

**Physical Therapist Licensing Board
Board Meeting
April 4, 2008**

MINUTES

Friday, April 4, 2008

Board Members Present: Joana Freedman, PT, Chair; Steve Alstot, PT, Vice Chair; Daiva Banaitis, PT, PhD, PT Member; Jason Fiske, PT Member; Burke Selbst, PT Member; Nancy Wilson, PTA Member

Board Members Absent: Cindy Cunningham, Public Member

Staff: James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator; Mindy Tucker, Contract Investigator

Legal Counsel: Carol Parks, AAG

EXECUTIVE (CLOSED) SESSION

Board Chair, Joana Freedman convened the Board into Executive Session at 8:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, administrative rule making, and Board policy and administration.

The closed door Executive Session is digitally recorded and stored electronically on the Board's file server.

PUBLIC (OPEN) SESSION

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

Board Motions

Case PT 246-7/07

Motion, by Nancy Wilson, to issue Notice of Proposed Disciplinary Action, citing violations of ORS 848-045-0020(2)(u)(A)(B) failure to cooperate with the Board and ORS 688.140(2)(a) failure to follow a written Order of the Board and, impose a civil penalty of \$1,000 previously stayed in a previous Order, place licensee on probation for a period of two years and suspend license to practice for 30 days.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

Case PT 260-12/07

Motion, by Nancy Wilson, to issue Stipulated Agreement and Final Order citing OAR 848-045-0010(4) impairment of licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety and require Licensee to continue psychiatric/psychological treatment from current provider for a period of two years, undergo a neuropsychiatric evaluation with report to the Board, work with on-site PT supervision until Board determines that such supervision is no longer necessary, provide a copy of the Stipulated Agreement, to all employers, and provide the Board with biannual reports from his treating providers.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

Case PT 253-9/07

Motion, by Nancy Wilson, to close case issuing an Advisory Letter requesting the Licensee complete a boundaries course and provide evidence of course completion to the Board.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

Case PT 263-2/08

Motion, by Nancy Wilson, to issue Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) practicing physical therapy with a lapsed license and imposing a civil penalty of \$250.00.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

Case PT 265-2/08

Motion, by Nancy Wilson, to close case citing no violations.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

Case PT 203-10/05

Motion, by Nancy Wilson, to reject Licensee's stipulated offer to settle and counter with a proposed Stipulated Agreement and Final Order stating: the Board is prepared to prove but the Licensee does not agree to all the violations as noted in the previous Second Amended Notice, assessing the Licensee a civil penalty of \$5,000 with \$2,500 stayed, placing the Licensee on probation for two years and, requiring Licensee to complete a Board approved documentation course and provide evidence to the Board of course completion.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

General Topics/Business

- The Director announced the upcoming FSBPT Board Member Training scheduled for April 18 through the 20th in Alexandria, VA. This training, the travel, hotel, meals and incidentals are funded by the FSBPT. Several of the current Board members have already attended the training and attested to the value of the time spent. The Director asked any other members who might be interested to contact him and he would submit their name.
- The Director announced the FSBPT new pilot program using the Practice Review Tool (PRT). The FSBPT developed the PRT as part of its continuing competency Tool Kit. The Federation is asking member boards to consider the use of the tool and to encourage licensees by crediting CE for completion of its use. After discussion and consideration, the Board determined it would invite the Federation staff to visit the Board and present the entire competency toolkit, to include the PRT. The visit and presentation will happen sometime this summer.
- The Director announced the FSBPT's request for nomination of Board Delegates to attend the 2008 FSBPT Delegates Assembly. The Assembly will be held September 12th through the 15th in Minneapolis, MN. The FSBPT funds the assembly and educational programs registration fees, the travel, hotel, meals and incidentals, for the Board's Voting Delegate, Alternate Delegate and Administrator. After discussion and consideration, the Board selected Chair, Joana Freedman to represent the Board as its Voting Delegate. Also selected, to attend the Assembly, will be the Alternate Delegate, Board Vice Chair, Steve Alstot and Jim Heider, Executive Director.
- The Director discussed a request from OPTA for a Board speaker at OPTA Insurance Provider Presentation in October, 2008. After discussion and consideration, the Board determined that the insurance provider symposium is not a proper forum for a Board presentation. The Board felt the program goal was geared towards the promotion of the profession and would be more appropriately presented by an OPTA member or officer. The Board further noted it was not adequately staffed to be able to provide speakers for special interest groups.
- The Board was presented a copy of the new OPTA Direct Access Brochure.
- The Board was presented with information regarding the National Athletic Trainers Association's (NATA) lawsuit against APTA.
- Sherri Paru, PT, Board Investigator shared, with the Board, that the APTA had accepted her proposal to present a program at the next Combine Sections Meeting in February, 2009. The presentation will include input from other jurisdictions and cover a gambit of boundary violations.

