



Physical Therapy Board of California

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

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916) 263-2560

Internet: www.ptbc.ca.gov



Board Members

President

Debra Alviso, PT, DPT

Vice-President

Katarina Eleby

Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Alicia Rabena-Amen, PT, MPT

James Turner, MPA

Carol Wallisch, MA, MPH

Physical Therapy Board of California

APPROVED Meeting Minutes

February 11, 2015 9:00 a.m.

February 12, 2015 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 of California (Board) meeting was called to order by Dr. Alviso at 9:01 a.m. on February 11, 2015. All members listed above were present and a quorum was established. Also present at the meeting were Laura Freedman, Legal Counsel (2/11/15); Angelique Scott, Legal Counsel (2/11/15 & 2/12/15); Kurt Heppler, Legal Counsel (2/12/15); Jason Kaiser, Executive Officer; Elsa Ybarra, Consumer Protection Services Manager; Liz Constancio, Administrative Services/Application and Licensing Services Manager, Sarah Conley, Executive Associate Analyst and Brooke Arneson, Associate Analyst.

2. Practice of Wellness and Related Regulatory Requirements

The Board revisited the topic of wellness. Wellness was added to the February 2015 meeting agenda to provide an opportunity for new Board members to become familiar with the issues. Mitch Kaye, PT, informed the Board that the CPTA QPC is still receiving questions on wellness – what licensees can and cannot do and whether the laws and regulations apply when providing wellness services, specifically in the areas of documentation and use of assistive personnel. Tameka Island, representing the CPTA, followed-up on the issue of assistive personnel. She noted that BPC § 2630.4 states that a physical therapy aide is not prohibited from administering massage, external baths, or normal exercise which is

not part of physical therapy treatment; therefore, the CPTA requests the Board consider and address the following questions:

1. Is a physical therapy aide exempt from supervision when administering massage or normal exercise?
2. Is a physical therapist required to document massage and normal exercise rendered by a physical therapy aide?
3. Does this language imply the massage and normal exercise are not part of physical therapy treatment?
4. What is the Physical Therapy Board of California's interpretation of "normal exercise?"

The Board discussed various potential wellness issues that could result in a complaint. Mr. Kaye questioned how the Board handles complaints related to wellness.

Ms. Freedman responded these types of complaints would likely be reviewed by a subject matter expert, who is also a physical therapist, to consider the professional judgment that was exercised and determine whether it was reasonable and in keeping with community standard. Ms. Freedman noted that this issue has the potential to require a physical therapist to exercise a great deal of professional judgment.

Mr. Kaye questioned whether the Board would publish wellness guidelines. Ms. Freedman responded that for a regulatory agency, guidelines are essentially regulations. An alternative to regulations would be a legal opinion; however, legal opinions are, by their nature, specific, and this is a broad issue. Both are within the Board's purview to pursue.

Mr. Kaiser and CPTA representatives discussed the possibility of the CPTA drafting a "white paper" on wellness. Mr. Kaiser indicated material developed by the profession is a resource for the Board in considering complaints as the information contained within represents community standard, if not best practices.

Dr. Byl expressed her appreciation to the Board for considering the issue again.

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(c)(1)
Prepare, approve, grade or administer examinations**

No discussion occurred on this item.

**(C) 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. Draft Regulatory Language for Board Consideration and Possible Action for the Following Sections of Division 13.2 of Title 16 of the California Code of Regulations

**(A) Fee Increase – *Liz Constancio*
Regulation number(s) to be determined**

Ms. Constancio presented proposed regulatory language which would increase application, initial license and biennial renewal fees effective January 1, 2016. The proposed increase in fees will enable the Board to effectively sustain operations necessary for protecting consumers through its licensing and enforcement functions. Board budget staff was in the process of completing a fee analysis which was anticipated to be attached, but unfortunately was detained while waiting to receive costs associated with BreZE implementation. Therefore, until a comprehensive analysis can be completed, PTBC is proposing to increase fees to the statutory authorized maximum. Staff requested the Board adopt the proposed language at this meeting so that the fees may be implemented by January 1, 2016.

Dr. Drummer questioned what would happen to the Board if insolvency

occurred. Mr. Kaiser responded that possible legislative action may occur, including a corrective action plan.

Mr. Turner stated that the proposed fee increase is justified and absolutely necessary considering the increase in expenditures reflected on the data analysis.

