

**Physical Therapist Licensing Board  
Board Meeting  
October 24, 2014  
MINUTES**

**Friday October 24, 2014**

**Board Members Present:** Richard Rutt, PT, Chair; Ruggie Canizares, PT, Vice Chair; Burke Selbst, PT Member; Aubree Benson, PT Member; Alan McAvoy, PT Member; Jennifer Wood, PTA Member, Carol Sutton, Public Member

**Board Members Absent:** Troy Costales, Public Member

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

**Legal Counsel:** Carol Parks, AAG

**EXECUTIVE (CLOSED) SESSION**

At 8:42 AM Chair Rutt 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.

At 11:40 Chair Rutt adjourned Executive Session.

The closed door Executive Session is digitally recorded and stored electronically on the Board's file server.

**PUBLIC (OPEN) SESSION**

At 11:41 AM, Board Chair Rutt 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.

**Guests:** Diana Godwin, Attorney for OPTIP, Rich Jones, PT OPTA Liaison

### **Board Motions**

#### **Case PT 515-4/14**

Motion by Jennifer Wood to amend the Notice of Disciplinary Action to include the recovery of costs in accordance to ORS 688.140(1)(i).

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 522-5/14**

Motion by Jennifer Wood to close case with no action.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 538-7/14**

Motion by Jennifer Wood to issue a Confidential Advisory Letter with regards to having an inappropriate conversation with a patient.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 542-9/14**

Motion by Jennifer Wood to issue a Stipulated Agreement and Final Order for failure to complete the continuing competency requirement within the certification period, a violation of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-045-0020(2)(u)(B), and OAR 848-035-0020(10). And to require Licensee to complete the CC's within 60 days of the Order and assess a civil penalty of \$550.00.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 544-9/14**

Motion by Jennifer Wood to issue a Stipulated Agreement and Final Order accepting a voluntary surrender of license in lieu of a disciplinary action for violation of ORS 688.140(2)(a) ORS 688.140(2)(c), OAR 848-045-0020(2)(u)(B), OAR 848-035-0020(10).

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 546-9/14**

Motion by Jennifer Wood to close the case and provide a letter to the Licensee noting the Board acceptance of the continuing competency credits submitted.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 543-9/14**

Motion by Jennifer Wood to issue a Stipulated Agreement and Final Order for violations of ORS 688.140(2)(a), OAR 848-045-0020(2)(u)(B) and assess a civil penalty of \$100.00.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 537-7/14 and PT 504-3/14**

Motion by Jennifer Wood to accept the Stipulated Agreement and Final Order, as signed by the Licensee, for voluntary surrender of their PTA license in lieu of the Board's issuance of a discipline action.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Case PT 545-9/14**

Motion by Jennifer Wood to issue a Confidential Advisory Letter regarding the Licensee having an inappropriate conversation with a patient and, at the Licensee's expense, require the completion of a Board approved Boundary course within 60 days of the date of the letter.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

#### **Dry Needling Update**

The Director introduced two new pieces of information relative to dry needling. The first was the latest edition of the APTA's Guide to Physical Therapy Practice which now includes the intervention of dry needling as part of a PTs scope of practice. The second was a ruling from a Washington trial court that ruled with a partial summary judgment, enforcement an injunction against an out of State Continuing Education Provider and a group of physical therapists who attended a dry needling course and during the course practiced dry needling. The Court ruled that without specific language in the Washington's PT scope of practice allowing for dry needling, the physical therapists attending the CE course were practicing acupuncture without a license. The Oregon Board discussed the new information and determined that it would hold to its current position as posted on the Board's website. The Board instructed the Director to post an update on the website noting the discussion.

#### **Patient Safety Commission's New Mediation Program**

New legislation enabled the Oregon Patient Safety Commission (PSC) to introduce a new Early Discussion and Resolution program. The program is designed to facilitate the settlement of claims of patient injury through a mediation process. The process is totally confidential and cases are not reported to the regulatory health boards or to the National Practitioner Data Bank. Further the PSC is not a mandatory reporter for child and elder abuse. Although the Board has concerns of possible public health and safety issues going unchecked, the Board has no recourse but to monitor the outcomes or ramifications of the legislatively approved program.

#### **Questions Regarding PTs Ordering X-Rays & Imaging**

The Board determined that current law does not allow for a physical therapist to order an X-ray or imaging and the requirement to refer a patient does not include referring to a radiologist as a physician.

