

**Physical Therapist Licensing Board
Board Meeting
August 26, 2011**

MINUTES

Friday, August 26, 2011

Board Members Present: Steve Alstot, PT, Chair; Jason Fiske, PT, Vice Chair; Joana Freedman, PT Member; Burke Selbst, PT Member; Richard Rutt, PT Member; Jennifer Wood, PTA Member; Carol Sutton, Public Member; Troy Costales, Public Member.

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

Legal Counsel: Carol Parks, AAG

At 8:42 AM, Chair Steve Alstot convened the Board into Executive Session, citing ORS 192.660(2)(k). Pursuant to ORS 192.660(2)(k)(f), this portion of the Meeting is closed to the public.

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

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

PUBLIC (OPEN) SESSION

At 12:32 PM, Board Chair Alstot convened the Board into Public Session. During this portion of the meeting, the Board considered inquiries from licensees and the public; approved the prior Board Meeting minutes; ratified new licenses; reviewed general correspondence; entertained motions; publicly voted on any actions so moved before the Board; and conducted any other Board Public Session business.

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

Board Motions

Case PT 383-2/11

Motion, by Joana Freedman, to issue Interim Order requiring a mental health evaluation within 60 days of the date of the order by a Board approved provider. Also to issue a Confidential Advisory Letter suggesting Licensee disclose to new patients that she offers prayer and pastoral services. She

should be clear that these services are not part of the PT treatment nor are they billed as PT but are an adjunct service Licensee can make available to patients upon request.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 340-4/10

Motion, by Joana Freedman, to issue Proposed Order of Discipline, (Revocation of License), for failing to follow an order of the Board. A violation of 688.140(2)(a).

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 399-7/11

Motion, by Joana Freedman, to close case citing no violation.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 400-7/11

Motion, by Joana Freedman, to close case citing no violation.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 402-7/11

Motion, by Joana Freedman, to close case citing no violation.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 406-7/11

Motion, by Joana Freedman, to close case citing no violation.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 401-7/11

Motion, by Joana Freedman, to close case citing no violation, but issue a Confidential Advisory Letter voicing Board concern for failure to disclose prior history of arrest or conviction.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 407-8/11

Motion, by Joana Freedman, to close case citing no violation, but issue a Confidential Advisory Letter voicing Board concern for failure to disclose prior history of arrest or conviction.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 408-8/11

Motion, by Joana Freedman, to close case citing no violation, but issue a Confidential Advisory Letter voicing Board concern for failure to disclose prior history of arrest or conviction.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 409-8/11

Motion, by Joana Freedman, to close case citing no violation, but issue a Confidential Advisory Letter voicing Board concern for failure to disclose prior history of arrest or conviction.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Case PT 386-3/11

Motion, by Joana Freedman, to ratify Stipulated Agreement and Final Order as executed.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

General Topics/Business

- **July 2011 FSBPT NPTE Summit Report** – The Director and Board Member Rutt attended the Federation of State Boards of Physical Therapy (FSBPT) 2011 July National Physical Therapy Examination (NPTE) Summit held in Dallas Texas. The FSBPT hosted the summit and covered all the travel, lodging, meals and incidental expenses for all participants. The purpose of the Summit was twofold. First, based on recent security breaches, to look at the immediate and near future with regards to security and delivery of a valid exam. And, secondly, to look at the long range future of the NPTE. Does it test what it is intended to test? Are there other means to deliver a high stakes valid exam without jeopardy from security issues? The immediate resolve determined that the exam would move to fixed date testing for the near future and that based on the resources available, the Federation would offer the examination five times in 2012 and four times in 2013 forward. The discussion with regards to the future of the examination, plus other findings and outcomes of the Summit will be sent in the form of an Executive Summary to all members in early September.

- **Board Process Policy on Foreign Educated Therapists Application and Credentials -**
The Director suggested the Board consider changing its current policy relative to foreign educated therapists (FET) application for licensure. Currently, the Board requires FETs to complete the Board credentialing process prior to making application for licensure. The Director indicated that it is the credentialing process that takes the greatest amount of staff time and often is never completed. Some of the candidates can work on credentials for up to five years or greater. The suggestion made to the Board was that the FETs be required to make the application first, paying the application fee, and completing the credentials as part of the application process for licensure. This would compensate the Board for staff time relative to the credentialing review and also would put a limit on the amount of time FETs have to complete the application including the credentials. All applications are valid for one year from the date first received and processed. A motion was made by Joana Freedman, to change the credentialing/application process for foreign educated therapists, requiring the completed application, payment of the application fee and successful completion of the Board jurisprudence exam prior to the completion of the credentialing process. Changes to be effective September 1, 2011.
Seconded by Richard Rutt
Motion passed by unanimous vote 8-0

- **Board to Ratify Amended Affirmative Action Plan** – The Board Director reported that based on comments, suggestions and concerns of the original 2011-2013 Affirmative Action Plan filed with the Governor’s office; an amended Affirmative Action Plan has been submitted to the Governor’s Affirmation Action office for review and approval. Upon acceptance and approval of the Governor’s Office of Affirmative Action, the Board will ratify the amended plan.

