



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

### President

Debra Alviso, PT, DPT

### Vice-President

Katarina Eleby

### Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Alicia Rabena-Amen, PT, MPT

James Turner, MPA

Carol Wallisch, MA, MPH

## Physical Therapy Board of California

### APPROVED Meeting Minutes

August 19, 2015 9:00 a.m.

August 20, 2015 9:00 a.m.

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

## Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Associate

Analyst

2 For the sake of clarity, agenda items discussed during the meeting follow their original order on  
3 the agenda in these minutes; however, some agenda items may have been taken out of order  
4 during the meeting.

5

## 6 **1. Call to Order, Roll Call and Establishment of Quorum**

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8 The Physical Therapy Board of California (Board) meeting was called to order by Dr.  
9 Alviso at 9:00 a.m. on August 19, 2015. The Board recessed and reconvened on August  
10 20, 2015. All members were present and a quorum was established. Also present at the  
11 meeting were Angelique Scott, Legal Counsel; Jason Kaiser, Executive Officer; Brooke  
12 Arneson, Sarah Conley, Jacki Maciel, Carl Nelson and Elsa Ybarra, Board staff.

13

## 14 **2. Special Order of Business – August 19, 2015 9:00 a.m.**

15

### 16 **(A) Hearing on Petition for Reinstatement of License – Aaron Tsuda**

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18 The petition for reinstatement of the license for Mr. Tsuda was not heard as scheduled  
19 but continued to November 2015 per his request.

20

### 21 **(B) Hearing on Petition for Termination of Probation – Mitzi Harrison, PT**

22  
23 After submission of the matter(s), the Board convened in closed session to deliberate per  
24 Government Code section 11126(c)(3).

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26 Once issued, disciplinary decisions can be found on the Board's website at  
27 [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

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## 29 **3. Closed Session**

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

Once issued, disciplinary decisions can be found on the Board’s website at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

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

**(C) Pursuant to Government Code section 11126(c)(1)  
Prepare, approve, grade or administer examinations**

**(D) Adjourn Closed Session**

**4. Reconvene Open Session**

**5. Review and Approval of May 13 & 14, 2015 Meeting Minutes**

Ms. Arneson presented the May 2015 minutes for the Board’s consideration. The Board identified minor amendments to the minutes as follows:

Page 7, line 38 – correct typographical error “SDB” 198 to “SB” 198

Page 8, line 17 – correct February 2014 to February 2015

Page 8, line 29 – correct typographical error “2106” to “2016”

**MOTION: To adopt the draft May 13 & 14, 2015 meeting minutes as amended.**

**M/S: Turner/Eleby**

**VOTE: 7-0 Motion carried**

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

**(A) Federation of State Boards of Physical Therapy (FSBPT) – Eligibility Update**  
David Relling, Susan Layton, Lorin Mueller

David Relling, Member of the Board of Directors, Susan Layton, Chief Operating Officer and Lorin Mueller, PhD. Managing Director of Assessment presented on the upcoming eligibility requirements to sit for the National Physical Therapy Examination (NPTE).

Dr. Mueller reminded members of the 2011 question harvesting incident by examination candidates prompting greater protection of the NPTE. As a result, after a lengthy and

75 extensive data analysis the following four safeguards were presented to the 2013 Board  
76 of Directors who in turn brought them forward to the Leadership Issues Forum and the  
77 Delegate Assembly. The following concepts were endorsed by a vast majority of the  
78 FSBPT members:

- 79
- 80 1) Lifetime limit allowing candidates to take the exam a maximum of six times
- 81 2) Limit of only two very low scores
- 82 3) Demonstrate English language proficiency
- 83 4) Limit the evaluation to the current coursework tool

84 Lifetime limit – The lifetime limit will go into effect as of January 1, 2016.

85 Candidates will be able to take the exam a maximum of six (6) times. An individual can  
86 take the NPTE for PTs six times and also take the NPTE for PTAs six times if he or she  
87 is otherwise qualified to do so.

