

**Physical Therapist Licensing Board
Board Meeting
August 10, 2007**

MINUTES

Friday, August 10, 2007

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

Board Members Absent: Jason Fiske, PT Member; Burke Selbst, PT 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 8:50 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.

At the completion of the Executive Session, Board Chair, Joana Freedman, brought the Board into Public Session to entertain any motions, and publicly vote on any actions so moved before the Board.

PUBLIC (OPEN) SESSION

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 243-5/07

Motion, by Steve Alstot, to issue Licensee an Advisory Letter citing failure to disclose prior arrest record and to cooperate with the Board in a timely manner.

Seconded by Cindy Cunningham

Motion passed, by quorum; absent, for the vote, were Board members Jason Fiske and Burke Selbst.

Case PT 244-6/07

Motion, by Steve Alstot, to issue Licensee an Advisory Letter citing failure to disclose prior arrest record and to cooperate with the Board in a timely manner.

Seconded by Cindy Cunningham

Motion passed, by quorum; absent, for the vote, were Board members Jason Fiske and Burke Selbst.

Case PT 246-7/07

Motion, by Steve Alstot, to issue Licensee an Order of Proposed Disciplinary Action citing: documentation and HIPAA violations, specifically ORS 688.140(2)(a) and (t); OAR 848-040-0110(6); OAR 848-040-0130; and, OAR 848-040-0170. Assess Licensee a civil penalty, of \$2,000 with \$1,000, stayed pending successful completion of one year probation. During the one year probation, Licensee must also complete a Board approved course on HIPAA regulations and comply with all Statutes and Rules of the Board.

Seconded by Cindy Cunningham

Motion passed, by quorum; absent, for the vote, were Board members Jason Fiske and Burke Selbst.

Case PT 247-7/07

Motion, by Steve Alstot, to issue Licensee an Advisory Letter citing: boundary violations, failure of Licensee to maintain appropriate professional/patient relationship; failure to communicate with other patient-related professionals regarding the patient's wellbeing; and, use of poor judgment. Licensee to complete a Board approved course or receive Board approved counseling on professional boundaries.

Seconded by Cindy Cunningham

Motion passed, by quorum; absent, for the vote, were Board members Jason Fiske and Burke Selbst.

Board Policy Decision

Motion, by Steve Alstot, to adopt proposed Board policy which will allow senior Board staff to approve initial licensing of new applicants disclosing prior arrest records and renewal applications of licensees disclosing arrest records, since the date of their last renewal, if the violation is a misdemeanor or less and satisfactory documentation has been provided.

Seconded by Cindy Cunningham

Motion passed, by quorum; absent, for the vote, were Board members Jason Fiske and Burke Selbst.

General Topics/Business

- Citizen Advocacy Center 2007 Annual Meeting, in Seattle, WA Oct 29-31, 2007. The Board approved for Board members, Daiva Banaitis and Cindy Cunningham, to attend the meeting in Seattle. Also approved, to attend the meeting, is Board staff member Sherri Paru, PT, Clinical Advisor/Investigator.
- Policy Statement on staff opening Board addressed mail – After discussion the Board determined that it would allow Board staff to open any mail specifically addressed, by name, to a Board Member labeled confidential and/or personal. The Board trusts that staff will be discreet in the handling personal or confidential information.

Discussion Regarding Creation of a “Retiree” License Status

As noted in the minutes from the 06/22/07 Board Meeting; after the Board’s discussion regarding the issue of retiree licenses, Board Counsel, Carol Parks, AAG, suggested the Board table further research and discussion while she verified the Board’s statutory authority to even consider a retiree license status. Upon further determination, the Board Counsel advised the Board they do have the statutory authority to create a “Retiree” license status. The Board instructed the Board Executive Director to research the topic and report back to the Board.

