

**THE BOARD OF PHYSICAL THERAPY**  
Professional & Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

**MINUTES OF MEETING**

Date: Tuesday, March 10, 2020

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, First Floor  
Honolulu, Hawaii 96813

Present: Neil Shimabukuro, Physical Therapist ("PT"), Chair  
Cynthia Tamayo, PT, Vice Chair  
Russell Chung, Public Member  
Michael Turner, PT  
Jill Wakabayashi, Physical Therapist Assistant ("PTA")  
Alan Taniguchi, Executive Officer ("EO")  
Valerie Kato, Deputy Attorney General ("DAG")  
Jennifer Fong, Secretary

Excused: Debra Kubota, PT

Guests: Esther Brown, Regulated Industries Complaints Office ("RICO")

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by section 92-7(b), Hawaii Revised Statutes ("HRS").

1. Call to Order: There being a quorum present, Chair Shimabukuro called the meeting to order at 9:00 a.m.

At this time, Chair Shimabukuro announced he was taking the agenda out of order to discuss the following agenda item:

- 7. New Business, a. Discussion with Esther Brown of the Regulated Industries Complaints Office ("RICO") regarding RICO Procedures.

7. New Business: a. Discussion with Esther Brown of the Regulated Industries Complaints Office ("RICO") regarding RICO Procedures.

Ms. Brown gave a brief overview of RICO's processes and procedures. She reported that RICO has three divisions: 1) the Consumer Resource Center which

handles inquiries and complaints; 2) Field Investigations which investigates complaints as well as conducts unlicensed enforcement visiting establishments to make sure they are operating properly; and 3) Legal which reviews complaints and evidence and determines whether to proceed with a case.

At 9:05 a.m., Vice Chair Tamayo arrived.

Ms. Brown noted that RICO has 57 staff members in their Oahu office and multiple offices on the Neighbor Islands. RICO's biggest challenge is the volume of complaints they receive. RICO gets nearly 3,000 new complaints every year on top of cases from previous years that are still being reviewed. RICO prioritizes cases depending on multiple variables, including public harm. She noted that as a profession, physical therapy is pretty good. There have been approximately eight final orders in the last decade. Some were for non-compliance with the continuing competence requirement and others for things like insurance fraud.

Chair Shimabuku asked how the RICO Advisory Committee is involved in the process.

Ms. Brown stated that the Advisory Committee is involved on the Investigations level. Whenever staff need assistance or have questions relating to the profession, such as whether a technique is an acceptable modality, they consult with a member of the Advisory Committee. Basically, they are considered expert consultants. RICO protects the identity of the Advisory Committee members unless they are needed to testify at a hearing.

Chair Shimabuku asked if the Advisory Committee meets together.

Ms. Brown said no. RICO maintains a list of the Advisory Committee members. Generally, the investigator calls one member to consult on a case. The members don't talk to each other. She noted that on occasion, there is an informal process where someone can be appointed a temporary member of the Advisory Committee. This is only in cases where they cannot use members of the Advisory Committee due to situations where there is conflict of interest or they are unavailable.

Ms. Wakabayashi asked how the legal section determines sanctions.

Ms. Brown stated in general, RICO relies on past precedent. They look at similar cases and base fines on that. They also take into consideration mitigating factors. She noted that RICO attorneys regularly have round table discussions to get input and assistance on their cases.

Mr. Chung asked if there is a threshold fine amount before it comes to the Board.

Ms. Brown said no, stating if RICO takes action, it always comes to the Board. She noted that in many situations, the complaint is closed for various reasons such as withdrawal, insufficient evidence, etc. They may also issue warning letters.

Chair Shimabukuro asked if RICO compiles data regarding the types of complaints they receive so the Board can see what issues may need to be addressed.

Ms. Brown said not at this time. She stated that RICO recently upgraded their computer system and are still learning its capabilities.

Mr. Turner said he thinks all licensees hear through the grapevine of things happening in their profession that shouldn't be done, usually from patients that previously went to another PT facility. While it is tempting to file anonymous reports, they must take into consideration that it is a small community and they do not want to cause animosity.

Ms. Brown noted that it is hard to follow through on complaints if the witnesses don't comply.

Chair Shimabukuro said part of the problem is that the legal staff may not recognize consumer harm. That's why knowing about the types of complaints received would give the Board an understanding of issues affecting the industry.

Ms. Brown asked if the Board had a way to contact their licensees.

Mr. Turner noted the Board has a website and a courtesy reminder is sent to all licensees prior to the renewal period. There is a Hawaii chapter of the American Physical Therapy Association, but not everyone is a member.

