



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

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Board Members

Debra Alviso, Physical Therapist, DPT,
President

Martha Jewell, Physical Therapist, Ph.D.,
Vice-President

Sara Takii, Physical Therapist, DPT, MPA

Katarina Eleby

James Turner, MPA

Carol Wallisch, MA, MPH

Physical Therapy Board of California APPROVED Meeting Minutes

November 6, 2013 8:30 a.m.

November 7, 2013 8:30 a.m.

Samuel Merritt University
Health Education Center
400 Hawthorne Avenue, RM HEC 102
Oakland, CA 94609

Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, 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 8:30 a.m. All members were present and a quorum was established. Also present at the meeting were Laura Freedman, Legal Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Consumer Protection Services Manager; Liz Constancio, Administrative Services/Application and Licensing Services Manager; and, Sarah Conley, Executive Associate Analyst.

2. Special Order of Business – November 6, 2013 8:30 a.m. Hearing on Petition for Modification of Probation – Elizabeth Oberholtzer, PT Hearing on Petition for Modification of Probation – David Dallmeyer, PT

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

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

3. 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 website at www.ptbc.ca.gov.

(B) Pursuant to Government Code section 11126(c)(1) Matters Relating to Examinations

(C) Pursuant to Government Code section 11126(e) US Equal Employment Opportunity Commission (EEOC) Charge

4. **Approval of August 7 & 8, 2013 Meeting Minutes – Sarah Conley**

The Board identified minor amendments to the minutes.

MOTION: To adopt the draft August 7 & 8, 2013 meeting minutes as amended.

MOVED: Dr. Jewell

SECOND: Mr. Turner

VOTE: 4-0, 2 abstained. Motion carried

5. **Consumer and Professional Associations and Intergovernmental Relations Reports**

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

Dr. Alviso and Mr. Kaiser reported on four noteworthy motions from the FBSPT Annual Meeting and Delegate Assembly: 1) establishing a lifetime limit of six attempts at passing the NPTE; 2) establishing a low score policy to ensure that candidates with two failing scores at or below 400 will not be allowed to sit again for the NPTE; 3) instituting a requirement that prior to sitting for the NPTE, graduates of non-CAPTE accredited schools meet the standards of the FSBPT's most recent Coursework Tool (CWT); and, 4) instituting a requirement that prior to sitting for the NPTE, non-exempt candidates, as defined by the U.S. Citizen and Immigration Services (USCIS) in USCIS Code of Federal Regulation section 212.15, will demonstrate English language proficiency by meeting the most recent Test of English as a Foreign Language (TOEFL) score requirements as defined by the FSBPT.

Mr. Kaiser explained that, in the Practice Act effective January 1, 2014, applicants that completed a physical therapy program outside the U.S. and not approved by the Board will be required to provide a passing TOEFL exam score to the Board as part of the application process.

In regards to the motions relating to the exam, Ms. Freedman advised that Business and Professions Code section 135 prohibits licensing agencies from having any involvement with licensing examinations beyond administration of the exam; therefore, the FSBPT motions could potentially conflict with California law if there are no alternatives. Dr. Jewell questioned whether other healing arts boards have encountered an issue like this with their exams. Mr. Kaiser explained that Medical Board and Pharmacy Board have some examination limitations, as specified in their practice acts; therefore, it would take a legislative change to the Physical Therapy Practice Act to limit exam attempts pursuant to the FSBPT's motions.

(B) Department of Consumer Affairs (DCA) – Christine Lally

Corrine Fishman with DCA Board and Bureau Relations introduced herself and indicated she had nothing to report on behalf of DCA.

(C) California Physical Therapy Association (CPTA)

Stacy DeFoe, Director, CPTA, thanked the Board and Ms. Freedman for providing clarification regarding physical therapists' involvement with medication regimen reviews.

Ms. DeFoe questioned the Board's progress on the Minimum Data Set (MDS) information collection effort that was discussed at the August meeting. Ms. Freedman strongly recommended against the Board, although it may facilitate the data collection, should not be the custodian of the data as there may be the appearance of impropriety in issuing licenses and imposing discipline.

