Approved
Physical Therapy Board of California
Meeting Minutes
August 2 & 3, 2004

Department of Consumer Affairs Howe Avenue Complex
1424 Howe Avenue, Greg Gorges Conference Room
Sacramento, California 95825
(916) 561-8200

Monday, August 2, 2004
10:00 A.M. - Board Meeting
1:30 P.M. - Licensing & Practice Issues Committee Meeting

Tuesday, August 3, 2004
9:00 A.M. - Board Meeting
10:00 A.M. - Regulatory Hearings & Public Forums

1. Call To Order and Roll Call

President Donald Chu called the meeting of the Physical Therapy Board of California to order at 10:03 a.m. Roll call was taken.

Donald Chu
James Turner
Ellen Wilson
Julie Brandt
Lorraine Kimura
Randi Woodrow

All members were present.

2. Maximus Diversion Program Overview – Donald Fensterman

Donald Fensterman the Physical Therapy Board of California’s Case Manager with Maximus gave a Power Point presentation on the role of Maximus as the diversion contractor for the Board. In Mr. Fensterman’s presentation he provided a complete overview of the diversion program and explained the pro’s and con’s of a Diversion Evaluation Committee (DEC) which the Board currently does not have implemented.

3. Consideration of Implementing Diversion Evaluation Committee(s) – Debi Mitchell

Debi Mitchell the Board’s Diversion Program Manager reported on the briefing paper that was handed out. After further discussion on the number of diversion candidates and the cost factor to begin utilizing a DEC, the Board directed staff to bring more statistical and cost information on the benefits
of implementing a DEC for the Diversion Program. Until the Board receives additional information on the benefits of having a DEC the Board directed staff to continue with the current process.

Steve Hartzell explained the Diversion Program is not well advertised to the licensees and consumers. He requested permission for staff to begin actively advertising the Diversion Program to educated the licensees that there is a Diversion Program for them to seek help for substance abuse as a self referral if needed. Mr. Hartzell also explained that staff was looking into providing wellness meetings and/or Alcoholic Anonymous (AA) meetings at the California Physical Therapy Association’s (CPTA) and American Physical Therapy Association’s annual conferences. Providing these types of programs would help promote the Diversion Program and provide a place for licensees to continue with their recovery when attending these conferences. Staff was directed to continue with pursuing different avenues of advertising the Diversion Program. Some avenues discussed were to place an article in the Board’s and the California Physical Therapy Association’s newsletter and to explore providing wellness meetings and/or AA meetings at conferences.

4. Deliberation and Discussion on Stipulated Settlements, Proposed Default Decisions, Proposed Decisions, Non-Adoption of Proposed Decision, Petitions for Reconsideration – CLOSED SESSION (per Title 2, Division 3, Part 1, Section 11126(c)(3) of the Government Code)

The Board’s decisions on matters discussed in closed session are available on the web site at www.ptb.ca.gov once they are made public.

5. 1:30 P.M. Licensing and Practice Issues Committee Meetings

Tuesday, August 3, 2004  9:00 A.M.

6. Call to Order and Roll Call

President Chu called the meeting of the Physical Therapy Board of California at 9:00 a.m. Roll call was taken.

Donald Chu
James Turner
Ellen Wilson
Julie Brandt
Lorraine Kimura
Randi Woodrow

All members were present.

7. Approval of Minutes

(A) May 10 & 11, 2004 – Board Meeting

Moved by Randi Woodrow, Seconded by Lorraine Kimura to approve minutes as written. Vote: 6-0. Motion Carried.

8. President’s Report – Donald Chu, PhD, PT

(A) 2004 Meeting Dates
President Chu reviewed the 2004 meeting dates in the agenda book and reported the November 4 and 5, 2004 Board meeting will be at the Hilton Oakland Airport Hotel.

Mr. Hartzell reported the CPTA’s next annual conference is on October 21-23 in Anaheim at the Marriott Hotel and requested members inform staff their interest in attending as soon as possible in order for staff to provide them with the conference’s information.

Mr. Hartzell confirmed staff would pursue arranging an exhibit booth and an AA meeting for Maximus at the CPTA’s annual conference.

Patty Evans, Director of CPTA, invited the members on behalf of the CPTA to attend the CPTA’s annual conference.