### **CLEAR, FARB and FSBPT Conferences**

- Clinical Advisory/Investigator Sherri Paru attended the Council on Licensure, Enforcement and Regulations' (CLEAR) annual conference and reported that her most valuable take away from the conference were the contacts and networking with other compliance officers and investigators. Ms. Paru felt that a disproportionate amount of the content was geared towards Canada.
- The Board's Senior Assistant Attorney General Carol Parks attended the Federation of Association of Regulatory Boards' (FARB) annual Regulatory Law Seminar. Ms. Parks reported that given all the educational opportunities for attorneys representing regulatory Boards, the FARB programming is, by far, the best match of relevant issues and topics. One topic of discussion included the legality of specific background questions used by Boards during the credentialing/application process. Ms. Parks will review the Board's current initial and renewal application language and render an opinion relative to the background questions used by the Board. Ms. Parks reported on the varying differences in type of legal representation Boards have around the country and how the Oregon structure offers one of the better solutions with regards to representation and associated costs. Ms. Parks also shared a handout with the Board relative to a case currently in front of the US Supreme Court, Federal Trade Commission vs. N.C. Dental Board. Ms. Parks reported that this case needs to be followed closely because depending on the outcome there could be ramifications to individuals serving on regulatory boards. Ms. Parks also attended a program on Telehealth practice and brought back language being adopted by the Kentucky Board; in conclusion, Ms. Parks cautioned the Board and Board staff of the ethical use of both email and social media citing case studies from the program.
- Board Chair/Delegate Richard Rutt, Vice Chair/Alternate Delegate Ruggie Canizares and Director Jim Heider attended this year's Federation of State Boards of Physical Therapy's (FSBPT) Delegates Assembly. The Board's Clinical Advisory/Investigator Sherri Paru also attended as a presenter. All Board members and staff, travel, hotel and meals were funded by the FSBPT. The attendees reported on the varying topics with the major theme focused on breaking down barriers to licensure. Topics included; telehealth, development of a national PT compact and credentialing and licensure for foreign educated therapists. The Director also reported that he had been elected to serve a second term as Director on the Federation Board.

### **Board Policy Issues/Review**

- Policy discussion on posting of final orders and all public records on the Board's website – After review and discussion the Board determined that they would amend the current policy of posting all public records leading up to the final order on the Board's website. The new policy will conform to what the other Oregon Health Boards are doing by posting only the final order by itself on the website. The documents leading up to the final order are still considered public records and are available to the public at any time with a public records request. The Board directed staff to amend the policy and bring it to the next meeting for ratification. Also the Board instructed staff to begin the project of amending the current public posting on the Board's website.
- Ratify amended Delegation of Authority Letter to include issuance of Order of Satisfaction of Probation – Based on an earlier directive of the Board, the Director

presented the Board an amended copy of the Delegation of Authority Letter adding the authority for Board Staff to issue a “Notice of Satisfaction of Probation” upon the successful completion of a Board imposed probationary period upon a Licensee. After review Board member Jennifer Wood moved to ratify the amended Delegation of Authority Letter. The motion was seconded by Ruggie Canizares. The motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

- Ratify amended policy of NPTE Special Accommodations – The Oregon Board’s Guide to Special Accommodations has been updated for changes in the new federal regulations. After review and discussion, Board Member Jennifer Wood moved to ratify the amended ADA Policy as written. The motion was seconded by Ruggie Canizares. The motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

### **General Topics/Business**

- 2015-2017 Financial Budget Discussion – the Board is in its current budget preparation cycle for 2015-2017. A draft of the proposed budget will be brought to the Board at its January 2015 meeting.
- Issuance of State IDs to Board Members – The Director issued each Board member a State of Oregon picture I.D. badge to be used only when on Board business i.e. parking, travel, hotels.
- Jurisprudence Exam Online – The Board Licensing Coordinator has put its current jurisprudence examination online taking the place of its current paper pencil test. This is part of the new online application packet. It is more of a learning tool now requiring applicants to review incorrect answers and select the correct answer. The Federation has developed a jurisprudence examination model that they are offering as a service to its member boards. The exam development is done by the Federation and will be offered in multiple forms. The Federation exam will be a valid reliable examination with similar qualities to the NPTE. The Director asked the Board for its approval to pursue moving towards the Federations new exam. The Board approved investigating the costs and viability of offering the Federations new jurisprudence model.
- Fingerprinting versus Database Search for Background Checks – After discussion the Board asked the Director to research the feasibility and costs associated to move from the current system of using online background checks through a data service to the FBI fingerprinting system.
- Fingerprinting of staff for LEDS Certification Audit – The Director reported that the Board completed its LEDS certification audit and there were two findings. The first was that the Director and the Clinical Advisor/Investigator need to complete the FBI fingerprinting process and the Clinical Advisor/Investigator needs to complete the CIJIS Awareness Class and pass the examination.