6. President's Report – Dr. Debra Alviso

Dr. Alviso reported on the outcome of the Wellness Symposium. Dr. Alviso noted the materials that were considered in the discussion and the issues that were identified during the discussion, which were: 1) the difficulty of defining patient vs. client/customer, 2) the difficulty in differentiating treatment from health/wellness, 3) public protection and public perception of physical therapy, and 4) the negative impact of unintended overregulation.

Dr. Alviso explained that, after careful and thorough review and discussion, the group resolved the following:

- Both traditional treatment and Wellness are "Physical Therapy" under current law;
- The laws of Physical Therapy apply to treatment and Wellness;
- Some aspects of the requirement for a diagnosis will change with the enacting of AB 1000;
- It appears current regulation (supervision, documentation) was designed for application to traditional physical therapy treatment;
- This level of required documentation and supervision may not be necessary across the broad spectrum of physical therapy services which now include Wellness, etc.
- Physical therapy services are on a continuum rather than a clear cut delineation between patient/client and treatment/Wellness;
- In concert with professional judgment, there are factors which influence where on the continuum a specific physical therapy service lies;
- There may be a way to define the exceptions to the current regulatory requirements, which may be a very small, low risk of public protection scenario; and,

- There may also be a way to provide guidance through regulation for the Board and the profession to use in determining the standard of documentation and supervision that applies in individual practice decisions.

Also, the group discussed the continuum of physical therapy care, which took into account the follow:

- Communication with public
- Consumer/patient needs
- Safety of service provide
- Intervention implemented and outcome
- Defensibility of service provided
- Setting in which service is provided

Dr. Takii, Ms. DeFoe and Nancy Byl, PT, also participated in the Symposium and they all shared it was a positive experience and were grateful for the opportunity.

Ms. Wallisch questioned whether the FSBPT would be able to provide some direction on the issue. Dr. Alviso responded that nationally Wellness lacks clear definition; however, the FSBPT was able to provide information from other states that have attempted to address the issue.

(A) Proposed 2014 Meeting Calendar

The Board reviewed the proposed 2014 meeting calendar and made the following changes:

Move the May 2014 meeting to the 14th and 15
 Move the August 2014 meeting to the 20th and 21st

MOTION: To adopt the proposed 2014 meeting calendar as amended.

MOVED: Ms. Eleby

SECOND: Dr. Takii

VOTE: 6-0 Motion carried

7. Executive Officer's Report – Jason Kaiser

Mr. Kaiser elaborated on specific items from his report and provided updates since the submission of the report. BreEZe Release 1 boards have "gone live." DCA is monitoring the progress of implementation of BreEZe for Release 1 boards, and making changes as necessary to address issues and improve the system, which will be a benefit for the Release 2

and 3 boards. The Board is in Release 2. The Board has been working with the DCA to ensure that all aspects of the Board's website are ADA compliant; an example of this will be provided in the Continuing Competency report.

The FSBPT released the fixed-date testing scheduled for 2014 and 2015. To meet the FSBPT deadlines, the Board has established application deadlines which have been posted to the Board's website. Also, as noted in his report, Mr. Kaiser informed the Board the DCA's Consumer Information Center (CIC) may be used to field routine calls to mitigate the staff's workload in Application and Licensing Services.

Mr. Kaiser reported that one of the four staff vacancies identified in his report has been filled. One of the three remaining vacancies is in the Administration Services program; Korey Landry, the Board's Outreach Coordinator and Personnel Liaison will be leaving the Board later this month. In the CPS program, existing staff that held temporary positions were recently appointed to permanent positions. The Continuing Competency program remains steady with a 14-month backlog, which is commendable given that the one analyst in the program is now splitting time between continuing competency duties and application/licensing duties.

Finally, the Board can commence travel again with the new fiscal year.

8. Legislation Report – Sarah Conley

Ms. Conley provided a brief explanation of each chaptered bill and how it may impact the Board, consumers, and/or the profession; for all noted bills, the statutes will take effect January 1, 2014.

