

**Oregon Physical Therapist Licensing Board  
Special Board Meeting  
January 23, 2008**

**MINUTES**

**Wednesday, January 23, 2008**

**Board Members Present:** Joana Freedman, PT, Chair; Steve Alstot, PT, Vice Chair; Daiva Banaitis, PT, PhD; Burke Selbst, PT; Cindy Cunningham, Public Member

**Board Members Absent:** Jason Fiske, PT; Nancy Wilson, PTA

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

**Legal Counsel:** Carol Parks, AAG

**EXECUTIVE (CLOSED) SESSION**

The Special Board Meeting was held via telephone conference. Interested parties were notified, by mail, and Notice was posted on the Board website.

At 12:15 PM, Board Chair, Joana Freedman convened the Board, into Executive Session, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information, allegation of practice impairment and possible risk to the public. Also, under legal advisement, from Board Counsel, the Board considered possible actions regarding the case.

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

At the completion of the Executive Session, Board Chair, Joana Freedman closed the Executive Session and convened the Board, into Public Session, to entertain any Motions, publicly vote on any actions so moved, before the Board, and cover any other Public Session business.

**PUBLIC (OPEN) SESSION**

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

**Physical Therapist Licensing Board**

**Board Meeting  
February 01, 2008**

**MINUTES**

**Friday, February 01, 2008**

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

**Board Members Absent:** Nancy Wilson, PTA Member; Cindy Cunningham, Public Member

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

**Legal Counsel:** Carol Parks, AAG

**EXECUTIVE (CLOSED) SESSION**

Board Chair, Joana Freedman convened the Board into Executive Session at 8:58 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, administrative rule making, and Board policy and administration.

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

**PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

## **Board Motions**

### **Case PT 252-8/07**

Motion, by Burke Selbst, to issue Notice of Proposed Discipline citing violations of ORS 688.140(2)(a), ORS 688.140(2)(m), OAR 848-045-0020(2)(k), OAR 848-045-0020(2)(o)(A), OAR 848-040-0150(1)(a), ORS 848-040-0150(1)(d), OAR 848-040-0170(1), OAR 848-040-0170(2) and impose a \$5,000.00 civil penalty with \$2,000.00 stayed, a two-year probationary period with conditions, completion of a Board approved boundary and documentation course with reports to the Board.

Seconded by Daiva Banaitis

Motion passed, by quorum, 5-0; Cindy Cunningham and Nancy Wilson were not present for the vote.

### **Case PT 250-8/07**

Motion, by Burke Selbst, to issue Advisory Letter citing Board concern over documentation and billing practices.

Seconded by Daiva Banaitis

Motion passed, by quorum, 5-0; Cindy Cunningham and Nancy Wilson were not present for the vote.

### **Case PT 203-10/05**

Motion, by Burke Selbst, to issue an Amended Notice of Disciplinary Action citing additional violations of ORS 688.140(2)(a), OAR 848-040-0145(3), OAR 848-040-0155(1), OAR 848-040-0155(2), OAR 848-040-0170(1).

Seconded by Daiva Banaitis

Motion passed, by quorum, 5-0; Cindy Cunningham and Nancy Wilson were not present for the vote.

## **Law Enforcement Data System (LEDS) Policy**

The Board Executive Director presented, to the Board, a copy of the proposed Board LEDS policy. After review and discussion, Joana Freedman moved to adopt the LEDS policy as written. Daiva Banaitis seconded the motion. Joana Freedom called for a vote, on the Motion, which passed by quorum 5-0. Cindy Cunningham and Nancy Wilson were not present for the vote.

## **General Topics/Business**

- The Board Clinical Advisor and Investigator reported that Medicare rescinded its proposal that would require a healthcare professional to have a RESNA Certification to prescribe a power wheelchair.
- The Board Executive Director presented each Board member with a copy of the 2008-2009 Federation of State Boards of Physical Therapy (FSBPT) Budget. As stated in the FSBPT bi-laws, all Board Members of all Federation Member Boards shall be given a copy of the adopted budget. The Board Chair called for any questions or concerns. With none noted, the Board Chair moved to the next item of business.
- The Board discussed the FSBPT's call for candidates. The FSBPT is searching for a PT to fill the position of Director of Professional Standards. Although the Board had several viable candidates in consideration for the position, none of the candidates were open to relocation to the Virginia area.
- The Board also discussed the FSBPT's ongoing competency model pilot project. Board Chair, Joana Freedman asked the Board Executive Director if contact had been made, with the FSBPT, to schedule a time for the Federation to come to Oregon and present the model. Jim Heider, Executive Director reported that he has had recent conversations with Mark Lane, PT the FSBPT VP of Professional Standards and Assessment. The FSBPT is aware of Oregon's interest and is planning a visit and presentation, to the Oregon Board, sometime in early summer.

### **Request from Colin Hoobler, PT Regarding Removal of Outdated Public Records from Google.Com**

Sherri Paru, PT, Clinical Advisor and Investigator presented Mr. Hoobler's request for Board consideration. Mr. Hoobler, PT, asked the Board to consider removing an old PT Board public record pointing to his name from the Google website. Ms. Paru researched the methodology behind the appearance of items/content/names on the Google search engine. Ms. Paru contacted both the Google Legal Department and the Google IT group. She was informed that the Google search engines use documents and content, from public websites, to identify and point to specific search requests. If something is old, outdated or no longer valid, the initiator of the information on the initiator's public website can remove it from their site, and Google will no longer be able to point to the item/content/name. Ms. Paru shared, with the Board, that in accordance to ORS 688.160(9)(c), the Board must publish all Board final actions in a format or place determined by the Board. The Board determined that it would publish all of its final actions in the Board Newsletter. The Newsletters are published on the Board website, and it is the Board's website where Google is picking up Mr. Hoobler name. Ms. Paru also shared, with the Board that based on the Board's recent decision that in the interest of public protection, the Board was going to publish all final orders on its

website. Even if the old and outdated Newsletters are removed from the Board site, the new policy of publishing all final orders, for public view, will negate the action. After consideration, the Board determined they would not be able to act on Mr. Hoobler's request. In the interest of public safety and protection, all final orders will be available for public viewing, through the Board website, regardless of the age of the action.

### **Public Record Disclosure of Final Actions on Board Website**

Currently, the Board website only indicates whether a licensee has had disciplinary action taken by the Board. The sub note, to the highlighted notification, tells the inquirer to contact the Board for further information or to obtain a copy of the actual document. The Board has determined that, in the interest of public safety and protection, it will make available all public documents leading up to, and including, a disciplinary action and final order or stipulated agreement available for public viewing on the Board website. As noted above, the Board discussed development of a policy, and funding a project, that would require staff to scan all Board public documents and final orders. These documents are considered public records and available to the public at their request. The project would take the publishing of those documents a step further by publishing the documents on the Board website for public access and viewing. The Board instructed the Executive Director to draft a policy to be presented to the Board at its April 4, 2008 Board meeting.

### **Request from Licensee Jonathan Cheek, PTA for CE approval**

After review and consideration, the Board determined that general education courses: chemistry, physics, statistics taken, as preparatory work towards a bachelor degree, would not count for CE requirements to renew a PTA license. The classes must relate to the delivery of physical therapy services.

### **Request from Kathleen Keeling, PT for CE approval**

After review and consideration, the Board determined that the PT related course work, office orthopedics, within the Naturopathic Doctorate program, will count toward CE requirements to renew a PT license.

### **License Renewal and CE Update and Issues**

New graduates - The Executive Director discussed, with the Board, his concern regarding new graduates and endorsement licensees whose initial licensure date, with the State of Oregon, is close to the expiration date and also at the end of the CE certification period. The Director pointed out that it would be an extreme hardship for those individuals to meet the new CE requirement to renew their April 1, 2008-2009 license. After consideration and discussion, the Board determined they would write a Temporary Rule exempting those initially licensed, between January 2, 2008 and March

31, 2008, from the 2008 CE renewal requirement. Burke Selbst moved to adopt and file the Temporary Rule amendment and Daiva Banaitis seconded the motion. Joana Freedom called for a vote, on the motion, which passed by quorum 5-0. Cindy Cunningham and Nancy Wilson were not present for the vote.

Retirees and inactive license status – The Executive Director reported, to the Board, that the office continues to receive letters and requests for the Board to consider offering an inactive license. The Board has addressed this issue before; however, the Board or Board staff could not recall the circumstances or the outcome of the discussion. There was also some question about the Board's statutory authority to create a new license status via rule making. Therefore, this discussion was tabled to the next Board meeting pending research and report by the Executive Director.

The Board reviewed its informal policy regarding its directive to Board staff following-up on renewal applications returned "Undeliverable" by the US Postal Service. In the past, the directive was for Board staff to make every effort to track these individuals down and get the renewal forms to them. This policy was set prior to the change, in Administrative Rule, requiring licensees to maintain current contact information on file with the Board. After consideration, the Board determined it is now the licensees' responsibility to maintain their contact information, and that the Board will no longer require staff to follow-up on returned renewal forms.

The Board also discussed its previous directive to staff to accommodate therapists who have waited, until the very last minute, to renew their license. The Board has directed staff to continue to accommodate therapists walking into the office at the last minute to process their renewal. The Board hopes the availability of on-line renewals will give licensees the resource to process renewal applications up to the dateline date.