PT Scope of Practice Fire Evacuation Plans

The Board addressed the issue regarding the development and implementation of an evacuation plan to assist special needs students in an emergency situation. After discussion and consideration, the Board determined that the responsibility to act in this capacity is not a PT Scope of Practice issue. There is nothing in the PT practice act that would require a therapist to act in this capacity, and there is nothing in the PT practice act that would prevent a therapist from acting in this capacity. The Board interprets this as an employment issue, falling within the framework of the employer's job description for the particular position.

License and CE Update and Issues

The Executive Director reported that the number of licensees allowing their licenses to lapse, effective April 1, 2008, is twice the number experienced for the prior five renewal periods. Up to

400 from the typical 200 lapsed annually. The Director attributed the increase to those Licensees no longer actively practicing but, none the less, maintaining their current license. Now, given the continuing education requirement to renew a license, many inactive license holders are finding the cost to obtain the necessary CE, for renewal, too much of an expense to hold a license that is not active. Currently, the Board does not have a non-active license status that would be exempt from CE and offered at a reduced rate.

Continuing Education Audit Policy

After Board review, discussion and consideration of a drafted CE Audit Policy, as presented by the Board Executive Director, the Board determined it would defer this topic until a later date. The Board did suggest changes to the draft including, adding all PT Board members and all Licensees on probation, as of April 1st, to the list of randomly selected licensees to be audited. The Board did determine the timing of the audit, approving audit letters sent out the 1st of May with a requirement for returned documentation, from Licensees, by the end of May. The Board directed staff and its legal counsel to further identify all the issues of non-compliance, and to survey other States with regards to actions taken for non-compliance of CE requirements. Staff will report its findings back to the Board at its June 6, 2008 meeting. Based on the staff report and Counsel's advice, the Board will determine what course of action it will take regarding Licensees who are in non-compliance with the continuing education requirements.

Rules Advisory Committee-Update

The Board Executive Director and Diana Godwin, Attorney for Oregon Physical Therapists in Independent Practice (OPTIP) and committee member, presented an update of the Advisory Committee's proposed rule language changes regarding the Board's top two review topics manipulation and mobilization, and screening and consultations. Upon review and consideration, the Board directed committee representatives to bring the proposed language back to the Committee with amendments. The Board conveyed to the committee representatives that, with the amendments noted, the Board would support the adoption of the rule changes.

The Board Clinical Advisor/Investigator shared a current concern regarding the PTA role in performing a reassessment. This is one of the next topics to be addressed by the Committee. Sherri Paru reported that this issue and concern is widespread, and since the article published in the latest Newsletter, she has been inundated with questions for clarification of the rule. Ms. Paru indicated that the approach she would like to take, with the Committee, would be to direct the committee not to get hung up on the current rules but to look at the intent of the current rule. The intent of the current rule is to make certain the PT remains involved with the patient care throughout that patient's therapy. Ms. Paru would suggest, to the Committee, that the rules can be changed accordingly if there is a better way to ensure the PT involvement. The Board agreed with this approach to the issue.

PT Coordination of Care with an Athletic Trainer

Ms. Paru shared, with the Board, her response to an issue she addressed with a Licensee. Ms. Paru wanted to make certain the Board was aware of the issue, and agreed with her assessment and advice back to the Licensee. The issue dealt with the treatment of an individual, by an Athletic Trainer (AT), under the plan of care of a Physical Therapist (PT). Bottom line message, to the Licensee, was that if the AT was working under the PT Plan of Care and providing physical therapy treatment to a PT patient, the AT is working as an Aide and subject to the Rules of Division 20 regarding aide training, documentation, supervision and prohibited treatment related tasks. Ms. Paru further told the Licensee that if based on the initial PT evaluation, the PT determined no

further PT treatment was warranted then the PT should document the file, discharge the patient and refer them over to the AT. Or, if based on the PT's evaluation, the PT determines that the patient will benefit from continued PT treatment and AT, the PT needs to make certain any treatment associated with PT is done, under their directive in a plan of care, and if assigned to an AT, again, the AT will have to qualify and work under the rules governing a physical therapy aide. After discussion and consideration, the Board approved Ms. Paru assessment of the situation and her communication back to the Licensee.

