



Physical Therapy Board of California

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

Physical Therapy Board of California

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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

- February 13, 2013 8:30 a.m.
- February 14, 2013 8:30 a.m.

Department of Consumer Affairs
2005 Evergreen St., Hearing Room
Sacramento, CA 95815

Board Staff

- Jason Kaiser, Interim Executive
Officer
- Liz Constancio, Manager
- Sarah Conley, Executive Associate
Analyst

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) meeting was called to order by Dr. Alviso at 8:33 a.m. All members were present and a quorum was established. Also present at the meeting were Jason Kaiser, Interim Executive Officer; Liz Constancio, Manager; Elsa Ybarra, Consumer Protection Services Lead; and Sarah Conley, Administrative Services Executive Associate Analyst.

2. Approval of Meeting Minutes – Sarah Conley

(A) November 6, 7 & 8, 2012

MOTION: To adopt the draft November 6, 7 and 8, 2012 meeting minutes as presented.

MOVED: Mr. Turner

SECOND: Dr. Chu

VOTE: 6-0 Motion carried

(B) December 12, 2012

MOTION: To adopt the draft December 12, 2012 meeting minutes as presented.

MOVED: Ms. Wallisch

SECOND: Mr. Turner

VOTE: 6-0 Motion carried

3. President's Report – Dr. Debra Alviso

(A) Adopted 2013 Meeting Calendar

Ms. Conley identified the following corrections to the 2013 calendar: The FSBPT Annual meeting is scheduled for October 10-12, 2013; the CPTA Annual meeting is scheduled for September 20-21, 2013; and, the Board's sunset hearing is scheduled for March 18, 2013.

(B) Proposed 2014 Meeting Calendar

Ms. Conley noted the Board's sunset hearing should be on the 2013 calendar, not the 2014 calendar.

4. Executive Officer's Report – Jason Kaiser

Mr. Kaiser expounded upon specific items from his report. The initial report on the deficiency request to supplement the Attorney General (AG) budget line item identified that the Board would receive \$150,000 whereas the actual amount received was \$170,000. This amount allows for addition expenses, but is still less than that amount supported by the AG. The Board's sunset hearing date is scheduled for March 18, 2013, and the Board's Outreach program has scheduled two speaking engagements at California State University, Sacramento and Sacramento City College.

5. Administrative Services Report – Liz Constancio

(A) Budget

Ms. Constancio presented the Board's budget expenditure report and provided background on the various line item adjustments. Ms. Constancio reported that staff has been working with the Department of Consumer Affairs (DCA) in preparation for the release of the Governor's budget, also referred to as "galley," on January 10th. The DCA, and all boards under its oversight, must justify the budget for the upcoming fiscal year.

(B) Outreach

Ms. Constancio noted that although the statistics show a one hundred percent increase in hits to the Laws and Regulations, and Forms and Publications pages, this is a skewed number. The pages are new links; therefore, previous hits for the same information on the old links are not included in the data capture.

6. Application & Licensing Services Report – Liz Constancio

Ms. Constancio presented licensing and application statistics, and informed the Board that the revised California Law Exam (CLE) will be implemented March 5, 2013. Dr. Jewell referred to the low pass rate for physical therapist assistant applicants educated in California, and questioned whether the Board will be able to address this through outreach in the future. Mr. Kaiser responded that with fixed-date testing it is easier to pinpoint the success of each school, and as such, the Board may be able to focus outreach resources to those schools whose applicants are not as successful in passing the exam.

Mr. Turner questioned why the acronym "AT" is used for physical therapist assistants rather than "PTA." Mr. Kaiser explained that the system used to license would not allow for an acronym of more than two letters; therefore, "AT" was used to reflect "assistant therapist." The Board can update "AT" to "PTA" in BreEZe.

7. Consumer Protection Services Report – *Elsa Ybarra*

Ms. Ybarra presented enforcement statistics and performance measure data for the first quarter of the year. Dr. Alviso questioned why the data pertaining to "all investigations ageing" jumps from zero to eighty-three since this data reflects *ageing* cases. Ms. Ybarra explained the data is captured the month when the ageing case is closed; this data does not reflect each month the case ages.

Dr. Jewell commended CPS staff for accomplishing so much with so few resources.

Mr. Kaiser informed the Board that due to the failure of SB 924 and the sunset of Business and Professions Code section 2674, a high volume of complaints against licensees working for medical corporations were filed with the Board; these complaints are not captured in the data presented.

