



Physical Therapy Board of California

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

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916)263-2560

Internet: www.ptbc.ca.gov



Board Members

Debra Alviso, PT, DPT, President

Martha Jewell, Ph.D., PT, Vice-President

Donald Chu, Ph.D., PT, ATC, CSCS

Sara Takii, PT, DPT, MPA

James Turner, MPA

Carol Wallisch, MA, MPH

PHYSICAL THERAPY BOARD OF CALIFORNIA APPROVED MEETING MINUTES

August 1, 2012 9:00 a.m.

August 2, 2012 9:00 a.m.

Board Staff

Rebecca Marco, Executive Officer

Liz Constancio, Manager

Jason Kaiser, Manager

Sarah Conley, Analyst

**Department of Consumer Affairs
2005 Evergreen Street, Hearing Room
Sacramento, CA 95815**

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

The Physical Therapy Board of California (Board) August 2012 meeting was called to order by Dr. Alviso at 9:02 a.m. All members were present, with the exception of Dr. Jewell, and a quorum was established. Also present at the meeting were Laura Freedman, Legal Counsel; Rebecca Marco, Executive Officer; and, other Board staff, including Sarah Conley, Liz Constancio, Sophia Cornejo, Jason Kaiser, Monny Martin and Elsa Ybarra.

2. Closed Session

(A) Pursuant to Government Code Section 11126(c)(3) Deliberation on Disciplinary Actions

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

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

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

Ms. Marco updated the Board on this agenda item.

(C) Pursuant to Government Code section 11126(a)(1) Appointment, Employment, Evaluation of Executive Officer

(D) Pursuant to Government Code section 11126(c)(1) Discussion of California Law Exam (CLE) Security Concerns if CLE Used as

a Component of the Continuing Competency Program and to Prepare,
Approve, Grade or Administer the CLE

3. Approval of Meeting Minutes

(B) May 9 & 10, 2012

The Board made the following changes to the minutes:

Page 16, Line 5-6

MOTION: To table the Uniform Standards until the August next meeting and direct staff to make the changes to the Guidelines.

MOTION: To adopt the draft May 9 & 10, 2012 meeting minutes as amended.

MOVED: Dr. Takii

SECOND: Mr. Turner

VOTE: 5-0 Motion carried

(C) May 30, 2012

The Board made the following changes to the minutes:

Page 2, Line 28

MOTION: To postpone Strategic Planning ~~until the next meeting~~ for a future meeting when all members are sure to be in attendance.

MOTION: To adopt the draft May 30, 2012 meeting minutes as amended.

MOVED: Dr. Takii

SECOND: Ms. Wallisch

VOTE: 5-0 Motion carried

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

(A) 2012/2013 Meeting Calendar

Dr. Alviso reported that on May 21st she and Ms. Marco met with Denise Brown, DCA Director, and then with Le Ondra Clark, Senate Business, Professions and Economic Development (BP&ED) Committee Consultant to introduce themselves and hopefully establish open lines of communication.

The Board rescheduled the October 25th and 26th meeting to November 7th and 8th and added November 6th for strategic planning. Additionally, the Board changed the meeting location from Newark to Sacramento as a cost-saving measure, and to allow staff as well as DCA

Strategic Planning facilitators to participate in strategic planning.

MOTION: To add strategic planning to the next meeting and reschedule for November 6th, 7th and 8th and move the location to Sacramento.

MOVED: Dr. Takii

SECOND: Dr. Chu

VOTE: 5-0 Motion carried

The Board reviewed the proposed 2013 meeting calendar for any potential conflicts. Ms. Marco requested, as a cost-saving measure, the Board consider moving one of the meetings planned for Southern California to Sacramento. The Board agreed to hold the February meeting in Sacramento instead of at Chapman University.

MOTION: To adopt the proposed 2013 meeting calendar as amended.

