

Physical Therapist Licensing Board

Board Meeting
January 23, 2004

MINUTES

Present: Board Members: Cathy Zarosinski, PT, MS, Chair; Daiva Banaitis, PT, PhD; Jerry Nickell, PT, Vice Chair; Nancy Wilson, PTA; Joana Freedman, PT; Cindy Cunningham, Public Member. Staff: James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator, Frank Mussell Contract Investigator. Legal Counsel: Carol Parks, AAG
Absent: Pat Moore, MD, Physician Member

PUBLIC (OPEN) SESSION

The meeting was convened by Board Chair, Cathy Zarosinski, PT, MS

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session to discuss licensee investigations.

EXECUTIVE SESSION

The Board reviewed investigatory information regarding pending cases and new complaints.

The closed door meeting of the executive session is recorded and labeled on sides A and B of two recording tapes.

Ms. Zarosinski took the Board out of Executive session and into Open Session.

PUBLIC (OPEN) SESSION

Case PT 123-02/03

Motion by Mr. Nickell to issue a Notice of License Revocation.
Seconded by Ms. Freedman.
Motion passed unanimously.

Case PT 139-6/03

Motion by Mr. Nickell to accept licensee's proposed stipulated order with the following changes; 3 years probation; a \$3,000 civil penalty; and the Board reserves the right to review the licensee's patient records at anytime during the probationary period.
Seconded by Ms. Freedman.
Motion passed unanimously.

Case PT 143-8/03

Ms. Zarosinski recused herself from this case. Motion by Mr. Nickell to accept licensee's suggested revised wording for the Board's proposed stipulated order with the following changes;

1 year of probation; a \$2,000 civil penalty; and note that the Board reserves the right to request and review licensee's patient records at anytime during the probationary period.

Seconded by Ms. Freedman.

Motion passed unanimously.

Case PT 90-4/02

Dan Taylor LMT, non-licensee investigation, update information only.

Topic-Rules Advisory Committee

Jim Heider prepared and presented a list of administrative rules for adoption, amendment, and housekeeping. These are all rule changes noted by the Board in past meetings. These rules will be presented to an advisory committee (yet to be determined) for additional suggestions and modifications. With a few changes the Board approved the list to go to the committee.

Topic-Board Approval of Alternate Medical Screening Courses

Sherri Paru researched, prepared and presented to the Board a matrix of alternate medical screening courses to be considered for direct access certification. These courses would be alternatives to the OPTA's current 12 hour medical screening course. The Board approved several options as presented by Ms. Paru. Internal Board administrative policy and procedures will be developed prior to the new course options being communicated to the licensees. Courses approved were as follows:

- Diagnosis by physical therapists, taught by David Musnick, MD, sponsored by North American Seminars
- Medical Screening for physical therapists, taught by William Boissonault, PT, sponsored by the APTA
- Medical Screening Upper Quarter and Lower Quarter, taught at Pacific University for students enrolled in the transitional DPT program.

All PT's that choose to take these alternate courses must still complete the CEU requirements and must take the refresher course during the required timeline. All classes about will count for 12 hours, regardless of actual class length.

A 6 month home-study course sponsored by the Sports PT section of the APTA has not yet been approved as all the modules are not completed. This course runs Jan-June 2004. If a licensee chooses to take this first course, they do so at the risk of the course not being approved. If the course is approved, it will be approved retroactively for any PT that takes the course now.

A 4 hour internet course on medical screening offered by the APTA was not approved by the Board as it is not long enough to qualify as the refresher course (6 hours).

Topic-Referrals and Prescription Timeframes

Sherri Paru presented to the Board an issue regarding the interpretation of ORS 688.130. Sherri gave the Board a list of eleven commonly asked questions regarding patient referrals. The Board responded to the questions and decided the following:

- Referrals are required to contain only the name of the patient, signature of the practitioner and the date.

- The condition/body part that will be treated by the PT does not need to be specifically stated on the referral.
- A referral does not need to include # of treatments authorized or period of time within which treatment is to be provided.
- If the specific # of treatments or period of time is included on a referral, a PT can not provide a more or less of treatments without clarification/additional orders by the referral source.
- If a PT sends a request for extension of services to a practitioner, and the practitioner does not send it back before the previous referral runs out, the PT must get verbal orders from the referral source and document that the verbal order was received.

Topic-Scope of Practice Use of Real-Time Ultrasound

Sherri Paru presented to the Board a research paper provided by Bill Temes, PT on real-time ultrasound used for the purpose of observing muscle contractions. In the scope of PT practice the Board approved the use of real-time ultrasound to observe muscle contractions. The Board prefaced this decision by noting an individual would require proper training in the technique prior to application.

Topic-Board Policy and Procedure Regarding the Use of a Notice of Proposed Discipline Verses a Stipulation & Final Order.

By consensus, the Board has set policy that when the Board votes to initiate disciplinary action, a Notice of Proposed Disciplinary Action will be sent initially. This will be followed by a Stipulation and Final Order if the licensee or licensee's attorney indicates the desire to settle the case without a hearing. One exception would be in cases where a licensee has practiced without a valid license, the Board will initially send a Stipulation & Final Order.

Topic-General Office Update

On 12/30/03 an e-mail was sent out to all Board members conveying the information set down by our second DOJ opinion. By individual poll the Boards intent was to continue to interpret the practice without referral statutes and rules as it has in the past, allowing a licensed PT's to practice in the three special settings noted (1) students eligible for special education; 2) student athletes; and 3) residents of a long-term care facility, without a script, and without a PWR certification. By consensus the Board ratified this decision.

Jim Heider asked the Board if they wanted to support a Semi-Independent Board Association (SIBA) initiative to contract a Lobbyist for the 05-07 legislative assembly to protect and perhaps enhance semi-independent Boards' position within state government? The Board felt that any threats to its status as a semi-independent Board were minimal and if a threat was evident, it would be recognized by the lobbyist currently working under contract with the Boards' business partner and professional association, the OPTA. Further, the Board was not in favor of SIBA's initiative to pass legislation allowing semi-independent boards to incur debt and own property. The Board concluded that supporting the SIBA initiative to hire a lobbyist would be unnecessarily, costly and redundant.

Jim Heider also reported on the following:

The Website project, the requested changes from the Board had been implemented to the new site. The new site is ready to go live. Timing depends on the publication of the site by DAS Informational Resource Management Division (IRMD). Mr. Heider is targeting mid-February. Mr. Heider also reported that the new licensure verification program was in place on both the new site and the old site. This was the version that was a quick solution to the problem. Mr. Heider will continue to research option for a more sophisticated name search verification program and report back to the Board.

The renewal process for 2004-2005 had begun. The renewals were mailed out on January 2, 2004. To date, 01/22/04, 930 renewals had been processed representing 25% of the 3,650 licenses to be renewed.

The financial audit went extremely well, final report expected at any time. There will be general ledger entries outlined to remove the assets and depreciation from the books. It should never have been booked according to state capitalization policy. And the accrued vacation liability has never been adjusted to reflect payout and current balances.

The Board 2003 annual PERS report has been completed and filed on time. There is a new web-based PERS reporting system and the Board is prepared to start using it with its first report of 2004.

When Board staff polls the Board via e-mail, it is important to note that when replying Board members should do so directly and only to the staff member who has initiated the poll. Replying to all may be viewed as a meeting and would be subject to meeting notice and protocol.

The Board's AAG was asked to compile the time and costs associated with the last civil action taken regarding the enforcement of a Motion to Compel for records in a case. The total hours were 23.8 and total cost \$2,277.

Topic- Board Financials

Gross profit is (\$123,418) under budget

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 that projected income or expense equitably over the entire accounting period, in this case 12 months, 7/1/03-6/30/04.

The Board's projected income for the fiscal year '03-'04 is budgeted at \$309,800. This is accrued at \$25,816/month (\$154,900 to date). Actual income booked to date equals \$31,483; this creates the budget deficit of (\$123,418).

The vast majority of the budgeted income will actually be received Jan-Mar '04. i.e. January '04 actual renewal income to 01/22/04 is \$72,383. I estimate the Board will end the month of January booking approximately \$75,000 in renewal income.

This is not an item for concern at this point.

Payroll Costs are \$1,463 over budget

'03-'04 and possibly '04-'05 fiscal expense will be over budget by \$7,290 in '03 and possibly \$9,000 in '04 for non-budgeted expenses associated with the Gustafson unemployment claim. At this time Ms. Gustafson is still benefit eligible and may file a first quarter 04 claim. Other payroll cost savings in '03 have offset the total \$7,290 actual cost booked for the '03 Gustafson unemployment claim.

General Office Expenses are \$4,164 over budget

There are two items creating the variance in general office expense. 1) Expense class 6120 Printing and copying is \$1,800 over budget. Again, because of the accrual method of budgeting, the remaining \$1,500 to be accrued will happen between now and the fiscal yearend 6/30/04. However, we will end up the fiscal year at approximately \$1,000 over budget for printing costs. This is primarily attributed to the redesign and reprinting of all the renewal and application forms. 2) Expense class 6160 dues is \$2,500 over budget. This is a misclassification. The accrued expense dollars for the FSBPT membership renewal were booked to expense class 6190 subscription and dues. The expense class 6190 will end up the year \$2,500 under budget.

All other expense classes at this time below estimates or on target.

Future Variance Concerns:

Nothing new to report at this time.

Topic- Approval of Meeting Minutes-

The November 14, 2003 Board meeting minutes were approved as written.

Topic- Ratification of PT/PTA Licenses-

The Board ratified all licenses issued for the period of November 14, 2003 through January 22, 2004.

Topic- Board Meeting Schedule-

The Board set the meeting schedule for the remainder of 2004. The schedule is as follows: April 2; June 4; July 30; October 1; and December 3, 2004.

Ms. Zarosinski adjourned the meeting.

**Physical Therapist Licensing Board
Special Board Meeting
March 16, 2004**

MINUTES

Present via telephone: Board Members: Cathy Zarosinski, PT, MS, Chair; Daiva Banaitis, PT, PhD; Jerry Nickell, PT, Vice Chair; Nancy Wilson, PTA; Joana Freedman, PT; Cindy Cunningham, Public Member, Pat Moore, MD, Physician Member. Staff: James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator. Legal Counsel: Carol Parks, AAG

PUBLIC (OPEN) SESSION

The meeting was convened by Board Chair, Cathy Zarosinski, PT, MS

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session

EXECUTIVE SESSION

The Board had open discussion relative to a request from an outside attorney to dispose a Board witness in a contested case hearing.

The closed door meeting of the executive session is recorded and labeled on side A of a recording tape.

Ms. Zarosinski took the Board out of Executive session and into Public Session.

PUBLIC (OPEN) SESSION

Policy Issue

Motion by Nancy Wilson: policy statement, generally, the Board does not allow for deposition of a witness in a contested case hearing unless faced with extraordinary circumstances, and, in the event of extraordinary circumstances the Board would delegate authority to the Executive Director to determine whether or not to allow for a deposition.