Paul Gaspar, PT, DPT, addressed the Board stating why he felt the Board should pursue investigating licensees working for medical corporations. Dr. Gaspar, Physical Therapist, expressed concern that although the Board has limited resources, the risk for consumer harm from this type of physical therapy business arrangement is, he feels, high and warrants a higher priority than "routine." Dr. Gaspar, Physical Therapist, referenced the Board's Guidelines for Issuing Citations and Imposing Discipline, stating a violation of the Moscone-Knox Professional Corporation Act is identified as a criminal act. Additionally, he stated, as the Board already has the authority for cost recovery, the licensees disciplined for working in a setting that violates the Moscone-Knox Professional Corporation Act should be required to pay the full investigation cost to support the Board's consumer protection efforts.

Dr. Gaspar, Physical Therapist, went on to state that the Board was previously under pressure from the DCA and the Legislature while going through an audit and its sunset review process, which delayed action on complaints regarding licensees working for medical corporations. However, now with a positive audit behind the Board, and failure of the Legislature to act on this issue, further delays in enforcing the law is, to him, unacceptable.

James Dagostino, PT, DPT, stated, the Legislature failed to act to address the issue; therefore, the Board now needs to take action to address the issue.

Stacy DeFoe, Executive Director of the California Physical Therapy Association, reiterated the point that the current law prohibits this type of employment arrangement; therefore, the CPTA urges the Board to pursue these cases.

8. Continuing Competency Report – *Jason Kaiser*

Mr. Kaiser informed the Board Karin Thompsen has accepted the Lead position of the Continuing Competency (CC) program; however, she was unable to attend the meeting. Mr. Kaiser reported the CC program is approximately one year behind in auditing licensees, which is attributed to the processing of licenses from active to inactive status, and initiating Approval

Agency audits. CC staff is finding the backlog to be problematic in that the licensees, although regulation requires that all documentation be maintained for no less than five years, are having difficulty in providing proof of completed continuing competency courses since they are not audited for a year after completion of the courses. Mr. Kaiser reported the pass rate of the licensees audited supports the Board lowering the percentage of licensees audited from ten percent to five percent, so that may be a consideration for the Board for the next audit quarter.

9. Consumer and Professional Associations and Intergovernmental Relations Reports

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

Ms. Everhart reported that the next quarterly Executive Officers' meeting is scheduled for Monday, March 4th; the minutes will be distributed to the Executive Officers and Board Presidents. The DCA will be releasing an electronic newsletter to provide an avenue to share important or news-worthy information with Board Executive Officers and Board Presidents/Chairs that occurs between the scheduled quarterly meetings; the newsletter should go out in the next few weeks. The DCA has also been working on the Governor's reorganization plan which will move the Board of Chiropractic Examiners, the Structural Pest Board, the Department of Real Estate, and the Office of Real Estate Examiners under the oversight of the DCA as of July 1st.

(B) California Physical Therapy Association (CPTA)

Representatives from the CPTA indicated they had nothing to bring before the Board under this agenda item.

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

- i. Motions for Submission to the Resolutions Committee for the 2013 Delegate Assembly

The Board had no recommendations for motions at this time.

10. Legislation Report – Sarah Conley

(A) Chaptered 2012 Bills

- i. AB 1588 (Atkins, Chapter 742)
Professions and Vocations: Reservist Licensees: Fees and Continuing Competency
- ii. AB 1904 (Block, Chapter 399)
Professions and Vocations: Military Spouses: Expedited Licensure
- iii. AB 2343 (Torres, Chapter 256)
Criminal History Information
- iv. AB 2570 (Hill, Chapter 561)
Licensees: Settlement Agreements
- v. SB 1099 (Wright, Chapter 295)
Regulations

Ms. Conley presented chaptered 2012 bills that will have an impact to the Board, and explained the impact of each bill.

(B) 2013 Bills Which Could Impact Physical Therapy Practice or Regulation

Ms. Conley informed the Board it is still early in the session and the deadline to introduce bills is not until February 22nd. However, SB 198 was introduced on February 7th by Senator Price, which may be one of the vehicles the Board uses to move forward with the proposed revisions to the Practice Act. Dr. Jewell expressed concern that the spot bill extends the Board's sunset date and may also be used to move forward with proposed revisions to the Practice Act that may be considered controversial, which may result in the failure of the bill and the extension of the Board. Mr. Kaiser explained staff will work with the Legislature to eliminate any proposed changes that may be cause for the bill to fail.

(C) Sunset of Business and Professions Code Section 2674

Ms. Conley informed the Board that Business and Professions (B&P) Code section 2674, which specifically prohibited the Board from taking action against licensees who worked for a medical, podiatric medical, or chiropractic corporation, sunset December 31, 2012. As discussed under agenda item #7, the sunset of this section in conjunction with the failure of SB 924 resulted in a high volume of complaints against licensees working for medical corporations being filed with the Board.

