

**Physical Therapist Licensing Board  
Board Meeting  
June 1, 2012**

**MINUTES**

**Friday, June 1, 2012**

**Board Members Present:** Steve Alstot, PT, Chair; Jason Fiske, PT, Vice Chair; Ruggie Canizares, PT Member; Burke Selbst, PT Member; Richard Rutt, PT Member; Carol Sutton, Public Member; Troy Costales, Public Member.

**Board Members Absent:** Jennifer Wood, PTA Member

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

**Legal Counsel:** Carol Parks, AAG

At 8:55 AM, Chair Steve Alstot convened the Board into Executive Session, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k)(f), 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, current legislation 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 1:11 PM, Board Chair Alstot convened the Board into Public Session. During this portion of the meeting, the Board considered inquiries from licensees and the public, approved the prior Board Meeting minutes, ratified new licenses, reviewed general correspondence, entertained motions, publicly voted on any actions so moved before the Board and conducted any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session was 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 435-4/12**

Motion by Ruggie Canizares to issue an Notice of Proposed Disciplinary Action (Revocation of License) citing violations of: ORS 688.140(2)(a); OAR 848-045-0020(2)(h); OAR 848-045-

0020(2)(i) for failure to comply with an order of the Board and the Board reserves the right to assess any costs associated with a Contested Case Hearing.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

**Case PT 411-10/11**

Motion by Ruggie Canizares to accept attorney's draft of the Stipulated Agreement and Final Order with amendments to stipulation #2 deleting drafted language and inserting "licensee failed to document the aide training"; and stipulation #3 changing the assessed civil penalty from \$1,000 to \$2,000.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

**Case PT 427-3/12**

Motion by Ruggie Canizares to ratify Confidential Advisory Letter issued by the Board on 3/30/12.

Seconded by Richard Rutt.

Motion passed by vote 6-1, Board member Costales voted nay and Board member Wood was absent from the vote.

**Case PT 422-2/12**

Motion by Ruggie Canizares to issue Notice of Proposed Disciplinary Action (Civil Penalty) citing ORS 688.140(2)(a) and ORS 688.135(2) for failure to protect patient health information. Impose a civil penalty of \$1,000 with \$500 stayed pending the successful completion of a Board approved HIPAA course within 90 days of the Notice and the Board reserves the right to assess any costs associated with a Contested Case Hearing.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

**Case PT 430-4/12**

Motion by Ruggie Canizares to issue a Stipulated Agreement and Final Order citing ORS 688.140(2)(a) and OAR 848-035-0020(10) for failure to timely complete the required continuing education. Impose a civil penalty of \$100.00.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

**Case PT 432-4/12**

Motion by Ruggie Canizares to close case, no action taken.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

**Case PT 434-4/12**

Motion by Ruggie Canizares to close case no action taken.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

**Case PT 437-5/12**

Motion by Ruggie Canizares to issue a Confidential Advisory Letter citing concern for failure to disclose arrest to the Board. Require Licensee to submit written monthly sobriety and progress

reports to the Board for one year, quarterly reports for the second year and provide documentation showing successful completion of the court ordered probation.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

### **Case PT 425-3/12**

Motion by Ruggie Canizares to close case, no action taken.

Seconded by Troy Costales.

Motion passed by vote 6-0, Board member Rutt recused himself from deliberation and voting and Board member Wood was absent from the vote.

### **Selection of Oregon Delegates for the 2012 Federation of State Boards of Physical Therapy (FSBPT) Delegates Assembly**

The Director reported that the Board's deadline to select and credential its delegates for the FSBPT annual assembly is June 25, 2012. The FSBPT will fully fund a Delegate, Alternate Delegate and Administrator from each of its jurisdictions. After consideration and discussion, the Board determined that Chair Alstot and Director Heider would attend the assembly. Selection of the Alternate Delegate was dependent on responses from members Wood, and Sutton. The Board's Clinical Advisor/Investigator has been invited and will be funded by the FSBPT to attend the assembly as a presenter on the subject of Social Media.

