



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

# Physical Therapy Board of California

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## Board Members

### President

Debra Alviso, Physical Therapist, DPT

### Vice-President

Sara Takii, Physical Therapist, DPT, MPA

### Members

Katarina Eleby

Alicia Rabena-Amen, Physical Therapist, MPT

James Turner, MPA

Carol Wallisch, MA, MPH

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

August 20, 2014 9:00 a.m.

August 21, 2014 9:00 a.m.

## Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Sarah Conley, Executive Associate

Analyst

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

For convenience, subjects discussed during the meeting follow their original order on the agenda in these minutes. Please note, however, issues were taken out of order during the meeting.

### **1. Call to Order and Roll Call**

The Physical Therapy Board (Board) meeting was called to order by Dr. Alviso at 9:07 a.m. All members were present and a quorum was established. Also present at the meeting were Laura Freedman, Legal Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Consumer Protection Services Manager; Sarah Conley, Executive Associate Analyst; and, other Board staff.

### **2. Board Member Appointments**

Mr. Kaiser informed the Board no appointments have been made as of yet, but hopefully soon.

### **3. Closed Session**

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

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

#### **(B) Pursuant to Government Code section 11126(e) US Equal Employment Opportunity Commission (EEOC) Charge Number 555-2012-00027**

No discussion occurred on this item.

### **4. August 20, 2014 Lunch 12:00 p.m. – 2:00 p.m.**

**5. Approval of May 14 & 15, 2014 Meeting Minutes – Sarah Conley**

**MOTION:** To adopt the draft May 14 & 15 meeting minutes as presented.

**MOVED:** Dr. Takii

**SECOND:** Ms. Eleby

**VOTE:** 6-0 Motion carried

**6. Consumer and Professional Associations and Intergovernmental Relations Reports  
(A) Federation of State Boards of Physical Therapy (FSBPT)**

Dr. Takii and Mr. Kaiser provided an overview of the Delegate Assembly motions that were adopted at the 2013 FSBPT meeting, and discussed at the recent Leadership Issues Forum; they identified specific motions that would have a significant impact to the Board.

Motion DEL-13-03 would impose a lifetime limit of six exam attempts, and motion DEL-13-04 would prohibit an applicant from taking the exam if the applicant has received two prior scores below 400. These motions are of particular concern because they conflict with Business and Professions Code section 135, which prohibits the Board from imposing any additional limitations, restrictions, prerequisites, or requirements on any applicant who wishes to participate in subsequent examinations, except as specified. Ms. Freedman informed the Board that should the FSBPT move forward with endorsing these policies, the Board may have to exercise its option to break its contract with the FSBPT because the motions directly conflict with California law.

Mr. Kaiser provided the rationale for the motions. The FSBPT asserts DEL-13-03 and DEL-13-04 would protect the integrity of the exam by restricting access to only those candidates who are likely to be competent as measured by the exam performance standard. The FSBPT references examination qualification models used by the Medical Board of California and the Pharmacy Board of California. Mr. Kaiser clarified that these boards do not entirely limit access to the licensing exams, but have established conditional provisions that applicants must comply with in order to be granted eligibility to sit for a subsequent license exam.

The Board indicated it shares the FSBPT's concern with exam subversion; however, suggested there may be an alternative to ensuring exam security without denying candidates their right to reasonable access to the profession. The Board expressed it cannot support DEL-13-03 and DEL-13-04.

Ms. Freedman noted there are provisions within the Board's contract with the FSBPT that would allow the Board to terminate the contract if the FSBPT were to mandate compliance with DEL-13-03 and DEL-13-04. However, if the Board were to terminate the contract, it would need to develop and administer a licensing exam. Because of the established expertise of the FSBPT in providing the licensing exam, it is the Board's wish to find an acceptable resolution to this issue without terminating the contract. Mr. Kaiser added that he suspects the FSBPT also has an interest in preserving the contract because California provides a large volume of exam clients and California is a large client of

FSBPT services.

There were provisions in the motions stating that the FSBPT would work with member boards to address conflicts with specific jurisdiction requirements. Two interpretations of this were 1) that the FSBPT will accommodate member boards whose jurisdictional requirements conflict, and 2) that the FSBPT will assist member boards in changing jurisdictional requirements that conflict with the motions to ensure implementation.

Although the Board could consider remediation similar to the Pharmacy Board as an alternative to completely denying access to the exam, the ideal situation would be that the FSBPT provide an exception for those member boards whose state laws prohibit them from implementing these examination attempt limitations. Either way, an accommodation must be made.