(B) 2005 Meeting Dates

President Chu reviewed the 2005 meeting dates in the agenda book. All dates were approved except the Strategic Planning meeting dates. Staff was given two sets of dates, March 21 and 22 or April 14 and 15, 2005, for the Strategic Planning meeting.

(C) Update

(D) Out-of-State Travel

Mr. Hartzell reported that at this time he is not aware of any approved out-of-state travel.

(E) Meeting Format

Mr. Hartzell reported the discussion on meeting format has been included in this meeting to solicit the member’s preference in how they would like staff to schedule future Board meetings. After discussion the members requested staff to schedule the Committee meetings first thing in the morning and the hearings and/or public forums in the afternoon on the first day of the Board meeting. Their preference is to have a complete full day on the first day of the Board meeting and then the closed meeting items on the second day. Staff was directed to schedule the next meeting as discussed.

9. Executive Officer’s Report - Steven K. Hartzell

(A) Update

Mr. Hartzell reported on the handout on the Federation of State Boards of Physical Therapy’s (FBPT) motions for the 2004 Delegate Assembly.

Mr. Hartzell explained the Little Hoover Commission’s handout on the Governor’s authority for reorganization of State government.

Michael McCormick reported on the Internet Web Page License Verification briefing paper that was handed out regarding the issue of including previous names of licensees on the Board’s web license look up. After further discussion the Board directed staff to move forward with adding an alternate name search option on the web license verification to assist consumers and licensees when trying to verify a license.
Mr. Hartzell reported on the 2003-2004 Budget included in the agenda book. He reported that since the Board did not fully expend its allocated funds, the Board would be assisting the Department of Consumer Affairs (DCA) in purchasing items necessary to improve the data processing services provided to the Board.

Mr. Hartzell reported the Governor recently signed the 2004-2005 Budget.

Mr. Hartzell reported staff is identifying office equipment needed to be purchased during the 2005-2006 budget year and that BCP’s will be prepared if needed.

10. Newsletter – Arlyce Ten Broeck
   (A) Delegation to Approve Final Newsletter

   Arlyce Ten Broeck directed members to the draft newsletter included in the agenda book and the replacement for page 4 that was handed out. Ms. Ten Broeck requested the members delegate final approval of the newsletter to the Board President since the next newsletter will be published before the next Board meeting.

   Ellen Wilson requested the number of foreign educated physical therapist applicants that applied for licensure be included in the article for Licensing Foreign Educated Therapists. The following changes will be made: a clerical change on page 2, the picture at the top of page 2, the Board Calendar will be updated on page 5, and the year 2006 will be changed to 2005 under Did You Know.

   The Board delegated to the Board President to approve the final newsletter.

11. Strategic Planning – Arlyce Ten Broeck
   (A) Strategic Planning Matrix Chart

   Ms. Ten Broeck reviewed the Strategic Planning Matrix Chart included in the agenda book and explained the color items identify what has been completed.

12. Consumer and Professional Associations and Intergovernmental Relations – Steve Hartzell
   (A) California Physical Therapy Association (CPTA)

   Mr. Hartzell reported the CPTA’s bill SB1485 was passed which adds wellness to physical therapist’s scope of practice.

   (B) Federation of State Boards of Physical Therapy

   Mr. Hartzell reported the Federation of State Board of Physical Therapy (FSBPT) would be funding Donald Chu as the delegate and himself as the Executive Officer to attend the next annual conference. Since out-of-state travel has not been approved for the other members to attend, Mr. Hartzell will also serve as the alternate delegate.
Mr. Hartzell indicated there is nothing new at this time to report.

Mr. Turner asked if DCA is considering renting the old Arco Arena for office space. Mr. Hartzell explained both DCA and the Board’s office are entering the soft term of the lease and negotiations have started with the current landlord. At this time he doesn’t have any additional information to offer.

Mr. Hartzell reported he is not anticipating the out-of-state travel to be approved for members to attend this meeting.

Mr. Hartzell reported Rebecca Marco has been assigned to monitor the California Board of Occupational Therapy. Ms. Marco handed out a briefing paper on the California Board of Occupational Therapy Board meeting she recently attended.

Mr. Hartzell reported Michael McCormick has been assigned to monitor the Board of Chiropractic Examiners meetings. Mr. McCormick reported the Board of Chiropractic Examiners last board meeting was cancelled.

Lorraine Kimura directed members to the Physical Therapy Practice Act’s report included in the agenda book and requested if members had any comments on the task force’s mission statement and goals.

