Physical Therapist Licensing Board

MEETING MINUTES

Friday June 03, 2005

Board Members Present: Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Nancy Wilson, PTA; Joana Freedman, PT; Daiva Banaitis, PT, PhD; Cindy Cunningham, Public Member

Board Members Absent: Pat Moore, MD, Physician Member

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

Legal Counsel: Carol Parks, AAG

EXECUTIVE (CLOSED) SESSION

Citing ORS 192.660(2) at 8:35 AM, Ms. Zarosinski convened the Board into Executive Session. Pursuant to ORS 192.660(2), 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 Counsel, regarding pending contested case hearings and Board Administration.

The entire meeting, including the closed door meeting of the Executive Session, is recorded and labeled on Sides A and B of three recording tapes dated 06/03/05.

PUBLIC (OPEN) SESSION

Upon completion of the Executive Session, Ms. Zarosinski took the Board into Public Session for motions and additional business. The public and interested parties are invited to attend this portion of the meeting.

Related questions from: Suzanne Trebnick, PT; Darla Kroll, PT; Julie Speck, PT; Duane Iverson, PT; Cheri Burns, PT; Christy Spencer, PT; and Joann Stillman, PT
Licensees would like clarification, of rules and requirements, regarding consults (in the schools), screens (in schools and SNFs), ergonomic assessments and pre-employment screenings.

- Who can perform?
- Does a full evaluation need to be performed?
- What needs to be documented?
- Are these people considered “patients”?
- What are the requirements for kids returning to school after an injury and needing a safety eval/check?

Board responses to questions noted above:

1. SAFETY ASSESSMENTS ON KIDS THAT ARE NOT IN SPECIAL ED (Ie: A child had a broken leg and is returning to school on crutches).

The Board determined that you DO need a referral to treat these children, and to do a safety assessment, these children are not exempt from needing a referral since they do not qualify for special education and therefore do not fall under 848-030-0010 (2)(b)(A). If you do treat these children, they need to have a full evaluation done and all documentation standards must be met. Since the Board considers this an evaluation of the students function, it can only be done by a PT, not a PTA. And, lastly, a PTA can not work under an OT to do the safety check, a PTA can only be supervised by a PT.

2. CONSULTS OR A SCREEN BY A THERAPIST

The screen or consult is not considered an evaluation, if the purpose of the screen or consult is merely to decide if the student needs to receive PT or not. The purpose should not be to devise a treatment plan, provide clinical recommendations or any treatment. If any PT intervention is needed, (ie: recommendations or education to the parents), then a PT evaluation is needed. The screen or consult can be done by a PT or a PTA and if the student then needs a PT evaluation, of course, a PT would need to do it. This would apply to all screens in all therapy settings (ie:SNF)

If a child who is on a “consult basis” needs to be seen weekly and there are weekly recommendations made regarding the students development, safety or well-being, then an evaluation is needed. If the student needs to be seen weekly on a consult basis, the Board considers that more than just a consult, the child needs to have an evaluation, and be followed with a plan of care. If an evaluation is done, the entire evaluation does not need to be finished, completed and documented on the same day, but whatever portion of the evaluation that is completed needs to be available in the patient record (ie: if you dictate your evaluation, your hand written notes should be available in the record until the dictated notes come back).

3. DOCUMENTATION RQUIREMENTS FOR SCHOOL BASED PT

The current rules require that a reassessment needs to be done, at the minimum every 60 days in the school setting. The specifics of what needs to be included are clearly written in the rules. OAR 848-040-0155 and 848-040-0160. The rules also state that notes need to be made at every visit, this is clearly written in the rules . OAR 848-040-0150 and 848-040-0110.

The rules regarding documentation in the schools may change in the future for the school setting, but for now, clinicians working in these settings must follow these rules. The Board has had a lot of input from licensees and is going to explore different options for the future. The Board is planning on getting a group of therapists from the schools together to see how the rules either "fit or don't fit" for this unique setting.

4. PRE-EMPLOYMENT SCREENINGS

These screens are most usually standardized tests that the employers set up and all the therapist needs to do is go through the motions and then a report is sent to the employer. There is no interpretation of the data and the therapist does not give the employee recommendations based on the screen. The Board determined that these types of screens do not need to be performed by a PT. A PTA or aide in the clinic can perform them, as long as that person is trained to do all of the aspects of the test. If the client needs PT services, a PT would need to get a referral (unless they have direct access) and do an evaluation and treatment plan.