Ms. Wakabayashi said she once tried to submit a complaint anonymously and she was told that RICO needed contact information, or they would not be able to conduct an investigation.

Ms. Brown noted that generally, there is very little information provided in anonymous complaints. Ideally, the person would know what took place, where it took place, who performed the service, etc. The more detail the complainant can provide, the better. It is difficult if the anonymous complainant is not willing to leave contact information as the investigator cannot contact them to get more information or ask questions.

Mr. Turner noted that in some situations, in order for RICO to get information, it would mean a Health Insurance Portability and Accountability Act ("HIPAA") violation.

Chair Shimabukuro asked if there were additional comments or questions for Ms. Brown.

There were none.

Chair Shimabukuro thanked Ms. Brown for coming and speaking to the Board.

Ms. Brown thanked the Board for the opportunity to talk with them and invited the Board to visit RICO's offices in the State Office Tower to meet their staff and see how they operate.

The Board returned to its regular order of business.

2. Additional  
Distribution:

None.

3. Approval of  
Board Minutes  
of the January  
14, 2020 Meeting:

Chair Shimabukuro asked if there were any comments or concerns regarding the Board meeting minutes of January 14, 2020.

There being none, upon a motion by Ms. Wakabayashi, seconded by Mr. Turner, it was voted on and unanimously carried to approve the Minutes of the January 14, 2020 Board meeting as circulated.

Chair Shimabukuro asked if there were any comments or concerns regarding the Executive Session Minutes of January 14, 2020.

There being none, upon a motion by Ms. Wakabayashi, seconded by Mr. Turner, it was voted on and unanimously carried to approve the January 14, 2020 Executive Session Minutes as circulated.

4. Executive  
Officer's  
Report:

a. Proposed rescheduling of July Board Meeting

EO Taniguchi noted that the July Board meeting is currently scheduled for July 14<sup>th</sup>, which is the same week as the upcoming Leadership Issues Forum. He would like to request that the meeting be rescheduled to a mutually agreeable date. He suggested either July 7<sup>th</sup> or July 21<sup>st</sup>. He reminded the Board that as Ms. Kubota's term ends in April and Chair Shimabukuro's term ends in June, there will only be four members on the Board, therefore, they will all have to attend in order to have quorum to hold a meeting.

After some discussion, it was the consensus of the Board to change the date of the July Board meeting to July 21, 2020.

5. Legislative  
Matters:

a. S.B. 2225, S.D. 1/H.B. 1807 – RELATING TO THE PHYSICAL THERAPY  
ACT

*Clarifies the scope of practice for licensed physical therapists to include the practice of dry needling. Expands other competence related activities to include certain dry needling specific knowledge.*

EO Taniguchi reported that unfortunately, this bill has died.

Chair Shimabukuro noted that the bill was heard by the Senate Committee on Commerce, Consumer Protection and Health (“CPH”) and was referred to the Committee on Judiciary (“JUD”) but was not heard.

EO Taniguchi said he heard that after the CPH hearing, the acupuncturists went to the JUD Chairperson’s office to lobby that the bill not be heard.

Chair Shimabukuro reminded the Board that there is a lot of opposition and disagreement on this issue between the physical therapists and the acupuncturists.

Mr. Turner commented that compared to other states, Hawaii has a strong acupuncture community.

Chair Shimabukuro said he has heard that language is being introduced to change the Board of Acupuncture’s practice act to take ownership of the term “dry needling”.

Mr. Turner said he believes doing so will be difficult as the term is used nationally as well as by multiple professions.

Chair Shimabukuro thinks this is a long-term fight. He said he would be open to setting up a meeting between the two boards.

Mr. Turner said he thinks even if it the boards come to a consensus, the practitioners would still be entitled to their opinions.

Chair Shimabukuro suggested the invitation could include representatives from the professional organizations as well.

Mr. Turner said he thinks the professional organizations should meet and have their own discussion.

Chair Shimabukuro noted that HAPTA has tried.

DAG Kato noted that if a joint meeting was held, it would have to be a publically

noticed meeting.

EO Taniguchi questioned whether there is middle ground for the professions to discuss.

Mr. Turner said he doesn't think so.

EO Taniguchi stated if there is no middle ground, a joint meeting would be a waste of time unless there is willingness to compromise.

Vice Chair Tamayo said it appears that for the acupuncturists, it is not an issue of having the right education or credentials to perform dry needling. It is simply that they just don't want physical therapists to be able to do it.