### **Inquiry Regarding PTA Scope of Practice**

The Board received an inquiry regarding a PTA working under the supervision of a PT where the PTA did not agree with the PT's plan of care. The PTA could not cite specific harm done to patients or patient safety issues only that, in the opinion of the PTA, the plan of care was not in the patients' best interest. After consideration, the Board determined that per Administrative Rule, a PTA works under the supervision of a PT. Further, it is up to the PT to determine treatment, as specifically as they would like. If a PT's plan of care specifies a certain treatment and it will not cause harm or jeopardize the patient's safety, then a PTA needs to follow the PT's plan of care. The Board felt strongly that, in this particular situation, many of the cited issues were work related. The working relationship, or lack thereof, between the PT and the PTA is an employment issue and should be addressed by the employer. If it were a practice or patient safety issue, it would certainly be addressed by the Board. The Board asked staff to consider writing a Newsletter article to specifically address the roles of a PTA regarding implementation of a PT's plan of care.

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

As established by the Board, the future Board Meeting dates are as follows: April 04, 2008; May 30, 2008; July 25, 2008; September 19, 2008; and, November 14, 2008. Based on schedule conflicts for the Board Chair and Executive Director, the Board discussed changing the May 30<sup>th</sup> date to June 6<sup>th</sup> and the July 25<sup>th</sup> date to August 1<sup>st</sup>. After the discussion, the Board changed the future Board Meeting dates to April 04, 2008; June 06, 2008; August 01, 2008; September 19, 2008; and, November 14, 2008. Meeting Dates, Notices, and published Minutes may be found on the Board website at [www.ptboard.state.or.us](http://www.ptboard.state.or.us).

### **Approval of Meeting Minutes**

The Minutes, from the December 7, 2007 Regular Board Meeting and the January 23, 2008 Special Board Meeting, were presented to the Board. PTA Board Member Nancy Wilson was not present at the meeting however, she submitted two written changes to the December 7, 2007 Minutes. The Board Chair opened the floor for additional discussion and comments. With the two noted changes, the Board voted unanimously to approve the Minutes for publication as written.

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

The Board was presented a list of new licensees and temporary permit holders for the period of December 6, 2007 through January 31, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, the Board voted unanimously to ratify the new licensees and permit holders for the above-noted period.

### **Other New Business**

The Executive Director reported: The 2005-2007 Board financial audit is complete. With the exception of one audit note regarding oversight of journal entries, which the Board has already addressed, the audit was clean. The next FSBPT Board Member Training is scheduled for April 18<sup>th</sup> through the 20<sup>th</sup>, in Alexandria Virginia, with all travel costs and accommodations paid for by FSBPT. Arizona Governor Napolitano has proposed legislation that would consolidate all Arizona health care professionals into one mega regulatory board.

Diana Godwin reported, to the Board, that her proposed bill adding physical therapists to the list of healthcare professionals, who have a mandatory reporting requirement when child abuse is suspected or known, is on hold. If another related Bill is not found, Ms. Godwin's proposed amendments will be introduced in the 2009 Legislative Session.

Finally, the Board Executive Director reported that the Administrative Rules Advisory Committee had its second meeting and is progressing with regards to the list of rule review topics. The topics in order of priority are: manipulation and mobilization, screenings and consultations, PTA role in reassessments, Aides role in therapeutic

exercise, clarification of direct access rules, pain management CE, and credentialing of foreign-educated therapists. The Committees rule making strategies were discussed, including using a smaller drafting sub committee for the detailed work. The Board felt comfortable with the direction and the approach the Committee is taking.

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

**Physical Therapist Licensing Board  
Board Meeting  
April 4, 2008**

**MINUTES**

**Friday, April 4, 2008**

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

**Board Members Absent:** Cindy Cunningham, Public Member

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

**Legal Counsel:** Carol Parks, AAG

**EXECUTIVE (CLOSED) SESSION**

Board Chair, Joana Freedman convened the Board into Executive Session at 8:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, administrative rule making, and Board policy and administration.

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



## **PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

### **Board Motions**

#### **Case PT 246-7/07**

Motion, by Nancy Wilson, to issue Notice of Proposed Disciplinary Action, citing violations of ORS 848-045-0020(2)(u)(A)(B) failure to cooperate with the Board and ORS 688.140(2)(a) failure to follow a written Order of the Board and, impose a civil penalty of \$1,000 previously stayed in a previous Order, place licensee on probation for a period of two years and suspend license to practice for 30 days.

Seconded by Burke Selbst

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

#### **Case PT 260-12/07**

Motion, by Nancy Wilson, to issue Stipulated Agreement and Final Order citing OAR 848-045-0010(4) impairment of licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety and require Licensee to continue psychiatric/ psychological treatment from current provider for a period of two years, undergo a neuropsychiatric evaluation with report to the Board, work with on-site PT supervision until Board determines that such supervision is no longer necessary, provide a copy of the Stipulated Agreement, to all employers, and provide the Board with biannual reports from his treating providers.

Seconded by Burke Selbst

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

#### **Case PT 253-9/07**

Motion, by Nancy Wilson, to close case issuing an Advisory Letter requesting the Licensee complete a boundaries course and provide evidence of course completion to the Board.

Seconded by Burke Selbst

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

### **Case PT 263-2/08**

Motion, by Nancy Wilson, to issue Stipulated Agreement and Final Order, citing violation of OAR 848-045-0020(2)(r) practicing physical therapy with a lapsed license and imposing a civil penalty of \$250.00.

Seconded by Burke Selbst

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

### **Case PT 265-2/08**

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

Seconded by Burke Selbst

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

### **Case PT 203-10/05**

Motion, by Nancy Wilson, to reject Licensee's stipulated offer to settle and counter with a proposed Stipulated Agreement and Final Order stating: the Board is prepared to prove but the Licensee does not agree to all the violations as noted in the previous Second Amended Notice, assessing the Licensee a civil penalty of \$5,000 with \$2,500 stayed, placing the Licensee on probation for two years and, requiring Licensee to complete a Board approved documentation course and provide evidence to the Board of course completion.

Seconded by Burke Selbst

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

### **General Topics/Business**

- The Director announced the upcoming FSBPT Board Member Training scheduled for April 18 through the 20<sup>th</sup> in Alexandria, VA. This training, the travel, hotel, meals and incidentals are funded by the FSBPT. Several of the current Board members have already attended the training and attested to the value of the time spent. The Director asked any other members who might be interested to contact him and he would submit their name.
- The Director announced the FSBPT new pilot program using the Practice Review Tool (PRT). The FSBPT developed the PRT as part of its continuing competency Tool Kit. The Federation is asking member boards to consider the use of the tool and to encourage licensees by crediting CE for completion of its use. After discussion and consideration, the Board determined it would invite the Federation staff to visit the Board and present the entire competency toolkit, to include the PRT. The visit and presentation will happen sometime this summer.
- The Director announced the FSBPT's request for nomination of Board Delegates to attend the 2008 FSBPT Delegates Assembly. The Assembly will be held September 12<sup>th</sup> through the 15<sup>th</sup> in Minneapolis, MN. The FSBPT funds the assembly and educational programs registration fees, the travel, hotel, meals and incidentals, for the Board's Voting Delegate, Alternate Delegate and

Administrator. After discussion and consideration, the Board selected Chair, Joana Freedman to represent the Board as its Voting Delegate. Also selected, to attend the Assembly, will be the Alternate Delegate, Board Vice Chair, Steve Alstot and Jim Heider, Executive Director.

- The Director discussed a request from OPTA for a Board speaker at OPTA Insurance Provider Presentation in October, 2008. After discussion and consideration, the Board determined that the insurance provider symposium is not a proper forum for a Board presentation. The Board felt the program goal was geared towards the promotion of the profession and would be more appropriately presented by an OPTA member or officer. The Board further noted it was not adequately staffed to be able to provide speakers for special interest groups.
- The Board was presented a copy of the new OPTA Direct Access Brochure.
- The Board was presented with information regarding the National Athletic Trainers Association's (NATA) lawsuit against APTA.
- Sherri Paru, PT, Board Investigator shared, with the Board, that the APTA had accepted her proposal to present a program at the next Combine Sections Meeting in February, 2009. The presentation will include input from other jurisdictions and cover a gambit of boundary violations.

### **PT Scope of Practice Fire Evacuation Plans**

The Board addressed the issue regarding the development and implementation of an evacuation plan to assist special needs students in an emergency situation. After discussion and consideration, the Board determined that the responsibility to act in this capacity is not a PT Scope of Practice issue. There is nothing in the PT practice act that would require a therapist to act in this capacity, and there is nothing in the PT practice act that would prevent a therapist from acting in this capacity. The Board interprets this as an employment issue, falling within the framework of the employer's job description for the particular position.

### **License and CE Update and Issues**

The Executive Director reported that the number of licensees allowing their licenses to lapse, effective April 1, 2008, is twice the number experienced for the prior five renewal periods. Up to 400 from the typical 200 lapsed annually. The Director attributed the increase to those Licensees no longer actively practicing but, none the less, maintaining their current license. Now, given the continuing education requirement to renew a license, many inactive license holders are finding the cost to obtain the necessary CE, for renewal, too much of an expense to hold a license that is not active. Currently, the Board does not have a non-active license status that would be exempt from CE and offered at a reduced rate.

### **Continuing Education Audit Policy**

After Board review, discussion and consideration of a drafted CE Audit Policy, as presented by the Board Executive Director, the Board determined it would defer this

topic until a later date. The Board did suggest changes to the draft including, adding all PT Board members and all Licensees on probation, as of April 1<sup>st</sup>, to the list of randomly selected licensees to be audited. The Board did determine the timing of the audit, approving audit letters sent out the 1<sup>st</sup> of May with a requirement for returned documentation, from Licensees, by the end of May. The Board directed staff and its legal counsel to further identify all the issues of non-compliance, and to survey other States with regards to actions taken for non-compliance of CE requirements. Staff will report its findings back to the Board at its June 6, 2008 meeting. Based on the staff report and Counsel's advice, the Board will determine what course of action it will take regarding Licensees who are in non-compliance with the continuing education requirements.