5. EXERCISE CLASSES OR ERGONOMIC ASSESSMENTS

The Board determined that these circumstances do not require the expertise of a PT, since other people also have the skills (OT, personal trainer, exercise physiologist). For that reason, an evaluation and complete documentation is not needed. If, as in the situation above, a client would benefit form PT services, the PT would need to do an evaluation, plan of care and follow all documentation requirements. In these types of cases, it is important that the client understands that he/she is not receiving PT, but the person teaching them happens to be a physical therapist. It is very hard for a PT to take his/her "PT hat" on and off, so you need to be careful to monitor yourself and know when you are wearing that hat, and when you are truly providing PT. It is important that the pubic be informed and understands the services that they are receiving.

In these situations, the one thing that you always need to consider, is your professional liability. The Board can not advise on this subject, however, many therapists have said that their PT malpractice insurance will not cover them if they are not working as a PT. And, if you consider what you are doing to be "PT", or if you bill the service as PT, then you need to follow all of the statutes and rules, including an initial evaluation, plan of care and documentation.

Board Policy Considerations

FCCPT and use of other credentialing agencies:
After presentation by the Executive Director and discussion by the Board, the Board approved the addition of the International Education Research Foundation, Inc. (IERF) as an approved credentialing agent of the Board. The Executive Director will take the steps to add the IERF to the web site and printed materials for foreign-educated physical therapists. Copies, of the Board policy, are available by contacting the Board office.

Use of Law Enforcement Data System (LEDS check):
After presentation by the Executive Director and discussion by the Board, the Board adopted a policy with regards to the use of LEDS checks. Based on the Boards adopted policy, the Board staff will conduct LEDS checks on: a random sampling of 10% of the renewal license applications; on all licensees who are the subject of a complaint and/or investigation; and on any licensee who answers "yes" to the question regarding a criminal conviction since their last renewal period. Copies of the Board policy are available by contacting the Board office.

Direct access policy review/system update:

After presentation by the Executive Director and discussion by the Board, the Board adopted policy updates to its policy on practice without referral/direct access. Amended was the Board's request to print the practice without referral date on the license. Because of administrative and tracking concerns, instead, the words "Certified to Practice Without Referral" with no date will print on the license. In its place, the current practice period will be available on-line to the licensees and the public on the Board's verification look-up screen. Additionally, the data base system will be updated to automatically print a reminder letter six months prior to the certification end date, making licensees aware of their end date and the requirements to maintain and roll over into their next 3 year certification period. Copies of the Board policy are available by contacting the Board office.

Timing of Board Newsletter Publications

After presentation by the Executive Director with regards to costs and administrative time, the Board elected to change its publication of a PT Newsletter from four times to three times a year. The targeted publication times will be early March, July, and November. Copies of previous Board Newsletter publications can be found on the Board website at www.ptboard.state.or.us.

Updated Jurisprudence Examination

In December 2004, the Board adopted new and amended changes to its Administrative Rules. The Board's jurisprudence examination is based on the Oregon Statutes and Administrative Rules. The Board's Clinical Advisor/Investigator reviewed the current jurisprudence examination and determined it needed to be updated. The Clinical Advisor presented, to the Board, an updated version of the examination which the Board reviewed and approved. The Executive Director will have the new examination published and begin using it immediately for all new examination and endorsement applicants.

Board PT Member Term Expirations

The Executive Director presented the Board the following information:
In September, the current Board Chair's PT Member Term will expire. This is the Chair's second four-year term and, by Statute, she can not volunteer to serve again. The Board needs to consider replacing a PT Member, on the Board, and electing another Chair. After discussion and voting, the Board elected Jerry Nickell, PT the next Chair of the Board, leaving Jerry's current position, as Vice Chair, open. After discussion and voting, the Board elected Joana Freedman, PT, as Vice Chair of the Board. Board appointment will be effective at the close of the August 5, 2005 Board Meeting. The Board further instructed the Executive Director to begin the process of announcing and contacting the OPTA, and searching for a replacement for the open PT Member position on the Board.

In November, a second PT Board Member's first term will expire. The incumbent, Daiva Banaitis, has again volunteered for consideration of reappointment to a second four-year term. The Board voted unanimously to have the Executive Director start the process to have Dr. Banaitis re-appointed to a second term.

FSBPT 2005 Delegates Assembly in Austin Texas

The FSBPT will hold its annual Delegates Assembly the weekend of September 9th through the 12th in Austin Texas. The FSBPT funds the travel, lodging, meals and miscellaneous expenses of each jurisdiction's selected Delegate and Board Administrator. An Alternate Delegate is suggested, but travel, meals and lodging are at the jurisdiction's expense. After discussion, the Board determined that Jerry Nickell will attend the Assembly as the Delegate from the Oregon Board. Jim Heider will attend as the Administrator of the Board, and Nancy Wilson may attend as the Alternate Delegate. If Nancy is unable to attend, Jim Heider will also act as Alternate Delegate.

