker informed the Board it does not currently have statute or regulation which speaks to when an applicant may sit for the NPTE.. Ms. Barker informed the Board it currently has one application process for both sitting for the exam and to obtain licensure. The Board having one application process was not of concern prior to these new policies because under old policy, the FSBPT would not allow a candidate to sit for the NPTE prior to graduation. Ms. Barker advised the Board now that the FSBPT has updated its policies to allow candidates to sit for the exam prior to graduation, the Board may wish to establish two separate application processes, one to sit for the NPTE and one to obtain licensure.

Dr. Alviso shared she has completed her service on both the Finance Committee and the Continuing Competency Committee, so she had nothing to report. Dr. Jewell noted due to the State travel restriction, no Board representative attended the FSBPT Annual Conference and the Exam Security Committee has not met, so she had nothing to report.

10. FSBPT Draft Model for Supervised Clinical Practice – Dr. Sara Takii

Dr. Takii reviewed the Draft Model for Supervised Clinical Practice (SCP) and provided recommendations to the Board. Dr. Takii recommended amending the prerequisite requirements in the FSBPT's draft model to require the applicant's education be equivalent to the education of physical therapists' education in a U.S. accredited entry-level program.

Dr. Takii also recommended, under *Timing of the NPTE*, the Supervised Clinical Practice (SCP) take place after the applicant sits for the exam and not before as the FSBPT has proposed in this draft. California has and currently requires foreign educated applicants to pass the NPTE prior to completing the SCP. Dr. Takii made this recommendation for the following reasons: 1) States should feel confident the foreign educated applicant has the required academic knowledge before allowing the applicant to treat patients; and, 2) statistically, a very high number of foreign educated applicants fail the exam; therefore, applicants who may not possess the required academic knowledge to practice physical therapy would be treating patients, thus creating a consumer protection issue.

Dr. Takii presented additional concerns regarding the Draft Model for SCP: 1) current regulation requires Clinical Instructors to utilize an older APTA form, 2) the ability for the applicant to get three months of SCP waived by successfully completing a course in Laws and Professional Ethics, and 3) SCP may be waived completely if the applicant has been licensed and practicing in another state. Dr. Takii provided examples of how physical therapy is defined in other countries and how different it may be from the U.S., which is a reason why Dr. Takii believes it is crucial the foreign educated applicants demonstrate their knowledge prior to the

SCP. Lastly, Dr. Takii recommended the Board consider adopting the FSBPT's definition of onsite supervision because it clearly states the required level of supervision.

Dr. Dagostino, CPTA, provided the CPTA would support the Board in recommending to the FSBPT a foreign educated applicant must pass the NPTE prior to the SCP due to the limited number of SCP sites and the statistically high fail rate of foreign educated applicants.

Dr. Alviso asked for comment on the Draft Model for Supervised Clinical Service and/or Dr. Takii's recommendations. Ms. Barker noted as statute is currently written, the Board's only option, if an applicant is unsuccessful at completing the SCP, is to deny the application for a second SCP with opportunity for due process.

MOTION: To provide comment to the FSBPT on the Draft Model for Supervised Clinical Practice regarding the education being equivalent to the U.S. accredited entry-level program and the Supervised Clinical Practice should be completed after the applicant passes the NPTE.

MOVED: Dr. Takii

SECOND: Mr. Turner

VOTE: 6-0 Motion carried

11. Legislation Report – Sarah Conley

(A) Implementation of Chaptered 2011 Legislation (B) 2011-2012 Bills

Ms. Conley reported on implementation of legislation chaptered in 2011 and 2011-2012 bills and noted an error in her briefing paper explaining SB 924 would amend B&P Code section 2620 and add section 2620.1, not 2660 and 2660.1. Ms. Conley shared SB 934 is sponsored by the CPTA. Dr. Dagostino, CPTA, reported SB 924 pertaining to direct access to physical therapy services and the addition of physical therapy corporations to the Moscone-Knox Professional Corporations Act passed out of the Senate with a unanimous vote and will be heard next by the Assembly Committee on Business, Professions and Consumer Protection.

