

**Physical Therapist Licensing Board  
Board Meeting  
December 7, 2007**

**MINUTES**

**Friday, December 7, 2007**

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

**Board Members Absent:** 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**

The December 7, 2007 Board Meeting was held off-site at Pacific University Hillsboro Campus, 222 SE 8<sup>th</sup> Avenue, Hillsboro, Oregon. Board Chair, Joana Freedman convened the Board, into Executive Session at 8:45 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, the Board adjourned for a meal break. At 1:00 PM, Board Chair, Joana Freedman brought the Board into Public Session. The Public Session was also held off-site at the Hillsboro Civic Center, 150 E. Main Street Room C117, Hillsboro, Oregon. 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. All the PT students, from Pacific University, were invited to attend the Public Session 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 231-01/07**

Motion, by Daiva Banaitis, to issue Notice of Proposed Discipline citing violations of OAR 848-040-0155(3); 848-040-0145(3); and 848-015-0030(1)(b) and impose a \$250.00 civil penalty.  
Seconded by Burke Selbst  
Motion passed, by quorum, 6-0; Cindy Cunningham was not present for the vote.

#### **Case PT 231b-01/07**

Motion, by Daiva Banaitis, to issue Notice of Proposed Discipline citing violations of OAR 848-040-0155(2); 848-040-0155(3); and 848-040-0155(1) and impose a \$1,000.00 civil penalty.  
Seconded by Burke Selbst  
Motion passed, by quorum, 4-2; Joana Freedman and Jason Fiske voted no to the motion;  
Cindy Cunningham was not present for the vote.

#### **Case PT 230a-01/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0155(2) and 848-040-0155(3).  
Seconded by Burke Selbst  
Motion passed, by quorum, 6-0; Cindy Cunningham was not present for the vote.

#### **Case PT 230b-01/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0145(3), 848-040-0155(3) and 848-015-0030(1)(b).  
Seconded by Burke Selbst  
Motion passed, by quorum, 6-0; Cindy Cunningham was not present for the vote.

#### **Case PT 230c-01/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0155(2) and 848-040-0155(3).  
Seconded by Burke Selbst  
Motion passed, by quorum, 5-0; Steve Alstot recused himself from the vote; Cindy Cunningham was not present for the vote.

#### **Case PT 255a-11/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0155(2) and 848-040-0155(3).  
Seconded by Burke Selbst  
Motion passed, by quorum, 5-1; Steve Alstot voted no to the motion; Cindy Cunningham was not present for the vote.

**Case PT 255b-11/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0145(3), 848-040-0155(3) and 848-015-0030(1)(b).

Seconded by Burke Selbst

Motion passed, by quorum, 5-1; Steve Alstot voted no to the motion; Cindy Cunningham was not present for the vote.

**Case PT 256a-11/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0155(2) and 848-040-0155(3).

Seconded by Burke Selbst

Motion passed, by quorum, 5-1; Steve Alstot voted no to the motion; Cindy Cunningham was not present for the vote.

**Case PT 256b-11/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0145(3), 848-040-0155(3) and 848-015-0030(1)(b).

Seconded by Burke Selbst

Motion passed, by quorum, 5-1; Steve Alstot voted no to the motion; Cindy Cunningham was not present for the vote.

**Case PT 257a-11/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of OAR 848-040-0155(2) and 848-040-0155(3).

Seconded by Burke Selbst

Motion passed, by quorum, 5-1; Steve Alstot voted no to the motion; Cindy Cunningham was not present for the vote.

**Case PT 257b-11/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting violations of 848-040-0155(3) and 848-015-0030(1)(b).

Seconded by Burke Selbst

Motion passed, by quorum, 5-1; Steve Alstot voted no to the motion; Cindy Cunningham was not present for the vote.

**Case Theresa (Cranford) Johnson Expired License Applicant**

Motion, by Daiva Banaitis, to acknowledge applicant as competent to practice, as a PTA in the State of Oregon, and to allow her to re-apply for licensure, through examination, without having to sit the examination again.

Seconded by Burke Selbst

Motion passed, by quorum, 6-0; Cindy Cunningham was not present for the vote.

**Case PT 251-8/07**

Motion, by Daiva Banaitis, to close case citing no violations.

Seconded by Burke Selbst

Motion passed, by quorum, 5-0; Jason Fiske abstained from the vote; Cindy Cunningham was not present for the vote.

### **Case PT 251b-8/07**

Motion, by Daiva Banaitis, to issue Confidential Advisory Letter noting need for improved daily notes and patient documentation.

Seconded by Burke Selbst

Motion passed, by quorum, 5-0; Jason Fiske abstained from the vote; Cindy Cunningham was not present for the vote.

### **Pain Management CE Requirements for PTs and PTAs**

Sherri Paru, PT, Clinical Advisor/Investigator confirmed, in Public Session, that the new statutory requirement for mandatory pain management CE, due by March 31, 2010, does not include PTAs and that the amended rules, relative to the pain management requirement, will include that information.