Seconded by Daiva Banaitis.

Motion passed unanimously.

Case PT 74-12/01

Motion by Nancy Wilson to deny petition from outside attorney for deposition of Board witness in this case.

Seconded by Daiva Banaitis.

Motion passed unanimously.

Ms. Zarosinski adjourned the meeting.

**Physical Therapist Licensing Board
Board Meeting
April 02, 2004**

MINUTES

Present: **Board Members:** Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Daiva Banaitis, PT, PhD; Nancy Wilson, PTA; Joana Freedman, PT; Cindy Cunningham, Public Member; Pat Moore, MD, Physician Member. **Staff:** James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator; Frank Mussell Contract Investigator. **Legal Counsel:** Carol Parks, AAG

Absent: None

The meeting was convened by Board Chair, Cathy Zarosinski, PT, MS

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session to discuss licensee investigations.

EXECUTIVE (CLOSED) SESSION

The Board reviewed investigatory information regarding pending cases and new complaints.

The closed door meeting of the Executive Session is recorded and labeled on sides A and B of two recording tapes.

Ms. Zarosinski took the Board out of Executive Session and into Open Session.

PUBLIC (OPEN) SESSION

Case PT 87-3/02

Motion by Dr. Moore to issue a Notice of Proposed Disciplinary Action citing 3 violations; including 2 falsified records, and the improper supervision of Aides; moved to impose a civil penalty of \$500.00 for each occurrence, total civil penalty \$1,500.00.

Seconded by Dr. Banaitis.

Motion passed unanimously.

The Board chose to send letters of concern to: Owner of the Clinic, and the Supervisor of the Licensee.

Case PT 151-12/03

Motion by Dr. Moore to send a letter to former licensee explaining the procedures and prerequisites for reinstatement of a lapsed license. The letter would also note, based on

prior history with the both the Oregon and California Boards, there was no assurance that if former Licensee completed the application process the Board would accept his application.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 152-1/04

Motion by Dr. Moore to issue a Stipulation and Final Order citing practice without a valid license for a period of 34 months; imposing a \$3,000 civil penalty; and, two years probation.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 153-02/04

Board reviewed case. No action taken. Letter to Licensee to close case.

Case PT 79-3/02

Motion by Dr. Moore to issue Final Order of Revocation of License.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 106-10/02

Motion by Dr. Moore to issue Final Order adopting the Administrative Law Judge's Proposed Order of Revocation of License.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 72-12/01

Motion by Dr. Moore to issue Amended Consent Order changing the probationary period from "indefinite" to two years from execution of the Amended Order without further incident.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 88-3/02

Board reviewed case. No action taken. Letter to Licensee to close case and support of Licensee's continued recovery.

Topic- Ratification of PT/PTA Licenses

By vote, the Board ratified all licenses issued for the period of January 24, 2004 through March 31, 2004.

Topic-Rules Advisory Committee

Jim Heider presented three items for discussion: 1) a revised list of administrative rules for adoption, amendment, and housekeeping as presented at the 1/23/04 Board meeting, updated to reflect the findings from the Administrative Rules Committee; 2) a matrix listing the findings of the Administrative Rules Committee, noting topic issues with concerns and possible solutions to those issues and concerns relative to rule update and change; and, 3) a memo dated March 12, 2004 from Diana Godwin, Attorney At Law, rules committee member, regarding proposed changes to Administrative Rules.

The Board reviewed, in detail, Items 1 and 2 and gave direction with regards to Board opinion. Item 3 was to be reviewed, outside the Board meeting, with comments directed back to the Executive Director.

At the suggestion of the Executive Director, the next step is to establish a small sub-committee to draft the proposed rule changes to be presented at the June 4, 2004 Board Meeting. The Board agreed with this plan of action.

Topic- Rules Specific to License Renewal

The Board does not have a rule regarding timeliness of a renewal application. The Board's current policy conflicts with ORS 183.430. The renewal form states the deadline for license renewal is March 31st, that would probably be interpreted as our timely application...but does not take into account the entire banking, accounting and processing time to issue the new license.

If we comply with ORS 183.430 without changing our rules, this would create a short period of time where a licensee could practice without the Board having evidence of timely renewal of their application. This could create a dilemma for the Board and the Board's response to employers or companies calling to verify a valid license.

Currently, we tell licensees, who are late with their renewal forms, that if they are postmarked by March 31st they will not be subject to a late fee. They cannot work until the renewal is received by the Bank and processed back to the Board, which can take a couple of days. This is in direct conflict with ORS 183.430.

ORS 183.430 states, if a licensee has made timely application for renewal in accordance with the rule of the agency, such license shall not be deemed to expire....

Other Boards have been faced with this issue. The resolve is the Boards have adopted a rule that clearly identifies timely application as a date prior to the expiration date. A date

far enough back to allow for banking, accounting, processing, returned and reprocessing of incomplete forms, etc. The PT Board determined they would support a rule identifying the timely processing of renewal forms. The decision was made to set the timely processing date to March 15th. This new rule shall be incorporated with the previously mentioned rule changes.

Topic-Physician Owned Physical Therapy Services (POPTS)

An inquiry to the Board, from a Licensee, asked for the Board's opinion/position on POPTS. After discussion, the Board's Legal Counsel advised the Board; as individuals, not associated with the Board, they can give an opinion; however, as a Board member, they should not give an opinion regarding this matter. The Board elected to follow the advice of its Counsel.

Topic-Credentialing Applicant Diez

Diez is a foreign trained credentialing applicant who was short 170 hours of clinical practice. The hospital hosting Diez' internship in completion of his clinical hours, has proposed a change in his clinical practice scheduling. They cited Diez as having difficulty meeting the performance level of a new graduate from an acute care setting. The hospital also asked the Board's advice on how long they should proceed with the program if Diez was not achieving expectations? And, what would happen to his opportunity to sit for the exam if Diez did not pass the clinical with them?

The Board first commended the Hospital for doing a great job assuring the competency of the intern. Secondly, the Board approved the new clinical plan advising the hospital that if Diez is having problems achieving satisfactory performance working just part time on his clinical, maybe they should change the setting and require Diez to work fulltime; and lastly, if Diez does not pass his clinical with the hospital, the hours put in will not count towards the deficit of 170 hours. It will be up to Diez to find another sponsorship if he is to meet the credentialing criteria of 800 hours of clinical practice in at least two different settings.

Topic-Licensee CEU Course Approval

Licensee Lisa Thorborg requested the approval of CEU for completion of courses sponsored and taught by the Oregon College of Oriental Medicine. The Board reviewed the Licensee's request and approved only those courses in which the content clinically related directly to the practice of PT: Dynamics of Illness; Western Clinical Diagnosis I-III; and Structural Diagnosis.

Topic-Online Licensure Verifications

The Board discussed the issue of using on-line verifications from other state Board websites as proof of current unencumbered licensure in those states. The web verifications would be used for the purpose of Oregon licensure through endorsement.

The Board agreed, if it could be determined that the website was a “primary source of information”; and, the site was easily accessible, that it would be OK to substitute the web information for a formal written verification. Prior to adoption of this policy, the Executive Director asked the Board Counsel for a legal opinion to make certain that current statutes and rules would allow for this change in policy. Board Counsel stated; as long as the source could be identified as a primary source it would be OK.

Topic-Iontophoresis as Part of PT Scope of Practice

Several licensees asked for the Board’s opinion with regards to Scope of Practice and a PT’s use of iontophoresis. The Board discussed the issue and determined that if a PT is trained in the procedure and it was part of the original order, then it is OK to administer. If it was not part of the original order, and the PT thinks it’s important to the plan of care, then the PT should include it in their plan of care. When the physician signs off on the care plan, it is OK to administer. If trained in the procedure, anyone with Direct Access would be able to administer iontophoresis without a referral or prescription.

Topic-Board Financial Report Narrative

4000 Gross Profit is \$63,372 over budget.

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 that projected income or expense equitably over the entire accounting period, in this case 12 months, 7/1/03-6/30/04.

The Board’s projected income for the fiscal year ’03-’04 is budgeted at \$309,800. This is accrued at \$25,816/month (\$232,350 to date). Actual income booked to date equals, \$295,723; this creates the budget surplus of \$63,372.

The vast majority of the budgeted income has been received and booked with the processing of the ’04/’05 renewals. For the remainder of the biennium, the income budgeted will be more than what is actually booked. With the existing surplus, at the end of the fiscal year 6/30/2004, income figures should be right on target.

5100 Payroll Costs are \$1,463 over budget.

’03-’04 and possibly ’04-’05 fiscal expense will be over budget by \$7,290 in ’03, and possibly \$9,000 in ’04 for non-budgeted expenses associated with the Gustafson unemployment claim. Ms. Gustafson has filed for extended unemployment benefits and her claim has been approved. The Board’s possible exposure for payment to Ms. Gustafson in 2004 is \$9,958. Other payroll cost savings in ’03 have offset the total \$7,290 actual cost booked for the ’03 Gustafson unemployment claim.

6100 General Office Expenses are \$4,164 over budget.

There are two items creating the variance in general office expense: 1) Expense class 6120 printing and copying is \$1,800 over budget. Again, because of the accrual method of budgeting, the remaining \$1,500 to be accrued will happen between now and the fiscal year end 6/30/04. However, we will end up the fiscal year at approximately \$1,000 over budget for printing costs. This is primarily attributed to the redesign and reprinting of all the renewal and application forms. 2) Expense class 6160 dues is \$2,500 over budget. This is a misclassification. The accrued expense dollars for the FSBPT membership renewal were booked to expense class 6190 subscription and dues. The expense class 6190 will end up the year \$2,500 under budget.

All other expense classes, at this time, are below estimates or on target.

Future Variance Concerns:

Oregon General Obligation Pension Bonds. Boards and Agencies will start debt repayment effective May 2004, distribution unknown at this time.

Board's Independent Outside Financial Audit Results are complete. The Board received a favorable Audit Report. The two suggested action steps noted have been resolved. Copies of the audit report are available by contacting the Board office at (503) 731-4047 Ext. 222.

Topic-General Office Update

Board Policy on Salaries and Position Classifications

It is the current policy, of the Oregon Physical Therapist Licensing Board, to adopt the salary and position classification policies and procedures of the Department of Administrative Services following enactment of SB112 into law. The Board may review these policies and procedures in the future.

The Current DAS policy is a freeze on salary increases for the biennium '03-'05.

For Discussion:

- Do we want to leave the Board policy as is, and strictly adhere to DAS programs and policies?
- Do we want to adopt DAS program and establish our own Board policies?
- Do we want to adopt our own Board program and policies?

The Board voted to leave the policies as is and adhere to the DAS program.

Newsletter

- Sherri Paru completed Publisher training and reformatted the Newsletter. The Board has received numerous responses to the “new look”, all have been positive.

Website

- The new website is up and running. We have received numerous comments, most of them positive. Licensees would still like to see the availability of applications and renewals on-line.