### **Rules Advisory Committee-Update**

The Board Executive Director and Diana Godwin, Attorney for Oregon Physical Therapists in Independent Practice (OPTIP) and committee member, presented an update of the Advisory Committee's proposed rule language changes regarding the Board's top two review topics manipulation and mobilization, and screening and consultations. Upon review and consideration, the Board directed committee representatives to bring the proposed language back to the Committee with amendments. The Board conveyed to the committee representatives that, with the amendments noted, the Board would support the adoption of the rule changes.

The Board Clinical Advisor/Investigator shared a current concern regarding the PTA role in performing a reassessment. This is one of the next topics to be addressed by the Committee. Sherri Paru reported that this issue and concern is widespread, and since the article published in the latest Newsletter, she has been inundated with questions for clarification of the rule. Ms. Paru indicated that the approach she would like to take, with the Committee, would be to direct the committee not to get hung up on the current rules but to look at the intent of the current rule. The intent of the current rule is to make certain the PT remains involved with the patient care throughout that patient's therapy. Ms. Paru would suggest, to the Committee, that the rules can be changed accordingly if there is a better way to ensure the PT involvement. The Board agreed with this approach to the issue.

### **PT Coordination of Care with an Athletic Trainer**

Ms. Paru shared, with the Board, her response to an issue she addressed with a Licensee. Ms. Paru wanted to make certain the Board was aware of the issue, and agreed with her assessment and advice back to the Licensee. The issue dealt with the treatment of an individual, by an Athletic Trainer (AT), under the plan of care of a Physical Therapist (PT). Bottom line message, to the Licensee, was that if the AT was working under the PT Plan of Care and providing physical therapy treatment to a PT patient, the AT is working as an Aide and subject to the Rules of Division 20 regarding aide training, documentation, supervision and prohibited treatment related tasks. Ms. Paru further told the Licensee that if based on the initial PT evaluation, the PT

determined no further PT treatment was warranted then the PT should document the file, discharge the patient and refer them over to the AT. Or, if based on the PT's evaluation, the PT determines that the patient will benefit from continued PT treatment and AT, the PT needs to make certain any treatment associated with PT is done, under their directive in a plan of care, and if assigned to an AT, again, the AT will have to qualify and work under the rules governing a physical therapy aide. After discussion and consideration, the Board approved Ms. Paru assessment of the situation and her communication back to the Licensee.

### **Foreign Educated PT's Request for Consideration of TOEFL Exemption**

The Candidate is a foreign-educated therapist licensed in two other States and has practiced as a physical therapist successfully for a couple of years. The Candidate has taken the TOEFL examination a total of eight times and has yet to achieve a passing score on the Test of Spoken English. The Candidate is asking the Board to make an exception to its Administrative Rule, and accept his application without a passing TOEFL score. Before the Board could deliberate on the issue, the Board's Assistant Attorney General (AAG) advised the Board that they do not have the authority to make any exception to Board Statute and Administrative Rule. The Board then discussed what would have to happen to give them the authority to change the current credentialing criteria or to give the Board authority to make case-by-case exceptions to the current Statutes and Rules. The Board's AAG cautioned the Board with regards to considering either. Changing existing criteria that has been in place for several years could have serious consequences relative to all other candidates held to the same standard and denied application, because their scores did not meet the criteria. Likewise, giving the Board statutory authority to make exceptions, to licensure on a case-by-case basis, exposes the Board to challenge regarding subjective judgment, as opposed to objective criteria. The Board determined they would not pursue either option for change at this time.

### **Endorsement Candidates Request for Consideration of Transfer NPTE Score**

The Candidate is a PTA licensed in several other states, practicing as a PTA successfully for fourteen years and wanting to endorse her license to the State of Oregon. The Candidate's NPTE test score did not meet the Oregon requirement, being short by one point. The Candidate is asking the Board to make an exception to its Administrative Rule and accept her NPTE test score. Before the Board could deliberate on the issue, the Board's Assistant Attorney General (AAG) again advised the Board that they do not have the authority to make any exception to Board Statute and Administrative Rule. The Board then discussed what would have to happen to give them the authority to change the current credentialing criteria or to give the Board authority to make case-by-case exceptions to the current Statutes and Rules. The Board's AAG cautioned the Board with regards to considering either. Changing existing criteria that has been in place since 1983 could have serious consequences relative to all other candidates held to the same standard and denied application because their scores did not meet the criteria. Likewise, giving the Board statutory authority to make exceptions, to licensure

on a case-by-case basis, exposes the Board to challenge regarding subjective judgment, as opposed to objective criteria. The Board determined they would not pursue either option for change at this time.

### **New Oregon Government Ethics Laws**

The Board was presented with copies of the "Top 10 Things Public Officials Should Know About Oregon's New Government Ethics Laws." After review, Board Counsel advised the Board that there was nothing new in the ethics law that would pertain to, or currently impact, them as Board members. However, the Board was advised to read the new regulations to be aware of possible ethical violations or future conflicts of interest.

### **Financial Report 7/01/07-2/29/08**

The Executive Director presented the Board with copies of the current Financial Report and narrative. The Director also reported income was below budget and expenses on budget. **See Addendum "B" for a copy of the Financials.**

### **Approval of February 1, 2008 Meeting Minutes**

The Minutes, from the February 1, 2008 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. With no noted changes, the Board voted unanimously to approve the Minutes for publication as written.

### **Ratification of the Board Policy for disclosure of Public Records on Website**

Motion, by Nancy Wilson, to accept the policy for disclosure of public records on Board website as submitted. **See Addendum "A" for a copy of the Policy.**

Seconded by Burke Selbst

Motion passed, by quorum 5-0; Jason Fiske and Cindy Cunningham were not present for the vote.

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

As established by the Board, the future Board Meeting dates are as follows: June 6, 2008; August 1, 2008; September 19, 2008; and, November 14, 2008. Meeting Dates, Notices and published Minutes may be found on the Board website at [www.ptboard.state.or.us](http://www.ptboard.state.or.us).

### **Ratification of the PT/PTA License & Temporary Permits issued**

The Board was presented a list of new licensees and temporary permit holders for the period of February 1, 2008 through April 3, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Nancy Wilson moved to ratify the list of new licenses and permit holders as submitted.

Seconded by Burke Selbst

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

### **Other New Business**

The Executive Director shared information regarding a Health Licensing Board's Omnibus Bill to be introduced by Representative Greenlick in the 2009 Legislative Assembly. The components of the Bill will include: reduce the term for Board members from 4 to 3 years; assure that all Board members serve at the pleasure of the Governor; set a ratio of public members serving on a Board to 50% minus 1 of the total members; implement a universal impaired practitioners program; and setup a separate oversight authority to monitor the Boards.

The Executive Director shared information regarding the upcoming 2009 legislative concepts submitted by the Chiropractic Board. After initial review, the Director determined the summary concepts have no relevance to the Physical Therapist Board, its Statutes or Rules.

With no additional other new business cited, Board Chair, Joana Freedman, adjourned the Board Meeting at 3:28 PM.

## **Physical Therapist Licensing Board Board Meeting June 6, 2008**

### **MINUTES**

**Friday, June 6, 2008**

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

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

**Legal Counsel:** Warren Foote, AAG

### **EXECUTIVE (CLOSED) SESSION**

Board Chair, Joana Freedman convened the Board into Executive Session at 8:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board

Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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

## **PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

## **Board Motions**

### **Case PT 246-07/07**

Motion, by Steve Alstot, to issue Stipulated Agreement and Final Order as cited in original Notice of Proposed Disciplinary Action.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 252-08/07**

Motion, by Steve Alstot, to issue Stipulated Agreement and Final Order as cited in original Notice of Proposed Disciplinary Action with the following changes: change the civil penalty from \$5,000 to \$4,000 with \$2,000 stayed; remove any reference to citation of documentation errors and put them in an advisory letter to licensee, remove any violations regarding patient GQ from the Order; change the wording, in the Agreement, to be more generic regarding boundary violations with two patients.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 233-02/07**



Motion, by Steve Alstot, to issue Confidential Advisory Letter citing Board concerns over billing practices; recommend licensee start using time in and time out logs; and that the therapist, providing the actual service, should change the billing records or be consulted prior to any changes being made.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 254-09/07**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 264-02/08**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 273-04/08**

Motion, by Steve Alstot, to issue Stipulated Agreement and Final Order citing licensee for practicing PT with a lapsed license; impose a civil penalty of \$100.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 234-03/07**

Applicant appeared, in person, at the Board meeting to discuss the proposed sanction.