88 Candidates will still be allowed up to three attempts per year but now will have a six-  
89 time total limit.

90 As of January 1, 2016, any candidate who has already tested six times will no longer be  
91 allowed to test unless a jurisdiction chooses to appeal this policy on a specific  
92 candidate's behalf.

93 Candidates who have not yet passed the exam will receive a notice from FSBPT in  
94 2014 explaining the new requirement and implementation date. This notice period will  
95 allow candidates to take up to three attempts in 2015.

96 There will be no “grandfathering” for candidates who registered prior to this requirement  
97 going into effect. All candidates who do not have a passing score and have tested in the  
98 last three years will be notified of the changes and have one year to pass the exam prior  
99 to the new requirements going into effect.

100 Low score limit – The low score limit will go into effect as of January 1, 2016.

101 Candidates who receive two very low scores on the exam, currently defined as  
102 performing at or close to chance level (scale scores 400 and below), will not be allowed  
103 to test again.

104 Currently, candidates who receive a very low score on the exam are notified their  
105 performance is so far away from the minimal competence level they need to engage in  
106 serious remediation, such as enrolling in another PT educational program, before  
107 attempting the NPTE again and another score that is very low (400 or below) may result  
108 in further action by FSBPT.

109 Starting January 1, 2016, the letter sent to candidates who receive a score of 400 or  
110 less will be modified to indicate that a second score of 400 or less will result in a lifetime

111 ban. No scores prior to January 1, 2016 will be considered, which means all candidates  
112 will have a “clean slate” with regard to this eligibility requirement.

113 The two remaining eligibility requirements endorsed in 2013, English language  
114 proficiency and determination of substantial equivalence using the FSBPT coursework  
115 tool, will go into effect in 2017.

116 Ms. Layton explained that over the course of the last 18 months FSBPT and its  
117 members have been communicating about an appeal opportunity and how best to  
118 establish a process.

119 Reasons a state might appeal the lifetime limit or low-score limit on behalf of a bona fide  
120 candidate for licensure in their state would likely be related to additional  
121 preparation/education the candidate has undertaken.

122 Candidates who are subject to the new eligibility requirements will be notified  
123 individually by email, no later than November 30, 2015, to explain the new  
124 requirements.

125 Member boards will receive a spreadsheet of all their candidates who have been  
126 notified and a sample of all emails used to communicate the new requirements.

127 At the same time the notices are sent to candidates and member boards,  
128 [www.fsbpt.org/eligibility](http://www.fsbpt.org/eligibility) will be updated with the timeline for implementation.

129 Dr. Alviso invited Ms. Scott, legal counsel and Mr. Kaiser, Executive Officer to comment  
130 on why these kind of limitations are prohibited by California law. Ms. Scott indicated  
131 there is an explicit prohibition in California law against limiting an applicant’s  
132 examination attempts. To do so would require a statutory amendment to the California  
133 Business and Professions Code section 135. Mr. Kaiser further indicated the Board’s  
134 regulations afford an applicant the right to take an examination post failure. He also  
135 went on to explain that the two Boards referenced by Dr. Mueller as doing such,  
136 Pharmacy Board and Medical Board, are not prohibiting repeat exams while they do  
137 have further restrictions they are not lifetime bans. Dr. Drummer asked about how this  
138 would impact California given the statutory restrictions. Ms. Layton replied that  
139 California will have an exemption on the exam limits. It was noted by Ms. Alviso and Mr.  
140 Kaiser that California is in the process of complying with the English proficiency and the  
141 FSBPT’s coursework tool requirements through regulation. Ms. Wallisch commented  
142 that in order for a legislative change to be made there would need to be substantial  
143 evidence of the problem and how consumers are being negatively impacted. Dr.  
144 Mueller and Ms. Layton assured there is psychometric evidence and offered to support  
145 the Board in the event it chooses to seek a legislative change. Earlier Mr. Kaiser  
146 reported the prohibiting statute is a general provision and impacts all licensing boards;  
147 therefore, making an amendment much more challenging.