MOVED: Mr. Turner

SECOND: Dr. Chu

VOTE: 5-0 Motion carried

5. Executive Officer's Report – Rebecca Marco

Ms. Marco reported she received direction from G.V. Ayers, Business, Professions and Economic Development (BP&ED) Committee Consultant, that the Board should complete an addendum to the original Sunset report submitted last November. The addendum should address any changes to data and issues since the submission of the report. Ms. Marco requested the assistance of a Board member to work with staff on completing the Sunset report addendum. Ms. Wallisch volunteered to assist; however, also indicated she will be unavailable from September 20th until October 9th. Dr. Alviso volunteered to be back-up and to conduct the final review. The Board and staff agreed that the other members, if they have any recommendations, can e-mail them to Ms. Marco by September 1st. Ms. Marco explained the report is due November 1st; however, the BP&ED Committee granted an extension to December 1st so the Board can review its addendum at the November meeting.

Ms. Marco applauded Korey Landry for her exceptional work with the Outreach Program. Staff has completed its work on the newsletter and it is currently with the DCA Publications, Design and Editing Office. This newsletter will be distributed and made available in electronic format only. Ms. Marco informed the Board of the successful WebEx with Kaiser and indicated staff hopes to do similar outreach activities in the future.

Ms. Marco provided an update on the status of Practice Issues stating staff has been working with Dr. Jewell and compiling resources to provide licensees. Ms. Wallisch questioned how other boards address practice issue questions. Ms. Freedman advised, in her experience, it depends on how significant an issue is, whether it is frequently a disciplinary issue and the resources the board wishes to put toward the issues. Many boards had a Practice Issue Committee; however, due to the increased number of potential underground regulations, boards have since ceased this practice. Ms. Freedman explained Board staff can advise a

single person on a specific issue with specific application; however, even that can be problematic if the question is legal in nature or would require an expert in the profession.

Dr. Chu expressed his concern with the issues preventing the Board from providing guidance to licensees regarding the practice. Dr. Alviso suggested the Board's discussion of practice issues is not dead; the Board will continue to address the matter as needed.

Ms. Marco added that even after consulting with Dr. Jewell and gaining insight into some of the inquiries, staff did not obtain answers to the questions, which leads back to the issue of resources.

The Board agreed to allow staff to continue its work on this issue and will address it again at a future meeting.

(A) Bureau of State Audits' Findings of Board Audits

Ms. Marco shared the outcome of the audit was favorable and informed the Board of the three Bureau of State Audits'(BSA) recommendations to the Board, which included: 1) explore the feasibility of establishing a state position to perform the duties of the expert in-house consultant at a reduced cost; 2) develop a means to formally evaluate its expert consultants; and, 3) Notify the Department of Consumer Affairs' filing officer when board members are appointed or intend to leave office. Staff and the Board President developed responses to the recommendations prior to the release of the audit report; therefore, the recommendations have already been addressed with the exception of exploring the feasibility of a state-employed expert consultant. Ms. Marco explained staff is currently in the process of exploring the potential cost savings of using a state-employed in-house expert consultant, but has completed its research on establishing a new position for an in-house expert consultant. Establishing a new state position that would require all the necessary qualifications to meet the Board's needs is a very extensive process and requires concurrence of multiple agencies; this has been expressed to the BSA.

Ms. Marco informed the Board it is required to submit follow-up reports to the BSA at sixty days, six months and one year following the release of the report. The Board determined it would be appropriate for staff to prepare each follow-up report and for the Board President to conduct the final review of each report on behalf of the Board.

Dr. Takii inquired what the cost is to the Board for the audit. Ms. Marco explained the initial quote was \$188,000. The BSA was paid through the State's General Fund and the Board is responsible for reimbursing the State for that amount, which will be done over two fiscal years.

Mr. Turner confirmed this was the Board's first audit since established.

6. Administrative Services Report – Liz Constancio

Ms. Constancio presented the budget report addressing information current as of June 30, 2012 and explained this is the last month of the fiscal year; however, there is what is referred to as a "Month 13" report that includes all expenditures recorded during the last month of the fiscal year. Additionally, Ms. Constancio reported a one percent reversion, or unspent monies, of the Board's budget that will go to the Board's fund.