Renewals

- Renewals are complete.
- From 01/02/04 to 03/31/04, Dot Danovich has processed 3486 renewals and booked \$264,465 in renewal income.
- During this time, Dot’s processing was current every day; we never had a backlog.

E-mail Polling of the Board

When Board staff polls the Board via e-mail, it is important that Board members reply directly to the staff member who has initiated the poll. Replying to all may be viewed as a meeting and would be subject to meeting notice and protocol.

Topic-Sworn Application for Licensure

The Office of Regulatory Streamlining contacted the PT Board and asked for the Board’s support, in the introduction of a legislative concept, that would eliminate the PT Board statute that requires an application for licensure be sworn. The hopes of the Office of Regulatory Streamlining is, by eliminating the need of a sworn application, eventually the Board will be able to accept electronic applications on-line. The Board voted to support this legislative concept.

Topic-OPTA Request to Offer Medical Screening Course Via Video Tape

The Board considered a request from the OPTA to approve the offering of the initial 12-hour Medical Screening Course via a videotape. With the information that the Board had been provided, the Board was prepared to approve a video taped course that would be proctored. Further, the Board felt that if the OPTA wished to pursue this or other options, the Board would request a written plan of action in response to questions and reservations the Board still has.

Topic- One-on-One Documentation Training For Licensees

The Board reviewed and approved the submission of an individual to act as a Trainer when a licensee is required by the Board to take a documentation course or receive one-on-one training. The Physical Therapist approved by the Board is Bob Thomas. The Board has contacted another therapist who may also be interested in working in this capacity; his name will be added to the list once we have confirmation of his interest. Neither therapist would be considered an employee or even a contractor for the Board. They would be acting on their own behalf, setting their own rates, training times etc. The Board would simply refer individuals to either party.

Topic- Board Meeting Minutes

Motion by Jerry Nickell to approve the Board Meeting Minutes from the January 23, 2004 regular meeting and the March 16, 2004 special meeting.

Seconded by Dr. Moore.

Motion passed unanimously.

Topic- Board Meeting Schedule-

The Board meeting schedule for the remainder of 2004 is as follows:
June 4; July 30; October 1; and December 3, 2004.

Ms. Zarosinski adjourned the meeting.

**Physical Therapist Licensing Board
Board Meeting
June 04, 2004**

MINUTES

Present: Board Members Present: Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Daiva Banaitis, PT, PhD; Nancy Wilson, PTA; Joana Freedman, PT; Cindy Cunningham, Public Member. **Staff:** James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator; Frank Mussell Contract Investigator. **Legal Counsel:** Carol Parks, AAG

Absent: Pat Moore, MD, Physician Member.

The meeting was convened by Board Chair, Cathy Zarosinski, PT, MS

Due to the nature of the public session agenda and the public guests present at the start of the meeting Ms. Zarosinski took the Board directly into public session.

PUBLIC (OPEN) SESSION

Topic- Rules Advisory Committee, Revisions, update and Recommendations

Mr. Heider, Executive Director, gave the Board a progress report and executive summary of the progress and proposed organizational changes and timeline with regards to the comprehensive administrative rules review. (Copies of the executive summary and or the proposed timeline can be obtained by contacting the Boards office at (503) 731-4047 or by E-mail at PTBoard.info@state.or.us). The purpose of the report was to solicit the Board's approval on the direction of the committee and the proposed timeframe. The Board approved the direction and the timeframe and agreed upon the scheduling of an extra day for rules review at the July 30th Board meeting. The Board will meet in Public session on July 29th to specifically cover the final draft of the proposed rule changes.

Topic- Ratification of PT/PTA Licenses

By vote, the Board ratified all licenses issued for the period of April 1, 2004 through June 3, 2004.

Topic- PRO-CPR and American Heart Association Online CPR Classes

Ms. Paru, Clinical Advisor/Investigator, presented the Board with a request to consider the approval of PRO-CPR and the American Heart Association's on-line CPR courses. The Board withheld their approval on the PRO-CPR on-line course because it did not have any hands on practice, however the Board did approve the American Heart

Association on-line course because the book work and study materials are on-line and it includes a hand-on practice portion.

Topic- Alonzo-Diez Foreign Educated Applicant

Mr. Heider, Executive Director, reported to the Board the progress of applicant's internship to satisfy his clinical hour's requirement.

Topic- OPTA Request to Offer Medical Screening Course Via Video Tape

At the April 02, 2004 Board meeting, the OPTA requested the Board's approval of the taping of their initial 12 hour Medical Screening Course with the intent of offering the video programs to interested licenses. After review of the request, the Board requested additional information from the OPTA regarding the video. The OPTA responded to the Board's request for information. Upon review of the responses the Board had a couple of additional questions; the Board wanted to have their staff review the finished product for quality of content, imaging and sound; and wanted assurance from the OPTA that if there were any changes in the program format, instructors, content etc, that the video would be kept current. Upon satisfactory review of the video the Board gave authority to its Clinical Advisor/Investigator to approve the program.

Topic- Letter From Licensees Concerning POPTS

The Board received a letter of concern from a group of licensees with regards to Physical Owned Physical Therapy Services (POPTS), in their geographic location. In addition to their concerns they were soliciting the Boards support in their efforts to educate and legislate against the spreading trend. Board has received prior inquiries and concerns regarding POPTS. The Board has sought the opinion of its legal counsel with regards to its jurisdiction over the issue and what, if any, role can the Board play regarding a position or a stand. It was advised that as individuals not associated with the Board, Board members may give an opinion; however as a Board member no opinion should be given regarding this matter. The Board will continue to follow the advice of its legal counsel. However the Board has asked its staff to investigate what other state Boards and professional organizations may be doing.

General Office Update:

Office Of Degree Authorization

Mr. Heider reported back to the Board his findings regarding the Office of Degree Authorization (ODA). Jim reported that the ODA provides for the protection of the citizens of Oregon and their postsecondary schools by ensuring the quality of higher education and reserving the integrity of an academic degree as a public credential. Further, ODA administers laws, standards, and services that protect students, holders of legitimately earned degrees, institutions, businesses, employers, patients or clients, and licensing boards.

The following statute gives the ODA its authority to act:

ORS 348.609

(1) No person who has been warned by the Oregon Student Assistance Commission, through the Office of Degree Authorization, to cease and desist shall claim or represent that the person possesses any academic degree unless the degree has been awarded to or conferred upon the person by a school that:

(a) Has accreditation recognized by the United States Department of Education or the foreign equivalent of such accreditation;

(b) Has been approved by the Oregon Student Assistance Commission through the Office of Degree Authorization to offer and confer degrees in Oregon;

(c) Is described in ORS 348.594 (2); or

(d) Is located in the United States and has been found by the commission to meet standards of academic quality comparable to those of an institution located in the United States that has accreditation, recognized by the United States Department of Education, to offer degrees of the type and level claimed by the person.

Mr. Heider further reported that all schools for physical therapist and physical therapist assistants that are accredited by the Commission On Accreditation in Physical Therapy Education (CAPTE). He further explained that CAPTE is listed as a nationally recognized accrediting agency by the US Department of Education and the Council for Higher Education Accreditation (CHEA) thus meets the credentialing requirements of the ODA. The board asked if that covered the foreign educated PTs who are graduates from non CAPTE programs and credentialed through the FCCPT. Mr. Heider said he would have to investigate that matter further.

DAS Proposed Move Of Suite 407 Boards

Mr. Heider informed the Board that the Department of Administrative Services had proposed moving the Suite 407 Licensing Boards from the 4th floor of the PSOB building to the first floor. This would be to accommodate the growing space requirements of both the Nursing Board and the Pharmacy Board. None of the Suite 407 Boards were in favor of the move; some of them were adamantly opposed. Much discussion ensued and Board voiced their concern over unforeseen costs, and business interruption. It was unclear whether DAS was going to absorb the costs associated with the proposed move.

New Recording Equipment

Mr. Heider reported to the Board his intent to research and purchase new recording equipment for the office. All the Board Meetings and investigative interviews are currently recorded. Often there is a need to refer to or, transcribe the recordings. The

current quality of the recordings is poor.

Transcription

The Board approved sending all required cases transcription to an outside vendor. Currently recordings are being transcribed in-house by Board staff.

Topic- Board Financial Report Narrative

Mr. Heider presented the Board's Financials as follows:

4000 Gross profit is (\$38,561.16) over budget

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 that projected income or expense equitably over the entire accounting period, in this case 12 months, 7/1/03-6/30/04.

The Board's projected income for the fiscal year '03-'04 is budgeted at \$309,800. This is accrued at \$25,816/month (\$283,983 to date). Actual income booked to date equals, \$322,545; this creates the budget surplus of \$38,562.

The vast majority of the budgeted income has been received and booked with the processing of the '04/'05 renewals. For the remainder of the biennium the income budgeted will be more than what is actually booked. With the existing surplus, at the end of the fiscal year 6/30/2004, final income figures should be \$15,000-\$20,000 above budget. The primary source of this additional income was booked in the renewals category.

5100 Payroll Costs are \$5,968 over budget

'03-'04 fiscal expense will be over budget by \$10,000 for non-budgeted expenses associated with an unemployment claim. The claimant filed for extended unemployment benefits and her claim has been approved.

Additionally, effective March 2004, we have additional payroll expense because of the change in the staffing status of our contract investigator. The additional average monthly expense is \$3,600. The actual dollars budgeted for these expenses are in Contracted Services which is currently \$14,578 under budget.

Other payroll cost savings in reduced PERS administrative fees for '03-'04 have partially offset these additional expenses. However, starting June 01, 2004, the new charge for the PERS Bond Debt Repayment Plan is in effect. The Board will experience about \$1,000/month additional payroll expense because of this new charge. The charge amount is base on a preset rate, now 7.39%, of subject PERS salaries and scheduled for the next 20 years.

6100 General Office Expenses are \$3,114 over budget

Expense class 6120 Printing and copying is \$2,334 over budget. Again, because of the accrual method of budgeting, the remaining \$1,500 to be accrued will happen between now and the fiscal year end 6/30/04. We won't actually incur \$1,500 in expense for June. However, we will end up the fiscal year at approximately \$1,000 over budget for printing costs. This is primarily attributed to the redesign and reprinting of all the renewal and application forms.

Reported at the 9/19/03 Board meeting, liability risk management charges are going to be \$1,500 over budget for the year because of the increase in fees not anticipated from the risk pool.

All other expense classes, at this time, are on target are below estimates.

Future Variance Concerns:

Oregon General Obligation Pension Bonds. Boards and Agencies will start debt repayment effective June 2004 for May payroll.

Topic- April 2, 2004 Board Meeting Minutes

Except for a spelling correction, Joanna Freedman moved to accept the April 2, 2004 Board Meeting Minutes.

Seconded by Daiva Banaitis.

Motion passed unanimously.

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session to discuss licensee investigations.

EXECUTIVE (CLOSED) SESSION

The Board reviewed investigatory information regarding pending cases and new complaints.