Motion, by Steve Alstot, to accept ALJ findings of fact and issue Final Order denying applicant licensure.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 275-05/08**

Motion, by Steve Alstot, to issue Stipulated Agreement and Final Order citing licensee for practicing PT with a lapsed license; impose a civil penalty of \$250.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 268-03/08**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 269-03/08**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 269b-03/08**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 267-03/08**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 267b-03/08**

Motion, by Steve Alstot, to close the case citing no violations.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 270-04/08**

Motion, by Steve Alstot, to issue Notice of Proposed Disciplinary Action citing violations for practicing outside the Scope of Practice for a PTA, specifically: ORS 688.140(2)(e), ORS 688.140(2)(a), OARs 848-040-0135(4), 848-015-0020(5), 848-015-0030(1)(c), 848-045-0020(2)(h) and, imposing the following sanctions: 30-day suspension from practice; 3 year probation with conditions; must show copy of the Order to current employers; must work with the on-site supervision of a physical therapist at all times. If licensee allows his license to lapse prior to the completion of the probationary period, and then subsequently reinstates the license, he must satisfy the remainder of the probationary period.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

**Case PT 274-04/08**

Motion, by Steve Alstot, to issue Stipulated Agreement and Final Order granting applicant licensure, but publicly reprimanding applicant for failure to disclose prior actions taken by another State on her Oregon PT application form, citing ORS 688.140(2)(a) and OAR 848-045-0020(2)(a), also assessing applicant a civil penalty of \$250.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 276-05/08**

Motion, by Steve Alstot, to issue Confidential Advisory Letter citing violation of Board Rules requiring licensee to maintain current contact information, with the Board, and to provide written notification of contact information within 30 days of the change, citing OARs 848-005-0030 and 848-045-0020(y). Failure to maintain current contact information, in the future, will result in disciplinary action.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 277-05/08**

Motion, by Steve Alstot, to issue Confidential Advisory Letter that will require licensee to use checks drawn with guaranteed funds for any future license renewal payments.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 266-02/08**

Motion, by Steve Alstot, to issue Confidential Advisory Letter requiring Licensee to immediately take steps to better organize her patient records, making certain she is in compliance with HIPAA regulations relevant to patient records and confidentiality. Additionally, advise Licensee that her clinics are subject to future random inspections by the Board.

Seconded by Cindy Cunningham.

Motion passed, by quorum, 5 to 2. Cunningham and Wilson opposed motion.

### **Administrative Rule Making**

Motion, by Steve Alstot, to amend current Administrative Rules Chapter 848-045-0020 to include a new violation for failure to comply with the recommendations of the Board as outlined in a Confidential Advisory Letter.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **General Topics/Business**

- The Director discussed Chair Freedman's interest to have a FSBPT staff member come to Portland to present the FSBPT continuing competency model. The Board discussed the topic of continuing competency and instructed the Director to follow through with Ms. Freedman's request to invite the FSBPT to a future Board meeting.
- The Director confirmed that Chair Freedman and Vice-Chair Alstot will represent the Oregon Board, as Delegate and Alternate Delegate, at the September 2008 FSBPT Delegates' Assembly in Minneapolis, MN. Ms. Wilson, Ms. Cunningham, Ms. Banaitis and Board Clinical Advisor, Ms. Paru, also expressed interest in attending the September conference. The Board asked the Director to review the training budget to see if the Board could accommodate any or all the requests.

### **CE Audit Update**

Board Director updated the Board on the status of the 2008 CE Audit. 374 audit request forms were mailed to randomly selected renewal licensees on May 6, 2008. Licensees were given until May 30, 2008 to return the Continuing Education Audit Summary Sheet with the corresponding CE Completion Certificates. To date, all but 24 audit request letters have been received. They have not been checked for completion, accuracy and compliance. The Director informed the Board that budget dollars had been appropriated to cover the cost of hiring a contractor, someone in the profession, to help with the processing, review and follow-up of the audits. The Board approved the Director's request and instructed him to proceed with the contractor and the audit.

### **Rules Advisory Committee Update**

Board Director presented the following Administrative Rules topic updates:

1. Mobilization and manipulation - proposed language drafted, reviewed and approved by the Board, pending Notice of Public Hearing.
  - Adds new definition to OAR 848-040-0100(8) "Physical Therapy Intervention" modeled after the APTA guide to Physical Therapy
  - Definition includes treatments or procedures, listed are.....mobilization and manipulation of soft tissue or spinal or peripheral joints....
2. Screening and consultation services - proposed language drafted, reviewed and approved, by the Board, pending amendment adding the term "animal" to the new definition and pending Notice of Public Hearing
  - Adds new Rule 848-040-0175 Standard for Screening Services
3. PTA role in reassessments - subcommittee to meet and draft proposed language to present to the Board. The Advisory Committee met and has directed the subcommittee to include language that would clearly require the physical therapist to document that they personally reassessed the patient, as required by rule.
4. Aide's role in exercise - proposed language drafted, pending Board review and approval.
  - Add sub-section clarifying that a PT or PTA must administer a PT intervention in its entirety before delegating that task to an aide.
5. Clarification of direct access rules – drafting subcommittee to work on proposed language to present to Board at its 08.01.08 meeting.
6. Endorsement criteria for foreign-educated physical therapists – Executive Director to draft proposed language to present to Board at its 08.01.08 meeting.
7. Pain Management CE requirements - drafting subcommittee to work on proposed language to present to Board at its 08.01.08 meeting.

### **Advanced Results Fitness**

Board Clinical Advisor/Investigator shared information found on Craig's List relative to the possible misleading advertising and potential practice of physical therapy without a

license. The Board instructed the Investigator to open a case and send in the Board's Contract Investigator, under cover, to see if there are violations of Statute and/or Rule.

### **Unlicensed Practice**

Board Clinical Advisor/Investigator shared information relative to Case PT 271-4/08 Gil Guzman. This complaint alleges the unlicensed practice of physical therapy. There is no further information available at the time of this meeting.

### **Dragonfly Massage Clinic, Kimberly Sprunger, LMT**

Board Clinical Advisor/Investigator shared information relative to a potential violation of Board Statute. It was alleged that Ms. Sprunger, a LMT, was advertising that she provided physical therapy. The allegation was derived from a newspaper article in which a Reporter, who interviewed Ms. Sprunger regarding her business and her practice, stated that Ms. Sprunger provided physical therapy. After a phone conversation, between the Board Investigator and Ms. Sprunger, it was clear that Ms. Sprunger was well aware of the article, and had already contacted the Reporter and asked that a correction be printed. In addition, prior to Ms. Sprunger's phone call to Sprunger, a Department of Justice employee went into the facility and asked questions of Ms. Sprunger. At no point did Ms. Sprunger say she was a physical therapist or that she provided physical therapy. The Board determined there was no other action necessary.

### **Medicare Regulations Regarding PT and OT**

Board Clinical Advisor/Investigator shared information regarding an existing CMS regulation that allows for an individual educated as a PT or OT, to provide and bill for professional therapy services to Medicare patients incident to a physician's services and plan of care. The therapist does not need to hold a professional license to meet the service or billing requirements.

### **Information from FSBPT Ethics and Legislation Committee**

Board Public Member Cunningham also sits on the FSBPT Ethics and Legislation Committee as its Public Member. Ms. Cunningham reported, to the Board, several items of interest and concern currently being addressed by the Ethics and Legislation Committee. Some of the discussion topics included: development of a data base to track jurisdictional legislative issues, the controversial referral for financial gain study requested, by the Delegates Assembly, the new disciplinary categories task force, ethics and disciplinary issues, limiting the number of attempts for the NPTE and the requirement for remediation, changes to the model practice act and other issues. From this discussion, the Oregon Board asked that the Director place a discussion item, on a future Board meeting agenda, relative to the Board's current Rule that only allows 5 attempts of the NPTE and requires remediation after the third attempt.

### **Approval of the April 4, 2008 Meeting Minutes**

The Minutes, of the April 4, 2008 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. With one noted correction, the Board voted 5-0 to approve the Minutes for publication as written, Jason Fiske and Burke Selbst were not present for the vote.

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

As established by the Board, the future Board Meeting dates are as follows: August 1, 2008; September 19, 2008; and, November 14, 2008. Meeting Dates, Notices and published Minutes may be found on the Board website at [www.ptboard.state.or.us](http://www.ptboard.state.or.us).

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

The Board was presented a list of new licensees and temporary permit holders for the period of April 4, 2008 through June 5, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Steve Alstot moved to ratify the list of new licenses and permit holders as submitted.

Seconded by Cindy Cunningham

Motion passed, by quorum 5-0; Jason Fiske and Burke Selbst were not present for the vote.

### **Other New Business**

The Board Chair called for other new business. With no additional other new business cited, Board Chair, Joana Freedman, adjourned the Board Meeting at 3:44 PM.

END OF PUBLIC SESSION  
**Physical Therapist Licensing Board  
Board Meeting  
August 1, 2008**

## **MINUTES**

**Friday, August 1, 2008**

**Board Members Present:** Joana Freedman, PT, Chair; Cindy Cunningham, Public Member; Daiva Banaitis, PT, PhD, PT Member; Burke Selbst, PT Member; Nancy Wilson, PTA Member

**Board Members Absent:** Steve Alstot, PT, Vice Chair; Jason Fiske, PT Member

Although Board Members Alstot and Fiske were not present for a vote, they did provide written and audio input into several of the investigative cases presented to the Board.

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

**Legal Counsel:** Carol Parks, AAG

Board Chair, Joana Freedman convened the Board into Executive Session at 8:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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## **PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

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## **Board Motions**

### **Case PT 202-8/05**

Motion, by Daiva Banaitis, to issue Emergency Suspension Order and Notice of Proposed Disciplinary Action (Revocation of License), for failing to follow an order of the Board, citing violations of ORS 688.140(2)(a) and OAR 848-045-0020(2)(h).

