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

1. Call to Order, Roll Call and Establishment of Quorum

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

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

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

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

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

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

Once issued, disciplinary decisions can 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 can be found on the Board’s website at 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
extensive data analysis the following four safeguards were presented to the 2013 Board of Directors who in turn brought them forward to the Leadership Issues Forum and the Delegate Assembly. The following concepts were endorsed by a vast majority of the FSBPT members:

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

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

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

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

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

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

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

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

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

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

Starting January 1, 2016, the letter sent to candidates who receive a score of 400 or less will be modified to indicate that a second score of 400 or less will result in a lifetime
ban. No scores prior to January 1, 2016 will be considered, which means all candidates will have a “clean slate” with regard to this eligibility requirement.

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

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

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

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

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

At the same time the notices are sent to candidates and member boards, www.fsbpt.org/eligibility will be updated with the timeline for implementation.

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

(B) Department of Consumer Affairs (DCA)
Christine Lally, Deputy Director of Board Relations presented on four items of interest.

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

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

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

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

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

(B) California Physical Therapy Association (CPTA)

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

Additionally, she expressed appreciation for Mr. Kaiser affording the CPTA the opportunity to work together with the Board on AB 483.
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
oppose position and the bill passed out of the Assembly and the Senate and was
currently in Appropriations. Mr. Turner asked Ms. Island, CPTA representative if the
CPTA had taken a position on the bill and she indicated they had not taken a position
on the bill.

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

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

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

M/S: Wallisch/Turner

VOTE: 7-0 Motion carried

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

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

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

M/S: Turner/Rabena-Amen

VOTE: 7-0 Motion carried

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

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

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

M/S: Dominguez/Wallisch

VOTE: 7-0 Motion carried

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

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

10. Rulemaking Report - Brooke Arneson

(A) 2015 Rulemaking Calendar

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

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

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

(A) Budget – Carl Nelson

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

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

(B) Outreach – Jacki Maciel

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


Ms. Conley reported on Application and Licensing Services activities. She referred the members to her report included in the agenda book and expounded on some areas of interest requiring further attention. She advised members she is paying special intention to the evolution of growth and its contributors, such as BreEZe, Fixed-date testing, Application and Licensing Performance Measures and examination performance. She expressed interest in exam performance of California test takers in comparison to the national average. She further indicated she was looking into what staff can do within existing resources to enhance services to stakeholders including adding additional timeline information to the letters used to communicate status to applicants. Dr. Dominguez suggested a visual timeline on the Board’s website. He noticed timeline information is somewhat buried within the application instruction and it would be helpful if it was more transparent. Stacy DeFoe, Executive Director of the
California Physical Therapy Association also expressed concern with communicating timelines as they receive numerous calls on the issue and requested a means to communicate real time in anticipation of minimizing applicant anxiety.


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

Ms. Ybarra also corrected the date of the Expert Consultant Training. Her report indicated it was November 3rd but it is November 10, 2015 and it will be held at Loma Linda University. Mr. Turner inquired about the length of the training and the number of participants. Ms. Ybarra replied it is one day – eight hours in length and she is anticipating approximately 30 participants. She further advised existing expert consultants are also required to attend in order to maintain status with the Board. Lastly she explained participants were solicited based on whether they met the criteria, licensed five years, no disciplinary background, etc. and demographic area. Mr. Kaiser indicated that even though they focus on recruiting in outlying areas it still poses a problem with the investigation when the expert consultant is a competitor of the subject of the complaint. In cases of conflict an expert from another geographic location is called upon to serve.

14. Board Member Training – Jacki Maciel & Liz Constancio

Ms. Maciel presented on travel guidelines and increasing reimbursement efficiencies.
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.