Physical Therapist Licensing Board
Board Meeting
May 19, 2006

MINUTES

Friday, May 19, 2006

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

Citing ORS 192.660(2)(k), at 8:36 AM, Mr. Nickell convened the Board into Executive Session. 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 recorded and labeled, on Sides A and B of four recording tapes, dated 05/19/2006.

PUBLIC (OPEN) SESSION

Upon completion of the Executive Session, Mr. Nickell convened the Board back into Public Session for motions and additional business. The Public Session is recorded and labeled, on sides A and B of two recording tapes, dated 05/19/2006. The public and interested parties are invited to attend this portion of the meeting.

Board Motions

Case PT 198-7/05
Motion, by Joana Freedman, to accept and issue Final Order by Default, Revocation of License.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 200-8/05
Motion, by Joana Freedman, to issue Stipulated and Final Order (Reprimand), citing documentation issues, as noted, in original Proposed Order of Discipline. Additionally, issue

Licensee a Board Advisory Letter advising Licensee to cease the use of the term "Doctor" as associated with his professional title and practice.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 205-11/05
Motion, by Joana Freedman, to issue Licensee a Board Advisory Letter noting Board concern regarding Licensee's honesty, with regards to omissions, on original endorsement licensure application.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 210-3/06
Motion, by Joana Freedman, to closed case citing no violation.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 211-4/06
Motion, by Joana Freedman, to issue Stipulated and Final Order (Civil Penalty), citing practice of physical therapy without a valid license, and assessing a civil penalty of $100.00. Additionally, issue Licensee a Board Advisory Letter advising Licensee of obligation to report unlicensed practice to third party payors.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 212-4/06
Motion, by Joana Freedman, to issue Stipulated and Final Order (Civil Penalty), citing practice of physical therapy without a valid license, and assessing a civil penalty of $75.00.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 213-5/06
Motion, by Joana Freedman, to issue Stipulated and Final Order (Civil Penalty), citing practice of physical therapy without a valid license, and assessing a civil penalty of $250.00.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 183c-1/05
Motion, by Joana Freedman, to issue Amended Stipulated and Final Order, accepting proposed amended wording as submitted by Licensee's Attorney.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 138-8/05
Motion, by Joana Freedman, to issue Second Amended Notice of Proposed Discipline, adding back, into the Notice, issues regarding authentication of notes and billing practices, as cited in the original Notice but omitted from the First Amended Notice.
Seconded by Nancy Wilson
Motion passed unanimously

Appearance by OPTA and OPTIP Representatives Regarding Board Investigations
Representatives: Joyce Wheeler, Ricci Susick, Dode Jackson and Tracy Fritts, from the Oregon Physical Therapy Association (OPTA), along with Diana Godwin, from the Oregon Physical Therapists in Independent Practice Group (OPTIP), addressed their members increased concern about risks therapists face when a complaint is filed against them with the Licensing Board. In a formal letter to the Board, dated May 5, 2006, and in public testimony at the Board Meeting, the OPTA and OPTIP Representatives covered the following areas of concern: 1) Is the Board obligated, by law, to open an investigation in response to every complaint received by the Board? 2) What types of cases and circumstances would the Board consider using its new authority, in which the Board can issue a non-disciplinary confidential "advisory letter" to a therapist, the letter notifies the therapist of certain conduct or practice that must be modified or eliminated? Would the advisory letter be used in lieu of issuing a disciplinary order? 3) Does the Board have guidelines, as to the types of cases and circumstances, under which the Board will extend an investigation, of a complaint, beyond the specific complaint itself or beyond the specific patient who is the subject of the complaint? 4) Are there other ways consistent with the Board's responsibility, to protect the public, to handle documentation violations other than a full disciplinary proceeding?

In an open dialog, between the Board and the Representatives, the following was discussed:

1) The Board does look at every complaint that is filed. If it is determined that the Board: a) has no jurisdiction over the matter or individual, b) the complaint has no validity or, c) if on the basis of the complaint the action or circumstances would not violate Board Statute or Rule, the complaints are dismissed, no case file is opened, and the complainant is notified of the Board's decision not to take action.