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 252-8/07**

Motion, by Daiva Banaitis to accept and execute the Stipulated Agreement and Final Order, as submitted to the Board by Licensee's Attorney.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 203-10/05**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order, for failing to comply with an order of the Board, citing violations of ORS 688.140(2)(a) and OAR 848-045-0020(2)(h). Action to include amending prior civil penalty lowering stayed amount of \$2,500 to \$2,250 thus increasing the imposed amount by \$250. Amended total civil penalty due the Board is now \$2,750.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 262-12/07**

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

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 270-4/08**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order, changing the language with regards to patient A to reflect the actual circumstances; amend the terms of probation from 3 years probation to 2 years probation; and, leaving all other terms, sanctions and cited violations the same.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 278-6/08**

Motion, by Daiva Banaitis, to close case and issue Confidential Advisory Letter noting failure to disclose arrest record upon renewal of license.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 279-6/08**



Motion, by Daiva Banaitis, to close case and issue Confidential Advisory Letter noting failure to disclose arrest record upon renewal of license.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 281-6/08**

Motion, by Daiva Banaitis, to close case and issue Confidential Advisory Letter noting failure to disclose arrest record upon renewal of license.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 280-6/08**

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

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 284-7/08**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order for failure to comply with continuing education rules, citing violations of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-035-0020(10), assessment of a civil penalty of \$450.00 and giving Licensee 30 days to complete the required CE.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 285-7/08**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order for failure to comply with continuing education rules, citing violations of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-035-0020(10), and assessment of a civil penalty of \$350.00.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 286a-7/08**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order for failure to comply with continuing education rules, citing violations of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-035-0020(10), OAR 848-045-0020(2)(u)(B), assessment of a civil penalty of \$550.00 and giving Licensee 30 days to complete the required CE.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 286b-7/08**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order for failure to comply with continuing education rules, citing violations of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-035-0020(10), assessment of a civil penalty of \$450.00 and giving Licensee 30 days to complete the required CE.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

**Case PT 288-7/08**

Motion, by Daiva Banaitis, to issue Stipulated Agreement and Final Order for failure to comply with continuing education rules, citing violations of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-035-0020(10), OAR 848-045-0020(2)(u)(B), OAR 848-045-0020(2)(u)(E), assessment of a civil penalty of \$800.00 and giving Licensee 30 days to complete the required CE.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 287-7/08**

Motion, by Daiva Banaitis, to issue Notice of Proposed Disciplinary Action for continued use of the term doctor, following a warning issued in a Confidential Board Advisory Letter, citing violations of ORS 688.140(2)(a), ORS 688.140(2)(c), OAR 848-045-0020(q)(D) and assessment of a civil penalty of \$1,000.00.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Case PT 277-5/08**

Motion, by Daiva Banaitis, to close case and issue Confidential Advisory Letter noting any future payments, to the Board, returned for insufficient funds may be cause for Board action.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Penalty Schedule for Failure to Comply with Continuing Education Requirements**

Motion, by Daiva Banaitis, to adopt the continuing education penalty schedule, for failure to meet continuing education requirements, as developed by the Board.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **General Topics/Business**

- The Director informed the Board that the Federation of State Boards of Physical Therapy (FSBPT) has agreed to come to the November 14<sup>th</sup> Board Meeting to present the Federation's Continuing Competency Model.
- The Director discussed the Board's training budget and which Board members would attend the 2008 FSBPT Delegates Assembly, September 12 – 13<sup>th</sup> in Minneapolis, MN. After discussion, the Board determined it would fund members Cunningham and Banaitis to attend the conference. Further, the Board approved funding for the Board Clinical Advisor to attend the conference.
- The Board Clinical Advisor/Investigator reported that she has been selected to present at the February 2009 APTA Combined Section Meeting. Her presentation will be titled Law and Order SVU (state violation unit) and would address specific boundaries violations and most common generic violations.

### **CE Audit Update**

The Director presented a continuing education audit summary update (**see Attachment A at the end of the minutes**). The Director reported the audit was complete; resulting in 5 Licensees found to be in non-compliance with Board Rule. These cases were brought before the Board for review. Also

reported, was the time and cost of the audit. 60 staff hours with an estimated cost of \$2,200, and 37.5 contractor hours at an additional cost of \$715.00.

### **Update on Workers' Compensation Rule Changes**

Board Counsel updated the Board on the issue surrounding the temporary rule proposed by the Workers' Compensation Division that would retroactively enforce providers to comply with the terms of their provider contracts. As opposed to seeking reimbursement under the WC medical fee schedule. The challenge to the Rule is two fold. Is the temporary rule legal? Or, if imposed retroactively, does that impede individuals' rights? Will implementation of the Rule adversely impact providers willingness to accept WC patients?

### **Update on Medicare Cap for Physical Therapy**

Board Clinical Advisor reported that the US House of Representatives and the Senate voted to override the Presidential veto to pass HR633 (the Medicare Improvements for Patients and Providers Act). HR 6331 includes provisions for physical therapists and their patients, including legislation to avoid the 10.6% cut in payments under the Medicare physician fee schedule and the expiration of the therapy cap exceptions process.

### **Financial Report and Update**

The Director presented the 2007-2008 Fiscal Yearend Financial Report with narrative (**see Attachment B at the end of the minutes**). The Director reported income over plan by \$6,724 and expenses under plan by \$2,911, with the fiscal net operation income \$9,635 over plan for a total operating income of \$32,015. The Director shared future 2007-2009 biennium budget concerns including salary variances for the changes in DAS salary plans as a result of the Governors 2007 Executive Compensation Plan; benefit variances with the addition of a staff member, who previously had opted out of the health plans, back onto the Board's benefits plan.

### **Question from Licensee Tim Esau, PT**

How can a newly licensed therapist be held accountable for Board policies or interpretation of Administrative Rules, as set and communicated by the Board, prior to the therapist's initial licensure date? After discussion, the Board determined that interpretations of the Administrative Rules were just that, an interpretation. The guiding principles of the Administrative Rules or Statute are always in tact. It is the responsibility of the newly licensed therapist to know and understand the Statutes and Rules governing the practice of physical therapy in the State of Oregon. Prior policies or interpretations of Rule are something that could change depending on the profile of the Board. Supervisors, peers and co-workers, who have had the opportunity to be privileged to such information, can be a resource for newly licensed therapists. Routinely, the Board actively reviews its Administrative Rules working toward better definition and greater clarity.

### **2009 Legislation, Interim Committee on Healthcare Legislative Concepts**

The Director provided a brief review of the proposed legislative concepts likely to be introduced by the House Committee on Healthcare during the 2009 Legislative Session. The proposed language, which remains in draft form, will be presented in Public Session in September for input and comment from the public and interested parties. Below is a listing of the topics to be considered, by the Committee on Healthcare, as possible legislative concepts:

- Budget Process, legislative oversight of semi-independent boards
- Impaired Licensee monitoring and treatment program
- Public membership of Boards
- Board member selections and membership

- Administrative Law Section Oregon Bar Association
  - Mental, physical and competency exams
  - Recoup of regulatory costs

The Board asked the Director to put together talking points that could be used, by the Board Members, in discussion with their respective Representatives. The Board also asked the Director to put together a list of who their Representatives are and the names of the Representatives that sit on the Interim Committee on Healthcare Legislation.

Lastly, the Director asked Board consideration to approve the investment of Board dollars to pool together with other semi-independent Boards to hire a Lobbyist who will represent and promote Semi-Independence. After consideration and discussion, the Board approved a maximum budget of \$5,000 but would like a say in who was hired to lobby for the semi-independent Boards.

### **Rules Advisory Committee Update**

The Director updated the Board with regards to the Administrative Rules Advisory Committee's progress in completing the Board task of Administrative Rule review. The Director reported that the Committee had completed its review of the topics as submitted by the Board, and submitted the following for Board consideration:

- New rule language regarding foreign-educated endorsement applicants\*
- Amended rules regarding reassessments
- Amended rules regarding use of aides in treatment programs
- Recommendation to table rule amendments regarding direct access
- New Rules incorporating Oregon Pain Commission SB 879 language into Division 35

After review and consideration, the Board chose to move forward with the Committee's proposed language and instructed the Director to proceed with the permanent rule making process. The Director indicated that the process would start with notice of rulemaking to the Secretary of States office, the Legislature, Interested Parties and Licensees. The Notice of Propose Rule Making Hearing would be posted in the October 1, 2008 Oregon Bulletin, on the Board website and in the Board Newsletter. The Rule Making Hearing would be scheduled for Friday, November 14, 2008, prior to the Board Meeting. After consideration of any testimony, the Board will decide whether or not to adopt the proposed rules language, as written, and will file any such language as a Notice of Permanent Rulemaking with the Secretary of States Office and Legislative Counsel. The newly adopted rules will tentatively be effective January 2, 2009.

\* Based on Board discussion regarding the adoption of new rules that will consider a foreign- educated therapist's domestic clinical experience for licensure purposes, the Board asked the Director to add to the list of future rule making items a review of domestically trained therapists, who have proven clinical experience but may not meet Board standards for NPTE test scores prior to 1996.

### **Case PT 271-4/08: Gil Guzman**

New complaint of alleged unlicensed practice of physical therapy; no information at this time.

### **Case PT 282-6/08: Charles Bean**

New complaint of alleged unlicensed practice of physical therapy; no information at this time.



**Case PT 283-6/08: Tamara Felix, LMT**

New complaint of alleged unlicensed practice of physical therapy; no information at this time.

**Approval of June 6, 2008 Meeting Minutes**

The Minutes, from the June 6, 2008 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. With a couple of noted changes, Daiva Banaitis moved to approve the Minutes for publication as amended.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

### **Ratification of the PT/PTA License & Temporary Permits issued**

The Board was presented a list of new licensees and temporary permit holders for the period of June 7, 2008 through July 31, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Daiva Banaitis moved to ratify the list of new licensees and temporary permit holders as submitted.

Seconded by Nancy Wilson

Motion passed, by quorum 5-0; Alstot and Fiske were not present for the vote.

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

As established by the Board, the future Board Meeting dates are as follows: September 19, 2008 and November 14, 2008. Meeting Dates, Notices and published Minutes may be found on the Board website at [www.ptboard.state.or.us](http://www.ptboard.state.or.us).

