



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**

Katarina Eleby

### **Vice-President**

Alicia Rabena-Amen, PT, MPT

### **Members**

Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Tonia McMillian

T J Watkins

## **Physical Therapy Board of California Adopted Meeting Minutes**

August 23, 2017 9:00 a.m.

August 24, 2017 9:00 a.m.

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

## **Board Staff**

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Associate

Analyst

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

### **1. Call to Order**

The Physical Therapy Board of California (Board) meeting was called to order by President Eleby at 9:00 a.m. on August 23, 2017. The Board recessed at 5:52 p.m. and reconvened at 9:04 a.m. on August 24, 2017.

### **2. Roll Call and Establishment of Quorum**

All members were present for day one of the meeting except for Jesus Dominguez, PT, PhD, and a quorum was established. Also present at the meeting were: Tara Welch and Salwa Bojack, Legal Counsels; Jason Kaiser, Executive Officer; and Brooke Arneson and Elsa Ybarra, Board staff.

### **3. Review and Approval of May 24 & 25, 2017 Meeting Minutes – Brooke Arneson**

The Board reviewed the minutes and made grammatical and editorial changes and voted on day 2 of the meeting. The minutes will be edited accordingly for the President's signature.

**MOTION:** To approve the minutes as amended.

**M/S:** Drummer/Alviso

**VOTE:** Alviso – Aye  
Dominguez – Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen – Aye  
Watkins – Aye

7-0 Motion carried

#### 4. **President's Report** – *Katarina Eleby*

##### (A) 2017 Adopted Meeting Calendar

Mr. Kaiser advised the Board the November 2017 meeting will be at Ohlone College in Newark and he anticipates first and second year students will be in attendance.

##### (B) 2018 Proposed Meeting Calendar

Mr. Kaiser introduced a handout proposing a shift in the 2018 meeting calendar dates. He suggested the modification would eliminate conflicting meeting space and webcast coverage with other DCA Boards and Bureaus, allow for more accurate reporting of data and legislation, and align with academic calendars affording larger student attendance. Ms. Rabena-Amen indicated it would not work well with her personal calendar and Ms. Eleby commented she appreciated how it interacted with the calendars of stakeholders. Ms. Rabena-Amen requested the meetings be held on Thursday/Friday versus Wednesday/Thursday. Dr. Alviso responded Friday commute from the Bay Area and Southern California were difficult and proposed those meetings remain on a Wednesday/Thursday schedule and the Sacramento meetings move to a Thursday/Friday schedule. Dr. Drummer requested the vote and further discussion be postponed until Dr. Dominguez is in attendance.

The Board discussed the meeting dates on day two of the meeting and agreed upon March 22 and 23, 2018, June 20 and 21, 2018, September 13 and 14, 2018 and December 5 and 6, 2018. They also would appreciate at the November 2017 meeting, a presentation by SOLID, on SOLID's facilitation of strategic planning process, and setting the strategic planning session in February 2018, or if that's not possible, the presentation by SOLID in March 2018, and the strategic planning meeting in April 2018.

**MOTION:** To adopt the 2018 proposed meeting calendar as amended.

**M/S:** Rabena-Amen/Watkins

**VOTE:** Alviso – Aye  
Dominguez – Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen – Aye  
Watkins – Aye

7-0 Motion carried

**5. Executive Officer's Report – *Jason Kaiser***

Mr. Kaiser discussed two additional items to the Administrative Services section of the Executive Officer Report. The first being that Karin Thompson, an analyst in the enforcement program, has returned from retirement to volunteer her assistance with scanning enforcement files. He expressed appreciation for her commitment and return to the PTBC family. Secondly, he directed the Board's attention to the trifold handout titled "About Us." He stated he had received feedback and edits from members not reflected in the handout, but that they would be incorporated in the final publication.

Discussion ensued on developing multiple handouts tailoring each to a different demographic. Dr. Drummer expressed concern over licensees confusing APTA with PTBC and felt there was a need to address the differences. Ms. Rabena-Amen proposed the appointment of an Outreach Committee and Ms. Eleby selected Mr. Watkins and Dr. Drummer to serve as members of the Committee.

Ms. Welch was asked to introduce Salwa Bojack as the Board's newest counsel. Ms. Bojack presented her background to the Board and expressed she looked forward to being counsel to the Board. Dr. Drummer questioned the degree of turnover of counsel, stating in three years the Board has had four different counsels assigned. Ms. Welch stated that, although she is unable to respond officially on behalf of the Legal Affairs Division, the turnover may be due to the efficiency of the Board making it an ideal first assignment for new Board counsel. Ms. Rabena-Amen noted that other boards are experiencing a similar turnover.