### **Contested Case Hearing Presentation by Carol Parks, AAG**

Board Counsel, Senior Assistant Attorney General, Carol Parks, presented, to the Board and its guests, a PowerPoint presentation. The presentation outlined the Department of Justice and Office of Administrative Hearings policies and procedures regarding the complete cycle of a requested contested case hearing.

### **Maciej Mocek - potential foreign-educated applicant for licensure**

At its December 7, 2007 Board meeting, the Board reviewed a request, from Mr. Mocek to consider his professional life experience as remediation for the deficiencies noted in the FCCPT October 4, 2005 Credentials Report prepared for the Oregon Board. Before the Board could deliberate, Board Counsel advised the Board that it did not have the legal authority to make exceptions to the Administrative Rule requirements for credentialing. Based on Mr. Mocek's circumstances, and the similarity to other recent cases brought before the Board, the Board has determined that it may need to revisit its current administrative rules regarding its credentialing criteria and subsequent licensure of foreign-educated therapists. The rule review would apply to a therapist who: has gone through some type of credentialing; holds a valid license in another US jurisdiction; has successfully taken and passed the NPTE; and may have a number of years professional experience in the US. The Board has instructed Staff to take this matter up with the 2008 Rules Advisory Committee. The Board also instructed staff to advise Mr. Mocek of his current options: 1) Wait six to nine months to see what, or how new rule amendments may impact the criteria for licensing foreign-educated therapists. 2) Do the remedial work necessary to meet the current Oregon credentialing criteria.

### **Kevin Bourlai - potential foreign-educated applicant for licensure**

At its December 7, 2007 Board meeting, the Board reviewed a request, from Mr. Bourlai, to consider his professional life experience as evidence of his competency to apply for physical therapy licensure for the State of Oregon. Mr. Bourlai received his education in Canada and the University he attended is unable to produce the historical documents necessary to complete the required Credentials Report. As noted above, before the Board could deliberate, Board Counsel advised the Board that it did not have the legal authority to make exceptions to the Administrative Rule requirements for credentialing. Based on Mr. Bourlai's circumstances, and the similarity to other recent cases brought before the Board, the Board has determined that it may need to revisit its current Administrative Rules regarding its credentialing criteria and subsequent licensure of foreign-educated therapists. The rule review would apply to a therapist who: has gone through some type of credentialing; holds a valid license in another US

jurisdiction; has successfully taken and passed the NPTE; and may have a number of years professional experience in the US. The Board has instructed Staff to take this matter up with the 2008 Rules Advisory Committee. The Board also instructed staff to advise Mr. Boulai of his current options: 1) Wait six to nine months to see what or how new rule amendments may impact the criteria for licensing foreign educated therapists. 2) Work with the FCCPT to try and piece together a Credentials Report that would be acceptable to the Oregon Board.

### **General Topics/Business**

- The Executive Director reported that he has been appointed to Chair the FSBPT Exam Administration Committee, this is a 3 year appointment, effective January 1, 2008.
- The Executive Director presented the 2009 Legislative Calendar, and timing for submission of proposed legislative concepts.
- The Executive Director presented the anticipated 2008 interim legislation topics that may have impact on the Board: the number of public members sitting on a board; the mandatory requirement for Boards to report suspected criminal activities to the appropriate law enforcement agency; and the development of published disciplinary guidelines. Diana Godwin, Attorney for Oregon Physical Therapist in Independent Practice, shared an addition legislative concept she hopes to present during the interim session. The concept would amend ORS 419B.005 and would add physical therapists to the list of health care providers who have mandatory requirements to report suspected child abuse.
- The Executive Director presented the final draft, of the proposed policy, on approval of compliance remediation courses by Board Staff. After consideration, Daiva Banaitis, PT Board Member, moved that the Board ratify the policy for staff approval of compliance and remediation courses as presented. The motion was seconded, by Burke Selbst, PT Board Member, and passed unanimously by the Board.
- The Executive Director reported that the FSBPT was implementing a new version of the Course Work Tool, effective April 1, 2008. The Director also reminded the Board that it is the Course Work Tool adopted by the Board, which is the standard used to measure foreign-educated therapists PT program content to that of a US educated therapist. The new requirements for general education credits will increase, from 54 credits to 60 credits, and professional education credits will increase, from 69 credits to 90 credits. The Board discussed the implications and concerns for foreign-educated therapists and their ability to meet the new standards as set by the Course Work Tool. The Executive Director shared, with the Board, a new program named P.L.A.N. (Planned Learning Assistance Network) created by the Foreign Credentialing Commission on Physical Therapy (FCCPT). The program is designed to identify and offer remediation opportunities, for foreign-educated therapists whose credentials do not meet the standards, as set by any particular jurisdiction. Further, the Director reminded the Board that the Oregon Board does allow for remedial work, as an option, for therapists who do not meet the Board's credentialing standards.
- The Executive Director presented a draft of the updated renewal application and instructions and asked for Board comments. The Board asked that the link to the Board website, directing applicants to the new CE Rules, be added to the form. The Board also requested staff to include a statement relative to an applicant who

checks the box “I will complete the CE”, the renew is issued and later applicant determines that they can not meet the CE requirement. The Board wanted a statement that said the therapist needs to contact the Board prior to March 31, 2008.