### **Other New Business**

With no additional other new business cited, Board Chair, Joana Freedman, adjourned the Board Meeting at 4:00 PM.

**SEE ATTACHEMENTS A & B BELOW**

## ATTACHEMENT A

### 2008 Continuing Education Audit Summary

#### Audit Process

- **Audited 10% of licensure data base**
  - **284 PTs**
  - **90 PTAs**
  - **374 Total**
  
- **Received 360 responses to initial request**
  - **18 were received after the deadline date of May 30, 2008**
  - **24 with incomplete documentation needing additional follow-up**
  
- **Mailed out 14 Second Notice Letters to Licensees who did not respond to initial request**
  - **10 Licensees responded to the second notice**
  - **4 Licensees had to be personally contacted and advised or compelled to comply**

#### Results

- **5 Licensees found to be in non-compliance with Division 35 Continuing Education Requirements, cases pending Board review**
- **1 Licensee still under investigation**

#### Resources

- **60+ hours of staff time – cost \$2,200**
  - **develop and initiate process**
  - **sort and track incoming audits**
  - **answer phone calls and questions**
  - **review questionable CE coursework**
  - **follow-up on incomplete documentation**
  - **dealing with non-compliant Licensees**
  
- **37.75 hours of contractor time – cost \$715.00**
  - **create audit worksheet**
  - **initial compliance review and signoff**
  - **research questionable CE coursework**
  - **setup files for problem audits**

## ATTACHEMENT B

### Oregon Physical Therapist Licensing Board Fiscal Year-End Report July 2007 through June 2008

	Jul 07-Jun 08	Budget	Variance
Ordinary Income/Expense			
Income			
		450,000.0	
4000 · Income	456,724.00	0	6,724.00
		450,000.0	
Total Income	456,724.00	0	6,724.00
		450,000.0	
Gross Profit	456,724.00	0	6,724.00
Expense			
		279,980.0	
5100 · Payroll Costs	282,665.00	0	2,685.00
5600 · Travel Costs	5,851.00	9,000.00	-3,149.00
6100 · General Office Expenses	16,602.00	23,640.00	-7,038.00
6190 · Dues and Subscriptions	3,042.00	2,500.00	542.00
6200 · Postage	7,248.00	9,300.00	-2,052.00
6400 · Contracted Services	80,567.00	70,380.00	10,187.00
6500 · Rent and Occupancy	15,023.00	16,020.00	-997.00
6600 · Background Checks	13,140.00	12,000.00	1,140.00
6650 · Investigation Expenses	48.00	600.00	-552.00
6800 · Computers & Accessories	523.00	4,200.00	-3,677.00
		427,620.0	
Total Expense	424,709.00	0	-2,911.00
Net Ordinary Income	32,015.00	22,380.00	9,635.00

Net Income

32,015.00

22,380.00

9,635.00

**August 1, 2008 Board Meeting  
 Financial Report Narrative  
 Reporting Period Fiscal Year 07/01/07 – 06/30/08**

**Total Income is over budget by \$6,724**

The Board’s accounting system is on an accrual basis. When accounting on an accrual basis, instead of accounting for the actual receipt or disbursement of large income and expense items as they occur, you spread that income or expense equitably over the entire accounting period, in this case 12 months, 7/1/07-6/30/08.

The Board’s projected income for the fiscal year ‘07-’08 was budgeted at \$450,000. This was accrued at \$37,500/month. Actual income booked for fiscal year ‘07-’08 was \$456,724; this created a positive income variance of \$6,724. This is an insignificant variance based on the projection of volume of new applicants. The major portion of this variance was income booked from an unpredicted increase in first time examination applicants from out of state.

**Total Expense is under budget by (\$2,911)**

**5100 Payroll Costs** are **\$2,685** over budget as a combination of several expense factors:

Expense Classification	Over Budget	Under Budget
Salaries	\$10,392	
Payroll Taxes	\$421	
PERS ER Paid EE Contrib	\$ 14	
Board Stipends		(\$3,300)
Employee Training		(\$2,520)
PEBB Medical Premiums		(\$1,219)
PERS Employer Admin		(\$863)
PERS Bond Debt Obligation		(\$240)

Narrative: Salaries are over budget because originally no increase was budgeted for the Director’s salary which had reached the classification ceiling. DAS implement a rate classification change raising the ceiling which allowed for an un-projected salary increase, also there was a vacation liability accrual adjustment of \$3,700 booked to meet with generally accepted accounting principle guidelines; Board stipends are under budget due to reductions in the Stipend reimbursement from \$100 to \$30; employee training is under budget because the Board investigator did not attend the CLEAR

conference this year as originally planned; medical premiums are under budget based on over estimate of premium increases.

**5600 Travel Cost** is **(\$3,149)** under budget.

Travel costs are under budget due to the cancellation of two trips planned for staff this year. The CLEAR Convention to be attended by the Board Investigator and the 2007 FSBPT Conference in Memphis to be attended by a Board member.

**6100 General Office Expenses** are **(\$7,038)** under budget as a combination of several expense factors:

Expense Classification	Over Budget	Under Budget
Liability Insurance		(\$1,850)
Printing/Copying		(\$1,531)
Telecommunications		(\$883)
Parking Validation Stickers		(\$604)
Office Supplies		(\$604)
Other		(\$535)
Dues		(\$500)
Fax/Conf Room Phone		(\$240)
Board Meeting Expenses		(\$126)
Bank charges/Fees		(\$98)
Copier		(\$67)

Narrative:

Liability insurance is on target the second payment scheduled for the month of June has not yet been received; printing and copying is under budget because the Board published only two the three scheduled newsletters last year.

**6190 Dues and Subscriptions** are **\$542** over budget.

**6200 Postage** is **(\$2,052)** under budget.

Postage is under budget because the Board published and mailed only two the three scheduled newsletters last year.

**6400 Contracted Services** are **\$10,187** over budget as a combination of several expense factors:

Expense Classification	Over Budget	Under Budget
Attorney General Fees	\$10,513	
Investigators Fee	\$6,091	
Computer Support		(\$2,800)
Audit Charges		(\$1,650)
Emp Hearing Officer Panel		(\$1,078)
Other Services		(\$493)
CPA Accounting Fees		(\$350)
Payroll Service Charges		(\$46)

Narrative:  
General

Attorney Fees are over budget due primarily to preparation costs for several contested case hearings; of which, all but one settled with a negotiated Stipulation and Final Order. The one case



that went to hearing was found in favor of the Board and a final order was issued. Investigator fees are over budget due to the case load volume and the use of the contract investigator for special projects, LEDS audit, CE audit, the audit, scanning and posting of all final orders on the Board website (in process). Computer support is under budget as a matter of timing, originally development and implementation of on-line renewals was scheduled for fall 2007 now is rescheduled for fall 2008, the estimated audit charge for the biannually financial audit was too high, hearing officer panel was under budget because of costs avoided by the settlement of several of the contested cases prior to going to hearing.

**Rent and Occupancy** is **(\$997)** under budget.

**6600 Background Checks** are **\$1,140** over budget.

Background checks are over budget due to an unpredicted increase in first time examination applicants from out of state.

**6650 Investigation Expenses** are **(\$553)** under budget.

**6800 Computer & Accessories** are **(\$3,677)** under budget.

Computer and accessories are under budget as a matter of timing; the Board is scheduled to replace its current workhorse printer and the Director's computer system which are both over 5 years old. Per the advice of the Board's IT Consultant, the replacement of the printer has been put on hold pending research into leasing options. This expense will be incurred in the next fiscal cycle.

**Note: Only significant variances greater than \$1,000, are addressed by this document.**

**Physical Therapist Licensing Board  
Board Meeting  
September 19, 2008**

**MINUTES**

**Friday, September 19, 2008**

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

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

**Legal Counsel:** Carol Parks, AAG

Board Chair, Joana Freedman convened the Board into Executive Session at 8:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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

## **PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

### **Board Motions**

#### **Case PT 203-10/05**

Motion, by Burke Selbst, to issue Stipulated Agreement and Final Order adding \$250.00 to previously imposed civil penalty and changing the payment schedule from \$200.00 per month to \$100.00 per month until civil penalty is paid.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

#### **Case PT 285-7/08**

Motion, by Burke Selbst, to issue Stipulated Agreement and Final Order amending the previous stipulated language to include the date the Licensee did complete the required continuing education. All other previously stipulated language and imposed civil penalty will remain the same.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

#### **Case PT 288-7/08**

Motion, by Burke Selbst, to issue two Stipulated Agreement and Final Orders. One, amending the previous stipulated language to include the date the Licensee did complete the required continuing education. All other previously stipulated language and imposed civil penalty will remain the same. The second Stipulated Agreement and Final Order will give the Licensee the option to voluntarily surrender the PT license with conditions regarding any future reinstatement.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**Case PT 290-8/08**

Motion, by Burke Selbst, to close the case and issue the applicant a physical therapist license.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**Case PT 291-8/08**

Motion, by Burke Selbst, to issue applicant a Confidential Advisory Letter for failure to disclose arrest record on the physical therapist licensing application; and, to issue the applicant a physical therapist license.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**Case PT 259-12/07**

Motion, by Burke Selbst, to close the case citing no violations.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**Case PT 292-8/08**

Motion, by Burke Selbst, to close the case citing no violations.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**Case PT 277-5/08**

Motion, by Burke Selbst, to close the case with no action required.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**Case PT 293-8/08**

Motion, by Burke Selbst, to close the case and issue the applicant a physical therapist assistant license.

Seconded by Daiva Banaitis. Motion passed by unanimous vote.

**Case PT 202-8/05**

Motion, by Burke Selbst, to issue amended Notice of Proposed Disciplinary Action adding facts relative to the Licensee's application to the Teachers Standards & Practices Commission.