(C) Proposed Physical Therapy Practice Act

Ms. Marco provided a brief history of the proposed Physical Therapy Practice Act (Act). The last time the Board reviewed the proposed Act was in February 2011 and since that time staff identified numerous items for consideration. One of the major changes proposed to the Board was to remove all specific licensure and renewal requirements and qualifications from statute and adopt them into regulation. The Board reviewed the proposed Act page by page and made the following determinations:

- Not more than one member of the Board may be involved in physical therapy education.
- A public member who is involved in education, with the exception of physical therapy

education, may serve on the Board in addition to the one professional member involved in physical therapy education. There is no limitation as to the number of public members involved in education who may serve on the Board.

- To serve on the Board as a professional member, a licensee must hold a valid license.
- The language to create a program of consumer and professional education in matters relating to the practice of physical therapy, was amended to read, "[...] *the regulation of physical therapy.*"
- Move all application for initial licensure and application for licensure renewal requirements to regulation.
- Amend §2612 stating simply the Board shall comply with the Bagley-Keene Open Meeting Act.
- The first sentence of 2620 stating what physical therapy means shall remain, and, as proposed, strike the remaining language and add language redefining physical therapy.
- Strike the definitions of "clinical instructor," "non-patient-related task" and "patient-related task" and move to regulation.
- Staff needs to rework 2620.7 stating a physical therapist shall document all care provided to a patient in the patient record, and replace the requirement for physical therapists to be responsible for maintaining patient records with general language stating how long patient records shall be maintained.
- Strike "direct and immediate" throughout the Act and leave as just "supervision."
- Add "entry-level" to further define the educational program in 2630.5 which pertains to persons exempt from licensure.
- Add "unrestricted" before "license" under 2630.5 for out-of-state licensees practicing in California for specific reasons during a limited period of time.
- Eliminate language referring to a bridge program or transitional program under 2630.5 (a).
- Eliminate "suffix" from 2633 because "affix" means either prefix or suffix.
- Ensure the authority for individuals to apply for physical therapy assistant licensure through equivalency remains.
- Strike "national" from 2636 so the physical therapy examination is not specific to the exam administered by the FSBPT.
- Maintain all educational requirements, as introduced in the original version of the Proposed Practice Act, be approved by CAPTE, or otherwise by the Board.
- In the Article referring to Diversion, change "diversion" to "rehabilitation."

The Board considered potential conflicts with the scope of practice as defined in the proposed Act and the proposed language in SB 924. SB 924 would add a new section, 2620.1, to the Act, and does not change any of the current scope of practice language, so there is no conflict.

It should be noted the proposed Act is DRAFT language only and has not been introduced to the Legislature. This language must go through the legislative process to be enacted.

MOTION: To authorize staff to move forward with these changes and any other changes authorized by the Board to be made by staff in concurrence with the discussions of today.

Moved: Dr. Jewell

SECOND: Dr. Takii

VOTE: 6-0 Motion carried

12. Update on Practice of Physical Therapy in Corporate Settings – Rebecca Marco

(A) Chapter 548, Statutes of 2011 (SB 543)

Ms. Barker provided a brief background of the issue relating to the practice of physical therapy in corporate settings. The Board made a motion at the August 2011 meeting, to comply with a request by the DCA Acting Director to refrain from concluding enforcement cases opened against licensees for being employed by a medical corporation. This motion restricted staff's ability to act on complaints. Ms. Barker presented two draft motions for Board consideration, one rescinding the August 2011 motion in its entirety and the second to rescind only the direction to staff to refrain from taking action, but keeping that the Board will continue to add to its agenda, "Updates on the Practice of Physical Therapy in a Corporate Setting" until the Board determines the issue has been resolved.

Dr. Jewell expressed concern regarding rescinding a motion appropriate at that time, especially considering B&P Code §2674 sunsets January 1, 2013, and SB 924 may fail to pass. Dr. Alviso explained the intent is not to close all the cases, but that the Board inadvertently made a motion preventing staff from acting, whatever it may be.

MOTION: In light of the passage of Business and Professions Code section 2674, I move that the previously passed motion of August 4, 2011, directing the Board's staff to refrain from taking action to conclude investigations of complaints received alleging violations of the Moscone-Knox Professional Corporations Act be rescinded with the exception that staff continue to include, as a part of all future agenda, until such time as the Board determines the issues have been resolved, "Updates on the Practice of Physical Therapy in a Corporate Setting."

MOVED: Dr. Takii

SECOND: Mr. Turner

VOTE: Motion withdrawn, no vote taken

Dr. Chu requested the Board consider the consequence of this motion particularly at this time since the Board is up for sunset review and inquired as to the necessity of addressing this issue at this time. Dr. Alviso explained since the motion prevents staff from doing its job, it is necessary to address at this time.