Mr. Kaiser concluded his report advising the Board he just learned the Veterinary Medical Board staff have been directed to promulgate regulation on animal rehabilitation. He further noted he did not know what the proposed language will look like.

Dr. Alviso questioned the outcome of the DCA internal audit and if the Board members would see the formal report. Mr. Kaiser responded he would be meeting with the DCA auditors next week for an exit interview and he would ask if a formal report would be issued.

**6. Presentation of FSBPT Physical Therapy Licensure Compact – Leslie Adrian and Jim Heider – Discussion and Possible Board Action**

Mr. Heider introduced himself as the Executive Director of Oregon's Physical Therapist Licensing Board, as a Director on the FSBPT's Board of Directors, and the liaison between seven states, including California and the FSBPT. Ms. Adrian is a physical therapist and is the FSBPT's Director of Professional Standards. Ms. Adrian presented on the FSBPT Physical Therapy Licensure Compact (Compact) after her presentation of the Supervised Clinical Practice Performance Evaluation Tool. She explained the purpose of the Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy service and that it is applicable to both physical therapists and physical therapist assistants. During discussion amongst the members, Ms. Adrian and Mr. Heider explained a licensee would lose Compact privilege for two years if administrative action was taken by one of the Compact states. The Board discussed that a California licensee could be in a Compact state where a violation occurs, but no action is taken because it is not considered a substantially related violation in that Compact state. This scenario could prove to be problematic since such a violation could be an actionable offense in California, but California may never become aware of the offense. This would conflict with California's mandate of consumer protection. The Board also discussed that not all states complete a background check of applicants to the same extent as California.

**7. Presentation of FSBPT Supervised Clinical Practice Performance Evaluation Tool – Leslie Adrian – Discussion and Possible Board Action**

Ms. Adrian began her presentation explaining that the Supervised Clinical Practice Performance Evaluation Tool (PET) was necessary for public protection, to ensure clinical competence, to evaluate cultural competency, and to verify English proficiency. She further described the benefits of the tool and why the tool is defensible. Ms. Adrian answered questions for the Board and staff regarding the PET. She concluded that FSBPT had not yet developed a PET for physical therapist assistants.

**8. Closed Session**

- (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings
- (B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

**9. Reconvene Open Session**

The Board reconvened at 1:35 p.m. into open session.

## **10. Discussion and Possible Board Action – Sunset Review Report – Jason Kaiser**

Mr. Kaiser reported that the Board's Sunset Bill (Bill), AB 1706 is in suspense with the Senate Appropriations Committee and asked the Board to submit a letter of support. He further advised that the Bill includes repeal of Business and Professions Code (BPC) section 2648.7 authorizing retired license status exemption. The repeal allows the Board to rely on BPC section 464 for retired license status exemption. The Bill grants the Board discretion when granting exemptions from BPC section 2653(b) and specifically exempts licensees graduating from the English-speaking countries of Australia, Canada (except Quebec), Ireland, New Zealand, and the United Kingdom. Also, the Bill repeals BPC section 2688.5, which currently requires the Board to submit a report to the legislature when the Board increases its fees. However, the Bill does not include extending the fee caps, which are currently at their ceiling. Both sides of the legislature understand these concerns and indicated that they may be considered in the future.

**MOTION:** To submit a letter in support of AB 1706.

**M/S:** Rabena-Amen/Watkins

**VOTE:** Alviso – Aye  
Dominguez – Absent  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen – Aye  
Watkins – Aye  
6-0 Motion carried

## **11. Legislation Report – Brooke Arneson**

(A) Discussion and Possible Board Action Regarding the 2017/18 Legislative Session Summary

- i. Discussion and Possible Board Action Regarding AB 208 (Eggman) Deferred Entry of Judgment Pretrial Diversion
- ii. Discussion and Possible Board Action Regarding AB 387 (Thurmond) Minimum Wage: Health Professionals: Interns
- iii. Discussion and Possible Board Action Regarding AB 508 (Santiago) Health Care Practitioners: Student Loans

Ms. Arneson reported on the bills which have had a status update since publication of the agenda materials. AB 208 was moved to the Senate Appropriations Committee suspense file on August 21, 2017; AB 508 was read a third time, passed and ordered to the Assembly on August 21, 2017. Mr. Kaiser gave an update on AB 1706 in the Executive Officer's report.

**12. Rulemaking Report – Brooke Arneson**

(A) Discussion and Possible Board Action Regarding the 2017 Rulemaking Update

i. Examination Passing Standard/Setting Examination Score

Ms. Arneson explained the Board approved the proposed language at the last meeting and stated it was moving through the new DCA rulemaking review process.