Seconded by Daiva Banaitis.

Motion passed by unanimous vote.

**General Topics/Business**

- Due to the scheduling for the November 14, 2008 Public Administrative Rules Hearing, the Director informed the Board that the FSBPT

competency presentation scheduled for November 14, 2008 has been rescheduled for the January 23, 2009 Board meeting.

- Board members who attended the September 2008 FSBPT Delegates Assembly in Minneapolis MN shared, with the Board, their experiences, insight and future Board agenda items for consideration. The Board Chair reviewed the assembly motions, the position of the Oregon Board on the motions and the outcome of the assembly vote. Chair Freedman also shared, with the Board the outcome of the vote for the slated positions for FSBPT Board and Nominating Committee.

### **NPTE ADA Special Accommodations Policy**

The Board directed the Executive Director to develop a NPTE ADA special accommodation policy. The policy will be modeled after the FSBPT template ADA policy and will be presented at the November 14, 2008 Board meeting for review, comments, amendments and/or adoption.

### **Continuing Education Civil Penalty Schedule**

At its August 1, 2008 meeting, the Board developed and voted to adopt a continuing education penalty schedule to be used when dealing with Licensees who failed to meet the CE requirements. After the August 1, 2008 meeting, the staff realized that the Board left a noted violation off the adopted civil penalty schedule. The Staff presented the Board with an amended CE Civil Penalty Schedule. After Board review and consideration, Burke Selbst made a motion to ratify the amended CE Civil Penalty Schedule as presented. The motion was seconded by Daiva Banaitis and the motion passed by a unanimous vote of the Board.

### **2009 Legislation, Interim Committee on Healthcare Legislative Concepts**

The Board Director shared his experience testifying at the Legislative Committee work session on September 16, 2008. The Director was one of two individuals testifying in opposition to Legislative Concept (LC) 1151, requiring the three semi-independent health board to prepare and submit their biennium budgets to the legislature for approval. Currently, the semi-independent board budgets are set by Administrative Rule, subject to public disclosure and hearing prior to adoption by the Board. The Committee informed the attendees that LC 1151 was scrapped, as written, that a new LC would be written in its place that would totally eliminate the Statutes that created the three semi-independent health Boards. The three Boards, Physical Therapist, Massage, and Optometry would roll back into full state governance. Although the new LC was not yet written, the two semi-independent Board Directors testified in opposition to the pending LC. The PT Board Director felt the Committee Chair had a predetermined agenda and did not want to hear any testimony to the contrary. The Semi-Independent Board Association (SIBA) is meeting to strategize ways to defeat this concept.

### **Staff Compensation Review**

The Board Director asked the Board to table this discussion for a future Board date. The Director needed additional time to research salary data and trends for the current Board staff position. The Director said he would tentatively report back to the Board at its November 14, 2008 meeting.

### **2009-2011 PT Board Affirmative Action Plan**

The Executive Director presented the Board with a draft copy of the 2009-2011 Oregon Physical Therapist Licensing Board Affirmative Action Plan. After Board consideration, Burke Selbst made a motion to ratify the AAP, as written. The motion was seconded by Daiva Banaitis and the motion passed by a unanimous vote of the Board.

### **Future Board Meeting Dates**

As established by the Board, the future Board Meeting dates are as follows: November, 14, 2008; January 23, 2009; March 13, 2009; May 8, 2009; July 17, 2009; September 18, 2009; and, November 13, 2009. Meeting Dates, Meeting Notices, and published Minutes may be found on the Board website at [www.ptboard.state.or.us](http://www.ptboard.state.or.us).

### **Case PT 271-4/08: Gil Guzman**

This is an open investigation of alleged unlicensed practice of physical therapy; no additional information is available at this time.

### **Case PT 282-6/08: Charles Bean**

New complaint of alleged unlicensed practice of physical therapy; no information at this time.

### **Case PT 283-6/08: Tamara Felix, LMT**

This case has been referred to the Oregon Board of Massage Therapists. The Massage Boards will initiate an investigation and report their findings back to the Physical Therapist Licensing Board.

### **Approval of August 1, 2008 Meeting Minutes**

The Minutes, from the August 1, 2008 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. Without any noted corrections, Burke Selbst made a motion to ratify the August 1, 2008 Minutes, as written. The motion was seconded by Daiva Banaitis and the motion passed by a unanimous vote of the Board.

### **Ratification of the PT/PTA License & Temporary Permits issued**

The Board was presented a list of new licensees and temporary permit holders for the period of August 1, 2008 through September 18, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Burke Selbst made a motion to ratify the

issuance of the new licenses. The motion was seconded by Daiva Banaitis and the motion passed by a unanimous vote of the Board.

### **Other New Business**

PT Member Jason Fiske asked the Board counsel if he, as a Board member, had knowledge of a licensee's disciplinary history, with the Board, and the existence of public documents regarding that history, could he inform a perspective employer of the action and existence of the public records? The Board counsel's response to that question was yes, he could disclose the information.

With no additional other new business cited, Board Chair, Joana Freedman adjourned the Board Meeting at 2:58 PM.

## **Physical Therapist Licensing Board Administrative Rules Hearing November 14, 2008**

### **MINUTES**

**Friday, November 14, 2008**

**Board Members Present:** Joana Freedman, PT, Chair; Steve Alstot, PT Vice Chair; Cindy Cunningham, Public Member; Jason Fiske, PT Member; Burke Selbst, PT Member; Nancy Wilson, PTA Member

**Board Members Absent:** Daiva Banaitis, PT Member

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

**Legal Counsel:** Carol Parks, AAG

The Proposed Administrative Rules Hearing was held Friday, November 14, 2008 in Room 1 - C of the Portland State Office Building, 800 NE Oregon Street, Portland, OR. Pursuant to OAR 848-001-0000; Notice of the Hearing was sent to all interested parties, posted in the October 1, 2008 Edition of the Oregon Bulletin, published in the Fall (October 2008) Board Newsletter sent to all Licensees, and published on the Board Website. The Hearing was convened, at 8:30 AM, by Jim Heider, Board Executive Director and Presiding Hearing Officer.

About thirty individuals attended the Hearing. Seven individuals signed up to testify before the Board. Many of the verbal testimonies were accompanied by written testimony as well.

The Board also received several pieces of written testimony that the Hearing Officer read into the record.

The Hearing is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

Upon completion of the testimony, the Hearing Officer closed the Hearing at 9:30 AM.

**Physical Therapist Licensing Board  
Board Meeting  
November 14, 2008**

**MINUTES**

**Friday, November 14, 2008**

**Board Members Present:** Joana Freedman, PT, Chair; Steve Alstot, PT, Vice Chair; Cindy Cunningham, Public Member; Burke Selbst, PT Member; Jason Fiske, PT Member; Nancy Wilson, PTA Member

**Board Members Absent:** Daiva Banaitis, PT Member

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

**Legal Counsel:** Carol Parks, AAG

Board Chair, Joana Freedman convened the Board into Executive Session at 8:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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

**PUBLIC (OPEN) SESSION**



At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

### **Board Motions**

#### **Case PT 203-10/05**

Motion, by Jason Fiske, to issue Confidential Advisory Letter citing concerns relative to Licensee's behavior. The Advisory Letter will require Licensee to submit monthly reports, to the Board, regarding his mental health status assuring the Board he is still taking his medication; and, quarterly reports, from his mental healthcare provider (or more frequently as specified by the healthcare provider) relative to Licensee's mental health status.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

#### **Case PT 289-8/08**

Motion, by Jason Fiske, to issue Confidential Advisory Letter citing concerns with, and the need for improved patient communication skills related to boundary issues and informed consent.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

#### **Case PT 261a-12/07**

Motion, by Jason Fiske, to issue Confidential Advisory Letter citing concerns relative to Licensee allowing a physical therapist aide to treat a patient prior to an evaluation and the need for improved documentation. Also, to issue a Stipulated Agreement and Final

Order citing violations of ORS 688.140(2)(a) and (c) and OAR 848-035-0020(10) for completing only 14.5 of the required 24 CE hours required for renewal, and imposing a civil penalty of \$350.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 261b-12/07**

Motion, by Jason Fiske, to issue a Stipulated Agreement and Final Order citing violations of ORS 688.140(2)(a) and (c) and OAR 848-035-0020(10) for completing only 23.25 of the required 24 CE hours required for renewal, and imposing a civil penalty of \$350.00.

Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Case PT 299-10/08**

Motion, by Jason Fiske, to issue a Stipulated Agreement and Final Order citing violations of ORS 688.140(2)(c) and ORS 848-045-0020(2)(a), to issue a probationary license for two (2) years, provide evidence, to the Board, that Licensee has successfully completed the APTA course on Ethics, as ordered by the Washington Physical Therapy Board, and pay a civil penalty of \$500.00. Seconded by Cindy Cunningham.

Motion passed by unanimous vote.

### **Administrative Rules Hearing**

The Administrative Rules Hearing was held just prior to the Board meeting. All of the Board members present, at the Board meeting, attended the Hearing. After consideration of all the testimony presented, at the Hearing, the Board decided to move forward with the adoption of the proposed language with a few amendments. Jason Fiske moved to adopt the proposed language for OAR 848-010-0122 with amendments. Cindy Cunningham seconded. The motion passed five to one with Cunningham opposing. After further discussion of the remaining proposed language, Nancy Wilson moved to adopt the remaining proposed rules language, with noted amendments and an effective date of January 2, 2009. Cindy Cunningham seconded. The motion passed four to zero. Burke Selbst and Jason Fiske were not present for this portion of the meeting.