After further consideration of the issue, Dr. Jewell requested Dr. Takii withdraw the motion. Dr. Takii and Mr. Turner agreed to withdraw the motion.

MOTION: In light of the passage of Business and Professions Code section 2674, I move that the previously pass motion of August 4, 2012, directing the Board's staff to refrain from taking action to conclude investigations of

complaints received alleging violations of the Moscone-Knox Professional Corporations Act be rescinded in its entirety.

MOVED: Dr. Jewell

SECOND: Dr. Takii

VOTE: 4-0, 2 abstained
Motion carried

13. Rulemaking– Sarah Conley

(A) 2012 Calendar

Ms. Conley presented the rulemaking schedule for 2012 and asked if the Board had any questions. Dr. Alviso requested clarification regarding the status of the regulatory package for 1398.4, Delegation of Functions; 1399.23, Discipline and Reinstatement of License; and, 1398.24, Unprofessional Conduct. Ms. Conley clarified regulatory packages expire one year after the publication date of the regulatory change notice. This package was set to expire before staff could complete the package; however, the DCA has indicated it will submit an extension request on behalf of the Board, so staff will not have to notice a new regulatory package.

(B) 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:

**i. Mandatory Fingerprinting, Section Number(s) to be Determined –
*Jason Kaiser***

Mr. Kaiser presented proposed regulatory language which would require licensees to submit fingerprints via LiveScan, and require retroactive fingerprinting as a condition of renewal if the licensee had not previously submitted fingerprints via LiveScan. Dr. Alviso recommended staff add language to clearly notify licensees the LiveScan request form must indicate the results shall be submitted to the Physical Therapy Board of California. The Board amended the title of the Article to be determined, Fingerprinting and Disclosure Requirements for Renewal of License to read Fingerprinting and Disclosure Requirements for Licensure. Dr. Jewell inquired as to how a licensee will know if he or she needs to be re-fingerprinted as a condition of renewal. Mr. Kaiser explained staff will identify who those licensees are and notify them they will be required to re-submit their fingerprints via LiveScan as a condition of renewal.

The Board discussed whether marijuana should be specifically identified as a controlled substance under Fingerprinting and Disclosure Requirements for Licensure (b), if medical marijuana would be exempt from this section and how “controlled substance” should be defined in this regulation. Ms. Barker explained the California Supreme Court issued an opinion stating Proposition 215 provides a criminal defense against medical marijuana; however, it does not shield the user from any other consequence he or she may be subject to, including administrative and civil action. Ms. Barker further noted under federal law medical marijuana does not exist. After the Board considered three possible definitions of controlled substance from 1) the California Business and Professions Code; 2) the California Health and

Safety Code; and, 3) federal law, it determined, for reader accessibility and to be consistent with the level of Board law, state law, the definition of controlled substance as defined in the California Health and Safety Code to be the best fit for the purposes of this regulation. The definition is as follows:

“Controlled substance,” unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058 [of the Health and Safety Code].

MOTION: To adopt 11007 [of the Health and Safety Code] as the definition of controlled substance

MOVED: Dr. Jewell

SECOND: Dr. Takii

VOTE: 6-0 Motion carried

Additionally, the Board directed staff to commence the rulemaking process for the 1398.14 and Article to be determined related to fingerprint and disclosure requirements.

MOTION: To adopt the proposed language as amended, authorize staff to commence the regulatory process, and to notice the amended language related to 1398.14 and Article to be determined related to fingerprint and disclosure requirements for hearing at the May 2012 meeting.

MOVED: Mr. Turner

SECOND: Ms. Wallisch

VOTE: 6-0 Motion carried

**ii. Notice to Consumers, Section Number(s) to be Determined –
Rebecca Marco**

Ms. Marco presented two “Notice to Consumers” samples from other boards for Board consideration. The Board directed staff to combine aspects of both samples and bring a sample of a notice and proposed regulatory language for Board consideration at the May 2012 meeting. Dr. Chu inquired as to how licensees would obtain this notice. Ms. Marco responded the Board would post it on its Web site for licensees to print out.

iii. Delegation of Functions, Section 1398.4; Required Actions Against Registered Sex Offenders, Section 1399.23; and Unprofessional Conduct, Section 1399.24