Dry Needling

The Director shared information relative to the petition for judicial review filed with the State of Oregon Court of Appeals by the Oregon Association of Acupuncture and Oriental Medicine naming the Oregon Board of Chiropractic Examiners as respondent. The Acupuncture Association is challenging the validity of the recently adopted Chiropractic administrative rule OAR 811-015-0036 which states dry needling is within the chiropractic physicians’ scope of practice.

Letter from Applicant Smith: Appeal to Accept NPTE Scores Not Meeting Board Passing Standards

Ms. Smith contacted the Board to request an endorsement application. Ms. Smith is a graduate of a CAPTE Accredited PT program, sat and passed the national PT examination for another State, holds a current license to practice in another jurisdiction and has been practicing successfully, without any actions or encumbrances since 1984.

When Ms. Smith transferred her national exam scores to the Oregon Board, her scores did not meet the Board’s passing score standards, as established by Administrative Rule. Ms. Smith was told if she wanted to be licensed in Oregon she would have to take and pass the national examination for the Oregon Board. Ms. Smith filed an examination application but has appealed to the Board for reconsideration of her transfer scores.

After discussion and consideration the Board determined they did not hold the authority to make exception to current Statute or Administrative Rule. If Ms. Smith wanted to be licensed, in the State of Oregon, she would have to present the Board with passing national examination scores according to the current Administrative Rules.

Based on Ms. Smith’s request for consideration and several other outstanding future rule change issues, the Board instructed staff to begin the administrative rules process by soliciting and establishing a Rules Advisory Committee and holding an initial meeting prior to the November 2011 Board meeting. At the same time the Director will email the Board the listing of possible amendments to the current rules, taken from the future rule change pending file, and the Board will respond, back to the Director, with comments, questions or concerns.

Letter From Licensee Reilly Regarding Board Action for Practicing with a Lapsed License

Mr. Reilly is a licensee of the Board and the owner of a private practice in Eugene OR. Mr. Reilly sent a letter to the Board requesting the Board reconsider an action the Board took against one of his clinics providers, Stuart Hogg. Mr. Hogg failed to renew his 2010 PT license and treated patients for almost eleven months with a lapsed license. The Board cited the licensee for providing physical therapy services without a valid license and assessed him with a civil penalty of \$1,000. Mr. Reilly asked the Board to consider backdating the effective date of Mr. Hogg’s reinstated lapsed license to 4.1.10. The Board reviewed and considered Mr. Reilly’s request backdate Mr. Hogg’s license, but has determined it would not be prudent or ethical on the part of the Board to backdate the effective date on the reinstated lapsed license. The Board asked its legal counsel to review the Statute and

Rules relative to lapsed licenses to see if there is any way the Board could build in a grace period or what options are available to the Board relative to notifications, grace periods, late charges etc.

Board Discussion Regarding Temporary Permit Expiration Dates

The Director identified a problem relative to the new fixed date testing and the issuance of temporary permits for first time test takers. Two years ago the Board amended its administrative rules relative to the period of time a temporary permit would remain valid. The Board amended the administrative rules making temporary permits valid for 60 days instead of 90. The reason for this change was because endorsement applicants were abusing the system. They would apply for licensure, including an application for a temporary permit. They would enter the State and work a temporary assignment for the 90 days with their temporary permit. At the completion of their assignment, they would simply leave the State leaving their applications incomplete until the application would expire after one year. So, knowing that most temporary assignments were for a period of 90 days, the Board changed the rule language to only allow for a 60 day temporary permit. This change initially had no impact on temporary permits for first time test takers. With continuous date testing, first time test takers could easily get in and sit for the national examination within the 60 day timeframe. With the move to fixed date testing that is no longer the case. There may be periods of time that a registered applicant will not be able to access the national exam for periods longer than 60 days. This is having an adverse impact on the applicants and on employers who depend on the temporary permits to allow their employees to work up to the scheduled test date. After review and consideration, the Board instructed staff to include this issue as a discussion item for the upcoming Administrative Rules Advisory Committee.