### **General Topics/Business**

- FSBPT Continuing Competency Presentation - Susan Layton, VP of Administration for the Federation of State Boards of Physical Therapy (FSBPT) will attend the OR PT Board's January 23, 2009 Board meeting. At the Board meeting, Ms. Layton will present the FSBPT's current continuing competency model and share with the Board the FSBPT plans for the continued development of the model.
- Newsletter Sanctions - The Board discussed the listing of Board sanctions in the Newsletter. The Board determined that, in the future, all sanctions will be listed by date of Final Order.

- FSBPT Ethics Research – The Director provided copies of the FSBPT ethics research literature to the Board.
- On-line Renewal - The Director informed the Board that Oregon E-Gov will not support the PT Board's efforts to move to on-line renewals this year. Because of the delay in the E-Gov Group decision, taking over 3 months to get a response, there is not enough time to look at other merchant processing options prior to the 2009 renewals. This year will be a paper renewal year. The Director, working with the other semi-independent Boards, will evaluate other on-line merchant account processing options.
- Governor's Budget Reduction Plan – The Director shared the Governor's Budget Reduction Plan. The Director noted that the Board was entering into a new budget biennium and would have to seriously look for ways to maintain, or even reduce current budget levels.
- Board File Purge Policy – Due to file storage restrictions, the Director introduced a concept to purge current licensure files. Prior to moving forward with the concept, the Board AAG Carol Parks is going to see if there is any State record keeping requirements that would prevent the Board from adopting a policy to purge information from active files.

### **2009 Legislation, Interim Committee on Healthcare Legislative Concepts**

SIBA strategic legislative plan – The Director informed the Board that SIBA has hired Stephen Kafoury, as a Lobbyist, to work the Greenlick legislative concept that would repeal the Statute that gives the Physical Therapist Board its independent status.

OPTA 2009 Legislation – Per Ricci Susick OPTA Legislative Committee Chair, the OPTA will not be moving any legislative concepts forward in 2009 that would open the Physical Therapy Statute. The OPTA will, however, look to sponsor or partner in sponsorship with legislators to present a legislative concept that would open ORS 676 and initiate a change that would add physical therapists to the list of healthcare providers, who can use the term "doctor", associated with their name and their practice.

### **Board review and approval NPTE ADA policy**

After Board review and consideration, Nancy Wilson moved to accept the ADA policy as written after editing out Counsel legal references. Cindy Cunningham seconded the motion. The motion passed unanimously.

### **Question about CE presentation by Diana Godwin, Attorney at Law**

The Board reviewed the OPTIP request to accept CE hours for a program presented by OPTIP attorney Diana Godwin entitled, "Oregon Statute and Rules

Governing the Practice of Physical Therapy". The Board accepted the program as 3 hours of CE.

**CASE PT 271-4/08: GIL GUZMAN** \*\*\* complaint of alleged unlicensed practice. Still under investigation.

**CASE PT 282-6/08: CHARLES BEAN** \*\*\* personal trainer advertising on craigslist, possible unlicensed practice of PT. Still under investigation.

**CASE PT 283-6/08: TAMARA FELIX, LMT** \*\*\* complaint of alleged unlicensed practice. Oregon Board of Massage is investigating.

### **Approval of September 19, 2008 Meeting Minutes**

The Minutes, from the September 19, 2008 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. Without any noted corrections, Nancy Wilson made a motion to ratify the September 19, 2008 Minutes, as written. The motion was seconded by Cindy Cunningham and the motion passed by a unanimous vote of the Board.

### **2009 Board Meeting Dates**

As established by the Board, the future Board Meeting dates are as follows: January 23, 2009; March 13, 2009; May 8, 2009; July 17, 2009; September 18, 2009; and, November 13, 2009. Meeting Dates, Meeting Notices, and published Minutes may be found on the Board website at [www.ptboard.state.or.us](http://www.ptboard.state.or.us).

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

The Board was presented a list of new licensees and temporary permit holders for the period of September 19, 2008 through November 13, 2008. The Board Chair opened the floor, for discussion, with regard to the new licensees and permit holders. Without noted discussion, Nancy Wilson made a motion to ratify the issuance of the new licenses. The motion was seconded by Cindy Cunningham and the motion passed by a unanimous vote of the Board.

### **Other New Business**

The Board Chair called for other new business. With no additional new business cited, Board Chair, Joana Freedman adjourned the Board Meeting at 4:12 PM.

**Physical Therapist Licensing Board  
Special Telephone Board Meeting  
November 24, 2008**

## **MINUTES**

**Monday, November 24, 2008**

**Board Members Present:** Joana Freedman, PT, Chair; Steve Alstot, PT, Vice Chair; Cindy Cunningham, Public Member; Daiva Banaitis, PT Member; Burke Selbst, PT Member; Nancy Wilson, PTA Member

**Board Members Absent:** Jason Fiske, PT Member

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

**Legal Counsel:** Carol Parks, AAG

Board Chair, Joana Freedman convened the Board into Executive Session at 12:00 PM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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

## **PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Chair, Joana Freedman brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

## **Board Motions**

### **Case PT 246-7/07:**

Motion, by Nancy Wilson, to issue Stipulation and Final Order citing the violations and sanctions, as noted in the Proposed Notice of Discipline dated 4.15.08.

Seconded by Davia Banitis.

Motion passed by unanimous vote 6 – 0.

### **OTAO Appeal of Board Administrative Rules Language**

The Board reviewed the appeal letters, from the OTAO, regarding the adoption of OAR 848-040-0100 (8) "Physical Therapy Intervention". The OTAO requested that the Board reconsider the OTAO proposed language changes to the adopted definition. During the Board discussion, Sybil Fisher, OTAO President was invited to speak. Ms. Fisher proposed additional amendments to the OTAO original proposed language for further consideration of the Board. After discussion and consideration of the OTAO compromised amended language, Burke Selbst moved to accept the OTAO comprised language amendments; Nancy Wilson seconded the motion. Joana Freedman called for a voice vote. The motion failed four to two. The Board instructed Staff to file the new rule definition, as adopted.

### **Other New Business**

The Board Chair called for other new business. With no additional new business cited, Board Chair, Joana Freedman adjourned the Board Meeting at 1:34 PM.

## **Physical Therapist Licensing Board Special Telephone Board Meeting December 4, 2008**

### **MINUTES**

**Thursday, December 4, 2008**

**Board Members Present:** Steve Alstot, PT, Vice Chair; Cindy Cunningham, Public Member; Burke Selbst, PT Member; Jason Fiske, PT Member; Nancy Wilson, PTA Member

**Board Members Absent:** Joana Freedman, PT, Chair; Daiva Banaitis, PT Member

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

**Legal Counsel:** Carol Parks, AAG

Board Vice-Chair, Steve Alstot convened the Board into Executive Session at 11:30 AM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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

## **PUBLIC (OPEN) SESSION**

At the completion of the Executive Session, Board Vice-Chair, Steve Alstot brought the Board into Public Session. In Public Session, the Board considers inquiries from licensees and the public; approves the prior Board Meeting minutes; ratifies new licensees; reviews general correspondence; entertains any motions; publicly votes on any actions so moved before the Board; and conducts any other Board Public Session business.

The public and interested parties are invited to attend this portion of the meeting. The Public Session is digitally recorded and stored electronically on the Board's file server. Audio copies are available, to the public or interested parties, for the administrative cost to reproduce the audio file.

## **Board Motions**

### **OTAO Appeal of Board Administrative Rules Language**

The Board reconsidered the OTAO compromised language for proposed changes to the OAR 848-040-0100(8). After discussion, Burke Selbst moved to accept the OTAO comprised language amendments; Nancy Wilson seconded the motion. Steve Alstot called for a voice vote. The motion passed unanimously 5-0. The Board instructed Staff to file the new rule definition with the OTAO amended language effective January 2, 2009.

### **FSBPT Request for Board Director to Serve as CBA 2009 Meeting Chair**

The Board Executive Director informed the Board that he had been contacted, by the FSBPT, and asked to Chair the Council of Board Administrators' 2009 meeting to be held in September in San Diego. The Director cited that he already sat as FSBPT Chair for the National Examination Administration Committee; sat as a committee member on the FSBPT Foreign Education Standards Committee; and was a member of the FSBPT task force for setting credentialing standards for agencies that use the FSBPT Course Work Tool. After consideration, the Board left the decision of stepping into the position of CBA Meeting Chair to the Director.

### **Other New Business**

The Board Chair called for other new business. With no additional new business cited, Board Chair, Joana Freedman adjourned the Board Meeting at 11:56 AM.

**Physical Therapist Licensing Board  
Special Telephone Board Meeting  
December 11, 2008**

## MINUTES

**Thursday, December 11, 2008**

**Board Members Present:** Joana Freedman, PT, Chair; Steve Alstot, PT, Vice Chair; Cindy Cunningham, Public Member; Jason Fiske, PT Member; Nancy Wilson, PTA Member

**Board Members Absent:** Burke Selbst, PT Member; Daiva Banaitis, PT Member

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

**Legal Counsel:** Carol Parks, AAG

Board Chair, Joana Freedman convened the Board into Executive Session at 1:30 PM, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k), this portion, of the Meeting, is closed to the public.

In Executive Session, the Board reviewed investigatory information regarding current cases and new complaints. The Board also considered legal advisement, from Board Counsel, regarding investigative cases, pending contested case hearings, Administrative Rule making, and Board policy and administration.

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### **PUBLIC (OPEN) SESSION**

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### **Board Motions**



None

**Other New Business**

The Board Chair called for other new business. With no additional new business cited, Board Chair, Joana Freedman adjourned the Board Meeting at 2:13 PM.