EO Taniguchi recommended that the profession just keep pushing the issue, making sure that it is heard every legislative session. He would like the Board to review the language in S.B. 2225, S.D. 1 and decide whether they support it. If so, if the bill is submitted for the 2021 Legislative Session, they will already have a position.

Mr. Chung asked if dry needling has always been a part of physical therapy.

Mr. Turner stating only within the last five to ten years.

Chair Shimabukuro noted that in acupuncture, the use of needles is approximately 80% of their practice. For physical therapy, where there is a multitude of techniques and modalities that they can employ, it is much less.

Mr. Turner said he was told by Herb Yee when initial licensure for physical therapists was being discussed, in order to get the support of acupuncturists, the language about not breaking or puncturing skin was included in the statute.

EO Taniguchi suggested that the Board consider approving the additional language in S.B. 2225, S.D. 1 for separate certification of qualified licensed PTs to perform dry needling.

Upon a motion by Mr. Turner, seconded by Ms. Wakabayashi, it was voted on and unanimously carried to support the language in S.B. 2225, S.D. 1 regarding separate certification of qualified licensed physical therapists to perform dry needling.

6. Old Business: a. Additional Discussion regarding Presentation by CE Broker

EO Taniguchi reported at the last meeting, he asked DAG Christopher Leong

("DAG Leong") whether the Board would be required to go through the procurement process. Initially, he said yes, however, when he was informed that licensee participation would be voluntary, he said he needed to do more research. He asked DAG Kato if DAG Leong had provided her with an update.

DAG Kato said no.

Mr. Turner said he was contacted by a continuing education ("CE") provider who heard that Hawaii was considering using CE Broker. He asked how CE Broker makes money if their services are offered to the consumer for free. The CE provider said that CE Broker charges the CE providers to certify their courses. The fees appear to be per course per state. He was told that one CE provider which offers webinars had to pay approximately \$14,000.00 for all of their courses just for Florida licensees.

Vice Chair Tamayo said she uses Gawenda which offers both live and webinar courses. She questioned how CE Broker would charge the CE provider for a webinar as the licensee could be taking the course from literally anywhere. They can't control who is watching and from where.

EO Taniguchi stated that his understanding is that CE Broker will take the list of Board approved courses and use that on their website to note which courses have been approved for Hawaii licensees.

Mr. Turner expressed concern that using CE Broker would discourage CE providers from coming to Hawaii and offering courses. He said he would like CE Broker to provide more information on what CE Providers need to do to get approval.

Ms. Wakabayashi noted that ProCert also charged to evaluate CE courses and activities to determine whether the ProCert certification would be awarded.

Mr. Turner said he would also like to know what CE Broker's fee structure is for CE providers.

EO Taniguchi said, regardless, Hawaii licensed PTs can only use courses that have been approved by the Board. He noted that some Boards also charge CE providers to review CE courses. Hawaii currently does not charge for review. Vice Chair Tamayo asked where the money would go.

EO Taniguchi said the money would go to a special fund which is used to run the division.

Ms. Wakabayashi pointed out the CE Broker would also make money if a

licensee chooses to upgrade from the free service.

DAG Kato said based on the discussion, it sounds like the Board will need to go through the procurement process. She said she would pass on her recommendation to DAG Leong.

Ms. Wakabayashi asked how the continuing competence (“CC”) audit would work if the Board chooses to proceed with CE Broker.

EO Taniguchi said he believes the audited licensees would need to mail in a hard copy of their CC documentation as proof of compliance.

It was the consensus of the Board to defer discussion on this item, pending submission of additional information by DAG Leong and CE Broker. The Board directed EO Taniguchi to ask CE Broker for information on how CE providers get their courses posted on their website, including the fees to do so.

7. New Business:                      b. Federation of State Boards of Physical Therapy (“FSBPT”) Delegate Assembly & Annual Meeting, October 22 – 24, 2020, Orange County, California

EO Taniguchi noted that the voting delegate will also need to attend the Leadership Issues Forum in July.

Ms. Wakabayashi noted that she will already be attending the 2020 Annual Meeting as a member of the FSBPT’s education committee, however, she can still go as the Board’s delegate.

After some discussion, upon a motion by Mr. Turner, seconded by Chair Shimabukuro, it was voted on and unanimously carried to elect Ms. Wakabayashi as the voting delegate, Vice Chair Tamayo as the alternate delegate, and EO Taniguchi as the funded administrator to the FSBPT 2020 Delegate Assembly & Annual Meeting.

c. FSBPT 2020 Leadership Issues Forum, July 18-19, 2020, Alexandria, Virginia

After some discussion, upon a motion by Chair Shimabukuro, seconded by Vice Chair Tamayo, it was voted on and unanimously carried to elect Ms. Wakabayashi and EO Taniguchi to represent the Board at the 2020 Leadership Issues Forum.

