



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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you

## Board Members

### President

Alicia Rabena-Amen, PT, DPT

### Vice-President

TJ Watkins

### Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Katarina Eleby

Tonia McMillian

## Physical Therapy Board of California Adopted Meeting Minutes

December 5, 2018 9:00 a.m.

December 6, 2018 9:00 a.m.

University of the Pacific  
Day One: Room PHS201  
Day Two: Room PHS201  
757 Brookside Road,  
Stockton, CA 95211

## Board Staff

Jason Kaiser, Executive Officer

Sarah Conley, Manager

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.

### Wednesday, December 5, 2018

#### 1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 8:59 a.m. and recessed at 5:02 p.m. on December 5, 2018. The Board reconvened at 9:00 a.m. and adjourned at 3:55 p.m. on December 6, 2018.

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

Dominguez- Present  
Drummer – Present  
Eleby – Present  
McMillian – Present  
Rabena-Amen - Present  
Watkins – Present

All members were present, and a quorum was established. Also present at the meeting were: Salwa Bojack, Legal Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Sarah Conley, Brooke Arneson, Monny Martin and April Beauchamps.

Dr. Dominguez read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

**3. Special Order of Business – 9:05 a.m.**

(A) Petition for Termination of Probation – Vivian Eisenstadt, PT

This matter was heard before a quorum of the Board. Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings, sat with the Board and presided over the hearing. John Gatschet, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner Vivian Eisenstadt, PT was present and was represented by legal counsel, Adam Richards. Evidence was received, the record was closed, and the matter was submitted for decision.

(B) Petition for Termination of Probation – Shannon Hill, PT

This matter was heard before a quorum of the Board. Marcie Larson, ALJ, Office of Administrative Hearings, sat with the Board and presided over the hearing. John Gatschet, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner, Shannon Hill, PT was present and represented herself. Evidence was received, the record was closed, and the matter was submitted for decision.

**4. Closed Session**

(A) Pursuant to Government code section 11126(c)(3), the Board will convene to Deliberate on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings

(B) Pursuant to Government code section 11126(a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer.

The Board went into closed session at 12:15 p.m. and reconvened at 1:58 p.m. on day one, December 5, 2018 to deliberate on Agenda Item 3. The Board went back into closed session at 3:40 p.m. and adjourned at 5:02 p.m. on day one, December 5, 2018 to deliberate on Agenda Item 4(A).

**5. Reconvene Open Session**

The Board reconvened at 1:58 p.m. after going into closed session at 12:15 p.m. on day one, December 5, 2018. The Board went back into closed session at 3:40 p.m. and adjourned at 5:02 p.m. on day one, December 5, 2018 to deliberate on Agenda Item 4(A).

**6. Review and Approval of June 20-21, 2018 Meeting Minutes – Brooke Arneson**

Ms. Arneson presented the draft June 2018 meeting minutes. Dr. Drummer recommended that the Board’s mission statement be added to the meeting minutes. Ms. Eleby corrected the date under Agenda Item 6 from 2017 to 2018. Dr. Rabena-Amen under Agenda Item 16(C), added the year, 2019, to the CPTA Annual Conference. Dr. Drummer requested to add the date and which day of the meeting to adjournment and recess times in the meeting minutes for clarity. Dr. Drummer requested that the motions for removing the approval agency recognition under Agenda Item 21(B) be consistent. Ms. Bojack, legal counsel, recommended that wording of motions be addressed as they occur, as the notetaker’s responsibility is to capture the motions verbatim. Dr. Drummer stated he would like the editorial language to be consistent for the motions.

**MOTION:** Move that the motion language be consistent across all of the motions in Item 21(B) of the June 2018 meeting minutes that remove approval agency recognition to state “Remove recognition from [insert program name] as a continuing competency approval agency.”

**M/S:** Drummer/Dominguez

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

Dr. Rabena-Amen amended Agenda Item 23, to read Consumer Protection Services Report. Ms. McMillian amended Agenda Item 24, line 678 to remove a duplicate statement and amended Agenda Item 25 page 675 to add counsel in front of legal.