Policy Regarding Approval of Applicants and Renewal Applicants with Arrest History

As noted in the minutes from the 06/22/07 Board Meeting, after the Board’s discussion of a proposed policy regarding delegation of licensure application approval authority to senior Board staff. This would apply to cases where the applicant discloses a prior misdemeanor arrest or conviction and provides necessary documentation to the Board. The Board Counsel, Carol Parks, AAG, suggested that the Board table further discussion while she verified the Board’s statutory authority to even consider the delegation of approval authority. Upon further determination, the Board’s Counsel advised the Board they do have the statutory authority to adopt a policy delegating approval authority to senior Board staff. Through a Board motion the Board adopted the new policy. See Attachment “A” to these Minutes.

Update on Bill in Legislature and Impact to the Board

- SB 879 - The Board discussed the passage of SB 879. Sponsored by the Pain Management Commission, SB 879 adds Physical Therapists to the list of professionals required to complete a one-time pain management CE program, as determined by Statute and Rule. The law is effective 01/01/08 and states that the CE program requirement must be completed, within 24 months, following the professional’s first licensure renewal after the effective date of 01/01/08. For the majority of the PT Board Licensees, this would require that they complete the required program, by March 31, 2010. If a Licensee fails to complete the required program they will not be eligible to renew their 2010 practice license. The Board now has to write Administrative Rules incorporating this new requirement into the existing Continuing Education Rules found in Division 35 of Administrative Rules Chapter 848. The Board has chosen to follow the recommendations, of the Pain Commission, in structuring the required program. The required program will include completion of the one hour on-line Introduction to Pain Management, produced and sponsored by the Commission, and an additional six hours of pain management continuing education, content and parameters of the six hours to be determined. The Board did determine that the one-time completion, of this required pain

program, will count towards the CE requirement, as outlined in Division 35 of the Board's Administrative Rules.

- SB717 – The Board discussed the failure of SB 717. Sponsored by Committee on Health Policy and Public Affairs, the bill would have created a practice review committee to review and report to Legislature and Governor proposed changes to Scope of Practice. The committee recommendations would take into account the position of proponent and opponents to the proposed changes. At the 06/22/07 Board meeting, the Board discussed a letter received from the Chiropractic Board. In its letter to the PT Board, the Chiropractic Board requested, upon passage of SB 717, the Physical Therapist Board's complete cooperation, in the committee process to review the PT Scope of Practice issues, brought forth by the Chiropractic Association during the 2005 Legislation Session. At its 06/22/07 meeting, the PT Board determined that it would wait to first see the outcome of SB 717 before responding to the Chiropractic Board's letter. At its 08/10/07 meeting, because of the failure of SB 717, the PT Board determined that it would not actively respond to the Chiropractic Board's request to participate in Committee Review of any Scope of Practice issues. Further, the Board determined it would only play a passive role, in any discussions regarding Scope of Practice issues, between the Chiropractic Association and the Physical Therapy Association.
- Passage of Law Regarding Non-Compete Agreements – The Board discussed Governor Kulongoski signing a bill that affects the ability of employers to enforce non-competition and arbitration agreements with employees in Oregon.

Question from Kelly Parrett, PT Regarding OHSU Program Approval for CE

Is OHSU's EpicCare program eligible for CE? After review and consideration, the Board determined that the EpicCare program taught, at OHSU, is part of an in-service program and is not eligible for continuing education credit.

Update/Information on CSCS (Certified Strength and Conditioning Specialist) Certification and CEU Credit

Because the Delaware PT Board has approved the CSCS certification for continuing education credit after discussion, the Oregon Board determined it also would approve a CSCS certification for continuing education credit. The Oregon Board will allow 15 hours of CE credit for the certification.

Question from Maria Bennett, PTA Regarding Performance of Home Assessments by a PTA

Can a PTA conduct a home assessment? After review and consideration, the Board determined that if the home assessment/visit/evaluation includes taking the patient to the home and assessing the safety of the home and ability of the patient to return to the home environment, this is considered an evaluation and requires a PT to perform the visit. If however, the visit does not include the patient, and the purpose is to collect data, measurements, etc., then that can be done by a PTA. For example: a PTA could go to a patient's home to measure doorways, count how many stairs, look at the type of flooring, emergency exits, etc.