11. Proposed Revisions to the Physical Therapy Practice Act – Sarah Conley

Ms. Conley informed the Board that staff has been fielding questions posed by staff from the Committee; however, there is no update.

12. Medication Regimen Reviews as Part of the Home Health Requirement for Medicare – Dr. Donald Chu

Dr. Alviso presented a briefing paper which provided background on two medication regimen review inquiries and the Board's response to those inquiries to date; Dr. Alviso verbally summarized this information and noted the current status is that the Board received a letter from the CPTA Quality Practice Committee in July 2012.

Dr. Chu delivered a presentation explaining the role of medication regime reviews in physical therapy in various settings, the current education level of physical therapists, and the potential impact to the profession of the Board's current position on the issue. Additionally, Dr. Chu invited Rodney Silveria, PT, from Professional Home Care and Associates to address the process of completing the OASIS form to comply with Medicare requirements for delivering in-home care.

After Dr. Chu's presentation, Dr. Alviso requested Ms. Freedman provide a brief explanation about legal issues regarding the Board's involvement in issues related to practice. Ms. Freedman explained that there are a few issues that can cause concern. The first is that the Board could, by issuing practice standards, inadvertently create underground regulation in violation of the Administrative Procedures Act. Another is that, if staff contacts multiple Board members about an issue outside of a Board meeting, there could be a violation of the Bagley-Keene Open Meeting Act. Finally, she advised that, should the question result in an enforcement action, a Board member that got involved in the issue might have to recuse himself or herself from voting on that matter.

Ms. Freedman also explained that a legal opinion is one option available that avoids all of these concerns. Resources are, however, a limitation with regard to that option.

Dr. Alviso followed up Ms. Freedman's explanation of practice issue concerns with a briefing paper, also related to medication regimen reviews, which provided the history of the initial question posed to the Board, and the response, which was determined by the Practice Issues Committee of the Board at that time.

- MOTION:** To form a task force to review the issue of medication review requirements, clarify language, answer questions, and develop a new approach to medication regimen reviews, and take the Board out of conflict with APTA, FSBPT, and Medicare.
- MOVED:** Dr. Chu
- SECOND:** Dr. Takii
- VOTE:** 2-4 Motion failed

After extensive discussion regarding the physical therapist's role in completing medication regimen reviews, Ms. Freedman noted, it is her legal opinion that it is within a physical therapist's scope of practice to review and record a patient's medication in any setting. Ms. Freedman went on to explain the issue arises when the "medication review" includes an analysis and decision regarding the medication as part of the compliance with CFR 484.55.

Ms. DeFoe requested that the Board clarify what a physical therapist can do independently, and what requires collaboration with other clinicians.

Ms. Freedman volunteered to memorialize the legal opinion she provided today and provide an expanded response on the issue.

- MOTION:** Delegate to the President to appoint a member to work with legal counsel to draft response.
- MOVE:** Dr. Jewell
- SECOND:** Ms. Wallisch
- VOTE:** 5-0, 1 abstention
Motion carried

- 13. Special Order of Business – February 14, 2013 8:30 a.m.**
Hearing on Petitions for Modification of Probation
(A) Abraham Ortiz III, PT
(B) Ryan Monagle, PT

After submission of the matters, the Board convened in CLOSED SESSION to deliberate per Government Code section 11126(c)(3).

Once issued, disciplinary decisions may be found on the Board's Web site at www.ptbc.ca.gov.

14. Closed Session

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

Once issued, disciplinary decisions may be found on the Board's Web site at www.ptbc.ca.gov.

15. Sunset Review – Jason Kaiser

Mr. Kaiser explained the Board's sunset review will be held Monday, March 18th before both the Senate Committee on Business, Professions and Economic Development (BP&ED), and the Assembly Committee on Business, Professions and Consumer Protection (BP&CP). The Board was recently notified the Assembly BP&CP Committee will be participating in the sunset review process. In an introductory meeting with the DCA and Assembly BP&CP consultants and staff, Chief Counsel, Hank Dempsey, explained the Committee Chair values the sunset review process and has made it a priority to begin working with the Senate BP&ED Committee to acclimate the Assembly with sunset review. Though the Assembly Committee will be involved, it will be a learning process, so the Senate will be taking the lead.

The Board's review has been assigned to Bill Gage, Chief Consultant, who indicated a background paper will be provided to the Board approximately two weeks prior to the hearing date. The background paper will include recommendations and/or questions from the Committee for the Board's response.

16. Rulemaking Calendar – Sarah Conley

(A) 2012 Rulemaking

- i. Model Guidelines for Issuing Citations and Imposing Discipline
- ii. Sponsored Free Health Care Events
- iii. Mandatory Fingerprinting
- iv. Notice to Consumers
- v. Required E-mail Filing

Ms. Conley provided the status of each 2012 Rulemaking Calendar item and noted Mr. Kaiser will present further on Mandatory Fingerprinting.