8. Continuing Competence (“CC”) Course Approval Requests:                      a. CC Course Requests for Review

After some discussion, upon a motion by Ms. Wakabayashi, seconded by Chair Shimabukuro, it was voted on and unanimously carried to approve the

following course for Ethics, Laws, and Rules (Jurisprudence) CCUs:

INDEX #	PROGRAM TITLE (SPONSOR)	UNITS
20-013	Hawaii Ethics, Laws, and Rules for Physical Therapy (Sponsor: Summit Professional Education)	2.0

After some discussion, upon a motion by Ms. Wakabayashi, seconded by Mr. Turner, it was voted on and unanimously carried to approve the following courses for Professional Practice of Physical Therapy CCUs:

INDEX #	PROGRAM TITLE (SPONSOR)	UNITS
20-014	Certification Course for Lymphedema Management of the Upper and Lower Extremities (Sponsor: Comprehensive Lymphedema Management for American Healthcare)	34.0
20-015	Refresher, Update and Advanced Course for Lymphedema (Sponsor: Comprehensive Lymphedema Management for American Healthcare)	14.0
20-016	The Runners Rehab Fix (Sponsor: Providence Oregon Rehab Seminars)	14.0
20-017	Stroke Rehabilitation Intensive Training Course: Best Practices for Rapid Functional Gains and Improved Outcomes (SEM#77005) (Sponsor: PESI, Inc.)	12.5
20-018	The Aging Brain: Alzheimer's Disease & Other Dementias: 2-Day Comprehensive Training Course (SEM#: 78877) (Sponsor: PESI, Inc.)	12.5

9. Applications:

a. Ratifications

Upon a motion by Mr. Turner, seconded by Vice Chair Tamayo, it was voted on and unanimously carried to ratify the following:

PHYSICAL THERAPIST

- |                            |                           |
|----------------------------|---------------------------|
| PT 4939 HOLLY S WEIMER     | PT 4966 LIANA K KAM       |
| PT 4940 DANIEL L HARRELL   | PT 4967 KENSHIN R SCOGGIN |
| PT 4941 MARLEY A MCGRAW    | PT 4968 TERI N TAKEHIRO   |
| PT 4942 ERIN A OELKLAUS    | PT 4969 YAN ZHENG         |
| PT 4943 JOSHUA P OSTRANDER | PT 4970 ISAAC ARAGON      |

PT 4944	SEAN D RUTHERFORD	PT 4971	STEPHANIE M GARNER
PT 4945	JOHN G HARDY	PT 4972	MICHAEL A MCNEIL
PT 4946	JULIE L HAUBERG	PT 4973	ERIN C HOLT
PT 4947	CAMERON T KUROZAWA-CHOW	PT 4974	LILY WU COOK
PT 4948	PHILLIP R CANNON JR	PT 4975	LAUREN W BLACK
PT 4949	DARRIN M SHIMADA	PT 4976	LEANN C JONES
PT 4950	MEENAKSHI PRABHAKAR	PT 4977	THOMAS C WALD
PT 4951	KYLE A HILLARD	PT 4978	AUREEN ARELLANO
PT 4952	JOSEPH D HOFFMAN	PT 4979	SYLVIA TAM
PT 4953	THOMAS J APRUZZESE	PT 4980	CHARLES M PLISHKA
PT 4954	BRIAN R MELROSE	PT 4981	ERIN J ARAGON
PT 4955	ANDREW H WAGNER	PT 4982	RILEY R THEISS
PT 4956	MARTI E BRADBURY	PT 4983	KIRSTEN M S KRULL
PT 4957	JAMES T GERMAN	PT 4984	SUSAN E MUSICANT
PT 4958	CHRISTOPHER J COOK	PT 4985	SOLIVEN P LANSANGAN
PT 4959	ALFREDO K FRANCISCO	PT 4986	JUSTIN H LEE
PT 4960	CHARMAINE J M SANTIAGO	PT 4987	SHEYENNE L TURK
PT 4961	KIRA ANNE L M LAM	PT 4988	NICOLE J HERNANDEZ
PT 4962	JESSICA A PANKEY	PT 4989	KRISTEN M WARD
PT 4963	MACKENZIE E MCELHANEY	PT 4990	CARLY K NEAL
PT 4964	KURT T NEUBAUER	PT 4991	LAURA B SELIG
PT 4965	NATHAN DEMOS		

