



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

Katarina Eleby

Vice-President

Alicia Rabena-Amen, PT, MPT

Members

Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Tonia McMillian

TJ Watkins

Physical Therapy Board of California Adopted Meeting Minutes

May 24, 2017 9:00 a.m.

May 25, 2017 9:00 a.m.

Department of Consumer Affairs
2005 Evergreen St.
Sacramento, CA 95815

Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Sarah Conley, 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; however, some agenda items may have been taken out of order during the meeting.

Wednesday, May 24th

1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by Vice President Rabena-Amen at 9:07 a.m. on May 24, 2017. The Board recessed at 8:00 p.m. and reconvened at 9:00 a.m. on May 25, 2017.

2. Roll Call and Establishment of Quorum

All members were present except Katarina Eleby and a quorum was established. Also present at the meeting were Tara Welch, Legal Counsel; Jason Kaiser, Executive Officer; Brooke Arneson, Monny Martin, Sarah Conley and Elsa Ybarra, Board staff.

3. Special Order of Business

(A) Petition for Termination of Probation – Bonnie Yen, PT

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

After submission of the matters, the Board will convene in CLOSED SESSION to deliberate on the petitions pursuant to Government Code section 11126(c)(3).

4. Closed Session

(A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings

(B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

5. Reconvene Open Session

The Board didn't reconvene into open session since they remained in closed session until 8:00 p.m.

6. Review and Approval of August 24 & 25, 2016, October 25, 2016, November 16 & 17, 2016, November 28, 2016 and February 8, 2017 Meeting Minutes – Brooke Arneson

- **August 24 & 25, 2016**

Ms. Alviso requested page 13, the first line of the paragraph starting with line 136 be corrected to read, "Dr. Drummer commented that the Board has heard during testimony in previous hearings, from probationers, that the employer of an employee on probation has received notice that the employer can no longer be an approved provider by the insurance company while the employee was on probation."

MOTION: To approve the minutes as amended.

M/S: Rabena-Amen/Watkins

VOTE: 6-0 Motion carried

- **October 25, 2016**

Ms. Alviso expressed concern with page 20, line 73 in that the depiction of the discussion regarding the issues surrounding retired license status wasn't complete. Discussion pursued and the motion on page 21, lines 77-78, was corrected to instead read "To reject the Sunset Review Committee's recommendation to revise the Board's retired license statute, BPC 2648.7, but include the retired license issue in the Sunset Review Report and explore other options."

MOTION: To approve the minutes as amended.

M/S: Alviso/Drummer

VOTE: 6-0 Motion carried

- **November 16 & 17, 2016**

Ms. McMillian pointed out that her name was misspelled on page 27, lines 159 and 171. Ms. Alviso questioned why there was nothing recorded under agenda item #15. Mr. Kaiser responded there was no outcome; therefore, there was

nothing to record. Ms. Alviso suggested including that the report was reviewed and there was no outcome. Ms. Rabena-Amen requested the vote count be recorded on page 28, line 176.

MOTION: To approve the minutes as amended.

M/S: Watkins/Dominguez

VOTE: 6-0 Motion carried

- **November 28, 2016**

Ms. Welch requested a comma be inserted as follows “November 16-17, 2016” on page 30, line 69.

MOTION: To approve the minutes as amended.

M/S: Alviso/Watkins

VOTE: 6-0 Motion carried

- **February 8, 2017**

Ms. Rabena-Amen commented there was only one presenter, noted on page 33, line 75 while there was an additional presenter, Gloria Castro, Deputy Attorney General. Mr. Kaiser replied, that she will be added to the minutes for her contribution to the presentation.

MOTION: To approve the minutes as amended.