**MOTION:** Approve the proposed June 20-21, 2018 Meeting Minutes, as amended.

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

**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye

McMillian – Aye  
Rabena-Amen - Aye  
Watkins – Aye  
6-0 Motion carried

**7. Review and Approval of September 13-14, 2018 Meeting Minutes – Brooke Arneson**

Ms. Arneson presented the draft September 2018 meeting minutes. Dr. Rabena-Amen questioned whether the request to place the increase of the exempt level of the Executive Officer on the agenda was for annually or at every meeting. Ms. Arneson confirmed the request was made for it to be placed on the agenda annually. Ms. Bojack recommended to add the subsections noticed on the agenda in the Executive Officer's Report meeting minutes. Mr. Kaiser stated that if all subsections in the Executive Officers report are discussed, they can be added to the meeting minutes in the future. Dr. Drummer amended Agenda Item 18 to state that dry needling was performed in the Veteran's Administration Palo Alto Clinic to provide clarity that they are not performing dry needling under the jurisdiction of this Board. Ms. Ybarra, during public comment amended Agenda Item 26, Probation Monitoring Report, page 22, line 852 to better capture what was reported. Mr. Kaiser solicited the Board for their feedback on the meeting minutes. Dr. Drummer responded that he would be in favor of less detail as the webcast is available to add clarity to the discussion. Ms. Bojack, legal counsel, recommended that some agenda items include more detail, for example, rulemaking discussions as detailed minutes are helpful for the rulemaking file.

**MOTION:** Approve the proposed September 13-14, 2018 Meeting Minutes, as amended.

**M/S:** Eleby/Watkins

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

**8. President's Report – Alicia Rabena-Amen**

(A) 2019 Proposed Meeting Calendar

Mr. Kaiser stated that staff have two recommendations for the 2019 calendar. He explained that Thursday and Friday meetings are difficult logistically and incur increased travel expenses and suggested reverting back to Wednesday and Thursday meetings. In addition, he encouraged that the March and December meetings be held in Sacramento and the June and September meetings on the road to due to scheduling logistics during the holidays and to increase student participation and outreach when the Board visits campuses. The Board responded that Thursday and Friday meetings worked better for their schedules. Mr. Kaiser suggested having the March and December meetings in Sacramento on Thursday and Friday and the June and September meetings on the road on Wednesday and Thursday. The Board agreed with Mr. Kaiser's suggestion. Dr. Drummer asked if the June meeting dates could be moved to Thursday, Friday, June 20-21, 2019 so that he and Dr. Dominguez could attend BMOT training on Wednesday, June 19, 2019 before the meeting. Mr. Kaiser stated that he would connect with CSU Long Beach to see if they had availability to host on Thursday and Friday instead.

**MOTION:** Approve the proposed 2019 Meeting Calendar as amended.

**M/S:** Drummer/Eleby

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

#### (B) 2020 Proposed Meeting Calendar

Mr. Kaiser suggested that the Board implement the changes made to the 2019 calendar to the 2020 calendar. The Board agreed with the amendments to the 2020 calendar. Dr. Drummer asked that Board members receive meeting materials as early as possible to allow for adequate review before the Board meeting.

#### 9. **Executive Officer's Report – Jason Kaiser**

Mr. Kaiser presented the Executive Officer's Report.

##### (A) Administrative Services

Mr. Kaiser reported that the Administrative Services Program is recruiting for an Office Technician to serve as the receptionist and provide administrative support to the programs. He reported that staff have arranged for temporary staffing from

ACC Senior Services, which assists with job training and finding employment. The Board welcomes Wanda Hoggard who has been tremendously helpful.

(B) Applications

The Board was referred to Agenda Item 22 for a detailed report.

(C) Licensing/Continuing Competency

The Board was referred to Agenda Item 23 and 24 for a detailed report.

(D) Consumer Protection Services

The Board was referred to Agenda Item 25 for a detailed report.

(E) Outreach

The Board was referred to Agenda Item 21(B) for a detailed report.

(F) PTBC Relocation

Mr. Kaiser reported that there has been progress in planning and evaluating the Board's space needs for the move upstairs and staff have been working with DCA and DGS in finalizing the numbers and continuing with the space planning. The square footage numbers have been recalculated several times to project for future growth incorporating legislative and budget change proposals. Mr. Kaiser informed the Board that the estimates for square footage have changed from 4400 sq. feet to 8500 sq. feet. Mr. Kaiser stated that they started demo this week and staff are hopeful that possibly at this time next year the Board may be in its new space. Dr. Rabena-Amen questioned what will happen when the lease expires in March 2019? Mr. Kaiser responded that the Board will enter a month to month lease until it is able to move upstairs and that the landlord is very amendable to keeping the Board as tenants in the building.

(G) Strategic Plan

Mr. Kaiser reported that staff have been working with DCA's Publishing Design and Editing unit and the strategic plan was published and distributed on September 26, 2018. He stated that staff have already met with SOLID to create an action plan to guide completion of the strategic objectives by establishing timelines, identifying major tasks and assigning responsible parties. Dr. Rabena-Amen stated that she liked having an update on the strategic plan in the Executive Officer's Report. Dr. Drummer added that he shared the Board's strategic plan at the FSBPT annual meeting and everyone was impressed. Mr. Kaiser stated that only 4 states out of the 53 jurisdictions do strategic planning, so it is an unfamiliar concept to the other jurisdictions that attended the FSBPT meeting.