Question Regarding the Sale of Anti-Inflammatory/Pain Relief Creams by Physical Therapists

Is it within the PT's Scope of Practice to sell anti-inflammatory/pain relief creams to patients? After review and consideration, the Board determined it did not have enough information about the products and the extent of use, of the products, in the practice of physical therapy. The

Board instructed the PT Clinical Advisor/Investigator to do some additional research and report back, to the Board, at its next scheduled meeting on 10/17/07. Further, the Board determined that, unless some egregious act occurs between 08/10/07 and the next schedule Board meeting, involving the sale of anti-inflammatory/pain release creams to patients, the Board would stay neutral on the subject.

Question from Steve Alstot, PT, regarding Aide Training

If a Company has several facilities, can an Aide trained in one facility move to another facility, within the same company, without a required 40 hours of additional training? After review and consideration, the Board determined that if an Aide is trained in one facility and moves to another facility, within the same company, the Aide would not have to be documented for 40 hours of training in the new facility. The Board did, however, note that, if the new facility's operations and protocol differs significantly from the prior facility, it would be prudent for the supervising therapist to make certain the Aide is aware of the differences.

Rule Regarding Standards of Professional Conduct for Providers who Perform Independent Medical Evaluations (IME's) for Worker Compensation Patients

In April 2006, the Board received notification regarding changes, to the requirements for Independent Medical Examinations (IMEs) for workers' compensation claims, enacted as part of the 2005 legislation. The bill allowed health professional licensing boards to adopt their own standards, or it provided a "default" to the guidelines of conduct published by the American Board of Independent Medical Examiners (ABIME). The Board chose to go with the guidelines as published by the ABIME. As part of the 2007 Legislative Session, use of the "default" option was no longer available and the new law requires the director to adopt, by rule, standards of professional conduct for providers performing IMEs for workers' compensation claims. The Board received a letter, from Diana Godwin, Attorney at Law and representative for Oregon Physical Therapists in Independent Practice (OPTIP). Because of Ms. Godwin's interests in OPTIP, she reviewed the new requirements. Based on Ms. Godwin's review, she suggested, to the Board, that the Board not adopt its own separate rules on the subject, simply follow the new Administrative Rules and guidelines as established by the Workers Compensation Division Chapter 436, Division 010, Rule 0265. The Board's Counsel, Carol Parks, Senior AAG, agreed with Ms. Godwin's assessment, of the new legislation, and advised the Board to follow the newly adopted Workers Compensation Rule OAR-436-010-0265.

Approval of Meeting Minutes

The Minutes, from the June 22, 2007 Regular Board Meeting; the July 11, 2007 Special Board Meeting; and, the July 16, 2007 Emergency Board Meeting, were presented to the Board. The Chair opened the floor for discussion and comments. With no noted changes, the Minutes were approved for publication as written.

Future Board Meeting Dates

As established by the Board, the future Board Meeting dates are as follows: Wednesday, October 17, 2007; December 07, 2007 (to be held at Pacific University); February 01, 2008; April 04, 2008; May 30, 2008; July 25, 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 PT/PTA Licenses & Temporary Permits

The Board was presented a list, of new licensees, for the period of June 22, 2007 through August 09, 2007. The Chair opened the floor, for discussion, with regards to the new licensees and permit holders. Without noted discussion, the Board voted, unanimously, to ratify the new licensees and permit holders for the above-noted period.

FSBPT Delegates Assembly Discussion of Assembly Motions

The Executive Director presented the Board with a summary of the Motions to be voted on by the Delegates at this year FSBPT Delegates Assembly in Memphis TN. The Board's appointed Delegate is, Board Chair, Joana Freedman and the Alternate Delegate is, Board Vice Chair, Steve Alstot. Following is a list/summary of the upcoming Motions and the Board position on each:

DEL-07-02 Qualification of Officers - broadens the description of who an officer of the FSBPT Board can be, to include an Administrator or an Associate Member. After consideration, the Board determined it would be a proponent of this Motion.