### **George Fox 2015 Graduate NPTE Status**

The first co-hort from George Fox University will be graduating May 2, 2015 but will not be eligible to sit for the national physical therapy examination (NPTE) until the Board receives verification from the Commission on Accreditation of Physical Therapy Education (CAPTE) that the University has been accredited. That notification is expected to be received sometime after April 29, 2015. The first opportunity the graduates from George Fox University will have to

take the NPTE will be in July but once the accreditation is awarded the graduates will be eligible to apply for temporary permits.

### **Questions Regarding School Based Physical Therapists**

The Board Investigator Paru shared with the Board an anonymous email from an individual who identified themselves as a therapist and a person in contact with a number of therapists in Multnomah County working in the school setting. The email detailed concerns with regards to case loads and work situations that force therapists to either work outside their scope or contrary to statutes and rules. After discussion the Board determined that its accountability is to enforce the Oregon Statute and Rules. If a therapist is working outside their scope or contrary to the statute and rule, they are subject to disciplinary action by the Board. The Board instructed staff to reply to the email address with a letter noting the therapists responsibility to adhere to statute and rule, to report if someone is practicing outside their scope or contrary to statute and rule or if they witness an individual practicing physical therapy without the proper credentials. If this is an employment issue the therapist should bring their case to the Department of Education.

### **National Insurance Crime Bureau (NICB)**

Sherri Paru, PT, Clinical Advisor/Investigator reported that both she and the Director were invited and attended a meeting at the Crime Bureau. Also in attendance were compliance representatives from the Oregon Chiropractic and the Massage Board. The Bureau hosts quarterly meetings of investigators from large insurance providers throughout the state. The group discussed and share information and names relative to healthcare providers suspected of fraud. Ms. Paru indicated that, unless the Board felt otherwise, staff would continue to have an involvement with the NICB at some level. There was no opposition from the Board members.

### **Approval of Board Meeting Minutes**

The drafted minutes, from the August 15, 2014 Regular Board Meeting and August 25<sup>th</sup>, 2014 Special Board Meeting were presented to the Board. Board Chair Rutt opened the floor for additional discussion and comments. Member Jennifer Wood noted two changes to the minutes of August 25<sup>th</sup>. Noted, Chair Rutt asked for a motion to approve the meeting minutes as amended.

Member Jennifer Wood moved to approve the Minutes from the August 15 and August 25<sup>th</sup> Board meetings as amended.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

### **Future Board Meeting Dates:**

The Board meeting dates for 2015 are all on Fridays; January 9<sup>th</sup>, March 20<sup>th</sup>, May 29<sup>th</sup>, August 7<sup>th</sup>, October 9<sup>th</sup> and December 11<sup>th</sup>. The May meeting is scheduled to be held in Bend, OR and the October meeting is scheduled to be held at Mt. Hood Community College in Gresham, 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).

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

Board Chair Rutt presented the Board with a list of new licensees and temporary permit holders for the period of August 15, 2014 through October 23, 2014. Chair Rutt opened the floor for

discussion. With none noted, Chair Rutt asked for a motion to ratify the new licensees and permit holders.

Member Jennifer Wood moved to ratify the list of new licensees and temporary permit holders as submitted.

Seconded by Ruggie Canizares.

Motion passed unanimously by a vote of 7-0, Member Costales was absent from the vote.

### **Board Member Reports/Other New Business:**

Chair Rutt asked for any other new business.

Director Heider submitted the following information:

### **Director Announcements**

- The Director distributed new State of Oregon I.D. badges to each of the Board members. This will allow members traveling on Board business to take advantage of State employee discounts at hotels.
- Board member stipends for the October 2014 meeting will not be paid until the November end of month payroll because the October payroll had to be reported a week earlier than normal.
- Board member reimbursement checks for 2014 meeting expenses will be issued by the end of the month.

The Director informed the Board that he was scheduled to have back surgery in November and depending on the outcome would be out of the office on medical leave for a period of time following the surgery.

The Director announced the holiday office closure dates. The Board office will be closed Thanksgiving and the day after Thanksgiving (staff taking the Governor's Day on Friday). The Board office will also be closed December 24<sup>th</sup> 25<sup>th</sup> and 26<sup>th</sup> for Christmas (staff using personal time off for the 24<sup>th</sup> and 26<sup>th</sup>) and the office will be closed on Thursday, January 1<sup>st</sup> for New Years.

Chair Rutt again asked for other new business. With none noted Chair Rutt adjourned the meeting at 2:32 PM.