

**Physical Therapist Licensing Board
Board Meeting
May 8, 2009**

MINUTES

Friday, May 8, 2009

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

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

Legal Counsel: Carol Parks, AAG

Following the Administrative Rules Public Hearing, Board Chair, Joana Freedman convened the Board into Executive Session at 9:00 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 licenses; 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 296-9/08

Motion, by Nancy Wilson, to issue Final Order by Default, citing same violations and actions as noted in the Notice of Proposed Discipline dated March 16, 2009.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 246-7/07

Motion, by Nancy Wilson, to close the case effective May 31, 2009 if Licensee fails to reinstate their physical therapist license that lapsed on March 31, 2009, and sign the Stipulated Agreement and Final Order by May 31, 2009.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 295-9/08

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

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 309-1/09

Motion, by Nancy Wilson, to issue a Confidential Advisory Letter noting Board concern over Licensee's practice to clearly identify personal training patients, from physical therapy patients, and making certain, at all times, that they are in compliance with OAR 848-040-0147(3).

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 315-4/09

Motion, by Nancy Wilson, to issue a Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) and assessing a civil penalty of \$75.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 316-4/09

Motion, by Nancy Wilson, to issue a Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) and assessing a civil penalty of \$100.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 317-4/09

Motion, by Nancy Wilson, to issue a Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) and assessing a civil penalty of \$100.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 318-4/09

Motion, by Nancy Wilson, to issue a Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) and assessing a civil penalty of \$100.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 319-4/09

Motion, by Nancy Wilson, to issue a Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) and assessing a civil penalty of \$100.00. Additional motion for licensee to provide the Board with a release of Licensee's psychiatric and medical health records, within 14 days, or issue an Order for Mental Health Evaluation citing ORS 688.140(3)(g).

Seconded by Cindy Cunningham.

PT Board Member Burke Selbst recused himself from this case and abstained from the vote.

Motion passed by unanimous vote 6-0.

Case PT 312-3/09

Motion, by Nancy Wilson, to issue a Confidential Advisory Letter noting Board concern over possible violations of ORS 688.132(1)(b) and OAR 848-040-0117(1)(a), duty to refer a patient after 60 days. Motion to request clarification from Licensee's mental health providers regarding the Licensee's ability to practice safely and competently.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Case PT 203-10/05

Motion, by Nancy Wilson, to complete current scheduled interviews and then to close the case and open a new case if Licensee requests reinstatement of his physical therapist license that lapsed March 31, 2009.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Amendment of Board 2007-2009 Biennium Budget

Motion, by Nancy Wilson, to accept proposed Rule Amendments to the Board 2007-2009 Biennium Budget as presented.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

Adoption of Board 2009-2011 Biennium Budget

Motion, by Nancy Wilson, to adopt the proposed Board 2009-2011 Biennium Budget, as presented.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

General Topics/Business

- **FSBPT 2009 Delegates Assembly San Diego 10/1-10/4/09** – The Federation will fund the costs for travel, hotel, meals and incidentals for member Boards to send a Delegate and the Board Administrator to the 2009 Delegates Assembly. After discussion and consideration, the Board chose Joana Freedman, Board Chair to act as the Board's Delegate, and Jim Heider will attend as the Board Administrator. Because the Federation no longer funds the Alternate Delegate, the Board appointed Jim Heider to also serve in the capacity of Alternate Delegate. The Board will save its budgeted travel dollars for future educational and training opportunities.
- **FSBPT Course Work Tool #5** – The Board approved adding the 5th Edition of the Federation's Course Work Tool to its toolkit when preparing the credentials for foreign-educated therapists. The 5th Edition of the tool will be available and effective July 1, 2009. It will be applied to all foreign-educated therapists who graduate from physical therapy programs on or after that date. In 2006, the Board adopted a policy for the use of the retro course work tools. This policy requires, for

credentialing proposes, the credentialing agency use the appropriate course work tool in place at the time the candidate graduated from physical therapy school.

- **Board Bank Account Status Changes/Costs** – The Executive Director reported that he and the Board Chair met with representatives from US Bank to discuss the Board's current bank fees and services. The Board voiced concern over increasing costs of Bank lockbox service fees and diminishing offset for reserve account credits. Bank Representatives will work, with the Board's Director, to look for opportunities to elevate some of the costs associated with the bank lockbox fees, and move the Board closer to the processing of on-line renewals and automatic deposits.
- **Lane County Community College PTA program** – The Executive Director reported that the Lane County Community College PTA program had received its program accreditation from the Commission on Accreditation of Physical Therapy Education (CAPTE). Christina Howard, MPT, is the Program Coordinator for Lane County. Ms. Howard says Lane County will commence with their first class this fall. The program will accept a maximum of 24 students. Lane County currently has 125 known applicants for these spots. As part of the application prerequisites, Lane County requires an applicant to have logged 25 hours of observation of a PT, in clinical settings, prior to making application. The program is designed for didactic distance learning and on-site laboratory work.

2009 Legislative Update

The Director reported on numerous bills, that the Board is following, all of which could have some impact on the Statutes, operations, or even the physical make up of the Board. Two noted major bills of concern, to the Board, were HB 2057 and HB 2118.

HB 2057 would have taken away the Board's semi-independent agency status. This bill never made it out of committee, primarily due to lack of committee support and a large opposition from the Boards from constituents and from the professional associations.