### **Historic Exam Passing Score Criteria**

After researching historical Board archives, the Director presented documentation of his findings relative to the history and adoption of Administrative Rule passing score criterion used in consideration of new examination and endorsement licensure applicants. The Director’s findings indicated that there exists a discrepancy, within Administrative Rule OAR 848-010-0020(5)(b), and the Board’s actual intention and application of the rule. The Rule reads: “For applicants examined, from January 5, 1983 through January 31, 1996, the minimum overall passing score shall be based on a formula using the national average raw score, minus two standard errors of measurement verified by a Board-approved examination service”. After discussion and consideration, the Board instructed the Director to include the following Amendment to OAR 848-010-0020(5)(b) during the 2008 Advisory Rules Committee proposed rule making changes and updates: “For applicants examined, from January 5, 1983 through January 31, 1996, the minimum overall passing score shall be based on a formula using the national average raw score, minus two **average** standard errors of measurement ~~verified by a Board-approved examination service~~ **as determined by the Board.**” The latter proposed Amendment has been the passing score criteria used, by the Board, since the adoption of the Rule in 1984.

### **Ethical Questions Posed by Mark Morenco, ethics professor at Pacific University**

The Pacific University third year physical therapy ethics students developed two case scenarios presented to the Board. The intent was to determine what action, if any, the Board may take if either of the scenarios were brought before the Board in the form of a complaint. The first scenario dealt with a physical therapist’s legal obligation to treat someone. The second question dealt with the provision of pro bono services. Both scenarios were general, in content, and after discussion and consideration, Board Legal Counsel determined that, in the case where a physical therapist refused to treat a patient, there is nothing in Statute or Rule that would require or obligate a therapist to treat any patient. If the denial for treatment was ethical, in nature, the Board does have Rules that hold a therapist responsible for ethical and professional behavior. In the case requiring a therapist to provide pro bono work, again Board Counsel stated there is nothing in Statute or Rule that would require or obligate a therapist to provide any kind of pro-bono work. The point was made by, Sherri Paru, PT, Clinical Advisor, that if pro-bono work is provided, the requirement for patient treatment and documentation is the same as if there was a fee for service. Also, Board Member Daiva Banaitis, PT commented that, as health care professionals, all therapists have a moral and ethical obligation to give back to their community.

### **Question Regarding use of “Urgent PC” & Removal of Needles**

After consideration, the Board determined that it would be within the physical therapy Scope of Practice to remove a needle placed by a physician during an Urgent PC treatment.

### **Question Regarding the Sale of Exercise Recovery Products**

After consideration, the Board determined that it is not within the physical therapy Scope of Practice to sell exercise recovery products. A therapist may provide informational materials to patients and answer questions, but the Board felt that physical therapists do not have the specific knowledge to recommend one product over another. Further, the Board felt that these types of

products are targeted for a small percentage of elite level athletes and not suitable for the typical patient population.

### **Future 2008 Board Meeting Dates**

As established by the Board, the future Board Meeting dates are as follows: 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](http://www.ptboard.state.or.us).

### **Approval of Meeting Minutes**

The Minutes, from the October 17, 2007 Regular Board Meeting, were presented to the Board. The Chair opened the floor for discussion and comments. With noted amendments, the Minutes were approved for publication as written.

### **Child Abuse Reporting Bill**

Diana Godwin, Attorney At Law and Counsel Representative for Oregon Physical Therapists in Independent Practice (OPTIP), presented, to the Board, a draft of her proposed legislation that would amend ORS 419B.005 adding physical therapists to the list of public or private officials required to report when the official has reasonable cause to believe a child with whom they come in contact has suffered abuse or that any person with whom the official comes in contact has abused a child. Ms. Godwin asked for the Board support of this proposed Legislative Amendment. After consideration, the Board determined it would join, with the OPTA, in support of Ms. Godwin's efforts to pass the proposed amended legislation forward.

### **Ratification of PT/PTA Licenses & Temporary Permits**

The Board was presented a list of new licensees for the period of October 17, 2007 through December 06, 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 Executive Director shared, with the Board, that the Administrative Rules PowerPoint Presentation Program created and presented, by Sherri Paru, PT Clinical Advisory/Investigator, at the OPTA winter forum, was a huge success. The Executive Director also announced that, at the directive of the Board, staff has brought together a 2008 Administrative Rules Advisory Committee and the initial meeting has been scheduled for Wednesday, December 12, 2007. With no additional other new business cited, Board Chair Joana Freedman adjourned the Board Meeting at 4:17 PM.