

**Physical Therapist Licensing Board
Board Meeting
October 17, 2007**

MINUTES

Wednesday, October 17, 2007

Board Members Present: Joana Freedman, PT, Chair; Steve Alstot, PT, Vice Chair; Nancy Wilson, PTA Member; Cindy Cunningham, Public Member; Daiva Banaitis, PT, PhD, PT Member; 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 8:30 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 229-12/06

Motion, by Jason Fiske, to issue Licensee a Confidential Advisory Letter citing Licensee's failure to include adequate and accurate record of treatment provided in patient's documentation.
Seconded by Nancy Wilson
Motion passed unanimously

Case PT 246-7/07

Motion, by Jason Fiske, to issue Licensee a Final Order by Default citing violations noted in the Notice of Proposed Disciplinary Action.
Seconded by Nancy Wilson
Motion passed unanimously

CMS Therapy Standards and Requirements

Motion, by Jason Fiske, to ratify Board's 8/24/07 letter of response to the Centers for Medicare and Medicaid Services proposed revisions to physical therapy standards.
Seconded by Nancy Wilson
Motion passed unanimously

2007-2009 Management Compensation Package

Motion, by Jason Fiske, to accept Executive Director's proposal to postpone his 10% salary increase, as proposed by the Governor for Agency Heads, until the Director is eligible for his 07/01/08 merit review increase.
Seconded by Nancy Wilson
Motion passed unanimously

Board Policy Decision Allowing Board Staff to Approve Remedial Course Work

Motion, by Jason Fiske, to delegate to Board staff the authority to research and approve coursework and remediation programs required of licensees as part of a Board sanction.
Seconded by Nancy Wilson
Motion passed unanimously

General Topics/Business

- The Executive Director presented, to the Board, the first quarter financial statement and narrative (see Attachment "A").
- The Executive Director presented, to the Board for ratification, the Board's drafted response to the Centers for Medicare and Medicaid Services proposed revisions to physical therapy standards. After review and discussion, the Board moved to ratify the letter.
- The Board Executive Director presented, to the Board, a copy of the Board's Investigative Statistics Report requested by, and presented to, the Governor's office. A copy of the Report is available by contacting Jim Heider, in the Board office, at 971.673.0203.
- The Executive Director presented, to the Board for discussion, a copy of the Governor's 2007-2009 Management Compensation Package. After review and discussion, the Board moved to postpone the implementation of the new compensation package until July 1, 2008.

- The Board Executive Director shared, with the Board, copies of written compliments sent to the Board regarding Dot Danovich, Licensing Coordinator. In the letters, new Licensees stated what a pleasure it was dealing with Dot and how quickly and efficiently the process went compared to their experience with other State licensing boards. A guest at the Public Session, Dylan Hogan the OPTA Liaison, addressed the Board in person and re-iterated, to the Board, what a pleasure it was to work with Dot, how helpful she was, and how easy and quick she made the licensing process.

Pain Management Commission CE Requirements SB 879

The Executive Director updated the Board regarding the status for implementation of the new Pain Management Commission's mandatory requirement for pain CE. Staff is currently working on communication to the licensees, rule making, a tracking system update to the licensure data base, audit procedures and forms updates. The Board also discussed what type of course work would count toward the pain management continuing education requirement. It was the Board's opinion that, if left up to them, it would accept any physical therapy continuing education dealing with pain towards the requirement. The Board instructed Staff to contact the Pain Management Commission to clarify if they have any specific requirements with regard to qualifying pain management continuing education, or if that decision was going to be left solely to the discretion of the Board.

Licensure Candidate, Donna Pepper, Request for Board Consideration of Application

The Board received a request from licensure candidate Donna Pepper to consider her for endorsement licensure even though she does not currently hold a valid license in another jurisdiction. Ms. Pepper is a PTA, who graduated from a CAPTE accredited PTA school, sat for and passed the PTA NPTE and was initially licensed in Florida. For the past several years Ms. Pepper has been working in Utah. Utah does not regulate or license PTAs in their state. Ms. Pepper let her Florida PTA license lapsed because she had no intentions of returning to, and working in Florida. Board Statute and Administrative Rule requires that a candidate, for an Endorsement Application, hold a current valid license to practice PT in at least one other state or jurisdiction. Based on that requirement, Ms. Pepper is not eligible to be licensed by endorsement in Oregon. After review of Statute and Rule and discussion with the Board legal counsel, the Board determined that Ms. Pepper can apply to Oregon, through examination, since it has been less than 5 years since her Florida license has lapsed. Also, because Ms. Pepper has already sat the NPTE and has passing scores for the State of Oregon, she will not have to take the exam again.