Ms. Marco presented the modified text as amended pursuant to the Board’s direction at the November 2011 meeting. Ms. Ybarra explained the changes made to the language included: 1) striking the Executive Officer’s delegation authority for approval of settlement agreements for revocation or surrender of a license or interim license suspension and to hold administrative

citation informal conferences and make decisions to affirm, modify or dismiss the citations under 1398.4; and, 2) added a provision from SB 1111 making it unprofessional conduct for a licensee to enter into a confidential settlement agreement prohibiting a party from disclosing information regarding the settlement under 1399.24. Ms. Barker explained Business and Professions Code section 802 mandates licensees to report any settlement agreement relating to any kind of misconduct related to the licensee's practice, such as alleging harm or negligence. Therefore, Ms. Barker recommended adding subsection 1398.24(d)(5) making failure to report settlements, judgments or arbitration awards unprofessional conduct.

MOTION: To approve of the language as edited and to delegate to the Executive Officer the authority to make any non-substantive changes to the revised text if necessary and approval to proceed with the regulatory process with the revised text as discussed and adopt the changes of at the expiration of the required 15-day comment period provided the Board has not received any adverse comments directly to the proposed revisions.

MOVED: Mr. Turner

SECOND: Dr. Jewell

VOTE: 6-0 Motion carried

iv. Uniform Standards Related to Substance Abuse and Guidelines for Issuing Citations and Imposing Discipline, Section 1399.15 – Elsa Ybarra

Ms. Ybarra presented the modified text of the Uniform Standards Related to Substance Abuse and Guidelines for Issuing Citations and Imposing Discipline (Guidelines) regulatory package as amended by the Board at the November 2011 meeting where the rulemaking hearing took place. The Board reviewed the modified text and provided the following comments:

Page 2

Ms. Wallisch noted she needs to be added to the list of Board members. Staff noted the version date will be the date the regulation takes effect.

Page 4, Lines 20-23

When an Initial Probationary License has been issued, a Statement of Issues, or an Accusation has been filed, these actions indicate that the nature of the alleged violation is severe enough to warrant disciplinary action if the allegations are proven.

Page 6

Dr. Jewell inquired as to how subsection (b) and (c) relate. Ms. Barker explained this language is the actual regulatory language that will incorporate the Guidelines document by reference;

moreover, subsection (c) is included in this language for ease of use by an Administrative Law Judge (ALJ). Ms. Marco questioned whether to amend the title of this section. Ms. Barker responded the titles as they read in throughout the document recognize the Board's Guidelines has incorporated the Uniform Standards set by the committee which was established by Chapter 548, Statutes of 2008 (SB 1441). Staff will work on this section.

Page 6, Lines 43-45

(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have be punishable as one or more of the offenses specified in this section.

Page 9, Lines 1-5

Dr. Alviso questioned why a licensee testing positive for a banned substance is not listed as a major violation. Staff indicated this language is written to reflect the Uniform Standards, and consequences for licensees testing positive for a banned substance is a condensed version of Standard #8 while major and minor violations are in Standard # 10. In summary, organization of the Guidelines language is consistent with the organization of the Uniforms Standards language. Dr. Jewell requested staff address the sentence structure of the section.

Page 9, Line 36

Dr. Jewell inquired as to why the drug testing standards begin with exceptions and not standards. Ms. Barker informed the Board the language was taken from Uniform Standard #4 which includes the testing frequency schedule that has not been included in the Board's language. Staff will add the drug testing schedule under Drug Testing Standards to this section as well as on page ten (10) for numbers one (1) and two (2).

Page 10, Line 41-43

Thereafter, tests shall be ~~administratied~~ administered one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Page 11, Line 24

The ~~appropriate~~ Board ~~will~~ shall be[...].

Page 12, Line 3

[...] licentiate's ability to practice is impaired due to mental illness, or physical illness, affecting [...].

Page 12, Line 14

[...] profession safely is impaired because the licentiate is mentally ill, or physically ill, affecting [...].

Page 15, Line 31

The Board changed "Health Support Group Meetings", which is specific to the Maximus Diversion Program to "support group meetings," so as not to refer to a specific program. The Board also directed staff review the section and apply this change where necessary.

Page 39, Line 27

The Board requested staff confirm Business and Professions Code section 2626.5 is titled accurately.

Page 58, Line 26

The Respondent's is ordered to reimburse [...]