The Board approved the Physical Therapy Practice Act Task Force’s mission statement and goals as outlined in the agenda book.

Ms. Marco reported on the changes with the Control of Professional Practice 1399.37 and the Use of Prefix, Affix, and Suffix 1398.12 have not been submitted as reported on the rulemaking calendar.

Ms. Marco indicated all new regulation packages are being critically reviewed by the new administration.

10:00 A.M. Regulatory Hearings & Public Forums

15. Regulatory Hearing on 1399.15 Disciplinary Guidelines
Robert Miller, Legal Counsel, opened the regulatory hearing at 10:05 a.m. on the proposed 1399.15, Title 16 of the California Code of Regulations.

No public comment was received. Hearing closed.

Moved by Ellen Wilson, Seconded by Randi Woodrow to adopt the proposed 1399.15 Disciplinary Guidelines. Vote: 6-0. Motion carried.

Mr. Hartzell reported there is another item to be addressed as a regulatory hearing. Section 1399.50, Physical Therapy Fees, and 1399.52, Physical Therapist Assistant Fees was noticed after the agenda mailing so was not included on this agenda; therefore a motion could not be made today. However, the Board has the option of allowing anyone present to provide comment on these two regulations.

Mr. Hartzell explained these two regulations and fees involved.

Robert Miller, Legal Counsel, opened the regulatory hearing at 10:15 a.m. on the proposed sections 1399.50 and 1399.52, Title 16 of the California Code of Regulations.

No public comment received. Hearing closed.

Mr. Miller explained no action would take place today but that formal action and another regulatory hearing will be held at the November meeting.

16. Public Forum on Proposed Amendment to Section 1399 of the California Code of Regulations - Physical Therapy Aide Supervision

President Chu opened the public forum on proposed amendments to Section 1399 of the California Code of Regulations, Physical Therapy Aide Supervision.

Morris Sasaki, PT, Community Medical Center in Fresno CA, does not support eliminating the use of physical therapy aides in performing patient related tasks. Mr. Sasaki asked if the Board has compiled any documentation that supports problems of why the Board is considering eliminating the use of physical therapy aides from performing patient related tasks. He would also like the Board to consider requiring physical therapy aides to become certified through a certification school before the Board completely eliminates the use of physical therapy aides from performing patient related tasks.

President Chu responded the Board is considering this issue since the American Physical Therapy Association’s position is to eliminate physical therapy aides from performing patient related tasks. The Board does not have any statistical information at this time.

President Chu directed staff to bring this agenda item to the November meeting.

17. Public Forum on Proposed Physical Therapist Assistant Supervision Regulation 1398.44

President Chu opened the public forum on the proposed Physical Therapist Assistant Supervision Regulation 1398.44.

Morris Sasaki, PT, would like there to be more clarification on 1398.44 (b)(f) on reevaluating the patient and commented that some of the language regarding supervision and documentation is duplicated throughout the regulation.
President Chu directed Ms. Wilson to come up with a plan in how she would like this to be continued at the November meeting.

President Chu directed staff to bring this agenda item to the November meeting.

**18. Public Forum on Proposed Patient Records Regulations 1399.85**

President Chu opened the public forum on the proposed Patient Records Regulations 1399.85.

Morris Sasaki, PT, likes the documentation format except for the part of placing a time of the reevaluation.

Ms. Wilson will prepare a proposed draft for the November meeting.

President Chu directed staff to bring this agenda item to the November meeting.

**19. Public Forum on Adding a Student as a Non-Voting Board Member**

President Chu opened the public forum on adding a Student as a Non-Voting Board Member.

Ms. Wilson feels this would provide a great opportunity for physical therapy students to be involved with the Board.

President Chu’s concern is the availability of a physical therapy student.

Mr. Miller expressed the Board might consider creating a student advisory committee as an avenue for physical therapy students to become involved with the Board.

Mr. Hartzell suggested the Board could consider adding a physical therapist assistant to the Board instead of a student.

Randi Woodrow would prefer a physical therapist assistant being added as a Board member before considering a student since a physical therapist assistant is also licensed by the Board and would be a voting member.

All members agreed with Ms. Woodrow’s suggestion.

Mr. Hartzell reported the time to request adding a physical therapist assistant as a Board member is during Sunset through the legislative process.