Mr. Turner questioned why the temporary help line item was so greatly over expended. Ms.

Constancio explained the Board relies heavily on temporary help; therefore, though the temporary help line item allotment is over expended, cost savings have been identified in other line items of the budget to enable the Board to continue to fund these positions.

Dr. Chu inquired why the cost of fingerprinting is so low in comparison to the amount budgeted. Ms. Constancio explained that though these costs are a budget allotment, the Board is reimbursed, so there is actually no cost to the Board. Ms. Wallisch questioned why the exam contract expenditure was far below the allotted amount, which the Board's Budget Analyst, Carl Nelson, explained it is due to the Board not having a contract in place with the Federation of State Boards of Physical Therapy; without a contract, the Board cannot spend the money allotted for that item. Moreover, unspent exam monies are disencumbered, or returned, at the end of the fiscal year, so the percent of the budget spent is zero.

Mr. Turner complemented Ms. Constancio on the budget line item definitions she provided.

Ms. Marco added staff is reviewing the budget line-by-line to identify all possible cost-saving opportunities to address the Board's oversight agencies' concerns with the Board's budget deficiency last fiscal year, which was due to: 1) the amount spent on temporary help and 2) the over-expenditure of the Attorney General line item.

Dr. Chu inquired about the status of the repayment of the loan to the State's General Fund. Ms. Constancio explained the State will not repay the loan until the Board's fund is insolvent. Ms. Marco added the Board's current fund condition does not reflect the audit expense or funding for BreEZe.

Ms. Marco inquired whether the Board wished to appoint a member to assist staff with the budget revisions. Mr. Turner volunteered to assist.

7. Application & Licensing Services Report – Liz Constancio

Dr. Alviso questioned whether the applications have been received at the same rate with fixed-date testing as they were with continuous testing. Ms. Constancio explained the number of received applications is reliant upon school graduation dates, so although there are been some change in the pattern, there is still a fairly consistent intake flow.

Dr. Alviso inquired about the increase of Inactive status licenses. Mr. Kaiser, prior Application and Licensing Services Manager, explained Inactive status was not offered prior to the Continuing Competency requirement; therefore, the number of licensees with Inactive status will increase each month until the completion of a full two-year renewal cycle with the Continuing Competency requirement. Once all licensees have been subject to the Continuing Competency requirement, the number of Inactive status licensees should begin to stabilize.

Dr. Takii requested staff provide statistics in the report on the number of foreign trained physical therapists who opt to apply for a physical therapist assistant license. Ms. Marco explained this is something staff is currently looking into; however, this type of data collection can only be done manually, so it will take some work. Mr. Kaiser added there are only two foreign physical therapist assistant programs, so the assumption is most foreign trained applicants that apply for a physical therapist assistant license were trained as a physical therapist. Moreover, to identify why the applicant made that decision would require staff contacting each applicant.

Mr. Turner questioned what data is used to show the national average of a jurisdictional, or state exam. Sophia Cornejo, Application and Licensing Services Lead, explained the data reflects other states' exams, for the states who offer a jurisdictional exam.

8. Consumer Protection Services Enforcement Report – Jason Kaiser

(A) Performance Measures

Ms. Ybarra reported staff is meeting the Board's goals in areas staff has control over; staff cannot control formal discipline timelines.

(B) Disciplinary Summary

There was no Board discussion on this item.

9. Continuing Competency Report – Jason Kaiser

Mr. Kaiser reported staff has been redirected from the Continuing Competency program to the Application and Licensing Services program leaving 1.5 positions in the unit. This loss of staff is limiting the progress of the Continuing Competency audits. Dr. Alviso questioned whether staff would consider reducing the sample size due to the increased compliance rate. Mr. Kaiser explained he has considered that; however, any change in the program would be best applied at the beginning of a new audit quarter. Dr. Takii requested clarification on the audit process since there seems to be quite a reduction in failed audits and enforcement cases based upon a failed audit. Mr. Kaiser explained due to reassessing the audit process and now allowing licensees to come into compliance rather than directly being sent to the Consumer Protection Services program, there has been a reduction in the number of failed audits and in the number of enforcement cases based on failed audits.