The closed door meeting of the Executive Session is recorded and labeled on sides A and B of three recording tapes.

Upon completion of the Executive session Ms. Zarosinski took the Board back into public session for motions and additional business.

Case PT 87-3/02

Board elected to respond to licensee by letter stating no change in the Boards current position on the proposed notice and, if requested by the licensee, the Board will refer the matter to the Office of Administrative Hearings.

Case PT 79-3/02

In response to letter received from the licensee, the Board asked Legal Counsel to contact the District Attorneys office to validate statements made by the licensee with reference to the witnesses in the criminal case. The Board also determined that to proceed, a Board investigation needed to be done, starting with an interview of the licensee.

Case PT 159-04/04

Motion by Ms. Freedman to issue a proposed notice of disciplinary action to licensee citing two boundary issue violations; assessment of a civil penalty of \$ 1,000; one year of probation; and completion of a Board approved course on Boundary Issues.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 110a-12/02

Motion by Ms. Freedman to close the case, no violation.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 110b-12/02

Motion by Ms. Freedman to close the case, no violation.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 110c-12/02

Motion by Ms. Freedman to close the case, no violation.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 101-8/02

Board Member Jerry Nickell recused himself from this case.

Motion by Ms. Freedman to issue a propose notice of disciplinary action to licensee for documentation violations; assessment of a \$1,500 civil penalty with \$750.00 stayed; and a letter to licensee that cautions of documentation requirement in new business for PT services whether or not the patients are charged for the service.

Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 157-04/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; and an assessment of a \$100 civil penalty.
Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 156a-04/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; and an assessment of a \$75 civil penalty.
Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 156b-04/04

Motion by Ms. Freedman to issue a stipulation and final order for allowing a physical therapist assistant to practice without a valid license; and an assessment of a \$500 civil penalty.
Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 158a-04/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; and an assessment of a \$100 civil penalty.
Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 158b-04/04

Motion by Ms. Freedman to issue a stipulation and final order for allowing a physical therapist to practice without a valid license; and an assessment of a \$500 civil penalty.
Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 160-04/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; and an assessment of a \$100 civil penalty.
Seconded by Dr. Banaitis.
Motion passed unanimously.

Case PT 161a-04/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; assessment of a \$100 civil penalty; and a letter of concern to employer.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 161b-04/04

Board requested additional information from investigative staff.

Case PT 165-05/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; and an assessment of a \$100 civil penalty.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 163-05/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; assessment of a \$100 civil penalty; and a letter of concern to employer.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 164a-05/04

Motion by Ms. Freedman to issue a stipulation and final order for practice without a valid license; and an assessment of a \$100 civil penalty.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 164b-05/04

Motion by Ms. Freedman to issue a stipulation and final order for allowing a physical therapist to practice without a valid license; and an assessment of a \$500 civil penalty.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 59

Motion by Ms. Freedman to close the case; and issue letter of commendation for achievement to licensee.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 104-9/02

Motion by Ms. Freedman to close the case; and issue letter of commendation for achievement to licensee.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Case PT 123-2/03

Motion by Ms. Freedman to amend notice or proposed disciplinary action to add violations to OAR 848-010-0050 1(f); OAR 848-010-0050 (1) (i)(C); and OAR 848-030-0010(1).

Seconded by Dr. Banaitis.

Motion passed unanimously.

Policy Issue

Motion by Ms. Freedman to assess the cost of the national background check back on to the applicant.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Policy Issue

Motion by Ms. Freedman to add a routine state criminal search to the annual renewal process and raise the renewal fees by \$5.00 to cover the LED access charges and administrative time.

Seconded by Dr. Banaitis.

Motion passed unanimously.

Topic- Board Meeting Schedule

Except for the additional day added to the July 30th meeting, which is now scheduled for July 29th and 30th, 2004, the remainder of the 2004 meeting schedule remains unchanged; July 29th and 30th; October 1st; and December 3rd.

Ms. Zarosinski asked for any other business.

Ms. Zarosinski adjourned the meeting.

**Physical Therapist Licensing Board
Board Meeting
July 29-30, 2004**

MINUTES

Thursday, July 29, 2004

Present: Board Members Present: Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Daiva Banaitis, PT, PhD; Nancy Wilson, PTA; Joana Freedman, PT; Cindy Cunningham, Public Member. **Staff:** James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator; Frank Mussell Contract Investigator. **Legal Counsel:** Carol Parks, AAG

Absent: Pat Moore, MD, Physician Member.

Jerry Nickell, PT, Board Vice Chair convened the meeting at 5:00 PM.

The Thursday night meeting was held in open session and was attended by guests from the public.

PUBLIC (OPEN) SESSION

Topic- Rules Advisory Committee, Presentation of Proposed Rule Change Drafts

Jim Heider, Diana Godwin, Frank Mussell and Sheri Paru represented the Rules Drafting Committee. They presented to the Board the proposed final drafts as reviewed and put forth by the Rules Advisory Committee. Each Division was independently presented to the Board for their consideration. Board discussion ensued and the Board approved each Division draft with recommended changes.

The meeting was adjourned by Cathy Zarosinski, PT, MS, Board Chair at 8:50 PM, scheduled to re-convene at 8:30 AM Friday, July 30, 2004.

Friday, July 30, 2004

Present: Board Members Present: Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Daiva Banaitis, PT, PhD; Nancy Wilson, PTA; Joana Freedman, PT; Cindy Cunningham, Public Member; Pat Moore, MD, Physician Member. **Staff:** James Heider, Executive Director; Sherri Paru, PT, Clinical Advisor/Investigator; Frank Mussell Contract Investigator. **Legal Counsel:** Carol Parks, AAG

The meeting was re-convened in Open Session at 8:30 AM by Cathy Zarosinski, PT, MS, Board Chair, and was attended by guests from the public.

Topic- Rules Advisory Committee, Presentation of Proposed Rule Change Drafts

The Rules Drafting Committee continued with their presentation of rule drafts as reviewed and put forth by the Rules Advisory Committee. The Board approved all Divisions drafts with recommended changes.

Copies of the Board approved Proposed Rule Changes can be found on the Board's website at www.ptboard.state.or.us.

Topic- Ratification of PT/PTA Licenses

Motion by Dr. Moore to ratify all the licenses issued by the Board for the period June 4, 2004 through July 29, 2004.

Seconded by Joana Freedman.

Motion passed unanimously.

Topic- PT Complaint Letter to the Oregon Board of Massage Therapists

The Board reviewed a copy of a complaint letter from Jeffrey Bresnahan, PT, to the Oregon Board of Massage Therapists. In his letter, Mr. Bresnahan alleges/questions whether Whitney Lowe, LMT had encroached upon the scope of practice of a physical therapist licensed in Oregon. The Board tabled this issue pending what actions, if any, the Massage Board may take. Mr. Heider, Board Director, will follow-up with the Director of the Massage Board to see what they have done with this complaint.

Topic- Request for Board Approval of a Medical Screening Course

The Board received a request from Glenn Dodge, PT to approve a medical screening course taken at Rocky Mountain University as part of a transitional DPT program. The letter and documentation regarding the program were not available at the Board meeting. After discussion, it was noted that the Rocky Mountain University DPT program was not an accredited program. The Board withheld a decision until it had the opportunity to review the letter from the licensee and the program documentation.

Topic- OPTA Request to Offer Medical Screening Course Via Video Tape

The OPTA responded to the Board's questions and concerns regarding the OPTA's intent to offer the initial medical screening via electronic media. The Board was satisfied with the OPTA's proposed policies, procedures, guidelines and safeguards they have in place or will implement to protect the content and integrity of the program. The Board gave the OPTA approval for the program contingent on the Board's review of the final product. The Board wants to make certain the quality of the media is acceptable. The Board instructed Mr. Heider, Board Director, to relay their position of approval with

contingencies to the OPTA, and to ask for a copy of the media when it is available. Also, because the OPTA has no limit or timeframe in which a participant must complete the program and test, the question of what date to use for the certification date was brought to the Board by Sherri Paru, Clinical Advisor. After discussion, the Board determined that, as with the live program and paper test, the certification date will be the date the participant registered for the program and is sent the tapes, regardless of when they finish the program.

General Office Update:

DAS Proposed Move Of Suite 407 Boards

Mr. Heider, Board Director, informed the Board that the Department of Administrative Services presented its plan for moving the Suite 407 licensing Boards. The decision had been made to move the Suite 407 Boards into the current Pharmacy space. The Pharmacy Board would be relocated to the ground floor. Mr. Heider reported to the Board that the cost associated with the move would be transparent to the PT Board. However, after his review of the initial plans, Mr. Heider was not satisfied that the plans presented would be functional for the PT Board. Mr. Heider asked the PT Board's opinion with regards to the move. Although the Board is not opposed to a move, they are opposed to losing the functionality they built into the current space. If DAS can not meet the Board's needs and requirements, they would consider other options to the Portland State Office Building. Mr. Heider will follow-up and report progress.

Pending Staff Leave

Mr. Heider presented to the Board the plan for coverage of the Clinical Advisor's position while Sherri Paru is out on leave. Mr. Heider informed the Board that the current hourly investigator would probably work more hours and that the costs associated with his additional hours were not budgeted. The Board approved the plan.

Topic- Board Financial Report Narrative

Mr. Heider presented to the Board a year-end report covering fiscal year 7/01/2003 through 6/30/2004, the finance report is as follows:

4000 Gross profit is \$21,420 over budget

The Board's projected income for the fiscal year '03-'04 is budgeted at \$309,800. Actual income booked year end 6/30/04 equals \$331,220; this creates the budget income surplus of \$21,420.

The source of this excess income can be attributed to collection of income in excess of projected budgeted figures in the following areas: \$11,000 in renewal fees; \$7,000 in civil penalties; and \$3,000 in mailing lists.

5100 Payroll Costs are \$5,968 over budget

The Board's projected payroll costs for the fiscal year '03-'04 is budgeted at \$220,873. Actual expense booked year end 6/30/04 equals \$230,554.67; this creates the budget expense variance of \$9,682.

The source of this variance is a combination of plus (+) and minus (-) variances.

Salaries are \$25,000 (+) due to \$13,000 in contract investigator's pay now classified as salary as opposed to Contracted Services and \$12,000 in unbudgeted unemployment claims.

Benefits are \$16,000 (-) due to employer PERS contribution rate lowered saving the Board \$9,000 for the year and the Board saved \$7,000 in PEBB insurance coverage primarily due to the opting out of one employee from the medical plan and the Board's initiation of the policy that covers premium for the employees only.

5600 Travel Costs

The Board's projected travel expense for the fiscal year '03-'04 is budgeted at \$10,776. Actual expense booked year end 6/30/04 equals \$4,125; this creates the budget expense variance of \$6,651.

The source of this variance is due to the Board looking for more economical ways to send employees to training programs etc., also, in October 2003, the Board did not fund an Alternate Delegate at the 2003 FSBPT Delegates Assembly.