Ms. Kimura would like the Board to solicit if physical therapist assistants have a desire to become a Board member prior to actively pursing adding a physical therapist assistant through Sunset. Ms. Wilson suggested adding this to the newsletter and to request that comments be submitted for the November meeting.

The Board directed staff to add this to the newsletter and to bring this as a public forum to the November meeting.
20. Licensing Committee – Ellen Wilson, PT, James Turner, Randi Woodrow, PT, Donald Chu, PhD, PT
   (A) Report on Committee Actions
   (B) Discussion and/or Action on Committee Recommendations

The meeting bullets for the Licensing Committee Meeting are at the end of the meeting minutes.

21. Practice Issues Committee - Lorraine Kimura, PT, Julie Brandt, Donald Chu, PhD., PT
   (A) Report on Committee Actions
   (B) Discussion and/or Action on Committee Recommendations

The meeting bullets for the Practice Issues Committee meeting are at the end of the meeting minutes.

22. Complaint Disclosure Policy – Steven K. Hartzell

Mr. Hartzell reported the Director of DCA has requested Board’s not to move forward with adopting the current Complaint Disclosure Policy until the new Administration has had time to review the language and determine their position.

23. Development of Complaint Mediation Program – Steven K. Hartzell

Mr. Hartzell reported the Board is currently developing a program to mediate complaints. He is anticipating that by the November meeting there will be an outline developed for the Board to review.

24. Expert Consultants – Rebecca Marco

Ms. Marco directed members to the briefing paper that was handed out and explained the need of having an on-site Expert Consultant. This issue is being brought to the members for their consideration and direction if they would like staff to continue exploring the option of having a physical therapist to serve as an on-site expert consultant to the Board.

Mr. Hartzell explained the type of cases the on-site expert consultant would review and what their role would be to the Board. This idea is in the preliminary phase and he only anticipates the on-site expert consultant working for the Board on an as needed basis.

The Board encouraged staff to continue with the development of the concept of having an on-site expert consultant and directed staff to update the Board at the November meeting.

25. Disciplinary Action Report – Donald Chu, PhD, PT

President Chu reported on the Disciplinary Action Report included in the agenda book.

26. Discussion and Determination by the Board if Designation of Executive Officer by Department of Consumer Affairs to Issue Subpoenas Should be Sought – Steven K. Hartzell

Mr. Hartzell reported that currently the topic of seeking authority to issue subpoenas is only a concept at this time. He explained that sometimes when going through the investigative process there are situations where in the past Division of Investigation (DOI) would subpoena records or a person, if needed during an investigation, to provide records and/or appear before an investigator for an
interview. However, DOI is now indicating they will no longer provide this service. After discussing this topic with the Attorney General’s Office he was advised the Director of DCA has the authority to designate someone on the Board’s staff to write subpoenas. Since the Board does not have on staff their own investigator this authority would be given to the Executive Officer. He would not write a subpoena for someone to appear before himself but would write a subpoena to require him or her to supply his or her records and appear before the investigator for an interview. Mr. Hartzell reported he has had only minimal discussions with DCA on this concept because he did not wish to pursue any further discussion without the Board’s and legal counsel’s consent.

Mr. Miller responded historically the Director does not usually grant this type of authority to an Executive Officer. He explained Mr. Hartzell would need to justify to the Director why he should be designated to write subpoenas on behalf of the Board.

After further discussion the Board directed Mr. Hartzell to explore with the Director the concept of being designated to write subpoenas on behalf of the Board as an alternative to using DOI.

27. Discussion and Determination by the Board if Designation of Board Staff by Department of Consumer Affairs to Write Infraction Citations Should be Sought – Steven K. Hartzell

Mr. Hartzell explained DOI suggested to him the Board write their own infraction citations on cases that are a low priority to DOI. This option has not been pursued in the past since the Board did not have a staff person out in the field. Now that the Board has a probation monitor that is primarily in the field he is bring this option to the Board for their consideration to pursue the authority of writing infractions with the Director. Mr. Hartzell reported the Board’s probation monitor was recently at a physical therapy practice where he noticed there was illegal activity being practice and if he had this authority could have written the physical therapists in charge an infraction citation.

The Board directed Mr. Hartzell to explore the option of the Board’s probation monitor being designated by the Director to write infraction citations on behalf of the Board.