Dr. Chu commended Mr. Kaiser for getting the Record Compliance Template (RTC) out and getting responses from all but three agencies. Mr. Kaiser noted those three agencies may have to come before the Board to have their recognition removed. Additionally, Mr. Kaiser noted there are two purposes for the RTC: 1) to stay in contact with the approval agencies and be informed of the courses they are approving, and 2) to provide Board analysts a resource to verify the certificates licensees are submitting are for valid courses. Compiling the RTCs took approximately six months.

Ms. Takii requested further information on approval agencies who are also course providers. Mr. Kaiser explained there are three ways an approval agency and course providers may interact: 1) an approval agency does not provide any courses, only approves providers; 2) an approval agency provides its own courses, but also approves outside providers; and, 3) an approval agency that only approves its own courses. If an approval agency is also a course provider, it must have a policy in place stating the courses offered are held to the same standards as those approved for outside providers.

10. Consumer and Professional Associations and Intergovernmental Relations Report

(A) Department of Consumer Affairs (DCA) – Reichel Everhart

Ms. Everhart, DCA Deputy Director of Board Relations, reported the DCA is focusing on the

regulatory packages for the Sponsored Free Health Care Events and SB 1441 encouraging boards to move forward with both. The DCA is also looking at teleconferencing to reach out to those who cannot physically attend meetings. Ms. Wallisch inquired what the DCA can offer for individuals with hearing impairments. Ms. Everhart shared the DCA has a Communications unit that may have options for individuals who may need accommodations and if more boards are interested in holding teleconferences, the DCA can look into what technology is available.

(B) California Physical Therapy Association (CPTA)

Ms. DeFoe, CPTA Executive Director, informed the Board SB 924 is scheduled for hearing August 8th at 9:00 a.m. by the Assembly Appropriations Committee. If the bill passes, the next stop would be Assembly Floor and then it would go to the Governor.

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

Dr. Alviso informed the other members the motions for the Delegate Assembly will be available August 10th. Dr. Alviso noted since the Board is unable to attend the Delegate Assembly due to travel restrictions, the FSBPT welcomes the Board's input on the motions prior to the meeting.

11. Legislation Report on Relevant 2011/2012 Bills with Staff Recommendations to Board – Sarah Conley

Ms. Conley provided the Board with an update on AB 2570, SB 924, SB 1237 and SB 1374 in a new reporting format which provided a flow chart of each bill location as well as narrative on existing law and how a bill will change the existing law. AB 2570 would prohibit a licensee from including in a civil settlement a "gag order" and Ms. Conley recommended a Support position. SB 924 was addressed by Ms. DeFoe under agenda item #10(B). SB 1237, as amended June 15, 2012, extends the Board's sunset date until January 1, 2014 in addition to other provisions unrelated to physical therapy. Since the Board's sunset date extension language was added and hearings took place between meetings, Dr. Alviso took an interim Support position, which Ms. Conley recommended the Board ratify. SB 1374 failed to pass the Senate Judiciary Committee, so it is dead. The Board took an Oppose position on SB 1374 at the May 2012 meeting.

Ms. Wallisch suggested Board staff meet with Senate BP&ED Committee staff regarding the Board's proposed Practice Act after the end of this session. The Committee's recommendations may provide the Board with some direction as to what proposed changes it should reconsider.

MOTION: To adopt a Support position as recommended by staff on AB 2570 and ratify the interim Support position taken by the Board President on SB 1237.

MOVED: Ms. Wallisch

SECOND: Mr. Turner

VOTE: 5-0 Motion carried

12. Special Order of Business – August 2, 2012 9:00 a.m.

Hearing on Petition for Reinstatement – Anthony del Zompo

After submission of the matter, the Board convened in closed session to deliberate pursuant to Government Code section 11126(c)(3). Disciplinary decisions are available on the Board's Web site at www.ptbc.ca.gov.