The representatives were unaware of the fact that the Board receives and dismisses several of these types of complaints every year. It was further discussed that the perception is, the Board investigates all complaints regardless of validity. The Board and Representatives determined that it might be helpful to publish the fact that the Board receives X number of complaints over a particular period of time. Of the X number of complaints, Y number were dismissed, Z number were opened, but, after investigation, of the Z number opened, Z-1 were closed with no violation, and Z-2 were found in violation of Board Statute or Rule and Sanctioned. The Board agreed they would look for opportunities to communicate this to the profession.

2) Based on discussions of the May 5, 2006 letter from the Representatives, the Board used its new authority to issue non-discipline "Advisory Letters", in conducting its business, regarding determination of Case files at its May 19, 2006 Meeting. The Board will continue the use of this new authority, on a case by-case-basis, taking into account the specific circumstances of each case.

3) The Board was very clear on its position, with regards to extending an investigation, beyond the scope of the original complaint. If during the investigative phase of the complaint process, the Board has reason to believe that violations, of Board Statute and Rule, exist in areas non-related to the original complaint; the Board is not going to turn a

blind eye. The Board will, under its own authority, extend the investigation into the suspected non-compliant area. There was some discussion of producing and providing some form of communication, to the licensee who is subject of a complaint, and subsequently, an investigation, so the Licensee has a better understanding of the Board's processes, procedures, and expectations of them. The Board was open to looking at options and opportunities, to produce some form of communication tool, to be given to Licensees who may be subject to a Board investigation.

4) The Representatives concerns, over the Board's option to use full disciplinary authority relative to issues of documentation, were taken into consideration by the Board. Again, the Board determined that they would make use of its new authority to issue non-disciplinary "Advisory Letters" to enforce a corrective action. This new authority would be extended to cases involving documentation but, once again, the use of this new authority, even with cases involving documentation, will be applied on a case-by-case basis determined by the specific circumstance of each case.

Summary Review of Consensus Document Prepared by Administrative Rules Advisory Group Regarding Therapists in a School Setting

The Executive Director presented, to the Board, a document prepared by the PTs in a School Setting Administrative Rules Committee. The document outlined a number of issues regarding the documentation requirements, in the current Administrative Rules, and the conflicts with other Federal and State requirements for therapists in the school setting. Sometimes the conflicts create duplicate efforts because they are not in sync with one another. The Board reviewed the document presented and agreed, in theory, with the committees proposed changes. The Board instructed the Board staff to continue to meet with the committee, and come up with a specific plan and proposed changes to the current Administrative Rules. The Board did approve the immediate change to OAR 848-040-0155(1)(b) clarifying the language to read, "At least every 60 days, or at every visit if the patient is seen less frequently, if the patient is being treated in an educational setting: or"

General Issues and Questions Regarding Continuing Education Course Approval

The Board Clinical Advisor/Investigator presented, to the Board, an issue with regards to vendors and course providers who want to publish that their particular physical therapy course is approved by the Physical Therapist Licensing Board. The Board determined that according to Rule, they would not allow vendors and course providers to print any statements with regards to the Oregon Board's pre-approval. It would be appropriate for vendors and providers of CE to direct individuals back to the Board Rules stating the qualifying requirements for continuing education.

Question Regarding Approval of AIDS Education Courses for CEU

The Board Clinical Advisor/Investigator presented, to the Board, the Washington requirement for their Aides training as part of their requirement for licensure. After consideration, the Board determined, as a stand-alone course, the Aides program, with seven contact hours, meets the eligibility requirements for continuing education credit in the State of Oregon.

Question Regarding Approval of Orthopedic Study Group for CEU

The Board Clinical Advisor/Investigator presented, to the Board, the request for CE approval for a study group in Orthopedics; the format primarily will be lecturing. After

consideration, the Board determined that this was more closely related to an in-service program and not eligible for continuing education.

Question Regarding CEU Credit for "Anatomy Awareness in Asana Yoga"?

The Board Clinical Advisor/Investigator presented, to the Board, the request for CE for Asana Yoga. After consideration, the Board determined that, as is, the course would not qualify for continuing education; the target audience is too general. However, if the course provider was to further develop the course specifically for physical therapists, the Board would reconsider the course for continuing education.