**(B) Department of Consumer Affairs (DCA) – Christine Lally**

Ms. Lally reported Awet Kidane has been appointed Director of DCA and Tracy Rhine has been appointed Deputy Director of DCA. Mr. Kidane previously served as Deputy Director of DCA and Tracy Rhine previously served as Deputy Director of Legislation for the DCA. Ms. Lally informed that Board the DCA recently issued an updated travel memo which outlines permitted and restricted travel and noted there is little deviation from these guidelines. Ms. Lally expressed gratitude for Mr. Kaiser's leadership in the BreEZe project.

**(C) California Physical Therapy Association (CPTA)**

Representatives from the CPTA indicated they did not have anything to bring before the Board at this time.

**7. President's Report – Dr. Alviso**

**(A) 2014 Meeting Calendar**

Mr. Kaiser shared the November meeting is anticipated to be at the University of the Pacific.

**(B) Proposed 2015 Meeting Calendar**

The Board reviewed the proposed 2015 calendar. Dr. Alviso informed the Board she has a conflict with November 18<sup>th</sup> and 19<sup>th</sup>, and requested the dates be moved. Staff provided November 4, 5, 6, 12, and 13 as possible dates for the November meeting. The Board did not indicate a preference and deferred to staff to determine the final November meeting date.

**MOTION: To delegate determination of the November 2015 meeting date to staff.**

**MOVED: Dr. Alviso**

**SECOND: Dr. Takii**

**VOTE: 6-0 Motion carried**

The Board adopted the proposed 2015 meeting calendar.

**MOTION: To adopt the proposed 2015 meeting calendar.**

**MOVED: Dr. Takii**

**SECOND: Ms. Eleby**

**VOTE: 6-0 Motion carried**

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

Mr. Kaiser provided an update on the BreEZe project. He explained that it is moving quite rapidly and consuming much of staff's time. He noted that the BreEZe contract prohibits double-booking, but only pertaining to double-booking BreEZe-related meetings; therefore, it does not account for other Board obligations, such as Board meetings. BreEZe is extraneously stressing boards' resources; however, this was anticipated with a system conversion as large as BreEZe. Mr. Kaiser expressed his gratitude and appreciation for the Board's Business Integration Analyst, Jeanie Wong, for her exceptional work and for consistently going above and beyond.

Mr. Kaiser echoed Ms. Lally's comments regarding travel and informed the Board that the staff is again looking at alternative outreach methods, such as social media, to address the Board's outreach demands. The Continuing Competency program will no longer be its own program; it will move under the License Services program. This will, hopefully, provide greater efficiency for both the License Maintenance and Continuing Competency programs. Currently, staff allocated to the Continuing Competency program has been assisting in the Application Services and License Services programs. Mr. Kaiser announced Tara Hamilton has joined the Application Services program; she previously served the Board in the Application Services program as an AARP employee.

**9. Legislation Report – Sarah Conley**

- (A) AB 186 (Maienschein) Professions and Vocations: Military Spouses: Temporary Licenses**
- (B) AB 1758 (Patterson) Healing Arts: Initial Licensing Fees: Proration**
- (C) AB 1890 (Chau) Athletic Trainers**
- (D) AB 2396 (Bonta) Convictions: Expungement: Licenses**
- (E) SB 1159 (Lara) Professions and Vocations: License Applicants: Federal Tax Identification Number**
- (F) SB 1243 (Lieu) Professions and Vocations**
- (G) SB 1256 (Mitchell) Medical Services: Credit**
- (H) Other bills that have come to the attention of the Board after publication of the agenda**

Ms. Conley provided an update on the bills noticed on the agenda as well as SB 1226 under agenda

item # 9(H). Dr. Alviso took an interim Oppose unless Amended position on AB 186 as amended June 25<sup>th</sup> primarily because the Board can issue a regular renewable license in the same amount of time as it could issue a temporary license; therefore, it provides no benefit to applicants for physical therapist and physical therapist assistant licensure. After the Board's concerns were communicated to the author of the bill, AB 186 was amended removing the Board. The Board ratified the interim Oppose Unless Amended position taken by Dr. Alviso.

**MOTION: To ratify the Oppose Unless Amended position taken by the President on AB 186**

**MOVED: Ms. Wallisch**

**SECOND: Ms. Eleby**

**VOTE: 6-0 Motion carried**

Then, because the bill as amended August 20<sup>th</sup> removed the Board, the Board removed its opposition.

**MOTION: To remove opposition to AB 186**

**MOVED: Ms. Wallisch**

**SECOND: Ms. Eleby**

**VOTE: 6-0 Motion carried**

Ms. Conley apprized the Board that Dr. Alviso also took a position on AB 1758. Dr. Alviso took a Support if Amended position and informed the author of a number of concerns with how the bill would impact the Board. On August 14<sup>th</sup>, the bill was held under submission in the Senate Appropriations Committee and failed to meet the deadline to pass out of Appropriations, which was August 15<sup>th</sup>. Although the bill died, the Board ratified Dr. Alviso's interim position to demonstrate its concurrence with the position on the subject of the bill and the concerns that were expressed.