13. DCA BreEZe Presentation – Sean O'Connor, BreEZe Business Project Manager

Mr. O'Connor delivered a presentation on the status of the BreEZe project and provided examples of what consumers and licensees will encounter when using the public or front-end interface of BreEZe.

14. 2012 Rulemaking Calendar Update– Sarah Conley

Ms. Conley presented a new rulemaking reporting format and provided a brief explanation of the rulemaking process. One issue identified in the flow chart presented was there was only one section for Board approval, which actually occurs at two points in the process: 1) Board approves for initial filing with the Office of Administrative Law (OAL) to notice the proposed regulatory change, and 2) Board approves final language to file with OAL. Ms. Conley noted the Board's concern and will edit the flow chart accordingly. Ms. Conley will also add process notes, such as specific deadlines and Board identified priorities of each rulemaking item to the report.

15. Required E-mail Filing Draft Regulatory Language for Board Consideration and Possible Action for Section 1398.6 of Division 13.2 of Title 16 of the California Code of Regulations – Sarah Conley

Ms. Conley presented proposed draft language for CCR section 1398.6, Required E-mail Filing, and explained though the Board approved the language to notice and schedule a hearing for this meeting, staff identified applicants were omitted in the language; therefore, staff brought it back for Board consideration. The Initial Statement of Reasons and the Notice of Regulatory Change were also included for Board consideration. Dr. Alviso expressed concern that in the Initial Statement of Reasons the reason the newsletter is inadequate – out dated information – is not clear and questioned whether the Board is required to issue a newsletter. Ms. Conley noted Dr. Alviso's concern regarding the reason the newsletter is an inadequate method of disseminating information and will amend the Initial Statement of Reasons accordingly, and will verify whether the Board is or is not required to issue a newsletter. Ms. Freedman suggested, if it is the Board's intent, the requirement for each change of address, name and e-mail may be in writing.

MOTION: To adopt presented language as amended to include applicants and to add language indicating all reporting must be submitted in writing, and direct staff to initiate the rulemaking process by filing the Notice of Regulatory Change to be published by OAL.

MOVED: Dr. Chu

SECOND: Dr. Takii

VOTE: 5-0 Motion carried

16. Modified Text for Board Consideration and Possible Action for Guidelines for Issuing Citations and Imposing Discipline, Section 1399.15 of Division 13.2 of Title 16 of the California Code of Regulations – Elsa Ybarra

Ms. Ybarra presented revised probationary conditions of supervision (A) & (F). Staff determined that the previously proposed language was too broad and lacked clarity; therefore, presented revised proposed language on the two probationary conditions. The revised language clarifies the supervision requirements for probation and also includes specific requirements of the supervisor. The supervision requirement was further defined by three levels of supervision 1) full presence and documentation review required 2) limited presence and documentation review required and 3) No supervision required and document review required as determined necessary.

Mr. Turner requested clarification of full presence supervision because the term as presented does not require the supervisor to be in the same treatment room. Dr. Alviso explained this is highest level of supervision without having a third party present while treating. Mr. Turner, Ms. Wallisch and Dr. Takii continued to express concern using the term “instantly” and recommended term replaced with “immediate” presence.

The Board did not make any amendments to the second level of supervision - *Limited Presence/Documentation Review* or the third level of supervision – *No Presence/Documentation Review As Determined*.

Ms. Marco explained the purpose of adding the “Note” is to provide direction to the Deputy Attorney General (DAG) and/or Administrative Law Judge (ALJ) that the supervision term may be written as needed to allow modification of the probationer’s level of supervision at the Executive Officer’s discretion. Ms. Freedman requested clarification whether the “Note” was intended to grant the Executive Officer the discretion to modify a probationer’s level of supervision or that the “Note” itself be added to the Order. Mr. Martin and Ms. Ybarra responded the intent of the “Note” is that it be added to the Order and that the modification would have to be earned, not written in a way such that the supervision level was reduced automatically after a specified period of time.

Ms. Freedman explained that in order for the Executive Officer to have the authority to modify the level of supervision, it would have to be expressly indicated in the Order and therefore recommended replacing the “Note” with the language from current “Optional” condition to reflect the discretion to reduce the level of supervision.