Foreign Educated PT's Request for Consideration of TOEFL Exemption

The Candidate is a foreign-educated therapist licensed in two other States and has practiced as a physical therapist successfully for a couple of years. The Candidate has taken the TOEFL examination a total of eight times and has yet to achieve a passing score on the Test of Spoken English. The Candidate is asking the Board to make an exception to its Administrative Rule, and accept his application without a passing TOEFL score. Before the Board could deliberate on the issue, the Board's Assistant Attorney General (AAG) advised the Board that they do not have the authority to make any exception to Board Statute and Administrative Rule. The Board then discussed what would have to happen to give them the authority to change the current credentialing criteria or to give the Board authority to make case-by-case exceptions to the current Statutes and Rules. The Board's AAG cautioned the Board with regards to considering either. Changing existing criteria that has been in place for several years could have serious consequences relative to all other candidates held to the same standard and denied application, because their scores did not meet the criteria. Likewise, giving the Board statutory authority to make exceptions, to licensure on a case-by-case basis, exposes the Board to challenge regarding subjective judgment, as opposed to objective criteria. The Board determined they would not pursue either option for change at this time.

Endorsement Candidates Request for Consideration of Transfer NPTE Score

The Candidate is a PTA licensed in several other states, practicing as a PTA successfully for fourteen years and wanting to endorse her license to the State of Oregon. The Candidate's NPTE test score did not meet the Oregon requirement, being short by one point. The Candidate is asking the Board to make an exception to its Administrative Rule and accept her NPTE test score. Before the Board could deliberate on the issue, the Board's Assistant Attorney General (AAG) again advised the Board that they do not have the authority to make any exception to Board Statute and Administrative Rule. The Board then discussed what would have to happen to give them the authority to change the current credentialing criteria or to give the Board authority to make case-by-case exceptions to the current Statutes and Rules. The Board's AAG cautioned the Board with regards to considering either. Changing existing criteria that has been in place since 1983 could have serious consequences relative to all other candidates held to the same standard and denied application because their scores did not meet the criteria. Likewise, giving the Board statutory authority to make exceptions, to licensure on a case-by-case basis, exposes the Board to challenge regarding subjective judgment, as opposed to objective criteria. The Board determined they would not pursue either option for change at this time.

New Oregon Government Ethics Laws

The Board was presented with copies of the "Top 10 Things Public Officials Should Know About Oregon's New Government Ethics Laws." After review, Board Counsel advised the Board that there was nothing new in the ethics law that would pertain to, or currently impact, them as Board members. However, the Board was advised to read the new regulations to be aware of possible ethical violations or future conflicts of interest.

Financial Report 7/01/07-2/29/08

The Executive Director presented the Board with copies of the current Financial Report and narrative. The Director also reported income was below budget and expenses on budget. **See Addendum “B” for a copy of the Financials.**

Approval of February 1, 2008 Meeting Minutes

The Minutes, from the February 1, 2008 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. With no noted changes, the Board voted unanimously to approve the Minutes for publication as written.

Ratification of the Board Policy for disclosure of Public Records on Website

Motion, by Nancy Wilson, to accept the policy for disclosure of public records on Board website as submitted. **See Addendum “A” for a copy of the Policy.**

Seconded by Burke Selbst

Motion passed, by quorum 5-0; Jason Fiske and Cindy Cunningham were not present for the vote.

Future 2008 Board Meeting Dates

As established by the Board, the future Board Meeting dates are as follows: June 6, 2008; August 1, 2008; September 19, 2008; and, November 14, 2008. Meeting Dates, Notices and published Minutes may be found on the Board website at www.ptboard.state.or.us.

Ratification of the PT/PTA License & Temporary Permits issued

The Board was presented a list of new licensees and temporary permit holders for the period of February 1, 2008 through April 3, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Nancy Wilson moved to ratify the list of new licenses and permit holders as submitted.

Seconded by Burke Selbst

Motion passed, by quorum 6-0; Cindy Cunningham was not present for the vote.

Other New Business

The Executive Director shared information regarding a Health Licensing Board’s Omnibus Bill to be introduced by Representative Greenlick in the 2009 Legislative Assembly. The components of the Bill will include: reduce the term for Board members from 4 to 3 years; assure that all Board members serve at the pleasure of the Governor; set a ratio of public members serving on a Board to 50% minus 1 of the total members; implement a universal impaired practitioners program; and setup a separate oversight authority to monitor the Boards.

The Executive Director shared information regarding the upcoming 2009 legislative concepts submitted by the Chiropractic Board. After initial review, the Director determined the summary concepts have no relevance to the Physical Therapist Board, its Statutes or Rules.

With no additional other new business cited, Board Chair, Joana Freedman, adjourned the Board Meeting at 3:28 PM.