M/S: Watkins/Dominguez

VOTE: 6-0 Motion carried

7. President’s Report – Alicia Rabena-Amen

(A) 2017 Adopted Meeting Calendar

Dr. Dominguez advised the August 23rd date would be a challenge due to his students’ schedule. Mr. Kaiser proposed moving the meeting to August 16 and 17, 2017. All other members indicated the new dates would work with their schedule. Later Mr. Kaiser advised DCA’s HQ1 hearing room was available and Sacramento State University has offered to host the Board as well, so either option may be viable for the

August meeting. Dr. Drummer requested the CPTA Annual Conference on September 16 and 17, 2017 in San Diego be added to the 2017 calendar.

Before adjournment Mr. Kaiser reported Sacramento State University would be able to host the meeting on August 16 and 17, 2017.

MOTION: Adopt the 2017 meeting calendar as amended.

M/S: Dominguez/Watkins

VOTE: 6-0

(B) 2018 Proposed Meeting Calendar

Dr. Dominguez expressed concern with the August meeting dates for 2018 and Dr. Drummer requested the APTA conference be added to the calendar. Ms. Rabena-Amen questioned the exam dates and Mr. Kaiser advised they hadn't yet received the 2018 dates. All things considered the calendar will be revisited at the next meeting.

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

The Board discussed the denial of the Board's request for an increase in the Board's Executive Officer from Level O to Level L. Ms. Rabena-Amen questioned if there was an explanation received of why it was denied and Mr. Kaiser replied, there was not.

MOTION: To charge Mr. Kaiser with investigating, as much to the degree that he can, the reason for the denial and what needs to be achieved in order to be successful with the Board's directive to employ an Executive Officer not just for management of the Board but at the true level of which is accomplished.

M/S: Drummer/Dominguez

VOTE: 6-0 Motion carried.

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

Mr. Kaiser highlighted a few events such as the attendance by Sarah Conley, Application Services Manager and himself at the CPTA Student Conclave in Fresno. While there they received requests to present by Mt. St. Mary's College, Loma Linda University and the University of St. Augustine. He also announced the release of the new Study Guide. Dr. Drummer requested a description of the document be contained within the document. Mr. Kaiser replied it will be called the Reference Guide in the future and will indicate it contains all laws and regulations governing the practice of physical therapy. He also mentioned Veterinary Medical Board (VMB) adopted the

recommendation of the Animal Rehabilitation Task Force; however, Ms. DeFoe indicated the VMB did not approve of the direct and immediate supervision of the physical therapist by the veterinarian without a premises permit for physical therapy on site. Lastly, Mr. Kaiser addressed outreach efforts and members had suggestions for enhancements.

**10. Discussion and Possible Board Action Regarding Sunset Review Report
Pursuant to Business and Professions Code Section 2602 – *Jason Kaiser***

(A) 30-Day Response to Committee Recommendations

The members reviewed the Board's prepared response to the Committee's recommendations. Mr. Kaiser and the Board agreed the favorable outcome of the hearing was not only a reflection of the well prepared report but the Board's work in its entirety and its respect for the process.

11. Board Member Training – *Jason Kaiser*

(A) Council on Licensure, Enforcement and Regulation (CLEAR) - Roles and Responsibilities of a Board Member

The Board found the training to be valuable and applicable to their roles and responsibilities. They encouraged further training at future meetings.

12. Recess

The Board recessed at 8:00 p.m.

Thursday, May 25th

13. Call to Order - 9:00 a.m.

14. Roll Call and Establishment

The Board reconvened at 9:01 a.m. All members were present except Katarina Eleby and a quorum was established. Also present at the meeting were Tara Welch, Legal Counsel; Jason Kaiser, Executive Officer; Sarah Conley and Elsa Ybarra, Managers; Brooke Arneson, Carl Nelson and Monny Martin, Board staff.