**10. Discussion and Possible Board Action for the Increase in the Exempt Level of the Executive Officer – *Alicia Rabena-Amen***

Dr. Rabena-Amen stated that the Board asked for the increase in the exempt level of the Executive Officer be placed on the agenda each year to revisit to look at the growth of the Board and provide a status update of the request. Dr. Rabena-Amen added that the Board formed a committee at the previous meeting to draft a letter and prepare and draft supporting documentation for presentation at the December meeting.

Ms. Eleby reported on behalf of the committee. She stated that she met with Mr. Watkins and they drafted a letter which they sent to Board staff for feedback. Mr. Kaiser provided the letter to the Board which included staff's feedback. Mr. Watkins reported that the committee suggested a face to face meeting with Business, Consumer Services and Housing Agency (Agency) Secretary, Alexis Podesta to hear the reasons why the requested level of the Executive Officer was not approved. Dr. Drummer thanked the Committee on their hard work on crafting the letter. The Board reviewed and made edits to the letter provided by the committee. Dr. Drummer suggested to revise the signature of the letter and proposed that the Board President sign the letter on behalf of the Board and list the names of the Board members. The Board agreed with this edit. Mr. Watkins clarified that this letter would be the first step for the Board to get information on why the level increase of the Executive Officer was not approved and therefore the letter should stand alone, and request a meeting with Agency, and not be a cover for the entire exempt level increase package.

Ms. Bojack, legal counsel, advised that where the letter was not identified on the agenda or included in the meeting materials that the Board might wish to consider taking up the letter at the next Board meeting for a motion. Dr. Drummer responded that the minutes from the September meeting show that the intent of the committee and letter was clear; that at the December meeting action would be taken on the letter. Dr. Rabena-Amen asked counsel for clarification on what the agenda should look like in the future to address this agenda item for the Board to take a motion. Ms. McMillian stated that discussion and possible board action should suffice, and Ms. Eleby agreed. The Board further reviewed and made edits to the letter drafted by the committee. Dr. Rabena-Amen thanked the committee for their hard work on the letter.

**MOTION:** Adopt the letter as amended, from the committee, and authorize the Board President to present the letter to Alexis Podesta with the Business, Consumer Services and Housing

Agency and grant the Board President the authority to make non-substantive changes should any be required.

**M/S:** Drummer/McMillian

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

## **11. Consumer and Professional Associations and Intergovernmental Relation Reports**

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

No representatives were present. Mr. Kaiser reported that there is potential for Board members to attend regulatory training at FSBPT in June 2019, and that staff are waiting to hear back from FSBPT on additional information and how many members per jurisdiction may attend. Mr. Kaiser informed the Board that once we know more about the training, staff will reach out to members to see who is interested and available to participate in the regulatory training. Dr. Rabena-Amen added that the last email she received from FSBPT regarding the regulatory training was soliciting for feedback on availability.

Dr. Rabena-Amen stated that because the Foreign Educated Standards Committee did such great work in the past, there aren't any pressing issues to continue the committee, so the committee has been dissolved and if there is a need in the future they will form a taskforce.

### **(B) Department of Consumer Affairs (DCA) – Executive Office**

Karen Nelson, Assistant Deputy Director of Board and Bureau Services provided an update to the Board on behalf of DCA. Ms. Nelson reported that the Director's Quarterly Meeting was held on October 29, 2018 and the Director provided an update on the Division of Investigation's (DOI) Client Survey, the Executive Officer's salary study and shared draft plans to assist the Boards and Bureau's with implementing AB 2138 by 2020.

Ms. Nelson reported that DCA's Public Affairs Office previewed a new video which provides an overview of DCA. She stated that December 7<sup>th</sup> is the second Board member and advisory leadership call and look forward to having Mr. Watkins on the call.

Ms. Nelson thanked the Board for being active in the licensing enforcement workgroups which continue to occur monthly and in October and November OIS previewed an interactive data tool to show performance metrics and performance measures and allow programs to customize that data to look at trends and any other analysis of that data. Ms. Nelson thanked Mr. Azar from the Board for being so helpful in these workgroups.