Question Regarding Contract Agreements between PT Practices Payment for Patient Referral

The Board Clinical Advisor/Investigator presented, to the Board, a question with regards to payment for patient referral. ORS 688.135(5) requires a PT to adhere to the standards of ethics, the APTA code of ethics does not allow for an individual to accept payment for referral.

Request from Bethanne Burrowes, PT Regarding Continuing Education

The Board Clinical Advisor/Investigator presented, to the Board, the request from Ms. Burrow for consideration of CE taken prior to the stated eligibility period of January 01, 2006. Per advisement, from Board Counsel, the Board does not have an option to make exception to the Rule. The Rule itself would have to be changed to allow for exceptions.

General Topics/Business

- **FSBPT development of referral list of remediation resources** – the Board Director reported, to the Board, that the Federation of State Boards of Physical Therapy (FSBPT) has included, in their 2007 strategic planning, the resource and budget to compile a reference list of remedial program options for applicants who fail the National PT Examination multiple times, or who may need refresher course work in the areas of ethics, boundary issues, or documentation.
- **FSBPT Conference September 2006** - the Board Director asked Board Members if any of them were interested in attending the fall FSBPT Conference, to be held in Portland. If interested, they should let him know so he can allocate budgeted training dollars to pay the registration fee.
- **Issues relating to "competency" of renewal applicants** – the Board Director brought two actual cases of therapists who have continued to keep their practice licenses current, by virtue of annual renewal, but have not actually worked in a PT setting for a number of years. The Director just wanted to make the Board aware of this situation citing concerns of re-entry to practice, continued competency, and public protection.
- **Issues relating to "competency" of applicants "former licensee"** – The Board Clinical Advisor/Investigator presented, to the Board, a situation where a former Oregon Licensee, license currently inactive more than five years, now working as a therapist in Canada, would like to return to Oregon. OAR 848-010-0035(2) states that the applicant must demonstrate competence to practice physical therapy. The Board determined that, in this case, the Board would consider review of the licensee's current curriculum vita, letters from his employers, verification of his Canadian license, and record of continuing education as proof of continuing competency.

- **OPTA Fall Business Meeting –** the Board Clinical Advisor shared, with the Board, the OPTA's request that she attend and present at the Fall, 2006, OPTA Conference in Portland. The Board approved the Clinical Advisor's participation and investment of staff time into this request.
- **Proposed 2007 Legislation re: change to Occupational Therapy Practice Act –** upon review and discussion, the Board determined they did not have an opposing position to the proposed changes to language in the OT Practice Act.
- **Licensee with NSF check for license renewal application –** the Board asked its Legal Counsel, to review and advise the Board, with regards to its position and options, regarding a licensee's status when the fee to obtain the license is returned, to the Board, for insufficient funds.
- **Negotiate Admin Support Contract with Mindy Tucker at reduced rates –** the Executive Director asked the Boards approval to negotiate and enter into an Amended Contract with its Contract Investigator. The thought was to negotiate a secondary rate, lower than the contracted investigators rate, allowing the Board to use the Investigator to help cover clerical duties of the Licensing Coordinator during her upcoming medical leave. The Board gave the Executive Director their approval.

Future Board Meeting Dates

As established, by the Board, the future Board meeting dates are as follows: July 14, 2006; September 12, 2006; November 3, 2006; and, January 5, 2007. Meeting date, Notices, and published Minutes may be found on the Board website at www.ptboard.state.or.us.

Ratification of PT/PTA License & Temporary Permits (3/16/06 – 5/18/06)

The Board was presented with a list, of new licensees, for the period of March 16, 2006 through May 18, 2006. The Chair opened the floor, for discussion, with regards to the new licensees. Without noted discussion, the Board voted unanimously to ratify the new licensees and permit holders for the above-noted period.

Approval of Meeting Minutes

The Minutes, from the March 17, 2006 Administrative Rules Hearing and Board Meeting, the March 22, 2006 Emergency Board Meeting, and the May 3, 2006 Administrative Rules Committee Meeting, were presented to the Board. The Chair opened the floor for discussion and comments. With no noted changes, all Minutes were approved as written.

Other New Business

With no other new business cited, Mr. Nickell adjourned the Meeting at 3:31 PM.