**MOTION: To ratify the Support if Amended position taken by the Board President**

**MOVED: Ms. Wallisch**

**SECOND: Ms. Eleby**

**VOTE: 6-0 Motion carried**

Ms. Conley notified the Board that SB 1226, which is a "gut and amend bill," was amended August 11<sup>th</sup> to add Section 115.4 to the Business and Professions Code (BPC) among other things. BPC section 115.4 would require boards to expedite the application process for all honorably discharged

veterans. SB 1226 had previously proposed to amend Section 83123.5 of the Government Code pertaining to the Fair Political Practices Commission. Ms. Conley noted that if the provisions within the bill were enacted, the Board would handle it similarly to other military-related legislation that requires the Board to expedite the application process, and staff does not anticipate a major impact to Board resources in carrying-out the provisions of this bill.

Ms. Conley and Mr. Kaiser presented AB 2396. AB 2396 would prohibit the Board from denying a license based solely on a conviction that has been expunged. Although the conviction is dismissed, the Board has no guarantee of rehabilitation and fitness for licensure. This bill could seriously jeopardize the Board's ability to meet its paramount mandate of consumer protection. The misconduct underlying the conviction may still be used as a basis to deny a license, but the Board may have difficulty if police and court records have been purged, and finding and obtaining witnesses depending on the details it is able to gather through investigation. The Board expects the expense to deny the license will increase considerably as a result, and that it may not be able to prove every case to the detriment of consumer protection. The Board discussed whether to take a position on AB 2396, and if so, what position it should take.

**MOTION: To adopt an Oppose position on AB 2396**

**MOVED: Dr. Takii**

**SECOND: Mr. Turner**

**VOTE: 5-0, Ms. Wallisch abstained. Motion carried**

**10. Rulemaking Report – Sarah Conley/Elsa Ybarra**

**(A) Guidelines for Issuing Citations and Imposing Discipline, and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees**

Ms. Conley reported the Guidelines for Issuing Citations and Imposing Discipline, and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees has been approved by the Office of Administrative Law (OAL) and will go into effect October 1, 2014.

## **11. Administrative Services Report**

### **(A) Budget – Carl Nelson**

Mr. Nelson informed the Board that the report before them is the last report for FY 2013/14 and reflects all revenue and expenditure for the fiscal year. He went on to address specific items within the report. In FY 2012/13, three permanent staff positions were authorized; however, additional funding for these positions was not. The Board reallocated monies in the Temporary Help budget to the Civil Services Permanent (staff) budget, which resulted in no Temporary Help budget for FY 2013/14. Savings in other areas of the overall budget funded the over expenditure of the Temporary Help budget. The reallocation of monies demonstrates the Board's intent and attempt to move all temporary help positions into permanent positions, which more accurately illustrates the Board's resource needs.

Mr. Nelson addressed the Consumer Protection Services (CPS) program. Approximately half way through FY 2013/14 staff realized the Attorney General costs were going to exceed its allocation, if they were to continue at the same rate. A one-time budget augmentation was approved, which increased the Board's AG allocation from \$320,000 to \$605,668; the Board still exceeded the allocation. Mr. Nelson explained the Attorney General and Office of Administrative Hearings allocations are often over expended because it is difficult to forecast the how many and what types of cases the Board will receive at any given time, and what actions will be required and how long those actions will continue, e.g., hearings.

Mr. Turner questioned whether the Board Member budget allocation could be increased so that it does not reflect an over expenditure. Mr. Nelson responded yes, but the Board would be required to submit a Budget Change Proposal (BCP). Mr. Kaiser added that staff appreciates direction provided from its oversight agencies – the DCA and the Business, Consumer Services, and Housing Agency (Agency) – and staff considers budget advisements, and the State's budget and political climate before completing and submitting BCP's; staff hasn't identified an opportunity to adjust the Board Member allocation through the BCP process.

### **(B) Outreach – Jacki Maciel**

Mr. Kaiser acknowledged Ms. Maciel for her natural outreach talent and ambition. Ms. Maciel has established a consistent and impactful social media presence for the Board. Staff hopes to begin using other platforms for more outreach opportunities, such as YouTube for instructional videos. Ms. Eleby inquired as to whether Instagram would be appropriate for the Board. Ms. Kaiser responded that social media broadcasting is more effective with the use of graphic elements so staff has added images to most social media posts. Therefore, using Instagram as a Board social media platform should be a fairly easy addition to the outreach program.

#### **i. Survey**

No discussion occurred on this item.

## ii. Newsletter

Mr. Kaiser informed the Board that, thanks to the return of Rebecca Marco as a Retired Annuitant to address special projects, a newsletter is on schedule for publication September 1<sup>st</sup>.