(B) Discussion of Issues and Possible Board action regarding Guidelines for Issuing Citations and Imposing Discipline, 6<sup>th</sup> Edition

Ms. Arneson deferred to Ms. Ybarra to present the proposed language on Guidelines for Issuing Citations and Imposing Discipline, 6<sup>th</sup> Edition (Guidelines). Ms. Ybarra led the Board through the proposed amendments to the Guidelines while they made grammatical and editorial changes. The Guidelines will be edited to reflect these changes for the Board's review at the November 2017 board meeting.

**13. Recess – 5:52 p.m.**

**Thursday, August 24th**

**14. Call to Order**

The Physical Therapy Board of California (Board) meeting was called to order by President Eleby at 9:04 a.m. on August 24, 2017.

**15. Roll Call and Establishment of Quorum**

All members were present, and a quorum was established. Also present at the meeting were: Tara Welch and Salwa Bojack, Legal Counsels; Jason Kaiser, Executive Officer; and Brooke Arneson, Sarah Conley, Monny Martin, Carl Nelson, Eura Trent, Veronica Gutierrez, and Elsa Ybarra, Board staff.

After roll call and a quorum was established, the Board revisited agenda item 4(B) and 12(B) – refer to those agenda items for the discussion and motion.

**16. Discussion and Possible Board Action for the Increase in Board Level and Exempt Status of the Executive Officer – Ricardo DeLaCruz**

Mr. DeLaCruz advised the Board their request to increase the exempt level of the Executive Officer position was denied. The Board expressed at length their frustration about the time invested in presenting the proposal for an exempt level increase believed to have been justified by the size and structure of the Board. The frustration

by the Board extends to the investment of time it has taken away from Board business only to be denied without explanation. The Board requested direction to ensure approval of the request.

**MOTION:** To adopt the proposal, as amended, for the Executive Officer Exempt Level increase from Level O to L as presented in Agenda Item 16 and demand the proposal be presented by OHR as necessary to seek the Exempt Level increase from O to L. The Board has voted to increase the Exempt Level of the Executive Officer from Level O to L and for OHR to work with PTBC staff and appropriate agencies to increase the Executive Officer Exempt Level and authorize the Executive Officer to make any technical or non-substantive changes to the proposal. Should the Board's demand for an Executive Officer Exempt Level increase be denied by the administration, the Board demands that the administration that denied the request, return to the Board to explain the reasons for the denial, including any specific deficiencies in the proposal.

**M/S:** Drummer/Watkins

**VOTE:** Alviso – Aye  
Dominguez – Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen – Aye  
Watkins – Aye  
7-0 Motion carried

**17. Closed Session**

- (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceeding
- (B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

**18. Consumer and Professional Associations and Intergovernmental Relation Reports**

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

There was no representative from the FSBPT present.

- (B) Department of Consumer Affairs (DCA) – Executive Office

There was no representative from DCA; however, Christine Lally, Deputy Director of Board Relations extended her apologies for not being present and requested Mr. Kaiser present on her behalf. Her report contained the following: the Governor appointed Debra Hoffman as Undersecretary of Business, Consumer Services, and

Housing Agency; Doreathea Johnson, Deputy Director of the Legal Affairs Division retired and Governor Brown appointed Ryan Marcroft to succeed her; Grace Arupo Rodriguez was appointed Assistant Deputy Director of the Legal Affairs Division; Tonya Corcoran was appointed Chief Deputy Registrar of the Contractor's State Licensing Board; DCA Director Dean Grafilo convened his first director's meeting with the Executive Officers; and DCA released its 2017-2018 Strategic Plan, which was developed with the assistance of DCA's SOLID Training and Planning Solutions.

(C) California Physical Therapy Association (CPTA)

There was no representative from CPTA present.

**19. Board Member Training – *Jason Kaiser***

(A) Council on Licensure, Enforcement and Regulation (CLEAR) – Introduction to Regulatory Governance

The Board found the training to be valuable and applicable to their roles and responsibilities. They encouraged further training at future meetings.

**20. Administrative Services Report**

(A) Budget – *Carl Nelson*

Mr. Nelson informed the Board the Architectural Revolving Fund request had been approved by the Department of Finance and \$200,000 had been encumbered out of the Board's 2016-17 budget. He also described how a small change in business practice can make a big difference. Mr. Nelson also observed a significant decline in postage expenditures and discovered, after speaking with the Board's managers, that staff had been communicating with applicants, licensees, and consumers through email as opposed to regular mail. This resulted in an expenditure of only \$10,000 as opposed to the \$28,000 expenditure for postage in fiscal year 2015/16.

(B) Outreach – *Liz Constancio*

Mr. Kaiser reported on behalf of Ms. Constancio and referred to the report distributed to the Board at the meeting. Mr. Kaiser added Board staff will be attending the CPTA Annual Conference in September. Ms. Eleby questioned the decline in hits to the Board's homepage on its website. Mr. Kaiser credited the decline to users leaving the homepage to access BreEZe.