Board Discussion Regarding Disciplinary Action Matrix Used for Practicing with a Lapsed License

Board member Carol Sutton requested the Board look at its policies and its disciplinary action matrix relative to sanctions levied on therapists who have been sanctioned for practicing physical therapy with a lapsed license. Ms. Sutton was concerned that any infraction or action taken by the Board will remain on the therapist permanent record and that she felt this particular infraction may not warrant that extensive an outcome. The Board discussed possible options including looking at models and policies currently used by other professional health Boards. The Board also discussed its roles and responsibilities relative to individually notifying licensees that their license has lapsed for non-renewal. The Director suggested a form or template letter be sent to the last known mailing address of all lapsed license holders as of April 1st of each year. As noted above, the Board also asked its legal counsel to review the Statute and Rules relative to lapsed licenses to see if there is any way the Board could build in a grace period or what options are available to the Board relative to notifications, grace periods, late charges etc.

Board Discussion on Fee Splitting and Online Companies Such as Groupon

Board Counsel AAG Parks shared concerns that other health Boards are currently experiencing relative to the issue of fee splitting, and whether marketing schemes like Groupon fall into that classification. The question posed was; whether there is Board concern that these types of marketing schemes would be considered fee splitting and if so, whether that would be direct violation of Board Statute 688.140(2)(1). The Board asked Counsel what the other health Boards are doing in regards to the issue. Counsel reported they are just in the beginning stages of investigating and addressing the issue.

The Board instructed its Clinical Advisor/Investigator to research Groupon and similar companies' marketing approach. Who receives the payment of the fees? Are the fees split or shared? Shared amongst whom?

She reported she is still in the process of gathering data and investigative materials. She will report her findings back to the Board at its November 4, 2011 Board meeting. At that time the Board will determine whether they want their legal counsel to render a legal opinion on whether there is a possible violation of Board Statute and Administrative Rule.

2011 Fiscal Year-End Financials

The Director presented the 2010-2011 yearend financial statements to the Board. After review and some discussion the Board approved the financial statements for publication to DAS and the Board website. The 2010 and 2011 fiscal yearend financial statements and the Boards 2011-2013 fiscal budget can be found on the Board's website at www.ptboard.state.or.us. Hard copies can also be requested by contacting the Board Director, Jim Heider at james.heidert@state.or.us or by calling 971.673.0203.

Approval of Board Meeting Minutes

The drafted Minutes, from the June 10, 2011 Administrative Rules Hearing and the June 10, 2011 Regular Board Meeting, were presented to the Board. The Board Chair opened the floor for additional discussion and comments. With a couple noted corrections, Joana Freedman moved to accept the minutes as amended.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

2011 Board Meeting Dates

As established by the Board, the future Board Meeting dates are as follows: November 4, 2011. The 2012 Board meeting calendar will be set at the November 4, 2011 Board meeting. Meeting Dates, Meeting Notices, and published Minutes may be found on the Board website at www.ptboard.state.or.us.

Ratification of PT/PTA Licenses & Temporary Permits

The Director presented the Board with a list of new licensees and temporary permit holders for the period of June 10, 2011 through August 25, 2011. The Board Chair opened the floor for discussion. Without noted discussion, Joana Freedman moved to ratify the issuance of the new licenses and permits as submitted.

Seconded by Richard Rutt

Motion passed by unanimous vote 8-0

Board Member Topics/ Other New Business

- **Board Delegation of Authority to Executive Director** - The Director presented the Board with a list of duties, responsibilities, activities and functions of the Board, as established and authorized by Statute. The list was developed to affirm and document those items that the Board has delegated to its Executive Director. Upon review, discussion and consideration Joana Freedman moved to ratify the list of delegated tasks and functions as assigned to the Director.

Seconded by Richard Rutt

- The Director made available a copy of the proposed personal services contract with Wicklund and Lew CPAs. Wicklund is the firm approved by the Secretary of State Audits Division to perform the statutorily biennial audit required of the Board. This year the audit/financial review will take place in December and the cost is estimated at approximately \$7,000. After discussion, the Board approved the execution of the personal services contract.
- Clinical Advisory/Investigator Sherri Paru shared concern that articles are published in the OPTA LOG that make reference to topics and issues relative to Board Statute and Administrative Rule without any input or review by the Board or Staff, and that sometimes the information printed is not always 100 percent correct. Sherri was going to contact the Director or the OPTA Board Liaison and asked to be included in proofing articles relative to Board Statute and Rule prior to publication.

With no additional new business cited, Board Chair Alstot adjourned the Board Meeting at 2:47 PM.

END OF PUBLIC SESSION AGENDA