### 12. Application & Licensing Services Report – *Veronica Gutierrez*

Ms. Gutierrez presented the Application and Licensing Services report. Staff has seen a decrease in the number of applicants applying to sit for the July exam and an increase in the number of applicants applying to sit for the October exam.

Mr. Kaiser explained the Board is experiencing a steady increase in the license population with a lower attrition rate. The licensing population is growing; the number of staff is not. Additionally, more licensees result in more transactions the Board processes. This information is not captured in the current report; staff hopes to present workload data in the future, in addition to application, exam, and licensing statistics.

Ms. Gutierrez apprised the Board of a change in how Board calls are fielded. Currently, staff is unable to sustain the voluminous number of calls and the Board's phone system is unable to support the number of calls the Board receives, i.e., the voicemail box only allows twenty messages until it registers full; twenty messages, with hang-ups, can occur within minutes for the Board. Staff is working with the DCA Consumer Information Center to field Board calls and direct, as necessary, to the appropriate staff. Staff hopes CIC will provide some relief to the Board and assistance to Board's callers staff is unable to provide at this time. Staff anticipates that calls will be redirected through CIC by the end of the year.

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

Ms. Ybarra directed the Board to the Performance Measures Q4 report. She explained the average cycle time from complaint receipt to the date the complaint was assigned to an investigator (PM2) is above target due to a problem with the intake process; the process was reassessed and the issue has been resolved, which should show in next quarter's performance measure report. Ms. Ybarra noted that although there was an issue with assignment of cases, the acknowledgement letters were sent to the complainants within the Board's 10-day mandate. Other areas that reflect above-target data are the average cycle time from complaint receipt to closure of the investigation process – this does not include cases sent to the Attorney General's Office (AG) or other forms of formal discipline (PM3); and, the average number of days to complete the entire enforcement process for cases resulting in formal discipline – this includes intake and investigation by the Board and prosecution by the AG (PM4). Ms. Ybarra explained that, for both categories, old cases were closed, which distorts the data; one old case can drastically skew the numbers.

Ms. Wallisch suggested staff provide the mode for the average cycle times to more accurately illustrate the Board's performance.

#### **14. Strategic Plan – Sarah Conley**

Ms. Conley presented the 2013 Strategic Plan and a revised version of the strategic plan. She explained that when staff attempted to draft the action plan, they realized a number of objectives had already been achieved and the remaining objectives captured a very specific point in time. Some of the issues the Board wished to address may no longer be of significant concern for the purposes of the strategic plan. She requested the Board's direction as to whether they wish to keep the 2013 Strategic Plan or adopt the revised plan. After further consideration, the Board determined the 2013 Strategic Plan was outdated and to adopt a new strategic plan. The Board President appointed Ms. Rabena-Amen and Mr. Turner to work with staff on the revised strategic plan, and bring it back for Board review at the November meeting.

#### **15. Board Member Policy Manual – Chapter 6: Enforcement and Disciplinary Action – Sarah Conley**

The Board reviewed Chapter 6: Enforcement and Disciplinary Action of the Board Members Administrative Manual. Dr. Alviso requested staff add information pertaining to Petitions for Reconsideration. Although enforcement actions encompass discipline and citations, the Board requested staff differentiate between discipline and citations under Enforcement Actions – Disclosure to the Public. Disciplinary actions are public record indefinitely, whereas citations, pursuant to California Code of Regulations (CCR) 1399.25, are destroyed after five years. The Board maintains citations on its website consistent with CCR 1399.25. Ms. DeFoe, Director, CPTA, requested the Board consider revisiting its policy to post citations online for five years since it is not required by statute or regulation and it can be misleading to the public giving the appearance that citations are formal discipline.

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

There was no additional public comment.

#### **17. Agenda Items for Next Meeting – November 5 & 6, 2014**

The Board indicated it did not have any specific agenda items for the next meeting at this time.

#### **18. Adjournment**

The Board concluded the meeting on Thursday, August 21, 2014 with closed session and adjourned at 3:35 p.m. upon completion of that agenda item.

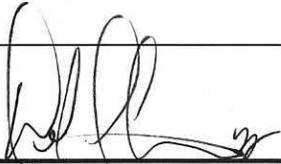
The Board adopted the August 20 & 21, 2014 meeting minutes at the November 5 & 6, 2014 meeting. The motion and vote are provided below.

**MOTION:** To adopt the revised draft August 20 & 21, 2014 meeting minutes as presented.

**MOVED:** Ms. Wallisch

**SECOND:** Dr. Dominguez

**VOTE:** 6-0 Motion carried



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Dr. Debra Alviso, Physical Therapist, Board President

11/20/14  
Date