Continuing Education Rules/Policies

The Board discussed changes and amendments needed for the continuing education rules Division 35. The Board Clinical Advisor pointed out, to the Board, a loophole in the requirements allowing an individual whose license was lapsed during the second half of a certification period. The current rules do not address a licensee who lets their license lapse during the odd year of a certification period (no CE requirement to renew during an odd number year) and subsequently reinstates their license in the next even numbered year. To reinstate, the Licensee would not have to show they completed any CE for the prior certification period. The Board instructed the staff to form a Rules Advisory Committee to look at updates to the CE Rules.

Renewal Applications CE Non-Compliance Policy

The Executive Director asked the Board to consider developing Board policy, relative to the Board's intended actions, toward Licensees found to be in non-compliance of the new CE requirements upon renewal. After consideration and discussion, the Board did make some policy decisions with regard to renewal applicants who do not meet the CE requirements. The Board determined all applicants will be asked the question whether they have, or will have, completed the required CE by the renewal date for March 31st. If an applicant answers no to the question, they will not be allowed to renew their license and it will lapse on April 1. Upon proof that they have completed the required CE and payment of the renewal fee and lapsed license fee, the applicant will be able to re-instate their lapsed license. Applicants who state, on the renewal form, that they have or will completed the CE by 3/31 and subsequently renew, will be subject to random audits. If audited, and licensee found in non-compliance, an investigation will be opened to determine if disciplinary action is warranted. The Board reviewed disciplinary actions taken in other states. The Board and Staff will develop a disciplinary matrix for use in applying civil penalties for non-compliance of CE regulations.

Question Regarding Approval of CE for CMS Course

Licensee Jackie Fowler asked the Board to consider approving a Center for Medicare and Medicaid Services web-based training for CE credit. After review and consideration, the Board approved the CMS course titled "PPS Success-Implication for Therapy".

Home Visits and Home Assessments

Licensee Tim Esau wrote a letter, to the Board, regarding his concerns about the Board's determination that home assessments must be done by a physical therapist. Board Staff surveyed several large employers to determine what they require, with regards to home assessments, and in all cases the home assessment is done by a physical therapist. After consideration and discussion, the Board reiterated that a home assessment needs to be done by a PT. If the PT recommends follow-up home visits, that can be done by a PTA if the goals for the visit are set by the PT. The Board understands that there is a shortage of PTs nationwide, but felt strongly that a home assessment, which determines whether a patient can safely be discharged to go home, should be done by a PT.

Direct Access Rule Clarification

Licensee Louise Gilbert asked the Board for clarification regarding the length of time she would need to wait, between the discharge of a direct access patient, and the re-initiation of care for the same diagnosis or injury. After consideration and discussion, the Board determined that if a patient is discharged from care because the goals have been met, and the "episode of care" has ended, that patient can return to PT in a reasonable amount of time without a script from an MD. What the Board does not want is for the PT to think, "the 30 days are up, I will discharge you, go home for a week and then come back and we will start over". The Board also wants staff to consider some clarification of the direct access rules when the next Rules Advisory Committee meets.

New 60 Day Direct Access Rule

Sponsored by the OPTA, HB 2386 will go into effect on January 2, 2008. The primary impact, on PT Board Statute, is the extension of the requirement to refer a direct access patient to a medical provider after 30 days. The timeframe to refer will change to 60 days on January 2nd. After consideration and discussion, the Board determined that any

direct access patients evaluated and treated prior to or on December 31, 2007 will still be subject to the 30-day referral requirement. Any new direct access patients evaluated and treated on or after January 2, 2008 may be seen for up to 60 days prior to the requirement to refer.