Ms. Nelson reported that the Future Leadership Program in September had its second cohort and thanked Mr. Kaiser for his active participation in the steering committee. Ms. Nelson stated that the Executive Officer's salary study is expected to take about 6 months and is anticipated to conclude Spring of 2020 and the consulting firm will be sending out a survey for completion to the Executive Officer's. Ms. Nelson reported that Board Member Orientation Training (BMOT), which is required within one year of appointment or reappointment to the Board, will be held March 27, 2019, June 19, 2019 and October 23, 2019.

Dr. Drummer asked where the BMOT training will be held in June and Ms. Nelson responded in the Southern California area, a location has not been finalized yet.

Mr. Watkins asked Ms. Nelson what the primary objective of the Executive Officer's Salary study is, and Ms. Nelson responded that it will look at the complexity, size and different responsibilities of the Executive Officer's within DCA.

Dr. Rabena Amen asked Ms. Nelson to provide additional information regarding DOI's Client Survey. Ms. Nelson responded that DOI partnered with SOLID to provide a survey to DCA's Board's and Bureau's to rate the level of service. Ms. Nelson stated she would be happy to share the results of the survey with the Board upon completion.

Dr. Rabena-Amen asked Ms. Nelson if there were plans to have a joint meeting the Director with Board leadership and the Executive Officer in attendance. Ms. Nelson responded that last year one of the four scheduled meetings included a joint attendance of Board President and Executive Officer and it will be the same this year.

(C) California Physical Therapy Association (CPTA)

Stacy DeFoe, Executive Director of the California Physical Therapy Association (CPTA), informed the Board that in April, CPTA will be holding student conclave at University of Pacific, Stockton and that the Board will be in attendance and

covering one of the sessions. Ms. DeFoe reminded the Board that CPTA's annual conference this year is a joint conference and will be held in Las Vegas, NV and that she is aware there may be logistical issues with travel for the Board, however would love to see the Board attend the conference and if there was anything CPTA could do to help facilitate the Board's attendance CPTA would be happy to do so.

Ms. DeFoe updated the Board that AB 2423, Physical Therapists: Direct Access to Services: Plan of Care Approval was signed by the Governor and will go into effect January 1, 2019.

Ms. DeFoe reported that physical therapists (PT's) and occupational therapists (OT's) who are providing contract services to Nonpublic, Nonsectarian Agency (NPA) and Nonpublic, Nonsectarian School (NCS) were being required by the California Department of Education (DOE) to submit to an audit. She stated this was causing a hardship to those providing these services as clear language on what the audit would entail was not provided and it could be very costly. CPTA worked with DOE and was able to get clarification that PT's and OT's providing these services were not required to participate in the audit. Dr. Rabena-Amen asked Ms. DeFoe to provide an example of an NPA. Ms. DeFoe stated that there are agencies working with children that are set up as private agencies and contract with PT's to provide services; they usually work with the school; but are not a public agency or school, they are private.

Ms. DeFoe informed the Board that CPTA believes that the Athletic Trainer bill will be back during the next legislative session and reported that CPTA is not in opposition to regulation of athletic trainers however wanted to make sure that it is in line with their education and training.

Ms. DeFoe reported that an issue with third party payers especially in the areas of workers compensation; she stated that there are third party entities that come in and work with payers and provide discounts to the payers at the expense to PTs providing the services. She stated that CPTA has been looking at this over the past few years and is working with other organizations to put together strategies to resolve this issue.

Dr. Rabena-Amen shared that the Board had a great presentation at the September meeting on dry needling and asked CPTA if they had any comment. Ms. DeFoe responded that CPTA does not currently have any comment and that

dry needling is an issue that they are watching very closely as it is a topic that is drawing a lot of interest across the country. Ms. DeFoe shared that the same individuals who presented to the Board in September presented to CPTA's Governor's Affairs Committee in October, however CPTA is not planning any immediate action in 2019 regarding dry needling.

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

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

Ms. Arneson referred Board members to the legislative summary report included in the agenda book.

#### **i. Discussion and Possible Board Action Regarding AB 2078 (Daly) Sex Offenses: Professional Services**

Ms. Arneson reported that AB 2078 was held under submission on August 16, 2018.

#### **ii. Discussion and Possible Board Action Regarding AB 2138 (Chiu & Low) Licensing Boards: Denial of Application: Criminal Conviction**

Ms. Arneson reported that AB 2138 was chaptered and has a delayed implementation date of 2020 which allows the Board to pursue regulatory change before it goes into effect. Ms. Arneson added that these regulatory proposals are included in the 2019 Rulemaking Calendar which will be presented under agenda item 14.

#### **iii. Discussion and Possible Board Action Regarding AB 2221 (Bloom) Occupational Therapy Practice Act**

Ms. Arneson reported that AB 2221 was chaptered and will go into effect January 1, 2019.