(A) AB 258 (Chávez) State Agencies: Veterans

AB 258 requires the Board to use a specific format when asking on any form whether an individual has served in the U.S. military. This format will be integrated into BreZE.

(B) AB 1000 (Wieckowski) Physical Therapists: Direct Access to Services

AB 1000 allows individuals to directly access physical therapy treatment for no more than 45 days or 12 visits, whichever occurs first. AB 1000 also allows professionals to be employed by other professionals without restriction; added physical therapy corporations to the list of exemptions specifying who may shareholder, officers, or directors; and, included physical therapists to the list of who may be shareholders, officers, or directors, as specified, of medical corporations.

Dr. Lowe presented a potential scenario based on the passage of AB 1000 and questioned the Board's position. Mr. Kaiser responded that questions such as these must be determined on a case-by-case basis through an investigation; without knowing all aspects of a particular situation, the Board cannot determine whether a certain practice is acceptable. In addition, if

the Board were to address an issue uniformly for all licensees, it would have to put it in regulation.

Ms. DeFoe requested the Board include an article in the newsletter addressing the Board's broad view of addressing questions related to wellness and AB 1000, including the professional judgment, community standards, and defensibility factors.

(C) AB 1057 (Medina) Professions and Vocations: Licenses: Military Service

AB1057 requires the Board, commencing January 1, 2015, to inquire on the application for licensure whether an applicant has served in the military. This component of the application will be integrated into BreZEe.

(D) SB 198 (Lieu) Physical Therapy Board of California

SB 198 makes changes and reorganizes various provisions throughout the Physical Therapy Practice Act. Staff is currently working on developing information to disseminate to the public regarding the changes. Staff will then begin the review process to determine whether regulations are necessary based upon the changes in the Act.

(E) SB 304 (Lieu) Healing Arts: Boards

SB 304 extends the sunset date for various boards, and specifically, adds the Board to the provision which sets forth that the Board's cases are investigated and prosecuted by Attorney Generals in the Health Quality Enforcement Section of the Department of Justice.

(F) Other bills affecting the Board identified by staff after publication of the agenda (Information only)

Ms. Conley indicated there were no other significant bills to report on at this time.

9. Rulemaking Report – Sarah Conley

Ms. Conley provided an update of each rulemaking item identified on the 2014 Rulemaking Calendar as noted below. Ms. Ybarra presented the Guidelines for Issuing Citations and Imposing Discipline, and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

(A) Guidelines for Issuing Citations and Imposing Discipline, and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Ms. Ybarra presented the Board with the Guidelines for Issuing Citations and Imposing Discipline (Guidelines) as amended at the August meeting and which included some additional amendments as recommended by legal counsel. The new amendments were to ensure the Board included all of the Uniform Standards Regarding Substance-Abusing Healing Arts

Licensees (Uniform Standards) in the Guidelines. The Board reviewed the Guidelines and made the following changes (underline indicates added text and strikeout indicates deleted text):

Page 51, Term 3

[...] recovery at least ~~ninety~~ [...].

Page 55, Term 20

Passing of the examination [...].

Page 57, Term A

The purpose of this condition ~~is to~~ would allow Respondent [...].

Page 63, Term O

[...] satisfactory completion of the coursework, within 180 days, Respondent [...].

Ms. Ybarra informed the Board that additional revisions to the Guidelines will be necessary with the passage of SB 198; therefore, she recommended the Board allow staff to make those changes and bring them back before the Board for consideration before a 15-day notice is issued. The rulemaking file was noticed on June 21, 2013, which allows staff and the Board time to make the changes to the Guidelines without having to do another rulemaking package if the Board approves the language no later than the February meeting.

The Board concurred with Ms. Ybarra's recommendation.

MOTION: To approve existing changes and those made at this meeting; direct staff to make changes based on SB 198, send version with SB 198 changes to Ms. Wallisch and Dr. Jewell for feedback, and schedule a teleconference to re-consider the Guidelines version reflecting the SB 198 changes.

MOVED: Dr. Alviso

SECOND: Dr. Takii

VOTE: 6-0 Motion carried

(B) Required Email Filing

Ms. Conley informed the Board the file was approved by the Office of Administrative Law (OAL); therefore, the regulation will take effect January 1, 2014.