15. Closed Session

**(A) Pursuant to Government Code section 11126(a)(1),
Evaluation of Executive Officer**

16. Reconvene Open Session

17. Consumer and Professional Associations and Intergovernmental Relations Reports

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

There was no representative from the FSBPT present; however, Mr. Kaiser reported he recently had a conversation with FSBPT regarding Alternate Pathway which establishes eligibility by the exam vendor and affords the applicant to take and pass the examination before applying for licensure. It appeared that because the Board cannot adhere to the eligibility requirements, (six time lifetime ban; two low score limit; Coursework Tool 6; and, TOEFL - which the Board will shortly have the authority to comply) the Board will not be able to offer Alternate Pathway as a product at this time. Mr. Kaiser further advised he didn't foresee any negotiations regarding this issue in the near future. The Board questioned whether that meant the Board would maintain its current process of determining applicant eligibility prior to exam registration.

Ms. Rabena-Amen encouraged members and staff to share information and experiences gained from attending meetings of the FSBPT. Mr. Kaiser shared he serves on the Continuing Competency Committee and their current focus. He solicited feedback from members on the FSBPT's Board member training and how it compared to DCA's training. Mr. Kaiser further reported on the Licensure Compact and their setting standards of best practices. He added that much of their standards the Board has already implemented.

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

Dean R. Grafilo introduced himself as the newly appointed Director of the Department of Consumer Affairs. He advised his prior experiences had been as the Commissioner of the Athletic Commission, Lobbyist for the California Medical Association and Chief of Staff for the California State Assembly. The Board welcomed Mr. Grafilo and Mr. Kaiser invited him to attend the upcoming staff meeting to introduce himself.

(C) California Physical Therapy Association (CPTA)

Tameka Island, Executive Associate Professional Affairs indicated there was nothing new of particular interest to report but she wanted to extend the invitation for participation in the Annual Conference scheduled for September 16 and 17, 2017 in San Diego. Mr. Kaiser responded the PTBC would be present.

18. Legislation Report – Brooke Arneson

Ms. DeFoe spoke to AB 387 and expressed concern with the proposal of payment of minimum wage for interns. The bill would significantly impact internship opportunities in one of two ways either 1) there would no longer be clinical internship sites to place

students or 2) the programs would increase their tuition to cover the costs. Ms. DeFoe asked the Board take a position on the bill since she considered it an impact to consumers. She further reported it's currently sitting in suspense but she's not sure where it will end up. Mr. Kaiser suggested waiting to see where the bill ends up before taking a position.

Ms. Arneson reported on the status of the legislative bills included in the agenda.

Dr. Drummer questioned the status of AB 1510. He thought it was withdrawn from committee because it wasn't going to pass and could potentially come back as a two year bill. Mr. Kaiser replied it was a possibility.

Dr. Alviso questioned if it was appropriate to take a position on AB 1706, and, if so, should the Board schedule a separate meeting.

(A) 2017/18 Legislative Session Summary

- i. AB 12 (Cooley) State Government: Administrative Regulations: Review
- ii. AB 77 (Fong) Regulations: Effective Dates and Legislative Review
- iii. AB 149 (Jones-Sawyer) Criminal Procedure: Disclosure: Felony Conviction Consequences
- iv. AB 208 (Eggman) Deferred Entry of Judgment: Pretrial Diversion
- v. AB 349 (McCarty, Gonzalez Fletcher, Nazarian) Civil Service: Preference: Special Immigrant Visa Holder
- vi. AB 387 (Thurmond) Minimum Wage: Health Professionals: Interns
- vii. AB 505 (Caballero) Physicians and Surgeons: Probation
- viii. AB 508 (Santiago) Health Care Practitioners: Student Loans
- ix. AB 706 (Patterson) Medical Board of California: Licenses
- x. AB 767 (Quirk-Silva) Master Business License Act
- xi. AB 1005 (Calderon) Professions and Vocations: Fines: Relief
- xii. AB 1278 (Low) Contractor Licensing: Judgment Debtor Prohibition: Final Judgment: Definition
- xiii. AB 1510 (Dababneh) Athletic Trainers
- xiv. AB 1706 (Committee on Business and Professions) Healing Arts: Chiropractic Practice: Occupational Therapy: Physical Therapy
- xv. SB 27 (Morrell) Professions and Vocations: Licenses: Military Service
- xvi. SB 572 (Stone) Healing Arts Licensees: Violations: Grace Period