#### PHYSICAL THERAPIST ASSISTANT

PTA 514	WILLIAM S CAREY	PTA 523	SHENNA ROSE U MARTIN
PTA 515	GRETCHEN H KANSIER	PTA 524	DANE M TORII
PTA 516	DAWN KERSHNER	PTA 525	DANIEL F GOLDIN
PTA 517	CORINNE N CONRAD	PTA 526	SHELBY R HOOPER
PTA 518	SEJOON NAKAMA	PTA 527	GARRIT ZWAKENBERG III
PTA 519	LANDON WAI MING LUNA	PTA 528	JULIE M CONTOS
PTA 520	MELANIE R JOHN	PTA 529	CHRISTOPHER J CASADEI
PTA 521	BRITTANY A AVERY	PTA 530	MICHELLE A SMOCK
PTA 522	PORSCHIE L MOORE	PTA 531	JOHN S KOWALCZK

#### b. Applications

##### 1) Matthew Bell

#### Executive Session:

At 10:18 a.m., upon a motion by Ms. Wakabayashi, seconded by Mr. Turner, it was voted on and and unanimously carried to move into Executive Session in accordance with HRS, § 92-5(a)(1) and (4), "To consider and evaluate personal

information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;” and “To consult with the board’s attorney on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities.”

Guests were excused from the meeting room.

At 10:25 a.m., upon a motion by Mr. Turner, seconded by Mr. Chung, it was voted on and unanimously carried to move out of Executive Session.

Ms. Wakabayashi asked what the Board’s options are.

EO Taniguchi said they can approve, defer or deny Mr. Bell’s application.

Vice Chair Tamayo asked if there is a restrictive license.

EO Taniguchi stated that there is a conditional license, however, if the Board decides to proceed with this option, they would need to decide what the conditions are.

DAG Kato stated that if the Board wants to continue discussing this application further, they would need to go into Executive Session.

Executive  
Session:

At 10:28 a.m., upon a motion by Chair Shimabukuro, seconded by Mr. Turner, it was voted on and unanimously carried to move into Executive Session in accordance with HRS, § 92-5(a)(1) and (4), “To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;” and “To consult with the board’s attorney on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities.”

Guests were excused from the meeting room.

At 10:40 a.m., upon a motion by Ms. Wakabayashi, seconded by Mr. Turner, it was voted on and unanimously carried to move out of Executive Session.

Upon a motion by Ms. Wakabayashi, seconded by Chair Shimabukuro, it was voted on and unanimously carried that upon agreement from Mr. Bell, a conditional license will be issued to Mr. Bell with the conditions listed below:

1. He shall submit an FBI national criminal history background check (“criminal abstract”) to the Board’s mailing address by 12/1/2020. In

order to obtain this criminal abstract, he shall be fingerprinted electronically at Fieldprint, Inc. at his own cost and expense.

2. If the criminal abstract does not indicate any new arrests or convictions, then he will be free to renew the conditional license by submitting an original completed renewal application including all required supporting documents and fees. If renewed, the license will be valid from 1/1/2021 – 12/31/2022.
3. He shall submit a criminal abstract every six months during the renewal license biennial period. These criminal abstracts shall be due on July 1st and December 1st for 2021 and 2022 and shall cover the periods of January to July and June to December respectively; and
4. He shall refrain from any actions that may result in his arrest or conviction for any crimes or any other act that is directly related to the physical therapy profession.
  - a. He shall report any such arrests or convictions to the Board within thirty (30) calendar days of the arrests or convictions; and
  - b. If he fails to timely notify the Board of such arrests or convictions, the conditional license shall be automatically revoked without a hearing on the 30th day after the date of the arrests or convictions.
5. If Mr. Bell agrees and complies with the above-referenced conditions, the conditional license shall remain on a conditional status until the 2023-24 renewal.

10. Public Forum: None.

11. Next Meeting: Tuesday, May 12, 2020  
9:00 a.m.  
Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, First Floor  
Honolulu, Hawaii 96813

11. Adjournment: With no further business to discuss, Chair Shimabukuro adjourned the meeting at 10:43 a.m.

Taken by:

/s/ Jennifer Fong

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Jennifer Fong  
Secretary

Reviewed by:

/s/ Alan Taniguchi

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Alan Taniguchi  
Executive Officer

3/30/2020

Minutes approved as is.

Minutes approved with changes; see minutes of \_\_\_\_\_.