148 **(B) Department of Consumer Affairs (DCA)**

149 Christine Lally, Deputy Director of Board Relations presented on four items of interest.

150  
151 1) BreEZe – Ms. Lally updated the Board on progress, status and upcoming events.  
152 She indicated User Acceptance training will be September 23 to November 19, 2015;  
153 Train the Trainer will be October 14 to November 3, 2015; and, User training will be  
154 November 4 to December 11, 2015. Go Live for those in release two is scheduled to  
155 take place in January, 2016.

156  
157 Ms. Lally on behalf of Director Kidane commended Jason Kaiser on his support and  
158 leadership as well as his dedication in the trenches. She indicated every time she hears  
159 Jason’s name it’s either preceded with “thank God for” or followed by “is awesome” and  
160 stated she concurred with these sentiments.

161  
162 2) Enforcement – Ms. Lally reported DCA initiated department wide quarterly meetings  
163 with the Board Presidents and Executive Officers to share best practices on  
164 enforcement. She advised the next meeting will be held in late September and an  
165 invitation will be mailed.

166  
167 3) Pro rata study – SB 1243 legislated a one-time study on expense distribution of pro  
168 rata. CPS HR Consultants were contracted to complete a survey and cost analysis.  
169 The results are posted on the DCA website and are available for review. Ms. Lally  
170 indicated a significant adjustment resulting from the outcome of the analysis is that DCA  
171 will begin meeting in October with Boards on annual cost distribution in lieu of waiting  
172 until January.

173  
174 4) Update on the *North Carolina State Board of Dental Examiners v. the Federal Trade*  
175 *Commission* Supreme Court Decision – Ms. Lally advised the Board that as a result of  
176 the Supreme Court decision Senator Hill requested an Attorney General opinion on  
177 what constitutes “active state supervision” of a state licensing board for purposes of the  
178 state action immunity doctrine in antitrust action and what measures might be taken to  
179 guard against antitrust liability for board members. Ms. Lally indicated the DCA legal  
180 office would be looking to the Attorney General opinion as well as completing their own  
181 research and will be providing information and training to Board Presidents, Executive  
182 Officers and legal counsels on the topic sometime in mid-September.

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184 **(B) California Physical Therapy Association (CPTA)**

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186 Stacy DeFoe, Executive Director advised the Board that association staff were busy  
187 preparing for the upcoming annual conference in Pasadena on September 26 & 27,  
188 2015, Saturday and Sunday. She also indicated Mr. Kaiser would be speaking at the  
189 conference on Sunday. Ms. DeFoe reported licensees could earn five continuing  
190 education units per day or two contact hours for attending the conference.

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192 Additionally, she expressed appreciation for Mr. Kaiser affording the CPTA the  
193 opportunity to work together with the Board on AB 483.

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**7. President’s Report - *Dr. Debra Alviso***

**(A) 2015 Meeting Calendar**

There were no changes to the November, 2015 meeting.

**(B) 2016 Meeting Calendar**

The Board considered moving the May meeting to May 11 & 12, 2016. Discussion pursued about the University of Southern California as a meeting location. The Board also discussed and agreed to move the November meeting to November 9 & 10 avoiding conflict with the Federation of State Boards of Physical Therapy’s annual meeting scheduled for November 4 - 6, 2016 in Columbus, Ohio.