19. Rulemaking Report – Brooke Arneson

(A) 2017 Rulemaking Update

Ms. Arneson reported on the status of the proposed regulations in progress. She announced the regulatory proposal on *Requirements for Graduates from Non-Accredited Programs: Test of English as a Foreign Language (TOEFL)* was approved by the Office of Administrative Law and filed with the Secretary of State on

May 8, 2017. The regulation will become effective on July 1, 2017. Additionally, she reported that section 100 changes, changes without impact, had been filed with OAL earlier this month.

(B) Discussion of Issues and Possible Board Action Regarding Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant; Clinical Service Requirements for Foreign Educated Applicants; and Criteria for Approval of Physical Therapy Facilities to Supervise the Clinical Service of Foreign Educated Applicants; Proposal to Add Section 1398.26.6 and Amend Sections 1398.26.1, and 1398.26.5, of Article 2, and Section 1398.38 of Article 3 of Division 13.2, Title 16 of the California Code of Regulations

Ms. Arneson advised there were a couple of typos and the language which was included in the agenda book inadvertently omitted the introductory paragraph; therefore, she presented the modified language as a hand out.

Dr. Alviso indicates it's not clear "who" chooses whether to use Coursework Tool (CWT) 6, the credential evaluation service or the applicant?

Ms. Welch advises the word "educational" should be "educated" in subsection (a) line two, reading ...the credential evaluation services will evaluate foreign educated ~~educational~~ credentials....

Ms. Rabena-Amen questioned the advantage to the option B. Mr. Kaiser advised that if an applicant becomes licensed in another state and that state requires CWT 6, the Board wouldn't want to deny the applicant for not being evaluated on one of the retro tools.

Ms. Welch concurs with Dr. Alviso's observation the language as written affords the credential evaluation service to make the determination of whether to use CWT 6. It was suggested that removing the word "either" from line three may address the concern of the credential evaluation service making the determination. FSBPT's credential evaluation service, FCCPT, could opt to no longer evaluate credentials based on the retro tools and in that case the applicant can choose from three other credential evaluation services.

Dr. Kaiser recommends striking the word "either" and the word "or" and the language following to the end of the sentence. Ms. Conley commented she found the language confusing since CWT 5 doesn't have an end date and CWT 6 doesn't have a beginning date. Mr. Kaiser then suggested adding language to the beginning of each CWT clarifying which period of time each CWT applies too. Ms. Welch advised the Board the changes were becoming substantive and recommended the Board afford staff time to work with language and bring it back for Board review at a later date. Additionally, there were two areas of clarification required of FSBPT: 1) whether or not there would be an end date to CWT 5; and, 2) the exact revision date

of CWT 6. Dr. Alviso suggested when staff amends proposed language the issue of CWT 6 being a higher standard in general.

(C) Discussion of Issues and Possible Board Action Regarding Uniform Licensing Examinations and California Law Examination Minimum Passing Scores; Proposal to Amend Section 1398.28 of Article 2, Division 13.2, Title 16 of the California Code of Regulations

Ms. Rabena-Amen suggested the Board consider the use of the Performance Evaluation Tool (PET) developed by the FSBPT specifically for an foreign educated physical therapist. The Board will table the regulatory package on sections 1398.26.5, 1398.26.6 and 1398.27 until the FSBPT can address the Board on the PET.

Ms. Arneson presented the Board with the proposed amendments to 1398.28 regarding setting the pass point for the National Physical Therapy Examinations. Mr. Kaiser introduced Heidi Lincer from DCA's Office of Professional Examination Services (OPES). She recommended not including the California Law Examination (CLE) in the language since the Board would then be required to work with the FSBPT to set the pass point on the CLE when historically the Board has worked with OPES.