Staffing Considerations/Issues

The Executive Director presented, to the Board, information and several scenarios regarding past, present, and future staffing needs of the Board. At issue was the current situation with regards to the temporary part-time investigator's position. This was created as a temporary position and, by definition of temporary, the Board needs to make a determination as to the continued longevity of the position. Given the uncertainty of the new OPTA proposed legislation and its possible impact to the Board staffing requirements, the Executive Director suggested that the Board postpone making a permanent staffing decision until the outcome of the OPTA legislation is known. In the interim, to address the temporary employment issue, the Board instructed the Executive Director to terminate the temporary position, by July 31, 2005, and start the process to replace it with a contracted investigator.

General Office Update

The only item, to update the Board on, was the pending office move targeted for August of 2005. The Executive Director informed the Board he has heard that the Nursing Board's budget relative to the move, and their request for additional square footage, is in question by the current Legislative Assembly. Also, in question, was the request from some of Suite 407 Health Licensing Boards for additional square footage. If these budgets and requests for addition space are not approved by the current Legislative Assembly, then the future and timing of the proposed move is jeopardized.

Financial Report
Total Income is over budget by $100,352

The Board's current accounting system is on an accrual basis. When accounting on an accrual basis, instead of accounting for the actual receipt or disbursement of large income and expense items, as they occur, you spread the projected income or expense equitably over the entire accounting period, in this case 12 months, 7/1/04-6/30/05.

The Board's projected income for fiscal year 04-05 is budgeted at $309,800. This is accrued at $25,816/month ($258,160 to date). Actual income booked, through 4/30/05, equals $358,519; this creates the budget surplus of $100,352.

January, February and March are license renewal months, and the Board's primary income months. All of that income has now been booked. The income for the remaining fiscal period, through 6/30/05, is estimated to be an additional $20,000. This would bring the estimated total income, for fiscal year 04-05, to $378,519. The total budgeted 04-05 income is set at $309,800. I estimate the Board's 04-05 income will be in surplus to budget by approximately $68,000. This is due, in part, to the increase in the Practice Without Referral renewal fee from $15 to $50 ($30,000), and the conservative initial budget projections on part of the Executive Director.

Total Expense is over budget by $10,426

5100 Payroll Costs are $28,432 over budget as a combination of several expense factors:

Expense Classification	Over Budget	Under Budget
Salaries	$29,700	
Payroll Taxes	$ 2,700	
Unemployment benefits	$ 4,500	
PERS Bond Debt Obligation	$ 8,800	
PERS Employer Admin		($6,900)
PEBB Medical Premiums		($7,300)
Employee Training		($1,500)
Board Stipends		($1,600)

Narrative: Salaries are over budget, by $29,700, due to the reclassification of the contract investigator's fees from contracted services to hourly wage. (Note: the wage amount budgeted, through 04/05 for contract investigator, was $25,000. We are 20% over that budgeted amount due to the additional use of the contract investigator during the primary investigators 3-month family medical leave.) Payroll taxes are over budget, by $2,700, due to the application of the FICA rate of 7.65% to the over budgeted salaries; the final payments, for the prior director's unbudgeted unemployment claim this fiscal year, total $4,500; the new unbudgeted monthly PERS Debt Obligation Bond repayment totals $8,800 to date; The PERS Employers rate is 2/3 the budgeted amount, due to the institution of the debt bonds ($6,900); healthcare expense is down, by ($7,300), due primarily to an employee selecting the opt-out option; employee training expense is below projected amounts ($1,500); and Board stipends are below projected amount by ($1,600) due to the Board Chair's election not to accept the stipend payments.

5600 Travel Cost are ($6,087) under budget
This is based on a monthly accrual of $900 per month, with less than anticipated employee travel to date. The primary expense associated this year with travel is reimbursement of mileage, meals and lodging to Board members for meetings.

6100 General Office Expenses are $3,426 over budget.
This variance is due primarily to the printing expense associated with the new Administrative Rules; and the unbudgeted, unanticipated excess charge for Board liability insurance.

6195 Depreciation Expense is ($2,025) under budget.
This is attributed to the auditor's instruction to charge off all assets under $5,000. Once the Board booked the entries, there is no longer any depreciation expense to book.