**MOTION: To adopt the 2016 meeting calendar as amended.**

**M/S: Wallisch/Eleby**

**VOTE: 7-0 Motion carried**

**8. Executive Officer’s Report - *Jason Kaiser***

Dr. Alviso referred members to the report included in the agenda materials and asked whether there were any questions. Mr. Turner inquired about staff resources dedicated to BreEZe. Mr. Kaiser indicated staff are impacted to some degree by BreEZe on a daily basis. He further explained the varied demands ranged from all day meetings to completing homework in preparation for a meeting but reiterated while it is a drain on staff resources it is an investment in the future success of BreEZe when the Board goes live with BreEZe. Even after that point the Board has been requested to dedicate an employee to the “train the trainer” program which would be a commitment of 4 days a week, 8 hours a day. This would be a significant sacrifice since the Board already suffers from staff shortages.

Mr. Turner also inquired about the publication date of the newsletter. Mr. Kaiser responded there has been a delay due to resources and the conclusion of some pending newsworthy items and assured there would be a winter, 2016 publication of the newsletter.

**9. Legislation Report - *Brooke Arneson***

**(A) AB 85 (Wilk) Open Meetings**

Ms. Arneson reported the Board adopted an oppose position on AB 85 at the May, 2015 meeting. It was further noted the Department of Consumer Affairs also adopted an

239 oppose position and the bill passed out of the Assembly and the Senate and was  
240 currently in Appropriations. Mr. Turner asked Ms. Island, CPTA representative if the  
241 CPTA had taken a position on the bill and she indicated they had not taken a position  
242 on the bill.

243  
244 **(B) AB 483 (Patterson) Healing Arts: Initial License Fees: Proration**

245  
246 The Board adopted an oppose unless amended position on this bill at its meeting in  
247 May; however, since the author agreed to amend the language removing the Physical  
248 Therapy Board from the bill, Dr. Alviso as Board President, issued an Interim Neutral  
249 position.

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251 **MOTION: To remove the former position of Oppose Unless Amended and**  
252 **adopt a Neutral position on AB 483**

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254 **M/S: Wallisch/Turner**

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256 **VOTE: 7-0 Motion carried**

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258 **(C) AB 1351 (Eggman) Deferred Entry of Judgment: Pretrial Diversion**

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260 Ms. Wallisch questioned why staff was recommending an Oppose position to this bill.  
261 Mr. Kaiser explained how the bill would cripple the Board's enforcement program since  
262 it would enable a licensee to choose pretrial diversion to avoid a drug or alcohol related  
263 conviction. Currently, the Board relies on the conviction and the evidence surrounding  
264 the conviction to support its allegation of substantial relationship. Ms. Scott, Board  
265 Counsel further pointed out that the length of the diversion program required in AB 1351  
266 is only from six to twelve months as opposed to Maximus, the Board's rehabilitation  
267 program, which is three years or more depending on the degree of successful response  
268 by the participant. Ms. Wallisch suggested a position of Oppose Unless Amended. Mr.  
269 Kaiser asked, what amendments would the Board propose? He further added the  
270 Board of Pharmacy had taken an Oppose Unless Amended and proposed  
271 amendments; however, he was unaware of the specific amendment language  
272 proposed. Mr. Turner wondered if a position could be deferred to a future meeting and  
273 Mr. Kaiser responded November would be too late. Dr. Dominguez suggested since the  
274 proposed language required Police Officers to disclose an arrest, perhaps the Board  
275 could seek similar language. Mr. Kaiser interjected that simply adding health care  
276 practitioners to those required to disclose an arrest would not be enough to protect  
277 consumers since even though the Board may have disclosure of an arrest by the  
278 practitioner, it would not have disclosure of the conviction thereby eliminating the Board's  
279 authority to take administrative action. Amongst the discussion the Board all agreed to  
280 oppose the bill unless amended. Mr. Turner made the motion and Ms. Rabena-Amen  
281 seconded. However, prior to the vote Dr. Drummer requested an amendment to the  
282 motion charging the Executive Officer with pursuing an appropriate amendment that  
283 would address the concerns of the Board the general concept. Both Mr. Turner and Ms.

284 Rabena-Amen agreed to the amendment.

285

286 **MOTION:** To oppose unless amended and charge the Executive Officer  
287 with pursuing an appropriate amendment that would address  
288 the concerns of the Board.