28. Legislation

A) Review of Definitions of Positions taken by the Board on Legislative Proposals

B) Chaptered Legislation

1. SB1485

Mr. Hartzell reported this bill, sponsored by the CPTA, has been signed which allows a physical therapist to provide and seek reimbursement for health and wellness.

Patty Evans, Director of CPTA, informed the Board the feedback the CPTA is receiving from licensees is very positive since now it is very clear that a physical therapist can provide and bill for health and wellness. The CPTA is also receiving feedback from consumers on their relief to be able to seek health and wellness from a physical therapist. Ms. Evans introduced Stacy DeFoe as the Director of Communication and Membership and who is becoming the Director of Government Affairs with the CPTA.

2. Other

Mr. Hartzell provided an overview of his understanding and the process of the California’s Performance Review Report that will be released on August 3, 2004.
C) Other legislation

29. Items for Next Meeting Agenda and Public Address
   (A) PTBC Meeting –November 2004
   President Chu identified the following items to be forward to the November meeting: Joseph Silney
   Credentialing Service; consideration of a physical therapist assistant as a Board member, the
   Regulatory Hearings on Fees, Public Forums, and consideration of an on-site Expert Consultant.
   Mr. Hartzell addressed Morris Sasaki’s concerns of physical therapist assistants still qualifying for
   licensure under the equivalency requirements.

30. Adjournment
   Moved by Ellen Wilson, Seconded by James Turner to adjourn the meeting at 11:30 a.m. Vote: 6-0.
   Motion carried.

Minutes Approved at the November 4 & 5, 2004 Board Meeting
   Motion by Ellen Wilson, Seconded by James Turner to approve the August 2 & 3, 2004 Meeting
   Minutes. Motion Carried. Vote: 5-0 (The Sign-In Sheet is available by request)

Donald Chu, PhD, PT – Board President

Date
Mary Grace Borden was approved to take the NPTA exam.

Rosyl Ang needs to satisfy a deficiency in Integumentary Evaluation & Treatment.

Gerardo Gumboc, and Melanie Taylor were approved to take the NPTE.

Staff will contact FCCPT to get clarification on the credential report of Jae Christine Tejano regarding Cardiopulmonary course work. Provided that Ms. Tejano has completed course work in Cardiopulmonary, she will be approved to take the NPTE.

Virgillo Aquino, Jr. and Danute Jurksaitis must satisfy deficiencies in Geriatrics and Integumentary Evaluation & Treatment.

Tommy de Vera Mislang, Jr. must satisfy deficiencies in Geriatrics, Integumentary Evaluation & Treatment, and either Cardiopulmonary Evaluation & Treatment or Pharmacology.

Anitha Valel must satisfy General Education deficiencies by taking one semester course in Humanities, Biological Science, Social Science, Behavioral Science, and Mathematics and any other additional GE courses in order to reach the minimum of 42 units.

Formal action on whether to remove Josef Silny & Associates from the list of approved credential evaluation services will be put on the agenda for the next meeting.

The PTA Equivalency Candidate Checklist has been modified as follows: (1) Remove the word AEquivalency® from the title of the checklist; (2) the minimum GE units shall be 12 including one course in the Humanities category, one course in the Social/Behavioral Science category, one course in the Mathematics category, and one course in Natural Sciences; and finally, (3) eliminate Administration/Management category in Technical Education (Educational Techniques and Medical Legal Issues were previously eliminated)

Reviewed and approved by ______________________________ Date__________________
1. Practice Issues Inquiries –

All Board members participated in the discussion and review of the practice issues that were presented to the Practice Issues Committee.

A) Multiple questions regarding Physical Therapy Corporation Ownership by Layperson and Physical Therapists Assistants in the Realm of Corporation Ownership. – Mark B. Brown, Attorney

The Board directed staff to respond to Mark B. Brown, Attorney at Law, clarifying that a physical therapist assistant cannot perform service as a physical therapist assistant if they are also a the owner or shareholder of a physical therapy practice.

B) Can a physical therapist supervise an occupational therapist in the delivery of modalities? – Jorge Orozco, PT

The Board directed staff to respond Jorge Orozco clarifying that Business and Professions Code 2570.3 of the California Board of Occupational Therapy gives authority for a physical therapist to supervise an occupation therapist in performing physical therapy modalities. Section 4154 of the California Board of Occupational Therapy regulations defines the post professional education of a physical therapist supervising an occupational therapist.