6400 Contracted Services

The Board's projected contracted services expense for the fiscal year '03-'04 is budgeted at \$80,640. Actual expense booked year end 6/30/04 equals \$62,648; this creates the budget expense variance of \$17,992.

In March of 2004 the Board's contracted investigator was put on payroll as a hourly employee. The source of this positive expense variance is the transfer of contracted investigator expense to the salary expense category.

Year End 2004 Summary

The Board's financial position for year end 6/30/2004 is better than originally projected. Income is up by \$21,000 and expenses are down by \$21,000. The net result is a savings of \$42,868. This translates into an actual operating loss of (\$17,777) for the year, when the 2004 original budget projected an operating loss of (\$60,645).

Future Variance Concerns

In July of 2004 the Board made an unemployment payment of \$3,530.00 representing the final eligible quarter, ending 6/30/04, for former employee.

The PERS Oregon General Obligation Pension Bond repayment started June 01, 2004. The Board will experience about \$1,000/month additional payroll expense because of this new charge. The charge amount is based on a pre-set rate, now 7.39%, of subject PERS salaries and scheduled for the next 20 years.
Increase salary expense due to extended use of hourly investigator to cover while primary investigator is out of office on leave.

Topic- June 4, 2004 Board Meeting Minutes

Motion by Dr. Moore to accept the June 4, 2004 Meeting Minutes.
Seconded by Joana Freedman.
Motion passed unanimously.

Future Board Meeting Dates:

The Board approved the upcoming meeting dates set for Friday, October 1, 2004 and Friday, December 3, 2004.

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session to discuss licensee investigations.

EXECUTIVE (CLOSED) SESSION

The Board reviewed investigatory information regarding pending cases and new complaints.

The closed door meeting of the Executive Session is recorded and labeled on sides A and B of three recording tapes.

Upon completion of the Executive Session, Ms. Zarosinski took the Board back into Public Session for motions and additional business.

Case PT 168-6/04

Motion by Dr. Moore to send Notice of Revocation.
Seconded by Joana Freedman.
Motion passed unanimously.

Case PT 161b-04/04

Motion by Dr. Moore to impose civil penalty of \$500.00 for allowing an unlicensed PT to practice.

Seconded by Joana Freedman.
Motion passed unanimously.

Case PT 123-02/03

Motion by Dr. Moore to accept voluntary surrender of license with a Stipulated Order noting convictions and agreeing never to apply for licensure in Oregon again.

Seconded by Joana Freedman.
Motion passed unanimously.

Ms. Zarosinski asked for any other business.

Ms. Zarosinski adjourned the meeting.

**Physical Therapist Licensing Board
Board Meeting
October 01, 2004**

MINUTES

Friday October 01, 2004

Board Members Present: Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Daiva Banaitis, PT, PhD; Nancy Wilson, PTA; Joana Freedman, PT; Pat Moore, MD, Physician Member

Board Members Absent: Cindy Cunningham, Public Member

Staff: James Heider, Executive Director; Frank Mussell Contract Investigator

Legal Counsel: Warren Foote, AAG

The meeting convened in Open Session at 8:34 AM by Cathy Zarosinski, PT, MS, Board Chair, and was attended by public guests.

Topic-Ratification of PT/PTA Licensees

The Board was presented with a list of new licensees issued for the period of July 30, 2004 through September 30, 2004. The Chair opened the floor for discussion with regards to the new licensees. Without noted discussion, the Board voted unanimously to ratify new licenses issued, by the Board, for the period July 30, 2004 through September 30, 2004.

Petition-Hazel Ryan, Endorsement License Application

Hazel Ryan petitioned the Board to consider the following as evidence that she should be eligible to license in the state of Oregon as a PTA through the endorsement process: Her foreign education and training credentials; her PTA national examination results; and her current PTA practice license in the State of New York. After discussion of Ms. Ryan's current situation, and consideration of possible alternatives, the Board responded to Ms. Ryan.

In the Board's response to Ms. Ryan, it was noted that current Board Statute and Rule do not recognize or allow the assessment of a foreign educated PTA. Further, the Board's credentialing agent, the FCCPT, states that there are foreign programs in existence that are equivalent to a US domestic PTA program. Thus, no assessment tools are currently available to make that comparison.

The Board suggested the following options to Ms. Ryan: 1) Since she attended a PT school in England, and practiced as a licensed PT in England, she should credential her foreign education as a PT instead of a PTA. When she is successfully credentialed as a PT, would then be eligible to make application, through the Oregon Board, to sit for the National PT examination. 2) She could also contact Mt. Hood Community College and

inquire about entering into their PTA program. 3) Lastly, after proper facilities training, she could work as an Aide under the direct supervision of a PT or a PTA.

The Board also determined that the credentialing of foreign educated PTAs may be a topic of further discussion.

Petition-Beth Duffy, PT, Approval of Submitted Program for CEUs

Beth Duffy, PT, petitioned the Board for consideration of continuing education units (CEUs) for clinical course work she had successfully completed at the Oregon College of Oriental Medicine. The courses were: Western Pharmacology, a 36-hour class primarily in lecture format; and, Western Clinical Diagnosis, a 108-hour course, which was a combination of lecture and lab. The Board reviewed the class syllabi, felt the course work was clinically relevant, and approved the credit of 50 CEUs, which is the maximum number of CEUs for Ms. Duffy's current practice without referral certification period.

Topic-OPTA Medical Screening Home Study Course

Mr. Heider reported, to the Board, that the review and positive response regarding the OPTA's 12-hour home study medical screening course was complete, and that the OPTA was going to make the new program available beginning October 2004.

Mr. Heider also reported, to the Board, that the OPTA had video taped its September 18, 2004, 6-hour medical screening refresher course. The hope is to develop a home study program similar to the 12-hour initial screening course. The Board will look forward to the opportunity to also view and approve the content and quality of this program.

Finally, the Board conveyed its appreciation to the OPTA Board for their thoughtful consideration and meaningful response to the PT Board's requests, questions, and concerns regarding the home study course project.

Future Board Meeting Dates

The next Board meeting date is set for Friday, October 22, 2004 and is scheduled as a Public Hearing. It will be held in Room 120-C of the PSOB, located at 800 NE Oregon Street, and will begin promptly at 12:00 Noon. The purpose, of the meeting, is to hear public testimony regarding the Boards proposed amendments, adoption, and repeal of certain Administrative Rules.

The last regularly scheduled Board meeting, for the year 2004, will be held on Friday, December 3, 2004. It will be held in Room 445 of the PSOB, located at 800 NE Oregon Street, and will begin promptly at 8:30 AM.

Dates were set for the first three Board Meetings to be held in 2005. The dates are:

Friday, February 4, 2005; Friday, April 1, 2005; and Friday, June 3, 2005. These meetings are currently scheduled to be held in Room 445 of the PSOB, located at 800 NE Oregon Street, and will begin promptly at 8:30 AM.

General Office Update

Family Medical Leave/Clinical Advisor/Investigator

Mr. Heider reported, to the Board, the leave status of the Clinical Advisor/Investigator. Mr. Heider reported that the employee has been on short-term disability pay from 8/24/04 through 9/28/04. Also, there is some question as to the actual end date on the disability, due to the fact that the employee had some delivery complications. The end date, of September 28th, may be subject to change. After the employee has used up the medical portion of her leave, she will use accrued sick and vacation time to keep her pay whole until her scheduled return on Monday, November 29, 2004.

DAS Proposed Move of Suite 407 Boards

Mr. Heider reported, to the Board, that he had completed and mailed, to the DAS Facilities Administrator, a letter stating the PT Board's position regarding the proposed move. Further, Mr. Heider reported that current information leads him to believe that the pending move date will be sometime in August of 2005. Mr. Heider, and the Suite 407 Boards, are scheduled to have an update meeting with the DAS Facilities Space Planner on Thursday, October 7, 2004. Mr. Heider will provide a follow-up report at the Board's December 3, 2004 meeting.

Joint Legislative Audit Committee Report to the Governor

Mr. Heider reported, to the Board, that he had completed the survey request from the Legislative Fiscal Office. The Legislative Fiscal Office (LFO) is scheduled to meet on the 14th of October to discuss their recommendations, to the Legislature, relevant to the survey findings as they pertain to semi-independent Boards. Mr. Heider also shared, with the Board, a letter he had written to Ken Rocco, the head of the LFO. In the letter, Mr. Heider asked to see a copy of the proposed report prior to the October 14th meeting of the LFO. Mr. Heider will provide a follow-up report at the Board's December 3, 2004 meeting.

Topic-Board Financial Report Narrative

Mr. Heider presented, to the Board, a financial report covering the period 7/01/2004 through 8/31/2004. The narrative of that report is as follows:

4000 Actual Gross Profit is (\$34,738) under Budget

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 that income or expense equitably over the entire accounting period, in this case 12 months covering 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 (\$51,633 to date). Actual income booked to date equals \$16,895; this creates the budget deficit of (\$34,738). The vast majority of that income will actually be received Jan-Mar '05.

This is not an item for concern at this point.

5100 Payroll Costs are \$10,520 over Budget

Payroll Costs are over budget by \$10,520 as a combination of several expense factors: salaries are over budget by \$7,500 due to the reclassification of the contract investigators paid from contracted services to hourly wage; the final payment for Gustafson unemployment claim of \$3,500 was made in July for 2nd quarter 04; new monthly PERS Debt Obligation Bond repayment totals \$2,000 for two months; the Board expense for benefits is down (\$1,400) due primarily to the opt out option; and, training and Board stipends are down by (\$1,100) jointly.

6100 General Office Expenses are \$553 over Budget

Most of the expense classifications under general office expenses are coming in under budget by a combination of (\$1,350). This savings is offset by the annual charge for risk management liability services, which is budgeted at \$50/month for 12 months totaling \$600. The actual annual payment made in July was \$1,987, showing a YTD budget variance of \$1,887.

6200 Postage is \$1,110 over Budget

The expense for postage is over budget due to a timing difference between budgeting and payment of expense. An invoice, for service and usage for Mar-May 04 totaling \$3,255, was not received and paid until July. The 3-month figure was high because of the Spring 04 Newsletter mailing that went out in March 04.

6400 Contracted Services is \$5,019 over Budget

Contracted Services are over budget by \$5,019, as a combination of several expense factors: the reclassification of the contract investigators paid from contracted services to hourly wage resulted in a reduction to this expense class of (\$5,000); legal fees are over budget by \$6,293, due primarily to increased usage attributed to 3 contested case

hearings, one finalized and two pending completion. The fee for outside audit services came in at \$4,312 for the fall 2003 bi-annual financial audit that was budgeted for in 2003.

Future Budget Variance Concerns

The Board will continue to experience the impact of the non-budgeted PERS Obligation Bond Debt repayment at \$1,000/month. In addition, we have opened three new requests for contested case hearings. This will continue to escalate the costs for contracted services to include legal fees and expert witness fees. In addition, the costs for use of the Employment Department Hearings Officer Panel will exceed projections.