Mr. Kaiser informed the Board that the effective date in the proposed language for Mandatory Fingerprinting to require licensees to, as a condition of renewal, furnish fingerprints to the Department of Justice is currently January 1, 2013 as it was anticipated the regulation would be effective prior to this date; however, it is still in progress. Mr. Kaiser explained the Board could choose a new effective date, or opt to not include a date; he recommended changing the date to June 30, 2014 to account for the BreEZe transition. This requirement will involve updating the renewal form; however, it is difficult to make changes as the DCA is preparing for the BreEZe transition. The deadline to move forward with this rulemaking file is in March, so it is quickly approaching.

Mr. Kaiser also noted there are going to be some non-substantive changes to the text as well.

MOTION: To modify the language of the proposed draft of 1399.80, subdivision (a) to change the date to June 30, 2014, and direct staff to issue a 15-day notice of modified text and, if no negative comments are received, authorize the Executive Officer to adopt the regulation and make any changes that may be required by the Department of Consumer Affairs or Office of Administrative Law.

MOVED: Dr. Chu

SECOND: Dr. Takii

VOTE: 6-0 Motion carried.

(B) 2013 Rulemaking

- i. Review and/or Update of All Application and Licensing Regulations**
- ii. Continuing Competency**
- iii. Delegation Authority for Citation Informal Conferences (Cite and Fine)**
- iv. Uniform Standards**
- v. Evaluation Elements**
- vi. Physical Therapy Business Requirements**
- vii. Telehealth**

Ms. Conley presented the 2013 Rulemaking Calendar that was submitted to the Office of Administrative Law (OAL) and explained each proposal; Ms. Conley noted Ms. Ybarra and Ms. Freedman will present further on the Guidelines for Issuing Citations and Imposing Discipline(Guidelines), and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards).

Mr. Freedman provided background on the adoption of the Uniform Standards explaining she understood the Board had previously adopted the Uniform Standards as they were incorporated in the Disciplinary Guidelines. Unfortunately, since they needed more discussion, and the deadline to file the Guidelines was quickly approaching, the Board opted to remove the Uniform Standards from the Guidelines and incorporate the Uniform Standards by reference in a separate rulemaking file. The Guidelines have been through the review process, been filed with the Secretary of State, and will take effect April 1, 2013.

At the November 2012 meeting, the Board adopted sample regulatory language that would impose the Uniform Standards contingent upon a post-hearing clinical evaluation. Staff presented the sample language as made specific to the Board and recommended the Board adopt the presented language, as amended. In addition, staff requested the Board authorize staff to modify the Guidelines consistent with the regulatory language. Ms. Freedman explained that the Board may choose to proceed with all the action requested, or choose some or none of the actions requested. However, since it is anticipated a hearing will be held for this regulatory package at the next meeting, the Board will have the opportunity to review the Guidelines, as modified, which include the Uniform Standards components.

Ms. Freedman identified that the most current version of the proposed language, dated 2/14/13, includes the text "which are hereby incorporated by reference" under CCR section

1399.15, subdivision (c)(2), specifically incorporating the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (4/2011) by reference in the Board's regulations.

MOTION: To adopt presented language as amended 2/14/13, and authorize staff to modify Guidelines consistent with regulatory language and begin rulemaking process.

MOVED: Dr. Takii

SECOND: Mr. Turner

VOTE: 6-0 Motion carried

17. Review of Draft 2013 Strategic Plan – Sarah Conley

The Board reviewed the draft 2013 Strategic Plan and directed staff to make the changes pursuant to the meeting discussions, and bring the draft back for review at the **May 2013** meeting.

18. Public Comment on Items Not on the Agenda

There was no additional public comment.

**19. Agenda Items for Next Meeting – May 8 & 9, 2013
Sacramento, CA**

Dr. Takii requested Wellness be discussed at the next meeting and agreed to draft an issue paper on the topic.

20. Adjournment

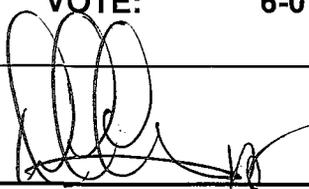
The meeting adjourned at 4:15 p.m. on Thursday, February 14, 2013.

MOTION: To adopt the draft February 13 & 14, 2013 meeting minutes as amended.

MOVED: Ms. Wallisch

SECOND: Mr. Turner

VOTE: 6-0 Motion carried


Dr. Debra Alviso, Physical Therapist, Board President

16/23/13
Date