### **Update on Massage Board Scope of Practice Issue**

At its March 16, 2012 meeting the PT Board discussed the issue regarding the Massage Board's declaration that use of the PT CPT Codes for evaluation and reevaluation were within the massage board scope of practice. The PT Board and the OPTA responded with written objections to this published statement and were invited to attend the Massage Board's March 30, 2012 Board meeting to voice concerns. At the meeting, OPTA President, Chris Murphy voiced the association's and board's opinion relative to the use of PT CPT Codes by massage therapists. Upon further consideration the Massage Board voted to rescind its earlier statement and publish a retraction in their current minutes, their newsletter and on their website.

### **Dry Needling Update**

The Director presented the Board with a summary document provided by the Chiropractic Board relative to the current status of the appellate court case between the Acupuncture Association and that Board. The case challenges the recently adopted Chiropractic rules relative to the certification of Chiropractic Physicians for use of the dry needling technique. The newly adopted rules are still suspended by the courts and Chiropractic Physicians who have been certified must cease all practice of dry needling. To date the Chiropractic Board has incurred \$15,000 in litigation expense and is estimating at least another \$5,000 in future costs. A declaration from the Appellate Court is not expected until sometime in 2013. Although the PT Board continues to receive letters and documentation in support of physical therapists practicing dry needling, the Board stands by their November 20, 2009 declaration posted on the Board website and will take no further action regarding this issue pending the outcome of the appellate court case.

### **Letter of Concern Regarding PTAs in Clinical Management Position**

The Board received a letter from a concerned citizen relative to their perceived abuse of using PTAs as directors of rehab in a clinical setting. The concerned citizen alleged that it puts the PTA in the position of authority over the PT and places the PTA in a role of making patient clinical care decisions, thus taking the PTA beyond their scope of practice. With no specific examples provided

or cited, upon discussion and consideration, the Board determined that it had no real authority over the clinics or rehab facilities. The only authority the Board has is over its licensees. It is clear in statute and rule that a PTA cannot direct the care of a patient or independently change a patient's plan of care. The Board determined that it would be helpful for the Board to publish an advisory newsletter article or letter that clearly defines the difference between a lead clinical care manager and an administrative manager and further identify the risk of potential violation of statute and rule by a PTA who is trying to manage patient clinical care.

### **OPTIP Concern Documentation by Student PT in Electronic Medical Records (EMR)**

Diana Godwin, attorney for Oregon Physical Therapists in Independent Practice (OPTIP), cited several issues regarding the rules requiring authentication of treatment notes written by student physical therapist (SPT) and co-signed by the supervising PT when using EMR systems. The concerns included costs associated with licensure and system restrictions and limitations. The Board determined that the issues are directly related to the employer's choice of systems. As a work around, the Board decided that those systems that would not allow for a second signature or access by the SPT, the note could be entered by the PT and documented that the treatment was provided by the SPT.

During this discussion it was also determined that the definition of "Authentication" in current administrative rule OAR 848-040-0100(1) and OAR 848-020-0000(6) needed to be updated to include in the both the SPTs and Aides.

### **NPTE Eligibility Policy and Procedures**

The Director provided the Board with a copy of a new administrative policy implemented on 5/15/2012. The new policy allows the staff to release a candidate's eligibility to sit for the National Physical Therapy Examination NPTE prior to receiving the required Certificate of Professional Education (Cert). The policy retains the Boards rights to rescind the candidate's eligibility if the Cert is not received prior to the scheduled exam date. With the implementation of fixed date testing, exam seats are limited at each test site. Many other jurisdictions already allow candidates to test prior to program completion. Board staff was noticing that there were students who had applied for licensure with another state, they registered to sit the exam and had been made eligible by that State but they were reserving exam seats in the State of Oregon. The rationale for the new policy was to make certain that Oregon graduates had the option of reserving seats in the Oregon test sites.

### **Non compliance with renewal demographic survey**

Statute requires that a renewal applicant complete the Oregon Healthcare Workforce Institute's (OHWI) professional demographic survey before the licensing Board can issue the renewal license. The PT Board chose to have the applicants attest to the completion of the survey as a question line item on both the on-line renewal and the paper renewal. The Board processed and issued a total of 4,305 renewal license applications. When comparing the Board data file of renewal applications to the OHWI data file of completed surveys there was a discrepancy of 675 records, 16% of the total. OHWI only captured 3,630 records.