#### **iv. Discussion and Possible Board Action Regarding AB 2423 (Holden) Physical Therapists: Direct Access to Services: Plan of Care Approval**

Ms. Arneson reported that AB 2423 was chaptered on September 26, 2018 and will go into effect January 1, 2019.

v. Discussion and Possible Board Action Regarding AB 2958 (Quik) State Bodies: Meetings: Teleconference

Ms. Arneson reported that AB 2958 was chaptered on September 28, 2019 and will go into effect January 1, 2019.

vi. Discussion and Possible Board Action Regarding AB 3110 (Mullin) Athletic Trainers

Ms. Arneson reported that AB 3110 was held under submission in the Senate Appropriations Committee on August 16, 2018.

vii. Discussion and Possible Board Action Regarding SB 1448 (Hill) Healing Arts Licensees: Probation Status: Disclosure

Ms. Arneson reported that SB 1448 was chaptered on September 19, 2019 and will go into effect January 1, 2019.

Dr. Rabena-Amen asked if Mr. Kaiser had anything to add to the legislation report regarding AB 2138 and he stated that further discussion on AB 2138 would be discussed under agenda item 14, the 2019 Rulemaking Calendar.

**13. Rulemaking Report – Brooke Arneson**

(A) Discussion and Possible Board Action Regarding the 2018 Rulemaking Update

Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda materials and advised on the status of all rulemaking items.

i. Examination Passing Standard/Setting Examination Score

Ms. Arneson reported that modified language was adopted by the Board at the September 2018 Board meeting and PTBC staff are preparing the initial rulemaking package for completing the new review process implemented by DCA.

ii. Guidelines for Issuing Citations and Imposing Discipline, 6th Edition

Ms. Arneson reported that modified language was adopted at the March 2018 by the Board and with the passage of AB 2138, significant revisions will need to be made to the Disciplinary Guidelines, therefore, this regulation will be placed on hold as staff identify the impact of AB 2138 on the guidelines.

iii. Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool

Ms. Arneson reported that the Board approved regulatory language at the May 2017 Board meeting and PTBC staff and DCA legal are working on preparing the initial rulemaking package for completing the new review process implemented by DCA.

iv. Federation of State Boards of Physical Therapy's (FSBPT) Performance Evaluation Tool for Foreign Educated Physical Therapists Completing a Supervised Clinical Practice in the United States

Ms. Arneson reported that language was adopted at the September 2018 Board meeting and staff is in the process of preparing the initial rulemaking package for completing the new review process implemented by DCA.

Mr. Kaiser stated that both the Retired License and Continuing Competency regulations are included in the 2019 Rulemaking calendar. He added that staff will review the disciplinary guidelines for edits made necessary by the passage of AB 2138 before the guidelines move forward in the rulemaking process.

**14. Discussion and Possible Board Action on 2019 Rulemaking Calendar – Brooke Arneson**

Mr. Kaiser presented the proposed 2019 Rulemaking Calendar and stated this is a list that the Board anticipates for this next year's future rulemaking and that Office of Administrative Law (OAL) uses this calendar to anticipate future workload. Mr. Kaiser reported that it is his recommendation to include both the continuing competency and retired license regulations in the 2019 rulemaking calendar as well as placeholders for the projected regulations regarding the implementation of AB 2138 which would affect Substantial Relationship Criteria, Rehabilitation Criteria for Denial and Reinstatement of Licensure and Rehabilitation Criteria for Suspensions and Revocations.

Ms. Eleby asked if licensees will be held to a different standard than applicants when it comes to criminal offenses now that AB 2138 has passed. Mr. Kaiser responded that arguably yes, the requirement for a licensee has not changed they would still be required to answer the disclosure question on the renewal form; however the question for disclosure for an applicant will change; therefore, effective July 1, 2020, the Board will no longer be able to ask applicants about their criminal history on their application. Mr. Kaiser stated that through the DOJ and FBI criminal background check, when there is a hit for an applicant, the Board will pursue on its own, the records or documents pertaining to that conviction. Ms. Eleby asked what the implications to the Board's budget will be with the increased workload due to the passage of AB 2138. Mr. Kaiser responded that it is hard to tell at this point as there may be efficiencies realized in addition to the increase of workload.

Dr. Drummer asked Mr. Kaiser to rank the rulemaking items in order of importance. Mr. Kaiser responded that all the regulations on the calendar were important and crucial however, the AB 2138 regulatory packages are deemed critical and department wide followed by the Disciplinary Guidelines and Setting the Exam Score, Continuing Competency, Retired License Status, and Coursework Tool.