289

290 **M/S:** Turner/Rabena-Amen

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292 **VOTE:** 7-0 Motion carried

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294 **(D) AB 1352 (Eggman) Deferred Entry of Judgment: Withdrawal of Plea**

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296 Mr. Kaiser advised this bill is similar to AB 1351 but takes into account criminal actions  
297 in process.

298

299 **MOTION:** To oppose unless amended and charge the Executive Officer  
300 with pursuing an appropriate amendment that would address  
301 the concerns of the Board.

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303 **M/S:** Dominguez/Wallisich

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305 **VOTE:** 7-0 Motion carried

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307 **(E) Other 2015 Bills Potentially Impacting Physical Therapy Practice or**  
308 **Regulation or the Operation of the Physical Therapy Board**

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310 Ms. Arneson indicated there were no other bills requiring further discussion.

311

312 **10. Rulemaking Report - Brooke Arneson**

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314 **(A) 2015 Rulemaking Calendar**

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316 At the November 2014 meeting, the Board adopted the 2015 Rulemaking Calendar as  
317 required by Government Code (GC) § 11017.6. Staff developed a rulemaking tracking  
318 form on which all rulemaking progress is noted and reported to the Board at its quarterly  
319 meetings. No action was requested on the presentation of the rulemaking report;  
320 however, staff requested action for specific rulemaking items; under 4(A) and 4(B).

321

322 **(B) Amendments pursuant to Title 1, Section 100 of the California Code of**  
323 **Regulations**

324

325 Dr. Alviso questioned rationale behind some of the section 100 changes and wondered  
326 about the capitalization of select subsections in section 1399.94. Mr. Kaiser made note of  
327 the inquiry and added if there was a correction to be made it would be done through this  
328 process. Dr. Alviso commented on the value of this pathway for cleanup of regulatory

329 language.

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331 **11. Administrative Services Report**

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333 **(A) Budget – Carl Nelson**

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335 Mr. Nelson identified the differences from the Month 12 report, included in the agenda  
336 materials, from the Month 13 report distributed at the meeting. He specifically brought  
337 to the attention of the Board an increase in expenditures in Personnel Services,  
338 Attorney General, Office of Administrative Services, Evidence Witness and Court  
339 Reporters since the release of Month 12. However, the budget moved from the red to  
340 the black in areas of General Services, specifically C&P and Department of Consumer  
341 Affairs pro rata. He also reported there was a \$15,000 reversion in Division of  
342 Investigation Costs. Mr. Kaiser advised the reversion was a result of increased efforts  
343 to scrutinize billings, just one of many ways the Board is being prudent about living  
344 within the Board's means. The fact that the Board's revenue does not support its  
345 expenditures is evidence of the dire need for the fee increase.

346  
347 Mr. Nelson went on to review materials included in the agenda book. Dr. Dominguez  
348 requested a definition of categories for ease of the user. Mr. Kaiser indicated it would  
349 be available by the November meeting.

350  
351 **(B) Outreach – Jacki Maciel**

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353 Ms. Maciel presented the Outreach report and noted a few highlights such as an  
354 increase of sharing posts of the PTBC on Facebook page and receiving more  
355 comments on posts. Ms. Albena-Ramen suggested addressing commonly asked  
356 questions and Ms. Maciel indicated she does have "Did you know" questions posted.  
357 Mr. Kaiser advised the Board has branched out into Instagram but has not been too  
358 successful as yet.