The Director reported that all of the health boards experienced similar results in the number of missing records. Because of the way the on-line survey system was set up it could not be determined for certain whether the licensees actually failed to complete the surveys or that there may have been a problem in capturing the records. The Oregon Health Policy and Research Group determined that they had a sufficient enough response to produce a valid report and recommended the Boards not to consider actions against the licensees and not require the missing record holders to

retrospectively complete the survey. After consideration and discussion the Board determined that it would not take action against the Licensees who had renewed their licenses but had no record of completing the survey. Member Costales asked Board staff to request something in writing from OHWI restating their recommendation for non-action by the Boards.

As a follow-up, OHWI has taken steps to alleviate this problem in the future and will implement a program change effective July 1, 2012 that will certify the completion of the survey prior to letting an applicant complete their online renewal.

**Recuperation of costs for contested case hearing**

The Board has the authority to recuperate the costs associated with a contested case hearing when the Board’s action is upheld by the Administrative Law Judge. After discussion the Board determined that it will include language in all of its future proposed orders and depending on circumstances will address the issue of whether to recoup costs on a case by case basis. Although it is important to reserve its rights, the Board did not want to discourage Licensees from exercising their rights to request a contested case hearing.

**Board Policy Regarding Verification of Licensure**

The current policy for requesting verification requires the requestors to complete a request form and pay a fee prior to completion of the verification. The request form asks the requestor where to send the primarily source written verification letter. The Board investigator was concerned that if the requestor asked for the verification to be sent directly to them rather than the receiving Board, the requestor has access to the document and may try to alter the form or fail to provide it to the receiving board. After discussion and consideration the Board determined that there are States that require applicants to gather these documents as part of the application process. To ensure the Oregon Board has done all it can to preserve the official document, the Board has instructed staff to seal all verification letters in a Board envelope and stamp the back of the envelope along the seal ensuring that whomever receives the document will know that it has or has not been opened prior to its receipt.

**General Topics/Business**

- Board Counsel report from FARB conference – Board Counsel Carol Parks reported on the FARB conference she attended last fall. Ms. Parks commented on the case involving the Federal Trade Commission and the North Carolina Dentistry Board. Pending the outcome of the case Ms. Parks was concerned that precedence would be set allowing an unlicensed person to administer a modality that previously required a licensed professional to administer. Ms. Parks also stated there was an interesting presentation on the issue of dry needling the scope of practice challenges facing the professions.
- After discussion and consideration the Board instructed staff to subscribe to the Professional Licensing Report published bi-monthly by ProForum and to include in the subscription rights to PDF copies of the publication to the Board electronically.
- 2012 Renewal Summary –

	<b>PT</b>	<b>PTA</b>	<b>TOTAL</b>
Renewals Mailed	3,560	989	4,549
Renewals Processed On-line	3,282	888	4,170 97%
Paper Renewals	106	29	135 3%
Total	3,388	917	4,305
Non Renewals/Lapsed	172	72	244

### **2012 Board Meeting Dates**

As established by the Board, the future Board Meeting dates are as follows: August 10, 2012, and October 26, 2012. The October 26, 2012 meeting is scheduled to be held at Lane Community College in Eugene, OR. Meeting Dates, Meeting 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 Board Meeting Minutes**

The drafted minutes, from the March 16, 2012 regular Board Meeting and the May 8, 2012 Special Board meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. Hearing none, Ruggie Canizares moved to accept the meeting minutes as submitted.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

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

The Director presented the Board with a list of new licensees and temporary permit holders for the period of March 16, 2012 through May 31, 2012. The Board Chair opened the floor for discussion. Without noted discussion, Ruggie Canizares moved to ratify the issuance of the new licenses and permits as submitted.

Seconded by Richard Rutt.

Motion passed by vote 7-0, Board member Wood was absent from the vote.

### **Board Member Topics/ Other New Business**

Chair Alstot asked if there was any other new business. Hearing none Chair Alstot adjourned the meeting at 3:31 PM.