Topic-July 29 & 30, 2004 Board Meeting Minutes

The minutes, from the July 29th and 30th 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 July 29th and 30th, 2004 Board Meeting Minutes as submitted.

Issue-Direct Access Course Completion Certification Date

Currently, when a licensee wishes to apply for practice without referral (PWR) certification, they are either eligible by virtue of their curriculum, graduating from a CAPTE accredited PT program after January 1, 1998, or they need to complete a 12-hour medical screening course approved by the Board.

The Board now recognizes five medical screening courses that will satisfy this requirement:

1. Diagnosis by Physical Therapists, taught by David Musnick, MD, sponsored by North American Seminars.
2. Medical Screening for Physical Therapists, taught by William Boissonault, PT, sponsored by the APTA.
3. Medical Screening Upper Quarter and Lower Quarter, taught at Pacific University for students enrolled in the transitional DPT program.
4. OPTA Medical Screening course.
5. OPTA Home Study Medical Screening course.

Issue:

In cases #1, 2 & 3, the PWR certification date will be a date that is assigned, by the PT Board, after the Board has received proof of successful completion of the course, (including the exam), and proof that the PT holds a valid and current Healthcare Provider CPR card. On that date, the PT will be sent a PWR Certification Letter along with a Certification Label to be affixed to the licensee's current practice license.

With the OPTA courses, both the classroom course and the home study course, the exam is handed out at the end of the course with no specific requirement for date of return. Oftentimes these tests are held for months, sometimes over six months. When the tests are completed and finally turned in for grading, those who have successfully completed the exam are sent a completion letter with a copy sent to the Board. Upon the Board's receipt of proof that the PT holds a valid and current Healthcare Provider CPR card, the Board sends the PT a PWR Certification letter and Label with the last day of the class as the certification date. NOTE: This is true even if the completion of the test letter date and proof of CPR card are not received by the Board for six months, or longer, after the course date. In essence, we are setting a retroactive certification date.

Reasoning:

Because the Board and the OPTA had so many issues and problems with tracking and enforcing the closed ended due date on the take home test, they determined they would leave it open ended.

One way, to monitor and hold those accountable for turning in a delinquent test, is to hold them to the standard for renewal as if they had taken the exam immediately following the course. In other words, regardless of when they turn the exam in, make the initial certification date the last date of the course, or in the case of home study, the course registration date. In essence, if they've held the test for one year and then get certified to PWR, they only have two years left in their certification period to meet CEU requirements and to consider taking the refresher course.

The only problem cited, by Mr. Heider, is that on the license the Board is actually retro dating the initial certification date to a date the licensee really was not eligible to practice, because the test had not yet been completed, and evidence of a valid and current CPR card may not have been on file.

Proposed Solution:

- In all cases, instead of printing the initial certification date on the license or label, print the certification end date. This will take care of the retro dating on the license itself and gives the licensee more pertinent information with regards to expiration of the certification.

Note: Jim Heider has to check with his data base manager to see if this is possible. If the expiration date has to be entered manually, for each licensee holder, this is not a reality in practice. Mr. Heider will report back to the Board at its December 3, 2004 meeting.

- Also, suggested was that the Board get rid of the labels and issue the licensee a duplicate license with the Practice Without Referral Certification and the date on the license. Note: If the Board does this, the licensee would be subject to the \$25.00 duplicate license fee.

Practice Question-David Marquis, PT

Treatment of a student athlete....requirement to refer....

Question 1) Is a PT, certified to practice without referral, obligated to refer a student athlete to a doctor, etc. if he has been treating him for 30 days?

Answer: No, OAR 848-030-0010(2)(b)(B) exempts him from having to refer a student athlete to a doctor.

Follow-up question 2) Is there ANY limit to the length of time the PT can treat this student athlete without referral?

Answer: No, there is nothing in the rules; however, if treating for an extended period of time, 30, 40, 45 days and there is no improvement or progress, sound judgment and prudent practice would tell you to refer him to a specialist.

Staff Question-Jim Heider

In the recent Joint Legislative Audit Committee survey, the following question was asked of the independent Boards and Agencies, what would your Board do if they were suddenly and unexpectedly without an Executive Director (ED)? Note: Some of the SIBA Boards are one person Boards.

At the last SIBA meeting, the group discussed optional answers to this question. Since the Boards are all pretty similar in their administrative operations, one of the ideas was the possibility of sharing ED resources, between Boards, during a time of critical need. Some sort of agreement for remuneration would have to accompany the service hours of the ED on loan.

Question: Would the PT Board be open to such an arrangement?

Answer: Yes, as long as the PT Board's critical needs took precedence over the needs of the other Boards.

EXECUTIVE (CLOSED) SESSION

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session to discuss licensee investigations.

The Board reviewed investigatory information regarding pending cases and new complaints.

The closed door meeting of the Executive Session is recorded and labeled on sides A and B of three recording tapes dated 10/01/04.

Upon completion of the Executive Session, Ms. Zarosinski took the Board back into Public Session for motions and additional business.

Case PT 123-02/03

Motion, by Jerry Nickell, to prepare a second amendment to the Stipulated Agreement and Final Order (Relinquishment of License) adding back the stipulations, as cited in the original draft; agreeing to a 5-year period before the licensee could re-apply for licensure in Oregon; and, taking out the words, friends, or relatives and treating patients in any setting, from paragraph 2.b “including treatment to any patients, [~~friends, or relatives, treating patients in any setting~~].”

Seconded by Daiva Banaitis.

Motion passed unanimously.

Case PT 173-09/04

Motion, by Jerry Nickell, to propose issuing to applicant a Stipulated Agreement and Final Order, licensing applicant with a Probationary license, with conditions, for a period of two years.

Seconded by Daiva Banaitis.

Motion passed unanimously.

Case PT 82-5/02

Motion, by Jerry Nickell, to issue a Final Notice releasing licensee from Probation and the remaining psychological examination requirements.

Seconded by Daiva Banaitis.

Motion passed unanimously.

Board Chair Affirmation

Motion, by Nancy Wilson, to reaffirm Cathy Zarosinski as the Board Chair for the remainder of her term through 09/15/05.

Seconded by Daiva Banaitis.

Motion passed unanimously.

Board Vice Chair Affirmation

Motion, by Nancy Wilson, to reaffirm Jerry Nickell as the Board Vice Chair for the period of one year.

Seconded by Daiva Banaitis.

Motion passed unanimously.

The question was asked, of Mr. Heider, what the procedure for the Rules Hearing would be. Mr. Heider explained the process and Board discussion regarding the October 22, 2004 Rules Hearing ensued.

Ms. Zarosinski asked for any other business.

Ms. Zarosinski adjourned the meeting at 1:51 PM.

**Physical Therapist Licensing Board
Administrative Rules Hearing
October 22, 2004**

MINUTES

Friday, October 22, 2004

Board Members Present: Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Joana Freedman, PT; Pat Moore, MD, Physician Member; Cindy Cunningham, Public Member

Board Members Absent: Daiva Banaitis, PT, PhD; Nancy Wilson, PTA

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

Legal Counsel: Carol Parks, AAG

The hearing was held Friday, October 22, 2004, in Room 120-C of the Portland State Office Building, 800 NE Oregon Street, Portland, OR. The hearing was convened at 12:00 Noon by Jim Heider, Board Executive Director and Presiding Hearing Officer.

Mr. Heider presented an opening statement asking all guests to sign the attendance log, which is on file with the Board. The hearing was recorded on Tape 1 Side A, titled, 10.22.04 Admin Rules Hearing and is available in the Board office.

Mr. Heider instructed the Board/Staff panel and the audience of the procedure he would use to conduct the hearing. Each Rule Division would be addressed, in sequential order, starting with Division 1. Mr. Heider would read the Rule Summary from the Notice of Proposed Rulemaking Hearing form. He would then open the floor up for testimony regarding the proposed rule changes for that Division, or any issues with regards to the Rules in that Division.

Division 1 Procedural Rules

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Diana Godwin, Attorney at Law representing Oregon Physical Therapists in Independent Practice (OPTIP), a trade association representing approximately 110 independent practice physical therapy clinics throughout Oregon. Ms. Godwin was also a member of the Rules Advisory Committee and played a significant role as part of the Rules Drafting Sub-committee.

Prior to her testimony and on behalf of her clients, Ms. Godwin commended the Board for its work on the proposed rule changes, stating that the proposed rules are significantly clearer, easier to read, and organized in a coherent and logical order. They will help both the licensees and the public, to better understand the practice and ethical rules that govern physical therapy in Oregon. Although OPTIP supports adoption of the proposed rules, they have four exceptions they would like to present to the Board for reconsideration.

With regards to Division 1, Ms. Godwin testified that OPTIP is opposed to the Board eliminating the right for a licensee to appear before the Board following a contested case hearing. Ms. Godwin cited that this is the licensee's final opportunity to present arguments regarding the Board's final order. The newly proposed rule, now in Division 1, OAR 848-001-0020, includes only the right to file written exceptions. A written/recorded copy, of Ms. Godwin's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #2: Tracy Fritts, licensed PT, representing approximately 800 members of the Oregon Physical Therapy Association (OPTA). On behalf of the OPTA, Ms. Fritts applauded the efforts of the Board on this much needed, but time consuming, process. The OPTA also appreciated the Board inviting 3 members of the OPTA Board of Directors to serve on the Rules Advisory Committee. Although the proposed rule changes offer improved organization and clarity, there are a few changes the OPTA found objectionable.