Ms. Bojack, legal counsel, stated that the AB 2138 rulemaking packages has been prioritized by DCA. Ms. Bojack reported to the Board that the Department has started working with the programs and setting up meeting groups to recommend model regulatory language to keep the rulemaking packages as consistent as possible and meet the January 2020 timeline goal. Mr. Kaiser responded that the OAL timelines for the AB 2138 regulation packages on the calendar are post effective date of the statute and are conservative projections at this point as the regulations cannot take effect prior to the statutes taking effect.

**MOTION:** Adopt the 2019 Rulemaking Calendar Schedule B.

**M/S:** Drummer/Watkins

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

Mr. Kaiser solicited the Board for any additional regulatory packages to be added to Schedule A of the proposed 2019 Rulemaking Calendar. The Board did not have any recommendations for additional rulemaking to be added to Schedule A. Mr. Kaiser stated that the rulemaking calendar is based on projected regulatory workload and the Board could add regulatory packages if the need arises.

Ms. Bojack stated that AB 2138 could potentially impact the Board's applications which may need to be addressed through regulatory change. Mr. Kaiser stated that the Board's applications are not currently incorporated by reference. Mr. Kaiser recommended implementing the changes from AB 2138 prior to promulgating regulations regarding applications.

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

The Board requested public comment on items not on the agenda, and there was no public comment.

#### **16. Recess**

The Board recessed at 5:02 p.m. on the first day of the meeting, Wednesday, December 5, 2018.

#### **Thursday, December 6, 2018**

#### **17. Call to Order - 9:00 a.m.**

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

Dominguez- Present  
Drummer – Present  
Eleby – Present  
McMillian – Present  
Rabena-Amen - Present  
Watkins – Present

All members were present, and a quorum was established. Also present at the meeting were: Salwa Bojack, Legal Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Sarah Conley, Brooke Arneson, Monny Martin and April Beauchamps.

Dr. Drummer read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

#### **19. 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

The Board entered closed session on day two, December 6, 2018 at 1:00 p.m. to deliberate on Agenda Item 19(A). The Board reconvened open session to adjourn at 3:55 p.m.

(B) Pursuant to Government Code section 11126(a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer.

The Board entered closed session on day two, December 6, 2018 at 1:00 p.m. to deliberate on Agenda Item 19(A). The Board reconvened open session to adjourn at 3:55 p.m.

## **20. Reconvene Open Session**

The Board reconvened into open session to adjourn at 3:55 p.m.

## **21. Administrative Services Report**

### **(A) Budget Report**

Mr. Kaiser presented the Budget Report on behalf of Ms. Constancio and reported that the report is for the first quarter of this fiscal year. Mr. Kaiser stated that the Board does not have fiscal software program to rely upon, therefore, most numbers are straight line estimates and projections. Mr. Kaiser mentioned a few items to note on the budget report: there was an increase in normal staffing costs which is attributed to bargaining agreements, cost of living adjustments, general salary increases and benefits; in addition, there was a decrease in DOI spending which should continue from this fiscal year to next.

Mr. Kaiser reported that the Board is in need of temporary help services to address backlog issues from money in the blanket. He stated that the Board's projected move will require an off-calendar budget change proposal, spring finance letter, to account for the one-time costs for the build out of space and move as well as adjusting the Board's allocation for the rental agreement moving forward. Ms. Eleby clarified that the Board has \$400,000 put away for the move and asked how much was going to be requested in the spring finance letter. Mr. Kaiser responded that the numbers are still unknown, and the Board will remain unknown until the square footage is finalized and other tenants have signed lease agreements; Mr. Kaiser projected that the spring finance letter would be approximately \$500,000 or more.

### **(B) Outreach Report – April Beauchamps**

Ms. Beauchamps presented the Outreach Report. She reported that September was busy for outreach; the Board went to University of the Pacific, Sacramento State and

attended both days of CPTA's Conference in Santa Clara September 22<sup>nd</sup> and 23<sup>rd</sup>. Ms. Beauchamps reported that the website had a 10% decrease over last fiscal year quarter. Ms. Beauchamps stated that even though there were decreases, for example, with the "forms" tab, it means that applicants are going to BreEze to apply, which is great.

Ms. Beauchamps reported there was a traffic decrease of 5% on the Facebook page; however, there was significant increases in "Activities" from last fiscal year. The "Engaged Users" showed a 222% increase and the "Consumers" showed a 206% increase. Ms. Beauchamps reported there were 54 posts this year, compared to 24 posts last fiscal year during this quarter.