Page 58, Lines 36-38

Ms. Barker explained bankruptcy is federally regulated and under federal law cost recovery would be interpreted as remuneration back to the Board. The Board would be considered the creditor and the licensee would be considered the debtor; therefore, cost recovery is considered dischargeable. However, any fine the Board may issue is considered police action which is not dischargeable under bankruptcy laws. Ms. Barker recommended the Board strike the sentence pertaining to the filing of bankruptcy shall not relieve a Respondent of his or her responsibility to reimburse the board. The Board concurred with Ms. Barker's recommendation.

Page 61, Lines 37-38

The Board directed staff to leave the language as presented that if a probationer is complying with all other terms, probation shall not be tolled. Ms. Marco requested direction from the Board as to whether a respondent's probation shall be tolled while the respondent attends school. The Board indicated its intent is probation shall be tolled while a respondent on probation attends school. Ms. Barker requested clarification whether the Board wishes to toll a probationer going to school if he or she meets the minimum number of practice hours. The Board responded, if the probationer is going to school and meeting the minimum practice hours, probation shall not be tolled.

Page 70, Line 40

[...] supervisory [...].

Page 71, Line 6

[...] supervisory [...].

Page 75, Line 38

[...] Respondent for dangerous drugs, and controlled substances.

Page 76, Line 40

The Board directed staff to eliminate all references to "out-of-range" use "positive result"

instead.

Page 78

Mr. Turner noted since the Board is changing “diversion” program to “rehabilitation” program in the proposed Physical Therapy Practice Act, “rehabilitation” should be defined in the Glossary of Terms.

Page 79

Dr. Alviso requested clarification as to the difference between a Public Repeal and a Public Letter of Reprimand. Ms. Barker suggested staff redefine Public Repeal addressing how it differs from a Public Letter of Reprimand. The Board concurred with Ms. Barker’s suggestion.

Ms. Wallisch requested staff verify all the referenced code sections throughout the document.

Ms. Marco informed the Board regulations may be implemented during the time between this meeting and the next, and some statutory provisions need to be added as well; therefore, Ms. Marco requested the Board authorize staff to make these changes as necessary. The Board directed staff to make the changes identified at this meeting as well as any other necessary changes and present the amended language for Board review at the May 2012 meeting.

Dr. Alviso noted public comment had been received on the Uniform Standards Related to Substance Abuse and Guidelines for Issuing Citations and Imposing Discipline regulatory package. Staff is currently preparing a response to the commenter.

v. Comments Received on Modified Text to Sponsored Free Health Care Events from Chapter 270, Statutes of 2010 (AB 2699), Sections 1400-1400.3 – Jason Kaiser

Mr. Kaiser presented the modified text of the Sponsored Free Health Care Events regulatory package as amended by the Board at the November 2011 meeting where the rulemaking hearing took place. The Board reviewed the modified text and made a few non-substantive edits to the language.

MOTION: To move forward with the rulemaking process with the edits made today and delegate to the Executive Officer to make non-substantive changes as needed to proceed with the rulemaking process.

MOVED: Dr. Alviso

SECOND: Dr. Jewell

VOTE: 6-0 Motion carried

14. Continuing Competency – Jason Kaiser

(A) Audits Year in Review

Mr. Kaiser presented a history of the Continuing Competency program addressing the number

of audits completed thus far, the renewal month staff is currently processing, and various factors affecting audit processing, including changes in staffing resources and audit sample size. Mr. Kaiser noted though staffing of the Continuing Competency program has increased from ¼ of a position to 2 ½ positions, there are other aspects of the program staff is addressing such as troubleshooting, working to streamline the program, updating the FAQs and starting the audit process for recognized approval agencies, which all take away from audit processing. Ms. Marco noted recently staffing of the Continuing Competency program has been reduced to two positions.

Dr. Chu requested staff research self-reporting of continuing competency. Self-reporting would allow licensees to maintain an electronic record of all continuing competency hours completed during their renewal cycle. Mr. Kaiser explained implementation of such a concept is being considered because it would benefit both licensees and staff and increase audit efficiency. Dr. Alviso explained the FSBPT has a continuing competency self-reporting program which allows licensees to authorize the Board to access their continuing competency information; however, the program is not commonly used on the West Coast. Dr. Alviso suggested notifying licensees of this service. Dr. Jewell noted many of the programs available to track licensees' continuing competency hours are provided by professional associations and until the Board has database to support such a program, it may not be the best use of resources to pursue this concept until BreEZE is implemented.