359  
360 **12. Application & Licensing Services Report - Sarah Conley**

361  
362 Ms. Conley reported on Application and Licensing Services activities. She referred the  
363 members to her report included in the agenda book and expounded on some areas of  
364 interest requiring further attention. She advised members she is paying special  
365 intention to the evolution of growth and its contributors, such as BreEZe, Fixed-date  
366 testing, Application and Licensing Performance Measures and examination  
367 performance. She expressed interest in exam performance of California test takers in  
368 comparison to the national average. She further indicated she was looking into what  
369 staff can do within existing resources to enhance services to stakeholders including  
370 adding additional timeline information to the letters used to communicate status to  
371 applicants. Dr. Dominguez suggested a visual timeline on the Board's website. He  
372 noticed timeline information is somewhat buried within the application instruction and it  
373 would be helpful if it was more transparent. Stacy DeFoe, Executive Director of the

374 California Physical Therapy Association also expressed concern with communicating  
375 timelines as they receive numerous calls on the issue and requested a means to  
376 communicate real time in anticipation of minimizing applicant anxiety.  
377

378 **13. Consumer Protection Services Report - *Elsa Ybarra***  
379

380 Ms. Ybarra shared there have been some staffing shifts within the CPS program and  
381 one new hire. Vincent Azar, the Board's current resident BreEZe expert promoted from  
382 the Application and Licensing Services program into the Consumer Protection Services  
383 program. Ms. Ybarra congratulated Mr. Azar on his promotion into the program but also  
384 shared he will remain serving as the Board's single point of contact (SPOC) for the  
385 BreEZe project. Ms. Ybarra went on to review the reports included in the agenda  
386 materials and noted that while there was a decrease in complaints received, costs were  
387 still escalating. This was largely due to the complexity of the cases requiring more  
388 formal investigations and supplemental investigations at the request of the Attorney  
389 Generals' office in order to prove its cases. She also commented on the increase in  
390 criminal convictions and the time involved in processing a criminal conviction. While the  
391 responsibility of obtaining arrest and conviction records rests on the applicant or  
392 licensee, sometimes they are practically unobtainable by the applicant or licensee  
393 requiring Board staff to intervene. Another obstacle in obtaining records is narrowing  
394 down the arresting agency since there are many times the arresting agency and  
395 booking agency are different. Another variable is when the Board receives a  
396 Subsequent Arrest Report from the Department of Justice, the Board opens the case  
397 based on the arrest and then must follow it to the conviction phase. These, plus other  
398 variables, factor into processing timelines.  
399

400 Ms. Ybarra also corrected the date of the Expert Consultant Training. Her report  
401 indicated it was November 3<sup>rd</sup> but it is November 10, 2015 and it will be held at Loma  
402 Linda University. Mr. Turner inquired about the length of the training and the number of  
403 participants. Ms. Ybarra replied it is one day – eight hours in length and she is  
404 anticipating approximately 30 participants. She further advised existing expert  
405 consultants are also required to attend in order to maintain status with the Board. Lastly  
406 she explained participants were solicited based on whether they met the criteria,  
407 licensed five years, no disciplinary background, etc. and demographic area. Mr. Kaiser  
408 indicated that even though they focus on recruiting in outlying areas it still poses a  
409 problem with the investigation when the expert consultant is a competitor of the subject  
410 of the complaint. In cases of conflict an expert from another geographic location is  
411 called upon to serve.  
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413 **14. Board Member Training – *Jacki Maciel & Liz Constancio***  
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415 Ms. Maciel presented on travel guidelines and increasing reimbursement efficiencies.

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

*Please note the board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. [Government Code sections 11125 and 11125.7(a)]*

There were no public comments on items not on the agenda.

**16. Agenda Items for Next Meeting – November 4 & 5, 2015  
Ohlone College, Newark, CA**

The Board indicated there were notes on items of future interest but did not have any specific items at this time for the November 4 & 5, 2015 meeting. Dr. Alviso reminded members to consider nominations for the positions of office within the Board and delegate and alternate delegates for the Federation of State Boards of Physical Therapy. Mr. Kaiser noted the Coursework Tool should be included in the 2016 Rulemaking Calendar.

**17. Adjournment**

The Board concluded the meeting on Thursday, August 20, 2015 and adjourned at approximately 3:20 p.m.