Request From the OPTA Legislative Committee

The OPTA's Legislative Committee requested the Board's consideration on two matters. Tracy Rutten, Lobbyist for the OPTA, was in attendance and addressed the first issue with the Board. The OPTA wanted the Board to consider rule making that would further define manual therapy or manipulation in the Board Administrative Rule and set some guidelines as to the qualifications of therapists who use these techniques. After consideration and discussion, the Board determined it would support amendments to the rule that would better define both the terms and the qualifications for therapists using manipulation. Further, it instructed Board Staff to include this topic in the next rule making process and to consider this topic when soliciting and selecting candidates to serve on the Advisory Committee. The second request was presented, to the Board, by Steve Alstot, PT. Steve serves as a member of the OPTA Legislative Committee. The Committee wanted to know if the Board would consider an article in the Board's next Newsletter regarding the Chiropractic Association's ballot measure initiative. The Chiropractic Association is trying to get an initiative on the November 2009 ballot. The initiative would specify the educational and clinical requirements necessary for a health care provider to perform any kind of spinal manipulation on a patient. After consideration and discussion, the Board decided it would not be in the best interest of the Board to play any kind of role in the public political arena. This was an issue targeting limitations to PT Scope of Practice, and was better suited for debate between the two professional associations.

Question Regarding the Sale of Products to Non-Patients

Licensee Jeff Giuliatti posed the question, to the Board, whether it is OK to sell medical supplies, i.e. postural support and exercise items, to non-patients? After consideration and discussion, the Board determined this issue is not addressed by the Statute or Rule, and that the sale of these products to non-patients is not a Board issue. The Board and its Legal Counsel stated that it is more of a liability issue for the Licensees. If a Licensee chooses to sell products to non-patients, they may be putting themselves at risk of someone getting injured and then saying, "well, a physical therapist recommended this or sold it to me". In addition, the Board suggested that if a Licensee chose to sell products to non-patients they should not make any recommendations about the product or give any advice regarding usage when selling product to non-patients.

Federation of State Boards of Physical Therapy Annual Conference

The Board Executive Director shared, with the Board, a report regarding the FSBPT Delegates Assembly held in Memphis. The information in the report included the motions moved before the Delegates, the position of the Oregon Board, and the outcome of each motion. Also included, in the report, was Oregon support position for the nominees slated, for elective offices, and the outcome of the election. Copies, of the report, are available by contacting Jim Heider in the Board office at 971.673.0203.

Policy Regarding Approval of Remedial Courses for Licensee's Sanction by the Board

Board Staff asked the Board's consideration of delegating to Staff the authority to research and approve remedial course work or programs mandated by the Board as part of a sanction or disciplinary action against a Licensee. This would include such things as documentation courses, ethics course, boundary courses, exam refresher courses, etc. After consideration and discussion, the Board moved to establish a policy allowing Board Staff to research, review, and approve course work and programs used in remediation of disciplinary actions.

Approval of Meeting Minutes

The Minutes, from the August 10, 2007 Regular Board Meeting, were presented to the Board. The Chair opened the floor for discussion and comments. With two 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: 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 August 10, 2007 through October 16, 2007. The Chair opened the floor, for discussion, with regard 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.

Other New Business

The Board Chair called for other new business.

- The Board received a call from an associate of Licensee Alanna McLean. Ms. McLean died in September. The Licensee owned a private practice and the surviving family wants to close the business. The associate wanted to know, from the Board, what if anything the family should do with the patient files. After Board consideration and discussion, the Board determined that the Board had no jurisdiction over the family, the business, the records, or the associate, who was not a licensee of the Board. The Board did feel it was necessary to convey to the family that, under HIPAA Privacy and Security Regulations, the Estate is responsible for maintaining the privacy of the records and insuring that patients can gain access to the records if they so desire. The Board suggested that an attorney, for the Estate, determine the appropriate course of action in assuring that patients can access their records and the records remain confidential. The Board did offer two possible solutions: ask a local therapist to assume the responsibility for the patient records; or, send out a letter to the patients and alert them that they may arrange to obtain their records if they so choose. The Board instructed the Staff to send a letter to the Licensee's husband noting the above information.
- The Board Clinical Advisor shared with the Board an escalating issue with regards to the role PTAs can play in the reassessment of a patient. After consideration and discussion, the Board determined that a PTA can play a role in the documentation for the reassessment of a patient. They can provide status and data to the PT; however, it is the PT who must personally see the patient and document that they indeed performed the reassessment. The Board also stated that a PTA could write the note to the physician documenting the reassessment because the rules do not address this issue. However,

again it must be the PT who personally performs and documents that the reassessment has been completed. Also, in question was the need for a PT to co-sign the work of a PTA under their supervision. The Board quickly stated there is nothing in Statute or Rule that would require a PT to co-sign anything a PTA has documented. The Board directed Staff to add the clarification of reassessments, performance and documentation to the list of items to be reviewed by the Rules Advisory Committee.