- (C) Update of Regulations
- (D) Physical Therapy Business Requirements
- (E) Continuing Competency
- (F) Delegation Authority for Citation Informal Conferences
- (G) Telehealth

Ms. Conley noted there was no update on items 9(C-G), with the exception of (F). Since the August meeting, staff was advised that the person holding the information conference must also be the person who issued the citation. With current resources, this is not an option; therefore, this item is not being pursued as it is not feasible for the Board to do at this time.

10. Administrative Services Report – Liz Constancio

(A) Budget

Ms. Constancio presented both the staff budget report, and the "Month 13" DCA CalStars report. The staff budget report is current as of September 20, 2013 and is an ongoing report of Board expenditures. The "Month 13" DCA CalStars report reflects the Board's budget for the end of the fiscal year (June 30, 2013) including both expenditures and revenues received.

(B) Outreach

Ms. Constancio presented the Outreach report. Facebook appears to increase about 5% quarterly. The Twitter increased activity is due to recent legislative activity.

11. Application & Licensing Services Report – Liz Constancio

Ms. Constancio presented the Application and Licensing Services report. Ms. Constancio noted that the California Law Exam (CLE) pass rate is slowly increasing since the implementation of the new exam form.

12. Consumer Protection Services Report – Elsa Ybarra

Ms. Ybarra presented the Consumer Protection Services report.

13. Continuing Competency Report – Jason Kaiser

Mr. Kaiser presented the Continuing Competency report noting, as previously mentioned, the current backlog remains as the program continues with limited resources. The Continuing Competency program recently completed a project that will assist licensees in obtaining course approvals. The list of Continuing Competency Approval Agencies on the Board's website has been updated with indicators showing which agencies 1) approve outside providers, 2) approve individual licensees, and 3) provide retroactive approval. The indicators are coded by color and shape, which is ADA compliant.

14. Public Comment on Items Not on the Agenda

There was no public comment under this item.

15. Elections

(A) President

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

MOTION: To elect Dr. Alviso as Board President

MOVED: Dr. Jewell

SECOND: Dr. Takii

VOTE: 6-0 Motion carried

(B) Vice-President

Mr. Turner and Dr. Takii nominated Dr. Jewell for Board Vice-President. Dr. Jewell declined the nomination.

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

MOTION: To elect Dr. Takii as Board Vice-President

MOVED: Dr. Jewell

SECOND: Mr. Turner

VOTE: 6-0 Motion carried

(C) FSBPT Delegate

MOTION: To appoint Dr. Jewell as the FSBPT Delegate

MOVED: Dr. Alviso

SECOND: Dr. Takii

VOTE: 6-0 Motion carried

(D) FSBPT Alternate Delegate (Primary)

MOTION: To appoint Dr. Takii as the FSBPT Alternate Delegate

MOVED: Mr. Turner

SECOND: Dr. Alviso

VOTE: 6-0 Motion carried

(E) FSBPT Alternate Delegate (Back-up)

MOTION: To appoint Ms. Eleby as the back-up FSBPT Alternate Delegate

MOVED: Mr. Turner

SECOND: Dr. Alviso

VOTE: 6-0 Motion carried

**16. Agenda Items for Next Meeting – February 19 & 20, 2014
Sacramento, CA**

The Board indicated it did not have any specific items at this time for the February meeting.

17. Adjournment

The meeting was adjourned on Thursday, November 7, 2013.

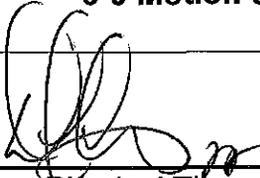
The Board adopted the November 6 & 7, 2013 meeting minutes at the February 19 & 20, 2014 meeting. The motion and vote are provided below.

MOTION: To adopt the draft November 6 & 7, 2013 meeting minutes as amended.

MOVED: Dr. Takii

SECOND: Ms. Wallisch

VOTE: 5-0 Motion carried



Dr. Debra Alviso, Physical Therapist, Board President

9/17/14
Date