Ms. Constancio informed the Board that if fees were increased to the statutory maximum, the Board would still reach insolvency in fiscal year 2019/20. The analysis does not include costs for BreZE, Attorney General, and increases in staff and growth. Mr. Kaiser pointed out that the Board in the future will need to go to the legislature to have the statutory caps increased.

Dr. Alviso questioned the data analysis for the Board's projected increase in revenue with the fees set at the statutory maximum. Mr. Kaiser pointed out that even with the proposed fee increase, the Board will become insolvent in fiscal year 2019/20. Ms. Constancio clarified that the fee increase proposal shows all fees increased to the maximum, which may not need to occur.

Mr. Turner requested further clarification on the figures provided in the analysis. He asked staff in the future to provide a breakdown of each figure to ease confusion.

Dr. Alviso asked Board members to provide input to staff on if they were in agreement to move forward with the regulatory process and what specific information needed to be provided as the regulatory process continued. Mr. Turner stated he was in consent to move forward with the regulatory process for the fee increase with clarified data analysis. Ms. Eleby agreed to adopt the language as amended and once information becomes available on projected costs for BreZE for those costs to be disclosed at the May meeting. Dr. Drummer was in favor of moving forward with the concept of the fee increase, however he was interested in having firmer figures presented and what the impact would be on the Board. He was also interested in potentially pursuing future amendments to the statute by investigating the potential for legislative change to address insolvency in the future. Ms. Rabena-Amen agreed to move forward with the regulatory process, however stated she was looking forward to receiving further

information at the May meeting. Dr. Dominguez stated he agreed with going forward with the proposed regulatory process, however he would like to see revenue projections with the proposed fee increase in addition to costs for BreEZe. Ms. Wallisch confirmed that she agreed with the other Board members on moving forward with the data requested for the May meeting. Dr. Alviso additionally approved moving forward with the proposed regulatory process for the fee increase with the language as amended, with hearing set for the May Board meeting.

The Board directed staff to complete the workload analysis, including BreEZe costs, for presentation at the May Board meeting.

MOTION: Notice language as amended for hearing at the next meeting, and have staff prepare the notice and initial statement of reasons with modified clarity issues.

M/S: Eleby/Wallisch

VOTE: 7-0 Motion carried

**(B) Requirements for Graduates from Non-Accredited Programs: Test of English as a Foreign Language (TOEFL) – Sarah Conley
Regulation number(s) to be determined**

Ms. Conley presented proposed regulatory language which would clarify English proficiency requirements for applicants who completed a non-accredited physical therapy program. Staff proposed a passing score on the Test of English as a Foreign Language (TOEFL), identified exemption qualifications, and specified the length of time the exam score is valid. The proposed language also requires approved Credential Evaluation Services to report on the evaluation of the applicant's TOEFL compliance or exemption.

Dr. Alviso inquired as to what security measures are in place for the TOEFL. Mr. Kaiser stated that the exam is taken at a secure facility and identity is verified. In addition, Dr. Alviso asked if there has been a change in TOEFL administration or passing score. Mr. Kaiser clarified that Educational Testing Services (ETS) allows each entity utilizing the TOEFL to determine

the passing score or standard.

MOTION: To adopt the proposed language as amended and authorize staff to proceed with the Rulemaking Process.

M/S: Wallisch /Eleby

VOTE: 7-0 Motion carried

5. Approval of Meeting Minutes

(A) November 5 & 6, 2014

Ms. Conley presented the November 2014 minutes for the Board's consideration. The Board identified minor amendments to the minutes.

MOTION: To adopt the draft November 5 & 6, 2014 meeting minutes as amended at the meeting.

M/S: Drummer/Dominguez

VOTE¹: 7-0 Motion carried

(B) December 1, 2015 Teleconference Meeting

Ms. Conley presented December 2014 teleconference meeting minutes for Board consideration.

MOTION: To adopt the draft December 1, 2014 meeting minutes as presented.

M/S: Turner/Wallisch

VOTE: 7-0 Motion carried

¹ All members present as reflected during the call to order participated in each vote unless otherwise indicated. Only the name of members voting against as motion, abstaining or recusing will be specified in these minutes.