MOTION: To adopt the amended Disciplinary Guidelines language as proposed by staff with legal counsel’s recommendations and direct staff to proceed with the 15-day notice of modified language, and, if there are no adverse comments, delegate authority to the Executive Officer to adopt the revisions and to make any non-substantive changes recommended by the DCA and/or the OAL.

MOVED: Dr. Chu

SECOND: Dr. Takii

VOTE: 5-0 Motion carried

17. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (SB 1441) Language for Board Consideration and Possible Action for Section Number(s) to be Determined of Division 13.2 of Title 16 of the California Code of Regulations – *Elsa Ybarra*

Ms. Freedman explained Legislative Counsel, Attorney General's Office and the DCA opine the boards do not have discretion to modify the Uniform Standards, and they shall be applied, as written, to all licensees identified to be a substance-abusing licensee with no deviations by the Administrative Law Judge (ALJ) or by the Board.

Ms. Freedman advised the caveat to this mandate is that there is no classic definition of a "substance-abusing licensee;" therefore, the DCA Legal Office developed three versions of regulatory language which may be adopted by the Board to implement the Uniform Standards as directed. Option 1 would apply a rebuttable presumption that a licensee is a substance-abusing licensee if convicted of drug or alcohol offense. In Options 2 & 3, if a licensee is deemed a substance-abusing licensee, the licensee is still subject to the Uniform Standards as written; however, how the licensee is determined to be a substance-abusing licensee varies. Option 2 identifies the expert to be the clinical diagnostician and whether a licensee is a substance-abusing licensee is dependent upon the clinical diagnostic evaluation. Option 3 places the burden fully on the Board to determine whether a licensee is a substance-abusing licensee. Ms. Freedman informed the Board she is looking into whether a hearing is required as part of Option 3, or if settlement is an option.

Dr. Chu questioned whether the potential for litigation is based upon the determinations made to identify the licensee as a substance-abusing licensee. Ms. Freedman explained how these standards are being applied is new, so there is no comparison to determine the chance for litigation. Ms. Marco shared these terms are currently being applied and they are required by Maximus, so the Uniform Standards themselves are not a major departure from what is currently applied.

The Board requested a cost-comparison of all options, input from the Board's Deputy Attorney General liaison, and information on how these options would impact enforcement case documentation and timelines for the next meeting.

18. Notice to Consumers Draft Regulatory Language for Board Consideration and Possible Action for Section Number(s) to be Determined of Division 13.2 of Title 16 of the California Code of Regulations – *Sarah Conley*

Ms. Conley presented proposed draft language for CCR 1398.14, Notice to Consumers, and explained that though the Board approved the language to notice and schedule a hearing for this meeting, staff identified that the approved language included both a description of the required posting information as well as a prescribed form when only one method should be used; therefore, staff brought it back for Board consideration. Moreover, the Board was presented with a rulemaking request from a member of the public at the May 2012 meeting that identified a number of issues the Board could potential address through this regulatory change proposal. The Initial Statement of Reasons and the Notice of Regulatory Change were also included for Board consideration.

Dr. Chu noted many of the issues presented in agenda item #19 are addressed on the Board's website.

Staff presented an updated notice with the intent of making it more appealing for consumer consumption as well as addressing the concerns identified in agenda item #19. The Board, with the assistance of Legal Counsel, made various edits to the notice and the proposed regulatory language.

Legal Counsel recommended the Board give the notice a form number and incorporate the notice by reference.

MOTION: To approve the proposed regulatory language as amended and direct staff to initiate the rulemaking process by filing the Notice of Regulatory Change to be published by OAL and delegate authority to the Executive Officer to make any non-substantive edits to the form required by this proposed section.

MOVED: Dr. Chu

SECOND: Ms. Wallisch

VOTE: 5-0 Motion carried

19. Board Consideration of Public Request for Regulatory Action Regarding Notification to Patient of Responsible Care Provider Pursuant to Government Code section 11340.7

Minutes for agenda items 18 and 19 have been combined; see agenda item 18.