HB 2118 did pass, from the House Healthcare Committee, and was sent to Joint Ways and Means Committee pending Hearing, Work Session and approval. HB 2118 is sponsored by the Governor's office. The Bill has several facets, most of which this Board supports. However, the Bill has two sections that are of concern to this Board. One would take away the Board's ability to set the parameters, duties and compensation for its Executive Director. The Bill would allow the Board to select its Director, but under the policies and procedures as established by the Department of Administrative Services. The second section would mandate that the Board Director serve at the pleasure of the Governor. This would give the Governor the authority to dismiss and reappoint the Board's Director for any reason or without cause. The Board members already serve at the pleasure of the Governor. This section would give the Governor full authority over any health Board. The concern is that these Boards then become totally politicized.

Board Position on the Scope and Use of Dry Needling

The Board received an inquiry from Licensee, Sean Roach, PT and also received a position statement from the AAOMPT (American Association of Manual Physical Therapy) stating their position that dry needling is in the scope of practice for PTs. Prior to the Board meeting, data was obtained from the FSBPT regarding 10 states position on dry needling. The Clinical Advisor/Investigator shared with the Board that when last discussed, the Board took the position that dry needling was not within the current scope of practice. To prepare for the Board discussion, the Clinical Advisor asked Board Counsel to research the Medical Board and Acupuncture Board Statutes to see if their Statutes would limit a licensee of the Physical Therapist Board from using dry needling. The Board Counsel advised that there was nothing

within the Medical Board or Acupuncture Board Statutes that would limit a licensed physical therapist from using dry needling. So the question for consideration remains whether or not the Board feels it is within the physical therapist scope of practice to use dry needling. Ms. Banaitis mentioned that many years ago, the Board issued an opinion, that it is in the scope of practice for a PT to perform needle EMG. The Executive Director will research old board meeting minutes to attempt to locate evidence of such statement. After discussion and consideration the Clinical Advisor suggested that she do further research on the topic prior to the Board reconsidering their position on dry needling. The Clinical Advisor will communicate with Licensee Roach to see if he can provide additional information and will also obtain additional information from other states that allow dry needling to see what their certification requirements are, if any.

Approval of Board Meeting Minutes

The drafted Minutes, from the March 13, 2009 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. With none noted, Nancy Wilson moved to adopt and publish the minutes as written. The Motion was seconded by Cindy Cunningham and passed by a unanimous vote.

Complaint Against Lebanon Community Pool

The Board Clinical Advisor Investigator shared, with the Board, information brought to the Board from a licensee. The complaint stated that the Lebanon Community Pool had advertised a physical therapy water program and also advertised that a physical therapist was part of the program, which was not the case. The licensee talked with the program director who indicated that there was no physical therapist involved in the class. He stated that the program was physical and the activities were therapeutic, thus he felt that they could use the term physical therapy. After the Board sent a letter to the program director, he agreed to take the word “physical” out of the program title and would now refer to the program as Water Therapy. He also stated that he would take out any reference to a PT being available in the class. After discussion, the Board agreed with the Investigator that she should contact the program director again and suggest that they rename the program Water Exercise and take out the word “therapy”.

Investigation of Unlicensed Practice

Based on the previous discussion, relative to the complaint against the Lebanon Community Pool, Board Counsel informed the Board that the Department of Justice Financial Fraud Section may be willing to represent the Board in the investigation of any unlicensed practice cases pending before the Board. They will do this without costs to the Board. Counsel asked the Board Investigator to provide her with the case files, and she will forward them onto the Financial Fraud Division and see if they wish to investigate the cases.

OT Role in Work Hardening Programs

The Board Clinical Advisor and Investigator shared with the Board questions that came from Salem Hospital regarding their work hardening program. The questions were whether an OT can run a group of PT patients and whether the patients could be seen by either an OT or a PT. The OT Licensing Board had provided a statement to the facility that it was within the OT scope of practice for an OT to work with work hardening patients, even if the patients were not being treated specifically for upper extremity injuries. The Board discussed the questions and determined that yes, the OTs can treat these patients in a work hardening setting but each discipline must follow their own evaluation and treatment plan. An OT can not work off a PT plan of care and the PT or PTA can not work off an OT plan of care.

2009 Board Meeting Dates

As established by the Board, the future Board Meeting dates are as follows: July 17, 2009; September 11, 2009; and, November 20, 2009. Meeting Dates, Meeting Notices, and published Minutes may be found on the Board website at www.ptboard.state.or.us.

Ratification of PT/PTA Licenses & Temporary Permits

The Board was presented a list of new licensees and temporary permit holders for the period of March 13, 2009 through May 7, 2009. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Nancy Wilson made a motion to ratify issuance of the new licenses. The motion was seconded by Cindy Cunningham and passed by a unanimous vote.

Other New Business

The Board Chair called for other new business. Cindy Cunningham shared, with the Board, that she would write something relative to her recent Federation Ethics and Legislative Committee meeting. The topics for discussion will include upcoming changes to the Model Practice Act language; offering of a HIPDB on-line training for the reporting of Board actions to the disciplinary data bank; and considerations for amendments to current Administrative Rules relative to terminology, disaster planning; and other housekeeping issues. With no additional new business cited, Board Chair, Joana Freedman adjourned the Board Meeting at 2:55 PM.

END OF PUBLIC SESSION AGENDA