6. Consumer and Professional Associations and Intergovernmental Relations Reports

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

Mr. Kaiser reported that the FSBPT will be holding a Board member orientation training in June 2015, he noted the training is very informative and educational. All members are encouraged to attend.

(B) Department of Consumer Affairs (DCA)

Ms. May presented on behalf of DCA. She reminded Board members that filing Form 700 filings are due April 1st, and any member who submits late will be assessed a fine. Mr. Kaiser specified that the PTBC outreach coordinator, Jacki Maciel, will be the contact for assistance with completing these forms. Ms. Constancio reassured the members that Ms. Maciel will send an email outlining form filing, training and paperwork requirements and deadlines.

(C) California Physical Therapy Association (CPTA)

Representatives from CPTA indicated they had no additional updates for the Board. Dr. Alviso questioned the logistics of the 2015 California Student Conclave. It was shared that this event will be hosted at CSU, Sacramento on April 11-12, 2015. It is anticipated to bring nearly 300 PT and PTA students. Mr. Kaiser noted he will be presenting on behalf of PTBC.

7. President's Report - *Dr. Debra Alviso*

(A) 2015 Meeting Calendar

The Board reviewed the 2015 calendar that was adopted at the November 2014 meeting and all members indicated they had no conflicts with the scheduled meetings. Mr. Kaiser shared that the May 2015 meeting will be held at Loma Linda University.

(B) 2016 Meeting Calendar

The Board reviewed the proposed 2016 calendar that was presented and all

members indicated they had no conflicts with the scheduled meetings.

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

Mr. Kaiser briefly elaborated on each item addressed in his report. He stated that the BreEZe project has been a major draw on the PTBC's resources. He also noted that PTBC staff continues to wage a successful, creative social media campaign. Mr. Kaiser apprised the Board that Ms. Conley would be transitioning into the Lead Analyst position in the Application and Licensing unit and Ms. Arneson would be transferred into the Lead Analyst position in the Administrative unit. He informed the Board that PTBC staff published the latest edition of its newsletter, "PTBC Progress Notes- Fall 2014" with the greatly appreciated assistance of PTBC's former Executive Officer, now Retired Annuitant, Rebecca Marco. Mr. Kaiser highlighted that PTBC is looking forward to attending the CPTA's 2015 Student Conclave at California State University, Sacramento (CSUS).

9. Legislation Report - *Sarah Conley*

- (A) AB 12 (Cooley) State Government: Administrative Regulations: Review**
- (B) AB 19 (Chang) State Government: Regulations**
- (C) AB 85 (Wilk) Open Meetings**
- (D) AB 161 (Chau) Athletic Trainers**
- (E) SB 52 (Walters) Regulatory Boards: Healing Arts**
- (F) Other 2015 Bills Potentially Impacting Physical Therapy Practice or Regulation**

Ms. Conley noted that at the August 2014 meeting, the Board requested staff to submit a legislative proposal to amend BPC § 2650 to eliminate the eighteen-week clinical experience requirement for physical therapist assistant programs. Staff submitted the Board's proposal to the Senate Business, Professions and Economic Development Committee for inclusion in its omnibus bill. The Committee approved the Board's proposal. Ms. Conley provided a brief summary of the bills noticed on the agenda. Staff recommended a "Watch" position for each bill.

(A) AB 12 (Cooley) State Government: Administrative Regulations: Review

MOTION: To adopt a Watch position on AB 12

M/S: Wallisch/Dominguez

VOTE: 7-0 Motion carried

(B) AB 19 (Chang) State Government: Regulations

MOTION: To adopt a Watch position on AB 19

M/S: Wallisch/Turner

VOTE: 7-0 Motion carried

(C) AB 85 (Wilk) Open Meetings

MOTION: To adopt a Watch position on AB 85

M/S: Wallisch/Eleby

VOTE: 7-0 Motion carried

(D) AB 161 (Chau) Athletic Trainers

MOTION: To adopt a Watch position on AB 161

M/S: Wallisch/Turner

VOTE: 7-0 Motion carried

(E) SB 52 (Walters) Regulatory Boards: Healing Arts

MOTION: To adopt a Watch position on SB 52

M/S: Wallisch/Dominguez

VOTE: 7-0 Motion carried

(F) Other 2015 Bills Potentially Impacting Physical Therapy Practice or Regulation

None at this time.