With regard to Division 1, Ms. Fritts testified that the OPTA was opposed to the Board removing the right for a licensee to appear before the Board prior to receiving disciplinary action. Ms. Fritts cited that the Board should not be able to impose sanctions on a licensee they have never met, nor given the opportunity to explain in person. A written/recorded copy, of Ms. Fritts' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #3: Arlene Harris, PT, former member of the Licensing Board, representing private practice. Ms. Harris testified that, from experience on the Board, there was a specific case where she wished the Board could have spoken directly with a licensee prior to imposing the final sanctions. Further, in talking with other PTs in the valley, it is felt that the Board needs to hear that person's story. Similar to the SOAP formatting in PT charting, the Board needs to have the whole case; the subjective, objective, the assessment, which the Board will make, and the plan. Ms. Harris closed with, let the licensee have their day in court. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Division 40 Minimum Standards for Physical Therapy Practice and Records

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Bruce Alter, PT, Carolyn Alter, PT, representing Hollywood Physical Therapy. Mr. Alter testified that the change they were concerned with was section OAR 848-040-0110(3), which clarifies requirement that patient records shall be prepared on the date of service. They are in opposition to this change because it can be problematic, unrealistic, and impossible for the Board to enforce. Further, they were concerned that the Board would use this rule as a tool to sanction a PT when, in fact, the PT may be under investigation for something totally unrelated to documentation. Lastly, Mr. Alter

feels that implementation, of this rule, would make PTs less efficient or less able to see patients. A recorded copy, of Mr. & Mrs. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Mr. Alter asked to present another issue. He stated he was now representing pediatric therapists in the school system, specifically, Willamette Educational Service District. Mr. Alter spoke, as a proponent, to amending OAR 848-040-0155(1)(b), Standards for the Required Reassessment, which states that a physical therapist needs to perform a reassessment, for the children that are in the schools, at least every 60 days. Mr. Alter gave testimony noting that the current Board reassessment rule is in misalignment with the current federal statute Individual Disability Education Act (IDEA) rules. The IDEA definition of a Individual Education Program (IEP), requires a statement of how the child's progress towards the annual goal will be measured, and how the child's parents will be regularly informed, through such means as periodic report cards, at least as often as the parents are informed of their non-disabled child's progress. Mr. Alter asked the Board to consider amendment of the reassessment rule to better match the federal IDEA reporting requirements with the need for PT assessment for children in the school districts. In doing so, the school districts can make better use of their resources and dollars, using more PTA support to follow care plans developed by PTs, and the PTs would reassess based on the IEP. It would be easy to check. The Board could pull a student's IEP and the therapist's notes, to see if the IEP required quarterly or monthly reporting. And, that it was actually being done by the physical therapist on those dates. A written/recorded copy, of Mr. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #2: Arlene Harris, PT, former member of the Licensing Board, representing private practice. OAR 848-040-0140(c), Record of the Plan of Care. Ms. Harris testified, in opposition to (c), requiring the proposed frequency and duration of treatment as part of the record of the Plan of Care. Ms. Harris cited it is easier when working with the insurance carriers, to state just the number of visits and the duration. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Division 5 Board Administration

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Carolyn Alter, PT, Hollywood Physical Therapy, commenting on OAR 848-005-0020(e), the increase in renewal fee to practice without referral from the current \$15.00 to \$50.00. Ms. Alter spoke, in opposition to this rule amendment, citing increasing financial hardship on the physical therapists already to maintain the continuing education requirements and CPR certification. A recorded copy, of Ms. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #2: Diana Godwin, Attorney at Law, representing Oregon Physical Therapists in Independent Practice (OPTIP). Ms. Godwin spoke out in favor of the new Division 5, citing the new division makes the rules easier to understand and better organized. She also spoke in support of OAR 848-005-0030, requiring every PT provide current contact information. And also, supported OAR 848-005-0020(b), which added a new fee for the actual cost of conducting nationwide or statewide background checks to the application process. Ms. Godwin did speak in opposition to OAR 848-005-0020(1)(f), which creates the new \$50.00 fee called the delinquent processing fee. This will be charged if the licensee's renewal is postmark after March 15th. Based on feedback, from her clientele, there was a lot of concern regarding this additional late fee, stating that it may hurt therapists in a difficult economic climate. Further, Ms. Godwin had a legal concern as to whether this new penalty can lawfully be imposed on a therapist who is in full compliance with ORS 688.100. And feels that if a therapist is in full compliance with ORS 688.100 (has renewed his/her license by April 1st), the Board does not have authority to impose an additional penalty. In fact, this rule could be considered, Ultra-virus, which is outside the scope of the authority granted to the Board by the Legislature. A written/recorded copy, of Ms. Godwin's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #3: Tracy Fritts, PT, representing OPTA. Ms. Fritts testified in opposition to OAR 848-005-0020(e), the increase in renewal fee to practice without referral from the current \$15.00 to \$50.00. Ms. Fritts cited that the proposed increase is over 150% and stating that the increase is too excessive. The OPTA favors the Board looking for ways to decrease other administrative costs associated with Direct Access rather than increasing the fee so excessively. Further, Ms. Fritts spoke out in opposition to OAR 848-005-0020(1)(f), which creates the new \$50.00 fee called the delinquent processing fee. The OPTA members feel the deadline for renewal is March 31st and the Board should not access a penalty before then. Perhaps, if the Board considered a positive incentive to have the licensee renew early, it would be more effective. A written/recorded copy, of Ms. Fritts' complete testimony and arguments regarding these matters, is on file in the Board office and available upon request.

Witness #4: Bruce Alter, PT. Mr. Alter spoke out in opposition to 848-005-0020(e), the increase in renewal fee to practice without referral from the current \$15.00 to \$50.00. Mr. Alter testifies that he maintains his Direct Access not because he has too in his particular setting, it is not required; however, he feels it pushes the profession of physical therapy forward. He would like to see the Board consider additional ways to encourage more therapists to acquire Direct Access. Mr. Alter feels that by increasing the costs, the Board discourages those, like himself, who maintain Direct Access as a matter of professionalism. A recorded copy, of Mr. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #5: Arlene Harris, PT. Ms. Harris spoke in opposition to OAR 848-005-0020(1)(f), which creates the new \$50.00 fee called the delinquent processing fee. Ms. Harris cited the confusion it would cause. It could end up being more confusing then

helpful to the Board. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Division 10 Licensing of Physical Therapists, Physical Therapist Assistants, and Temporary Permit Holders

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Diana Godwin, Attorney at Law, representing Oregon Physical Therapists in Independent Practice (OPTIP). Commented on Division 10 as it relates to the new proposed delinquent processing fee in Division 5. Citing that if Board Counsel advises a change, with respect to the issue previously raised, the Board would also want to take a look at Division 10 OAR 848-010-0033(3)(4)&(5), which also references the delinquent processing fee.

Witness #2: Arlene Harris, PT. Ms. Harris testified with regards to temporary permit, OAR 848-010-0026. Current rule requires the surrender of a temporary permit in the event the applicant fails the NPTE. Ms. Harris feels that a temporary permit is issued for 90 days and, regardless of whether an applicant fails the NPTE or not, the permit should remain valid for the 90-day period. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Division 15 Physical Therapist Assistants

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 15

Division 20 Physical Therapist Aides

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 15

10 Minute Break

Division 30 Practice Without Referral

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 30

Division 45 Grounds for Discipline and Sanctions

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Diana Godwin, Attorney at Law, representing Oregon Physical Therapists in Independent Practice (OPTIP). Ms. Godwin wanted to testify on two issues on Division 45, the first rule OAR 848-045-0010, Authority and Sanctions. The original opinion of the Advisory Group was that the Board would consider both mitigating and aggravating factors, as circumstances, when considering an imposed sanction. The Board chose to remove the wording that allowed for mitigating factors and only left in aggravating factors. Her group opposes the elimination of mitigating factors.

Ms. Godwin's second issue is in regards to OAR 848-045-0020(2), Grounds for Discipline. Ms. Godwin testified in opposition to Subsections (t) and (u), which provides that a licensee, who practices with a lapsed license after March 31st, must self report to third party payors because physical therapist services were delivered by a person whose license was in a lapsed state. Further, the licensee must provide evidence to the Board that the self reporting was done. This rule is going to cause enormous problems and financial hardships, and potential repercussions for future credentialing of a PT by a third party payor. It will also present enormous logistical problems for the Board. Aside from being burdensome and causing unnecessary invasion of patient privacy, Ms. Godwin does not think it is necessary for the Board to protect the interest of third party payors, nor is the role of the Board to do so. During the third party payor credentialing process, any actions taken against a PT will be disclosed; the third party payor will have a copy of the Order and the dates the licensee treated patients without a valid license. The third party payor already has the ability to seek reimbursement or take other actions, including canceling or not renewing a PTs credentials. There may also be a legal question, as to whether the Board is acting outside its statutory authority, in adopting these two provisions. A written/recorded copy, of Ms. Godwin's complete testimony and arguments regarding these matters, is on file in the Board office and available upon request.

Witness #2: Tracy Fritts, PT, representing OPTA. Ms. Fritts testified in objection to the Board omitting, from the final amended rules draft, the section on mitigating circumstances. Citing that if the Board gets to consider aggravating circumstances, it is only fair that mitigating circumstances also be considered.

Ms. Fritts also testified in opposition to OAR 848-045-0020(2)(s). Ms. Fritts cited that in large companies and hospitals organizations, it is rare and inefficient for PTs and PTAs to be involved in staffing and HR duties, such as credentials tracking. Just because a PT manager does someone's performance review, doesn't necessary mean that they are responsible for these things, or have the ability to look at them individually.

Lastly, Ms. Fritts testified in opposition to OAR 848-045-0020(2)(t)(u), requiring a licensee who has provided services with a lapsed license to self report. It is also felt that this oversight is covered by other organizations. Also, in cases where there is contact PT labor; or other similar situations the PT does not always have access to, or knowledge of, third party payors. Requiring a therapist to do this individually would be very tedious time consuming and repetitious since it is felt that other organizations already handle this

situation. Also cited, is the undue amount of Board time to administer and track the follow-through. The OPTA members prefer that their renewal fees be used for other administrative costs. A written/recorded copy, of Ms. Fritts' complete testimony and arguments regarding these matters, is on file in the Board office and available upon request.

Witness #3: Arlene Harris, PT. Ms. Harris reiterated the opposition to OAR 848-045-0020(2)(t)(u), requiring an unlicensed PT or PTA to self report to third party payors for providing unlicensed services. Third party payors and insurance companies handle this oversight themselves. Ms. Harris noted that a person is still a physical therapist even though they did not renew their license. This is not really protecting the public and feels this is another issue outside the Board's jurisdiction. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Division 50 Substance Abuse Diversion

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 50.

Mr. Heider opened the floor for comments on any of the rules that may not have been presented or brought forth earlier.

Witness #1: Jane Cedar, PT. A comment on Division 40, OAR 848-040-0145, Standards for Providing Treatment Section (1). "A licensee shall not permit an aide to administer a procedure or modality to a patient, unless "the" licensee has previously"...this is a small issue, but by using the word "the", it seems as if you are tying it to a specific individual. I'm thinking that is not what the Board intended. You do want the treatment administered by "a" licensed person, PT or PTA, prior to the Aide doing the treatment. A recorded copy, of Ms. Cedar's complete testimony regarding this matter, is on file in the Board office and available upon request.

Mr. Heider again opened the floor for comments on any of the rules that may not have been presented or brought forth earlier.

Cathy Zarosinski, Board Chair, asked to make a comment. I would just like to clear up any misconceptions that may have been created and that is, that the Board has never refused to allow a licensee to come to the Board per their request. They never have, and I certainly, as Chair of the Board, don't ever intend for that to happen. So, I don't want anyone to think that this is the case.

Mr. Heider again opened the floor for comments on any of the rules that may not have been presented or brought forth earlier.

Without further comments, Mr. Heider stated that written testimony will still be received by the Board, if in the Board's office by 4:30 PM that day. Mr. Heider closed the floor to testimony and adjourned the hearing at 2:15 PM.

**Physical Therapist Licensing Board
Board Meeting
December 03, 2004**

MINUTES

Friday December 03, 2004

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

Board Members Absent: None

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

Legal Counsel: Carol Parks, AAG

Pursuant to ORS 192.660 (1)(k) Cathy Zarosinski, Board Chair, convened the meeting in Executive Session at 8:32.AM. The Board considered legal advisement from Counsel regarding the pending Administrative Rule changes. Following Counsel's advisement, Ms Zarosinski adjourned Executive Session and re-convened the meeting in Public Session.