DEL-07-03 Amendment of Bylaws to clarify authority to use a mail-in ballot. After consideration, the Board determined it would be a proponent of this Motion.

DEL-07-04 Amendment, of Bylaws, to include specific guidelines for mail vote. After consideration, the Board determined it would be a proponent of this Motion.

DEL-07-05 Adoption, of Areas of Focus....this is a mandate of the FSBPT to annually review and update the Federation's Areas of Focus...typically, these are derived though the Federations short and long-range planning process. After consideration, the Board determined it would be a proponent of this Motion.

DEL-07-06 Distinction between professional title and degrees earned. The Board has discussed this issue before and may want to take an opposing position on this Motion. After consideration, the Board determined it would be in opposition to this Motion.

DEL-07-07 Reimburse FSBPT for ADA Accommodation Costs. The Board will want to discuss this issue and the fiscal impact to this Board. After consideration, the Board determined it would be a proponent of this Motion.

Other New Business

The Board Chair called for other new business. Executive Director, Jim Heider, made a couple announcements to the Board.

As of June 18, 2007, the Mt. Hood PTA Program has changed its organizational structure. Debbie Van Dover, PT, M.Ed, will assume the role of Program Director and Instructor. Jane Cedar, PT, former Program Director, will continue as ACCE and Instructor.

As of August 1, 2007, the Board's website was migrated to Version III of the Oregon.gov Teamsite Software. All content has remained the same; the look and feel changed a little. The migration to Version III allows for additional program efficiencies and capabilities transparent to the public.

Lastly, the Director announced, to the Board, that he had an opportunity to sit in on an investigative interview with Sherri Paru, PT, Board Clinical Advisor/Investigator. The Director

reported, to the Board, that he was very impressed with Ms. Paru's investigative style and approach. Further, he commented on what an asset she was to the Board.

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

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ATTACHMENT “A”

Oregon Physical Therapist Licensing Board Policy on Application Review/Approval Applicants with Criminal History

Intent: This policy is intended to be administered in the review and processing of initial and renewal applications for licensure.

Purpose: The purpose of the policy is to set benchmarks, relative to an applicant’s criminal background history. The benchmarks will be a guide to Board staff, identifying the level of approval authority necessary to proceed with an application for licensure.

Failure to Disclose Criminal Background History

If an Applicant fails to disclose prior criminal citation or arrest on application, and lack of disclosure is discovered during the licensure process, or later during a random audit:

- Follow standard procedures, ask applicant for: a written explanation for failure to disclose; a written statement of the events and circumstances surrounding the offense; and copies of all legal documents, court, police records, etc.
- Note: In some circumstances, court documents and police records may no longer be available. If so, the applicant must provide written documentation of their efforts to obtain the documents, and the reason why they are no longer available.
- Depending on the applicant’s written explanation and whether or not the offense indicates: is a one-time offense; is a misdemeanor or citation; or, is older than three years, the Board Chair or Board Vice Chair may make the sole decision to proceed with licensure, via a telephone contact and review, or, depending on the circumstances of the incident, they may choose to have the entire Board review the application.
- All other applications, with non-disclosure, along with an investigative report and documentation, will be brought before the Board for their review, at their next scheduled meeting.

Applicant Discloses Criminal Background History

If an Applicant does disclose prior criminal citation or arrest on application:

- Follow standard procedures, ask applicant for: a written statement of the events and circumstances surrounding the offense and copies of all legal documents, court, and police records, etc.
- Note: In some circumstances, court documents and police records may no longer be available. If so, the applicant must provide written documentation of their efforts to obtain the documents, and the reason why they are no longer available.

- Depending on the applicant's written explanation, and whether or not the offense indicates: is a one-time offense; is a misdemeanor or citation; or, is older than three years, and the National Criminal Background check and Oregon LEDS check come back clear, the Executive Director or Clinical Advisor/Investigator may make the decision to proceed with licensure.

- All other applications disclosing prior arrests and citations, along with an investigative report and documentation, will be brought before the Board for their review, at their next scheduled meeting.