10. Rulemaking - Sarah Conley

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. Ms. Conley provided an overview on the Rulemaking process. 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).

(A) License Renewal Exemptions: Retired Status

Ms. Conley reported that other rulemaking items are of greater urgency; therefore staff is not moving forward with this proposal at this time.

11. Administrative Services Report

(A) Budget – Carl Nelson

Mr. Nelson presented the 2nd quarter budget report. He informed the Board that based on current year expenditures and revenue, PTBC staff projects to overspend its budget authority due to Attorney General and Office of Administrative hearings projected expenditures. At this pace, the Board will over expend both line items and will require an augmentation to the AG budget. Board staff has prepared a request for this augmentation. In personnel services,

management has continued to move temporary help out of the blanket and into permanent positions. This will positively affect the personnel services budget as the year progresses. Revenue collection is consistent with recent past year second quarter reports.

Ms. Wallisch questioned why the Board members line item is over expended each year. Mr. Kaiser responded that this is due to the Board operating at full capacity, and that the amount of enforcement measures and per diem entitled for reviewing those cases is greater at this time.

Mr. Turner asked if zero based budgeting is used for building the budget. Mr. Nelson referred this question to Mr. Taylor Schick, the Budget Officer at DCA. Mr. Schick clarified that the State does not engage in zero based budgeting, the Budget Office uses an incremental based budget where the previous year's budget is carried over to the next fiscal year and incremental adjustments are made. These adjustments are directed usually by a Budget Change Proposal or direction from an Executive Order or Budget Letter. Mr. Turner inquired how long incremental budgeting has been in practice. Mr. Schick responded that at least since the 1990's; however there have been pilot programs where departments have attempted zero based budgeting or performance based budgeting. Mr. Turner questioned if incremental budgeting was going to be utilized to adjust the Board members budget for next fiscal year. Mr. Schick responded that to readjust that particular line item, the Budget Office would correctly reallocate the personnel services budget with a net zero adjustment to properly realign the Board member line item. Mr. Kaiser noted that it is very hard to anticipate unknowns (i.e. enforcement) and that the budget is a constant flex and adjustment process. Mr. Kaiser also highlighted that Ms. Constancio and Mr. Nelson have spent a great deal of work to true up line item allocations to reflect actual spending within PTBC's budget.

i. Fee Increase – Taylor Schick and Beth Dutchler-DCA Budget Office

Mr. Schick and Ms. Dutchler from the Budget Office provided a Physical Therapy Fund condition statement and a fund analysis to the Board. Mr. Schick pointed out that there is a structural imbalance in the Physical Therapy Fund where Board expenditures are exceeding revenue. In addition, not included in the fund condition statement were unknown Attorney General and BreEZe costs which will be a significant increase to the Board's expenditures making a fee increase

necessary.

Dr. Alviso questioned how many months the Physical Therapy Fund should show a reserve. Mr. Schick responded more than three months is preferable.

Ms. Rabena-Amen inquired if the Board will be expected to absorb all of the BreEZe costs at once. Mr. Schick responded that the costs would be absorbed over time. Mr. Kaiser clarified that next fiscal year, the Board will show an increase in allocation for BreEZe costs. He also noted that insolvency to the Physical Therapy fund, shown on the fund condition statement does not include costs for BreEZe, which makes it likely that insolvency to the Fund will come in FY 16/17, not FY 17/18, which will require the Board to either increase fees or cut costs. Mr. Kaiser stated that the Board is very frugal and consumer protection is our primary mandate and we cannot skimp on that.

Dr. Alviso inquired to how the general fund loan repayment would effect the proposed fee increase. Mr. Schick responded that the general fund loan needs to be repaid prior to initiating a fee increase.

Mr. Turner asked if interest would be assessed for the general fund loan. Mr. Schick stated that it does gain interest; however the interest earned will not be fairly significant to the Physical Therapy Fund.

Mr. Dominguez inquired if another loan could be taken from the Physical Therapy Fund. Mr. Schick responded that typically loans are taken only during times of fiscal crisis.

Dr. Alviso questioned if the audit expense has been accounted for. Ms. Constacio responded the audit did come out of the Fund under the statewide pro rata line item.