Topic-Board Public Testimony Propose Administrative Rule Changes

The Board reviewed the minutes of the 10/22/04 public hearing on the proposed Administrative Rule changes and a summary of each piece of testimony presented at the Hearing and in the Board office. The Board considered each piece of testimony and, based on that discussion, voted to amend, repeal, or adopted each of the proposed rule changes. The Board's detailed discussion of each proposed rule change, and Board consideration of the public testimony, can be heard on Tape 1, Side A from the 12/03/04 Board Meeting. Also, a copy of the Minutes from the 10/22/04 Proposed Rule Change Public Hearing are published on the Board website, www.ptboard.state.or.us .

Case PT-90-4/02- Dan Taylor, LMT

The Board considered the Investigative Report with regards to a complaint filed, against Mr. Taylor, alleging he was practicing physical therapy, which is beyond his scope of practice. The Board found no violation and voted to close the case.

Topic- Miquel Alonso-Diez, Foreign Educated PT

Mr. Heider reported that Mr. Alonso-Diez had successfully completed his clinical internship, with Sacred Heart Medical Center, and would be applying for licensure by examination.

Topic-Sean M. Roach, PT- Petition for Medical Screening Course Approval

Mr. Roach requested the Board's approval of the Differential Diagnosis course taught, by Rocky Mountain University, as the pre-requisite 12-Hour Initial Medical Screening course required for Certification to Practice Without Referral. After consideration of the course syllabus, the Board did not approve the Differential Diagnosis course, in itself. However, the Board did approve completion, of the Rocky Mountain University Transitional DPT program, as satisfying the content requirement for the 12-Hour Initial Medical Screening Course.

General Office Update

DAS Proposed Move of Suite 407 Boards-Mr. Heider reported on the status of the proposed move of the health related licensing Boards out of Suite 407. Initial plans have been approved by DAS and reviewed with the various Boards. The Boards would remain on the 4th floor of the PSOB and take the space currently occupied by the Pharmacy Board. The Suite number would not change, saving the cost of printing new business cards, letterhead, etc. Preliminary floor plans have been developed and the anticipated move date is targeted for August 2005.

Joint Legislative Audit Committee Report to Governor-The Review of Small Regulatory Agencies Report was finalized and presented to the Governor's Committee on December 1, 2004. For a complete copy of the Report, contact the State of Oregon, Legislative Fiscal Office.

Proposed Board Policies and Procedures for handling of complaints- Mr. Heider presented an outline, to the Board, of proposed policies and procedures for handling of incoming complaints against licensees. The Board approved the outline, and Mr. Heider will complete the details to present to the Board at its February 04, 2005 Board meeting.

Renewals-Mr. Heider reported that the renewal process is on schedule. All the stock has been ordered and received; the form updates are pending the outcome of the proposed Administrative Rule changes. The actual renewal forms will be printed 12/16 & 12/17, and all renewal applications will be mailed out to licensees the week of 01/03/05.

2005-2007 Budget-Mr. Heider will present a preliminary 2005-2007 Budget, to the Board, at its February 04, 2005 Board meeting. The Notice of Hearing will immediately follow and is scheduled as part of the April 01, 2005 Board meeting public session. The effective date of the new Budget will be July 1, 2005.

Re-appointment of Dr. Moore as Physician Board Member-Dr. Moore's first term, as Physician Board Member, expires on March 31, 2005. Dr. Moore agreed that he would be interested in serving a second term. The Board approved Mr. Heider's request to start re-appointment procedures for Dr. Moore.

Topic-Board Financial Report Narrative

Mr. Heider presented, to the Board, a Financial Report covering the period 7/01/2004 through 10/31/2004. The narrative of that report is as follows:

4000 Actual Gross Profit is (\$74,241) under budget

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 that 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 (\$103,267 to date). Actual income booked to date equals \$29,025; this creates the budget deficit of (\$74,242). The vast majority of that income will actually be received Jan-Mar '05.

This is not an item for concern at this point.

5100 Payroll Costs are \$11,405 over budget

Payroll Costs are over budget, by \$11,405, as a combination of several expense factors: salaries are over budget, by \$9,834, due to the reclassification of the contract investigators paid from contracted services to hourly wage (Note: the wage amount budgeted through 10/31 for investigative contract services is \$10,000, so we are on budget), the dollars are just reclassified; the final payments for the prior director's unbudgeted unemployment claim this fiscal year total \$4,486; the new unbudgeted monthly PERS Debt Obligation Bond repayment totals \$3,510 to date; the Board healthcare expense is down by (\$2,606), due primarily to the opt out option; PERS is down by (\$2,219) because of no salary increases and no salary paid for FMLA leave during August; and, training and Board stipends are down by (\$1,400) jointly.

5600 Travel Cost are (\$2,364) under budget

This is purely based on a monthly accrual of \$99 per month and no expense to date.

6190 Dues and Subscriptions are \$1,667 over budget

In October, we paid the Board annual membership dues of \$2,500 to the FSBPT, we are accruing \$208 per month to cover this cost.

6400 Contracted Services are \$1,720 over budget

Contracted Services are over budget, by \$1,720, as a combination of several expense factors: the reclassification of the contract investigator's pay from contracted services to

hourly wage, resulted in a reduction to this expense class of (\$10,000); the fees for CPA were budgeted at (\$1,400), however, we have not had to used CPA service/advisement for the past 18 months; legal fees are over budget by \$8,540, due primarily to increased usage attributed to 4 contested case hearings (all pending completion), complaint activity, and administrative rules review and rewrite. The fee for outside audit services came in at \$4,312, for the fall 2003 bi-annual financial audit that was budgeted for in 2003; lastly, we had a non-budgeted IT support item costing \$260.

6600 Background Checks are \$1,040 over budget

This is a matter of timing, again. By the end of the '04-'05 fiscal year, we should be in a break even-position.

Future Budget Variance Concerns:

The Board will continue to experience the impact of the non-budgeted PERS Obligation Bond Debt repayment at \$1,000/month. In addition, we have opened three new requests for contested case hearings. This will continue to escalate the costs for contracted services to include legal fees and expert witness fees. In addition, the costs for use of the Employment Department Hearings Officer Panel will exceed projections.

*** If the new rule requiring license application candidates to pay for their own background check takes affect in January '05, the Board will be over accrued for the fiscal year in this expense class.

Topic-Terry Rose, PT Rehab Director Generations Therapy

Mr. Rose presented, to the Board, a description of his facility and a program called, "Fit as a Fiddle," which is essentially a restorative/maintenance program carried out by restorative aides. Mr. Rose's question was, "Does the PT doing the initial evaluation, prior to program participation, need to have Direct Access"? The answer to Mr. Rose's question is, "No". The physical therapist is exempt from having Direct Access, as per OAR 848-030-0010 (2)(b)(C). Town Center Village qualifies as a residential facility; therefore, the PT does not need to have Direct Access.

Ratification of PT/PTA License & Temporary Permits

The Board was presented with a list of new licensees issued for the period of October 01, 2004 through December 02, 2004. The Chair opened the floor, for discussion, with regards to the new licensees. Without noted discussion, the Board voted unanimously to ratify new licenses issued for the above-noted period.

Topic-October 01, 2004 Board Meeting Minutes

The minutes, from the October 01, 2004 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 October 01, 2004 Board Meeting Minutes, as submitted.

Topic-October 22, 2004 Proposed Administrative Rules Hearing Minutes

The Minutes, from the October 22, 2004 Proposed Administrative Rules Hearing, 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 October 22, 2004 Proposed Administrative Rules Hearing Minutes, as submitted.

Future Board Meeting Dates

Dates are set for the first three Board Meetings to be held in 2005. The dates are: Friday, February 4, 2005; Friday, April 1, 2005; and Friday, June 3, 2005. These meetings are currently scheduled to be held in Room 445 of the PSOB, located at 800 NE Oregon Street, and will begin promptly at 8:30 AM.

Topic-Robert Jensen, PT

Mr. Jensen is a licensed PT in the State of Washington. Mr. Jensen currently has restrictions, on his WA practice license, and has petitioned the Oregon Board for consideration of his endorsement application in Oregon. The Board would not review Mr. Jensen's case, citing that he is not eligible to make application in Oregon, because his current license, in Washington, is not in "good standing" OAR 848-010-0020(5).

Board Issue/Question

The new proposed rule OAR 848-010-0015(3), removes the requirement for foreign-educated physical therapists to hold a current license in the country in which they received their education. Even though the proposed rule does not require therapists to hold a current license, if they did, shouldn't the Board require a copy of the license, whether current or not? We now do this with domestic endorsement applicants to assure they are/were in good standing. It was determined that, as with any previously licensed practitioner, the Board would still require proof of good standing if a license was held. Further, it could be considered part of Board policy to require this documentation. However, the Board instructed Mr. Heider to consider writing the requirement into the next set of rule changes.

EXECUTIVE (CLOSED) SESSION

Pursuant to ORS 192.660 (1)(k), Ms. Zarosinski took the Board into Executive Session to discuss licensee investigations.

The Board reviewed investigatory information regarding pending cases and new complaints.

The closed door meeting of the Executive Session is recorded and labeled on sides A and B of three recording tapes dated 12/03/04.

Upon completion of the Executive Session, Ms. Zarosinski took the Board back into Public Session for motions and additional business.

Board Motions

Case PT 79-03/02

Motion, by Nancy Wilson, to issue a Stipulated and Final Order revoking the Licensee's license, and prohibiting licensee from reapplying to the Oregon Board for a period of five years from the date the Stipulated Order is executed by the Board.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 174a-10/04

Motion, by Nancy Wilson, to issue a Stipulated and Final Order, imposing a civil penalty of \$562.50, for practicing physical therapy without a valid license.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 174b-10/04

Motion, by Nancy Wilson, to issue a Stipulated and Final Order, imposing a civil penalty of \$2,000.00, for allowing the practice of physical therapy without a valid license.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 149-09/03

Motion, by Nancy Wilson, to close the case citing no violations.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 175-11/04

Motion, by Nancy Wilson, to issue a Notice of Proposed Discipline and a Stipulated and Final Order, imposing a civil penalty of \$5,000, probation with conditions for 1 year, licensee subject to random documentation audit by the Board.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 158b-04/04

Motion, by Nancy Wilson, to withdraw Notice and close the case.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 161b-04/04

Motion, by Nancy Wilson, to withdraw Notice and close the case.

Seconded by Joana Freedman

Motion passed unanimously

Case PT 168-6/04

Motion, by Nancy Wilson, to issue Amended Notice of Proposed Discipline, citing additional violation of unethical and unprofessional conduct.

Seconded by Joana Freedman

Motion passed unanimously

Additional New Business

Ms. Zarosinski asked for any other business.

Ms. Zarosinski adjourned the meeting at 3:30 PM.