Ms. Welch questioned the why BPC section 2638 is included in the reference section. It is in her opinion that it doesn't apply and shouldn't be included. The Board accepted her recommendation and will strike it from the reference.

MOTION: I move that we approve the proposed text for noticing a 45-day comment period, and direct staff to take all steps necessary to initiate the formal rulemaking process. If no adverse comments are received during the 45-day comment period and no hearing is requested, delegate to the Executive Officer the authority to adopt the proposed regulatory changes as modified and make any technical or non-substantive changes that may be required in completing the rulemaking file.

M/S: Alviso/Rabena-Amen

VOTE: 6-0

20. Administrative Services Report

(A) Budget – *Carl Nelson*

Mr. Nelson directed the Board to the revenue and expenditure reports included in the agenda materials and added the Board could potentially revert 9% of its budget back

into its Fund. He further added a normal reversion would be 2 or 3%. This reversion is largely due to a decrease in expenditures and an increase in fees.

21. Application Report – Sarah Conley

Ms. Conley pointed out the data is year to date through quarter three which does not include April. She also reported that some data is from the old legacy system and some from the conversion to BreEZe; however this will no longer happen after July 1st and the data reported in November will be exclusively from BreEZe. She further reported there was a 30% increase in productivity but there also was a 30% decrease in personnel impacting staff's ability to meet established timelines.

22. Licensing Services Report – Sarah Conley

Ms. Conley reported returned mail and duplicate license requests as a challenging issue.

(A) Continuing Competency Report

Ms. Conley reported on the data included in her report.

(B) Discussion and Possible Board Action on Removal of Continuing Competency Approval Agency Recognition

Ms. Conley explained the reasons for withdrawing recognition of the following approval agencies.

i. ABC Pilates

MOTION: To approve ABC Pilates' request for the Board to withdraw recognition.

M/S: Dominguez/Alviso

VOTE: 6-0 Motion carried

ii. Advanced Training Specialists

MOTION: To approve Advanced Training Specialists' request for the Board to withdraw recognition.

M/S: Watkins/McMillian

VOTE: 6-0 Motion carried

iii. Color Seven Education LLC

MOTION: To approve Color Seven Education LLC's request for the Board to withdraw recognition.

M/S: Alviso/Watkins

VOTE: 6-0 Motion carried

iv. Global Augmentative Communication Innovators

MOTION: To approve Global Augmentative Communication Innovators' request for the Board to withdraw recognition.

M/S: McMillian/Watkins

VOTE: 6-0

23. Consumer Protection Services Report – Elsa Ybarra

Ms. Phelps presented the report on behalf of Ms. Ybarra and pointed out that the attachment A-1 was not available which is why it's not included. The fourth section of attachment A-2 "Investigations Aging" are incorrect.

24. Probation Monitoring Report – Monny Martin

Mr. Martin presented his report which included those who were determined to be clinically inappropriate for the rehabilitation program. Mr. Watkins questioned how it was determined. Mr. Martin explained the clinical diagnostic evaluation process. Mr. Kaiser suggested a presentation in August by Maximus, the Board's contracted rehabilitation program. In response to an inquiry posed by Dr. Dominguez, Mr. Martin responded eleven of the eighteen probationers who are tolling indicated they've left the profession. Dr. Drummer suggested probationers be advised that pro bono work could be considered as serving probation time.

25. 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).]

There was no public comment.

26. Agenda Items for Future Meeting –

August 23 & 24, 2017
Department of Consumer Affairs
Hearing Room
2005 Evergreen Street
Sacramento, CA 95815

Ms. Rabena-Amen requested including taking positions on legislative bills as an action item on future agendas. The Board considered the possibility of a teleconference before the August meeting if necessary to take a position on proposed legislative bills.

27. Adjournment

The meeting adjourned at 4:34 p.m.