(B) Outreach – Jacki Maciel

Ms. Maciel presented the Outreach report. Ms. Maciel noted that PTBC's Facebook page reflects a vast increase in fans from the previous year. Utilizing social media such as Facebook and Twitter allows the PTBC to post pertinent

information such as testing dates, discipline alerts and direct links for address changes and other resourceful information for Licensee's and Consumers. The PTBC Facebook account is ranked 4th in comparison with all boards/bureaus and is ranked 1st within the healing arts boards/bureaus. Ms. Maciel highlighted that PTBC staff is requesting contributions from Board members for potential articles in preparation for PTBC's Newsletter, which is anticipated to issue this summer. Ms. Maciel and Mr. Kaiser also encouraged Board members to provide PTBC staff with suggestions and feedback for Facebook posts.

12. Application & Licensing Services Report - *Liz Constancio*

Ms. Constancio presented the Application and Licensing Services report. The PTBC remains consistent with its increase in workload, more so, within its licensing services which is due to the increased licensing requirements pursuant to the revised Practice Act, effective January 2014. The revisions required PTBC to allow renewal fee exemption and waivers for applicants meeting renewal requirements for; military, disability, voluntary/unpaid services; and, retired status. The Licensing Status Statistics had an increase which was a direct result of increased licensee population and the increase of the newly implemented renewal fee exemption/waiver. The PTBC conducted a basic analysis of the FSBPT's examination statistics, specifically California statistics and identified that the National Physical Therapy Exam (NPTE) had a 68% pass rate with a slight decrease in participation. This decrease may have been a result of the change in the PT educational requirements, i.e., doctorate/master program, which has increased graduation time frames, which affects students from participating in the exam. There was a 7% increase in the pass rate of the California Law Exam (CLE) from FY 13/14 to CY 14/15.

13. Consumer Protection Services Report - *Elsa Ybarra*

Ms. Ybarra presented the Consumer Protection Services report. She noted that Debbie Nardine, Senior CPS Analyst, retired from State service on December 31, 2014. She was a great asset to the program and her knowledge and dedication to the Board were exceptional and she will be missed.

Ms. Ybarra stated that in the 2nd quarter, Performance Measure (PM) 3: Intake and Investigation, 70% of cases closed were within the 90 day target. For Performance Measure (PM) 4: Formal Discipline: the average for Q2 is based on the final resolution of 14 cases.

The Board questioned why a handful of cases within the Performance Measure (PM) 4 took longer than the Board's 540-day target. Ms. Ybarra explained that DCA prescribed the PM4 target, and reminded the Board that the 540 day target also includes AG and OAH processing times.

14. BreEZe Presentation - *Sean O'Connor, BreEZe Business Project Manager*

Mr. O'Conner delivered a presentation on the status of the BreEZe project and provided a tutorial of what consumer and licensees will encounter when using the public or front-end interface of BreEZe.

15. Strategic Plan – *Sarah Conley*

Ms. Conley distributed finalized copies of the 2014-2017 PTBC Strategic Plan. At the November 2014 meeting, the Board adopted the strategic plan as amended. Staff made the amendments as discussed at the meeting and forwarded the final draft to DCA's Office of Publications, Design and Editing (PD&E). Using its artistic expertise, PD&E produced a superiorly designed final product that was presented at the meeting. With the plan complete, Board staff will begin formulating the action plan, including setting tasks, identifying resources to be allocated to each task, and establishing deadlines for completion of those tasks. The action plan will guide staff in working to achieve the objectives, and ultimately goals that the Board has promulgated. Although staff will continually monitor progress, the Board, at the November 2014 meeting, requested staff provide annual strategic plan progress reports at the last meeting of each year.

Mr. Turner questioned where the PTBC Strategic Plan will be displayed. Mr. Kaiser stated that it will be posted prominently on PTBC's website and hard copies will be available at the PTBC office and at DCA headquarters. In addition, copies will be taken with PTBC staff for outreach activities. Ms. Eleby inquired as to whether or not a digital copy of the Strategic Plan could be sent to schools. Mr. Kaiser stated yes, that PTBC has increased its efforts to communicate with stakeholders, including schools, and the goal is to send out the Strategic Plan electronically to the stakeholders.

16. 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 was no public comment under this item.

17. Agenda Items for Next Meeting – May 13 & 14, 2015 Loma Linda University Loma Linda, CA

18. Adjournment

The Board concluded the meeting on Thursday, February 12, 2015 and adjourned at approximately 2:10 p.m.