**21. Application Report – *Sarah Conley***

Ms. Eura Trent presented the application services report on behalf of Ms. Conley. She referred the members to the report included in the agenda materials and highlighted



some of the data. Ms. Trent also answered questions from Board members. Ms. Trent described the application process for applicants who have already taken the national exam and hold a license in another jurisdiction. She also described how that process differs from the application process for applicants who have recently graduated, have not taken the national exam, and do not hold a license in another jurisdiction.

## **22. Licensing Services Report – Sarah Conley**

Ms. Trent also provided the report on licensing data. Mr. Kaiser credited BreEZe for the decline in miscellaneous transactions, such as an address changes, as a point of efficiency.

### **(A) Continuing Competency Report**

Ms. Veronica Gutierrez explained that the Board is auditing 10% of the eligible renewing population, which are selected manually and at random. She further reported there are 13,816 approved courses and 137 approval agencies. She also indicated there is a 93% compliance rate for physical therapists and 95% compliance rate for physical therapist assistants.

## **23. Consumer Protection Services Report – Elsa Ybarra**

Ms. Ybarra presented detailed data regarding the efficiency of the enforcement program, including year-end statistics in comparison to the last fiscal year. The year-to-year comparison reflected a slight increase of 9% in the number of cases initiated. The comparison also reflected an increase of 7% in the number of conviction/arrest cases initiated. The comparison also reflected a 27% decrease in the average number of days to complete investigations and a 30% decrease in the average number of days to complete cases transmitted to the Attorney General's (AG) Office. Ms. Ybarra added that, since the AG's Office implemented new processes to improve processing times, it would be advantageous for Gloria Castro, Senior Assistant Attorney General, to present the changes to the Board.

## **24. Probation Monitoring Report – Monny Martin**

Mr. Martin reported there are 88 licensees on probation, 80 are within the state, and 8 are tolling. There were also 4 licensees that completed probation in the quarter, and 3 licensees were either had their license revoked or surrendered their license in the quarter. Of the 80 licensees that are not currently tolling, 20 are currently enrolled and participating in the Board's Drug and Alcohol Recovery Monitoring Program, equaling 25% of all licensees on probation

## **25. Public Comment on Items Not on the Agenda**

*Please note that 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*

*whether to place the matter on the agenda of a future meeting. [Government Code sections 11125, 11125.7(a).]*

There was no public comment.

**26. Agenda Items for Future Meeting –**

November 15 & 16, 2017  
Ohlone College, Newark

Dr. Drummer noted that the Board spent an inordinate amount of time during the meeting, and during past meetings, making typographical and grammatical changes to documents presented to the Board, such as the Disciplinary Guidelines and rulemaking packages, that should have been reviewed for such errors ahead of time. He respectfully requested that a more final product be presented to the Board and added that the Board's time should be focused on content. Dr. Drummer further requested, if possible, to have legal counsel review materials before they are published in the agenda materials. He further requested that when legal review is not possible, that the administrative support team find some other way to get documents in better shape before they are presented to the Board. Mr. Kaiser agreed. Ms. Welch noted that legal counsel reviewed the Disciplinary Guidelines several times prior to the cutoff date for publication and further recognized and commended the administrative support team for trying to get agenda materials reviewed as much as possible prior to the publication deadline.

Ms. Welch agreed that reserving minor and technical comments for offline would be helpful. Dr. Drummer added that avoiding technical editing during Board meetings would help expedite things, especially when reviewing many pages. Ms. Eleby agreed that the role of the Board is higher level, but complimented the Board for being thorough. Ms. Alviso noted that, no matter how well documents are reviewed beforehand, some technical editing may be necessary during Board meetings when the Board is required to read and approve the documents. Mr. Kaiser clarified that the conversion of the agenda materials from Word to PDF format accounted for many of the errors identified during the meeting, and added that the administrative support team has identified that there can be an additional layer of review after that conversion process.

Ms. Alviso also noted that review of the disciplinary guidelines involved both looking at the document and talking about policy issues, such as the addition of new probationary terms or changes to the format of probationary terms. She respectfully requested that policy issues be dealt with as concepts presented to the Board beforehand, though it might take more time. Mr. Kaiser agreed to incorporate this suggestion as a part of the process going forward. He stated that the administrative support team will continue to try to improve methodologies, such as identifying policy issues to be presented to the Board before their incorporation in the Disciplinary Guidelines, so that the Board is more familiar with such revisions when reviewing the Disciplinary Guidelines.

## **27. Adjournment**

The meeting adjourned at 4:53 p.m.