Mr. Watkins questioned the trends on Facebook and if licensees or applicants were more interested with Facebook posts. Ms. Beauchamps responded that new applicants and students are most engaged in Facebook; however; the Board does post Facebook posts aimed at licensees and consumers as well. Mr. Watkins suggested that creating posts with tips and strategies of how to develop as a professional might be useful to students and new applicants since they seem to be more engaged in social media.

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

### **(A) Statistical Reports**

Ms. Conley presented the Application Services report. She reported that the format and information reported has changed using Quality Business Interactive Reporting Tool (QBIRT) which allows staff the opportunity to collect data that previously was unavailable; the new report also illustrates online usage as compared to other methods of submission. Ms. Conley reported that online usage has increased significantly from the past year; which was also shown on the decrease of the "forms" tab of the website. Ms. Conley stated that the exam format has not changed.

Ms. Conley stated that the application instructions have been updated to direct applicants to BreEZe to apply online. Ms. Eleby stated that she liked the new report and it was great to see the number of military represented and Dr. Rabena-Amen added that she also liked to see the foreign represented as well. Dr. Drummer asked if foreign educated applicants can apply on BreEZe and Ms. Conley responded yes.

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

### **(A) Statistical Reports**

Ms. Conley presented the Licensing Maintenance report. She reported that the format and information reported for licensing has also changed using QBIRT. Dr.

Rabena-Amen asked Ms. Conley why some licensees do not prefer to use BreEZe for online renewals. Ms. Conley responded it could possibly be due to the lengthy online registration process and part of it could be part of not wanting to be online. Ms. Conley stated that applicants have taken more to the online system.

Dr. Drummer questioned what verification requests are and Ms. Conley responded that it is an endorsement request; the licensee needs to be verify their California license for application in another state. Ms. Conley stated that she encourages people to go online to BreEZe to verify licenses as the online record is current.

#### **24. Continuing Competency Report – Sarah Conley**

##### **(A) Statistical Reports**

Ms. Conley presented the Continuing Competency report. She reported that 136 physical therapists and 45 physical therapist assistants were selected for audit for fiscal year 2017/18 Quarter 4 (April-June). Ms. Conley stated the pass rates are on track to be consistent with previous quarter pass rates.

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

##### **(A) Statistical Reports**

Ms. Ybarra presented the Consumer Protection Services report. She reported that quarter 1, PM 3 cycle time-investigation we went down slightly from 130 year-to-date to 97. Ms. Ybarra stated that for Investigations ageing, the Board is up 76% in comparison to last year which was 67%.

Ms. Ybarra reported that for PM4 AG cases, there are two that are within the performance goal of 540 days, they are at 482 days, so the goals are being met. She reported that enforcement staff do a great job at keeping track of cases and of DOI, the Experts and the Attorney General's Office.

Ms. Ybarra stated that Mr. Azar is a great asset as a subject matter expert for both BreEZe and QBIRT. She reported that CPS is encouraging people to use the online services versus the forms as it's a lot faster and it's to their benefit.

Ms. Eleby asked that the performance goals to be placed on the CPS report. Dr. Rabena-Amen asked if there were sub goals for each of PM 4 and Ms. Ybarra responded no, the goal is the 540-day goal and that is a DCA wide goal.

Dr. Dominguez solicited the Board for their feedback on the first case for review through BreEZe portal. Ms. Eleby stated that she liked it and she felt it was a good way to disseminate information and get members into the habit of submitting votes

through BreZE. Dr. Drummer stated that he struggled with the online portal with the challenge of easy flow and not being intuitive. Dr. Rabena-Amen agreed with Dr. Drummer. Ms. Eleby stated that it would be helpful to have the due date for members responses. Ms. Ybarra responded that they would look at the instructions and make them more detailed and specific. Mr. Kaiser added that the online system is made to be used by all the Boards and Bureau's at DCA so unfortunately there is a narrow set of parameters that are tailorable.

Ms. Bojack, legal counsel, identified that the topic of conversation was beyond what was noticed on the agenda and encouraged the Board to stay on topic of agenda item 25, Consumer Protection Services Report. Mr. Pane, legal counsel, added that it is to the Board's benefit for transparency, to be as specific on the agenda and stay on topic during the meeting.

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

### **(A) Statistical Reports**

Mr. Martin presented the Probation Monitoring report for quarter 1, fiscal year 2018-19. Mr. Martin reported that there were 85 licensees on probation and in addition, there were 11 probationers tolling (out of state) and not receiving credit toward the completion of probation. Mr. Martin also reported there were two licensees that completed probation in this quarter. He also stated that of the 74 licensees that are not currently tolling, 18 are currently enrolled and participating in the Board's Drug and Alcohol Recovery Monitoring Program, which is 24% of all licensees on probation that are not tolling.