20. Board Consideration of Continuing Competency Alternate Pathway
(A) Presentation by Jason Tonley, PT, DPT, OCS, from the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE)
(B) Staff Comments

Dr. Tonley, PT, DPT, OCS, delivered a presentation on fellowship and residency programs, and proposed adding participation in these programs as an alternate pathway to obtain continuing competency credit in California.

Dr. Alviso informed Dr. Tonley that if the Board chose to accept his proposal, it would have to be implemented through regulation. Existing continuing competency regulations are not scheduled to be revised until a later date. Mr. Kaiser projected early 2014 would be the earliest opportunity for the continuing competency regulations to be revised due to the status of the audits. The Board directed staff to make note of Dr. Tonley's proposal for future consideration.

21. Adoption of Precedential Decision
Ernest Sluder, PT
PTBC Case Numbers ID 2008 66674 and 1D 2001 68256

Ms. Freedman explained the process and purpose of adopting precedential decisions. A precedential decision is a noticed, controlling factor for regulated individuals, such as regulation; however, precedential decisions are exempt from the traditional rulemaking process. The Board has the authority to designate a decision, or portions thereof, as precedential. The Board must maintain an index of all precedential decisions and file the index

annually with the Office of Administrative Law (OAL).

Ms. Marco explained the decision imposed on Ernest Sluder, for case numbers 1D 2008 66674 and 1D 2010 68256, would establish a general application that poor judgment outside the practice of physical therapy relates to judgment in the practice of physical therapy. Ms. Freedman shared her experience with the Personnel Board is that it uses precedential decisions as a guideline, or legal principal.

MOTION: To adopt Decision imposed on Ernest Sluder for case numbers 1D 2008 66674 and 1D 2010 68256 as precedential and to direct staff proceed with the notice and filing process.

MOVED: Dr. Chu

SECOND: Dr. Takii

**VOTE: 4-0, 1 Abstention
Motion carried**

22. Public Comment on Items Not on the Agenda

Lauren Macnaughton, PT, explained she works in home health and requested the Board clarify whether the comprehensive assessment, which includes a medication regimen review, required by Medicare is in a physical therapist's scope of practice. She went on to say medication reviews are a necessary part of the required assessment, but currently completing this review is in conflict with how California law is being interpreted by the Board. Ms. Macnaughton informed the Board, in home health, a physical therapist identifies whether problems exist with a patient's medications, and if they do, then the physical therapist refers the patient to appropriate health care provider. Ms. Macnaughton requested this issue be added to future agenda.

Dr. Byl also requested the Board reconsider whether medication regimen reviews are within a physical therapist's scope of practice. Dr. Byl agreed with the overall response initially provided by Board staff, but expressed she is concerned it further limits current scope of practice. Dr. Byl explained the consequences of physical therapists not performing the comprehensive assessment are: 1) lower quality of care for Medicare and home health patients, and 2) physical therapists won't be able to provide care as an independent care provider in these cases.

The Board expressed interest in collecting additional information and directed staff to add this topic to the next meeting agenda. Ms. Freedman clarified the Board's options in adding this item to the agenda is ultimately going to be either 1) requesting a legal opinion, or 2) drafting regulations – both would require significant use of Board resources.

23. Agenda Items for Next Meeting – Sacramento, CA

Dr. Takii will provide staff with a list of items she collected throughout the meeting, and staff will review the minutes.

24. Adjournment

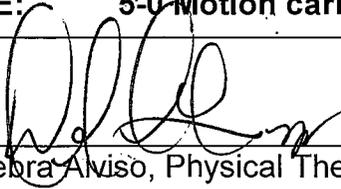
The meeting was adjourned at 4:06 p.m. on Thursday, August 2, 2012.

MOTION: To adopt the draft August 1 & 2, 2012 meeting minutes as presented.

MOVED: Mr. Turner

SECOND: Ms. Wallisch

VOTE: 5-0 Motion carried



Dr. Debra Aniso, Physical Therapist, Board President

12/27/12
Date