- The Executive Director shared, with the Board, a request from a foreign-educated therapist for consideration of licensure in the State of Oregon. The therapist is a graduate of a Canadian non-CAPTE accredited program. In 1994 the therapist completed the credentialing process through ICA for the State of Hawaii. He successfully passed the NPTE and currently holds a Hawaiian PT license. As instructed, by Board staff, the therapist started the Oregon credentialing process with IERF. However, the former University is unable to provide IERF the specific syllabi necessary to complete the evaluation. This issue came up just days before the Board meeting. The Board is sensitive to the needs of the therapist; however, it would not be prudent for the Board to deliberate on this issue until it has all the facts. The Board instructed the Executive Director to contact the Board Legal Counsel to see if the Board has any authority to make exception to the requirements. Also, to contact the Director of the FCCPT to see if they can help the therapist with the credentialing report. Relying on their vast libraries and history of previous credentials, the FCCPT has been able to help other candidates in similar situations. Lastly, the Board asked the Executive Director to pull the files of classmates of the therapist, who currently hold Oregon licenses (noted in therapist's letter to the Board). The Board asked that the Director report his findings back to them at the December 7, 2007 Board meeting.

With no additional other new business cited, Board Chair, Joana Freedman, adjourned the Board Meeting at 3:58 PM.

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ATTACHMENT "A"

Oregon Physical Therapist Licensing Board Fiscal Year-to-Date Financial Report July 2007 through September 2007

	<u>Jul 07 - Sep 07</u>	<u>Budget</u>	<u>Variance</u>
Ordinary Income/Expense			
Income			
4000 · Income	22,407.53	111,030.00	-88,622.47
Total Income	<u>22,407.53</u>	<u>111,030.00</u>	<u>-88,622.47</u>
Gross Profit	22,407.53	111,030.00	-88,622.47
Expense			
5100 · Payroll Costs	65,903.59	69,045.00	-3,141.41
5600 · Travel Costs	-276.80	2,250.00	-2,526.80
6100 · General Office Expenses	3,003.35	5,910.00	-2,906.65
6190 · Dues and Subscriptions	30.48	600.00	-569.52
6200 · Postage	320.11	2,325.00	-2,004.89
6400 · Contracted Services	21,704.74	17,310.00	4,394.74
6500 · Rent and Occupancy	2,775.60	4,005.00	-1,229.40
6600 · Background Checks	3,195.00	3,000.00	195.00
6650 · Investigation Expenses	0.00	150.00	-150.00
6800 · Computers & Accessories	522.78	1,050.00	-527.22
Total Expense	<u>97,178.85</u>	<u>105,645.00</u>	<u>-8,466.15</u>
Net Ordinary Income	<u>-74,771.32</u>	<u>5,385.00</u>	<u>-80,156.32</u>
Net Income	<u><u>-74,771.32</u></u>	<u><u>5,385.00</u></u>	<u><u>-80,156.32</u></u>

Scroll Down to View Narrative

**October 17, 2007 Board Meeting
Financial Report Narrative
Reporting Period 07/01/07 – 09/30/07**

Total Income is under budget by \$88,622

The Board's 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 that income or expense equitably over the entire accounting period, in this case 12 months, 7/1/07-6/30/08.

The Board's projected income for the fiscal year '07-'08 is budgeted at \$450,000. This is accrued at \$37,010/month (\$111,030 to 09/30/07). Actual income booked to 09/30/07 equals \$22,408; this creates an income deficit of (\$88,622). The vast majority of the accrued income will actually be received during the renewal cycle, Jan-Mar '08.

This is not an item for concern at this point.

Total Expense is under budget by \$8,466

Narrative: All year-to-date expenses are following on track, or slightly under budget, with the exception of Contracted Services. Contracted Services are over budget by \$4,395. This is due primarily to legal counsel expense incurred for preparation of a complex contested case hearing. This hearing did end up settling with a Stipulation and Final Order. For the two months ending August, 2007, the Board budget for legal counsel was \$5,000. The actual spent for this case, in preparation for the hearing, was \$9,637. Since the inception of this case in August, 2005, the Board has incurred legal expenses totaling \$29,688. Note: this is just the expense for the legal counsel; this figure does not include any costs for allocated staff time, the Administrative Hearings Office, or use of the part-time Investigator.