6400 Contracted Services are ($12,689) under budget as a combination of several expense factors:

Expense Classification	Over Budget	Under Budget
Attorney General Fees	$11,100	
Audit Charges	$ 4,300	
Other Services	$ 2,200	
Investigators Fee		($25,000)
CPA Accounting Fees		($3,500)
Emp Hearing Officer Panel		($1,800)

Narrative: Attorney General Fees are over budget by $11,100, due primarily to increased usage attributed to 6 requests and preparation or negotiation on contested case hearings, of which all but two have been settled or withdrawn, one of the two pending cases in staff intensive, advisement on increase complaint activity, and administrative rules review and rewrite; 2003 Audit Charges were $4,300, the audit and the expense for the audit was budgeted for fall of 2003, the expense was actually charged in July of 2004; the charges for Other Services $2,200, represent payment for the cost of expert witness fees and transcription fees not budgeted; the reclassification, of the Contract Investigators fee to hourly wage, resulted in a reduction to this expense class of ($25,000); the fees for CPA were budgeted at ($3,500), however we have not had to use CPA service/advisement for the past 24 months; although, the requests for contested case hearings is at an all time high, Board and Board Counsel have avoided the actual expense of a hearing saving ($1,800) in this expense class.

Future Budget Variance Concerns:
As we approach the end of the 2004-2005 fiscal year, other than the non-budgeted PERS Obligation Bond Debt repayment at $1,000/month, and a projected surplus in income, I am not anticipating any other variance concerns.

OPTA'S Proposed Legislation

Board staff provided the Board with copies of HB 3260-7 amendments to the OPTA's proposed legislative changes to the current Physical Therapist Practice Act. With the exception of holding neutral on the issue surrounding "POPS", the Board has gone on record as reviewing and approving prior versions of the proposed legislation. The current dash-7 amendments do not change the Board's position.

Future Board Meeting Dates

August 5, 2005; September 30, 2005; December 2, 2005. 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 with a list of new licensees for the period of April 01, 2005 through June 02, 2005. 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 April 1, 2005 Regular Board Meeting were presented to the Board. The Chair opened the floor for discussion and comments. Without any noted discussion, the Board voted unanimously to accept the April 1, 2005 Board Meeting Minutes, as submitted.

BOARD MOTIONS

Case PT 85-5/01

Motion by Jerry Nickell to issue Stipulation and Final Order citing failure to do the required 30-day re-evaluations; and, issue a Letter of Concern regarding licensee's need to review PTA rules relevant to a PTs supervisory responsibility of a physical therapist assistant.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 177-11/04

Motion by Jerry Nickell to send licensee a Letter of Concern and Support. In the letter, the Board will request that the licensee voluntarily submit an annual medical status report from her MD upon her license renewal.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 145-8/03

Motion by Jerry Nickell to issue Notice and Stipulated Order citing record keeping violations, and imposing a civil penalty of $1,000 with $500 stayed if no further documentation violations occur; and, issue a Letter of Concern with regards to treatment of family members and a possible conflict of interest.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 188-4/05
Motion by Jerry Nickell to issue a Stipulated Order citing practicing physical therapy with a lapsed license and imposing a civil penalty of $100.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 162a-11/03
Case PT 162b-11/03
Motion by Jerry Nickell to close case citing no violations.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 80-3/02
Case PT 81-3/02
Motion by Jerry Nickell to close case citing no violations; and, issue a Letter of Concern to licensees with regards to their current record keeping and documentation process. The letter will strongly suggest that licensees complete a record keeping course. Also, the Board requests follow-up, from licensees, by providing examples of their new documentation system.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 168-6/04
Motion by Jerry Nickell to send a second Amended Notice of Discipline, Revocation of License, to the licensee citing the new patient care violations and the Board's intent to proceed to Hearing with the case.
Seconded by Joana Freedman
Motion passed unanimously

Case PT 191-5/05
Motion by Jerry Nickell to close case and license applicant.
Seconded by Joana Freedman
Motion passed unanimously

Call for Other New Business
The Board's Clinical Advisor received an inquiry from a licensee; For Board Rule requirements, is a Certified Nurse Midwife (CNM) equivalent to a Nurse Practitioner? And, if so, can a PT accept a referral from the CNM? After discussion, the Board determined it needed more information as to the credentials of a CNM, if by definition of the Nursing Board states that a CNM is equivalent to a Nurse Practitioner, then, yes, a physical therapist can accept a referral from the CNM.

Ms. Zarosinski adjourned the meeting at 2:57 PM.