(B) Review of Current Frequently Asked Questions

Mr. Kaiser presented updated continuing competency frequently asked questions (FAQs) Dr. Jewell expressed concern the responses to the FAQs may be overly complicated and suggested simplifying the responses.

Dr. Jewell recommended adding a "Cancelled License" category to the chart which lists how many continuing competency hours a licensee is required to complete, and to not combine multiple questions as one.

Ms. Barker expressed concern with the response provided for question number seven pertaining to the Basic Life Support (BLS) course requirement. The licensee must complete a four hour BLS course to comply with the continuing competency requirements. The purpose of regulations is to clarify statute; therefore, the regulation has little room to be interpreted in any other way than as written. Ms. Barker advised the Board if the intent is for a BLS course of any length, including that which may be fewer than four hours, to meet the BLS course requirement set forth by the Board, the Board needs to adopt this into regulation because, at this time, that is not clear. Ms. Marco asked Ms. Barker for an alternative since the regulatory process is quite lengthy. Ms. Barker explained she will review the continuing competency regulatory package for the BLS course requirement intent.

Ms. Wallisch questioned whether there is a similar issue with the hours for alternate pathways. Ms. Barker explained since the Board adopted the specific hours granted for those activities in regulation, there is no issue because the Board quantified the course and the licensees are aware of what hours will be granted up to the maximum as provided in the regulation.

Mr. Kaiser questioned whether the Board's intent was to limit the number of hours from a specific area of continuing competency, or permit the licensee to apply the "extra" hours obtained in one area to the overall number of continuing competency hours required. Dr.

Alviso indicated it was the Board's intent to allow the licensee to apply "extra" hours towards the total continuing competency hours required.

Mr. Turner recommended staff included an FAQ regarding how a licensee may apply extra hours.

(C) Report on Identified Program Components in Need of Review

Mr. Kaiser presented a briefing paper identifying obstacles within the Continuing Competency program, which included an action request to consider seeking funding for additional staff and impose a fee on the recognized approval agencies. The Board discussed the possibility of reducing licensing renewal fees and imposing a fee to recognized approval agencies. Ms. Barker informed the Board staff's proposal to redirect fees to the appropriate program, would be in line with Proposition 26 which indicates a fee is a tax unless it is directly related to the services being provided. Ms. Barker explained this could potentially be a Constitutional issue. Staff has identified a burden has been placed on the licentiate that does not appear to belong on the licentiate; however, is redirecting fees still creates an apparent revenue increase. The current Administration will not approve a revenue increase.

Dr. Alviso indicated the Board at this time is not in a position to take any action on issues related to redirecting or imposing fees, or requesting funding.

Dr. Alviso noted she anticipated an analysis of the Continuing Competency program addressing the effectiveness of the regulations, common concerns from licensees, coursework recommendations and a more detailed look at why licensees fail audits. Ms. Marco explained since the Board has a two-year renewal cycle, staff will not have a comprehensive picture of the program until after October 31, 2012 when the current two-year renewal cycle is complete.

(D) Framework for Approval Agency Audits

Mr. Kaiser presented a flowchart representing the audit process for recognized approval agencies. Mr. Kaiser informed the Board staff has sent out a Record Compliance Template (RCT) to all recognized approval agencies. The purpose of the RCT is to create a course catalog database with the information collected. It is anticipated the RCT will be sent to the recognized approval agencies quarterly.

15. Public Comment on Items Not on the Agenda

There were no comments from the public.

16. Agenda Items for Next Meeting – May 9 & 10, 2012 Loma Linda, CA

Dr. Jewell will provide staff with a list of items she collected throughout the meeting.

17. Adjournment

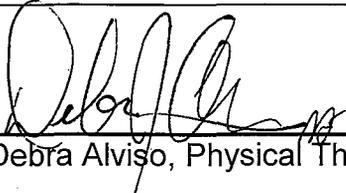
The meeting adjourned at 4:12 p.m. on Thursday, February 9, 2012.

MOTION: To adopt the draft February 8 & 9, 2012 meeting minutes as edited.

MOVED: Dr. Jewell

SECOND: Ms. Wallisch

VOTE: 6-0 Motion carried



Dr. Debra Alviso, Physical Therapist, Board President

6/12/12
Date