Ms. Eleby asked Mr. Martin to add the number of probationers that are tolling to the probation monitoring statistical report.

## **27. Board Member Elections**

### **(A) President**

**NOMINATION:** Ms. McMillian nominated Dr. Drummer as Board President.  
**NOMINEE:** Drummer  
**MOTION:** To elect Dr. Drummer as Board President.  
**M/S:** McMillian/Rabena-Amen  
Dr. Drummer declined the nomination.

**NOMINATION:** Dr. Drummer nominated Dr. Rabena-Amen as Board President.  
**NOMINEES:** Rabena-Amen  
**MOTION:** To elect Dr. Rabena-Amen as Board President.

**M/S:** Drummer/Eleby  
**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen - Aye  
Watkins – Aye  
6-0 Motion carried

**(B) Vice-President**

**NOMINATION:** Ms. McMillian nominated Mr. Watkins as Board Vice-President.  
**NOMINEES:** Watkins  
**MOTION:** To elect Mr. Watkins as Board Vice-President.  
**M/S:** McMillian/Drummer  
**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen - Aye  
Watkins – Aye  
6-0 Motion carried

**(C) FSBPT Delegate**

**NOMINATION:** Ms. McMillian nominated Ms. Eleby as FSBPT Delegate.  
**NOMINEES:** Eleby  
**MOTION:** To elect Ms. Eleby as Board FSBPT Delegate.  
**M/S:** McMillian/Watkins  
**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen - Aye  
Watkins – Aye  
6-0 Motion carried

**NOMINATION:** Dr. Rabena Amen nominated Ms. McMillian as FSBPT Delegate.  
**NOMINEES:** McMillian  
**MOTION:** To elect Ms. McMillian as Board FSBPT Delegate.  
**M/S:** Rabena-Amen/Drummer

Ms. McMillian declined the nomination

**(D) FSBPT Alternate Delegate**

**NOMINATION:** Mr. Watkins nominated Dr. Drummer as FSBPT Alternate Delegate.

**NOMINEES:** Drummer

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

**NOMINATION:** Dr. Drummer nominated Ms. McMillian as FSBPT Alternate Delegate.

**NOMINEES:** McMillian

**M/S:** Drummer/None

Ms. McMillian declined the nomination

**NOMINATION:** Ms. Eleby nominated Dr. Rabena-Amen as FSBPT Alternate Delegate.

**NOMINEES:** Rabena-Amen

**M/S:** Eleby/None.

Dr. Rabena-Amen declined the nomination

**NOMINATION:** Dr. Drummer nominated Mr. Watkins as FSBPT Alternate Delegate.

**NOMINEES:** Watkins

**M/S:** Drummer/Eleby

**MOTION:** To elect a Board FSBPT Alternate Delegate

**VOTE:** Dominguez- Drummer

Drummer – Watkins

Eleby – Drummer

McMillian – Drummer

Rabena-Amen - Drummer

Watkins – Watkins

4-2 in favor of Dr. Drummer/Motion carried

**(E) FSBPT Back-up Alternate Delegate**

**MOTION:** To adopt the procedure of establishing back-up alternate delegates in reverse alphabetical order of Board members.

**M/S:** Drummer/Eleby

**VOTE:** Dominguez- Aye

Drummer – Aye

Eleby – Aye

McMillian – Aye  
Rabena-Amen - Aye  
Watkins – Aye  
6-0 Motion carried

**28. 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).]*

The Board requested public comment on items not on the agenda, and there was no public comment.

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

March 21-22, 2019  
Sacramento, CA

Dr. Rabena-Amen stated that she would like to see under the reports on the agenda, a place for procedural questions directed to staff from the Board. Dr. Rabena-Amen added she would also like a Probation Monitor Services presentation; and in specific she would like to know how Mr. Martin spends his time and how he would like to spend his time. Dr. Drummer stated that he would like to add under the statistical reports on the agenda, a separate subsection that addresses issues with duties, performance etc. so that the Board can discuss updates. Dr. Rabena-Amen stated she would like to see an agenda item for further discussion on the online BreEZe case review for Board members. Mr. Watkins stated he would like to add under agenda item 10; increase in the level of the Executive Officer a section for the committee to report back on the progress on investigating the exempt level request. Ms. McMillian stated she would like to have an update on the Board members transition to BreEZe.

**30. Adjournment**

The meeting adjourned at 3:55 p.m.