

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY
333 WILLOUGHBY AVE, 9TH FLOOR, CONFERENCE ROOM A, JUNEAU, AK

APRIL 10-11, 2008

By authority of AS 08.01.070(2) and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the State Physical Therapy and Occupational Therapy Board was held on April 10-11, 2008 at the State Office Building, Conference Room A, Juneau, Alaska.

THURSDAY, APRIL 10, 2008

Agenda Item 1 Call to Order/Roll Call

The meeting was called to order by Mary Ann Paul, PT, Chair at 9:00 a.m.

Those present, constituting a quorum of the Board, were:

Mary Ann Paul, PT, Chair
Jay McDiarmid, PT, Secretary
Jo Boehme, OT/L
Joyce Barnett, PT
Stephen Brecht, MD
Gary Burleson, Public Member

All members present except Kathleen Lind, OT who was unable to attend due to a prior commitment.

Staff present: Judy Weske, Licensing Supervisor

Agenda Item 2 Review/Approve Agenda

Add AS 08.84.150(a)(6) under Annual Report / goals and objectives

**On a motion by Burleson, seconded by McDiarmid and carried
unanimously it was RESOLVED to approve the agenda as
amended.**

Agenda Item 3 Ethics Reporting

There were no ethic violations to report.

Agenda Item 4 **Minutes**

Joyce Barnett questioned the wording on page 2 of the minutes regarding the word “skill” vs. the word “services” – board discussion clarified Joyce’s concerns.

On a motion by Brecht, seconded by Burleson and carried unanimously it was RESOLVED to approve the October 4-5, 2007 minutes as written.

Agenda Item 5 **Public Comment**

Sundi Hondl, President of the Alaska State Physical Therapy Association and Carla Goeransson (state government liaison for association) questioned the fee increase for licenses. Ms. Hondl also asked who will replace Alec Kay as the board’s liaison. Ms. Hondl further advised that she spoke with the vice-chair of the Chiropractic Board and the vice-chair agreed to discuss at the Chiropractic board’s next meeting the use of the word “physical therapy.”

Jay McDiarmid agrees to be the PT liaison.

Agenda Item 6 **Investigative Report**

The board reviewed the report. Jo Boehme referenced her attendance at NBCOT meeting regarding discipline matters and board’s having more information regarding nature of investigations.

Jo asked if members could share the November 14, 2007 letter to Patricia Truman. Staff replied “yes”, the letter is a public document.

Agenda Item 7 **Review of Regulations**

The board reviewed the regulations which will become effective April 11, 2008.

Agenda Item 8 **Regulation Projects**

The board reviewed regulations 12 AAC 54.500(c), 12 AAC 54.500(d), and 12 AAC 54.530, 12 AAC 54.825 which had been public noticed and were now before the board for adoption.

The board read and considered the public comment to 12 AAC 54.530 and 12 AAC 54.825. The board agreed to change HIPPA to HIPAA.

On a motion by Brecht and seconded by Burleson and carried unanimously, IT WAS RESOLVED TO adopt 12 AAC 54.500(c) and 12 AAC 54.500(d).

On a motion made by Boehme and seconded by McDiarmid carried unanimously, IT WAS RESOLVED TO ADOPT 12 AAC 54.530 and 12 AAC 54.825 as amended by changing HIPPA to HIPAA.

The board considered the costs to the public as a result of adopting these regulations and determined there were no costs to the public.

Recessed at 10:25 a.m.; back on record at 10:35 a.m.

The board reviewed proposed changes to 12 AAC 54.410, continuing education requirements.

On a motion made by Boehme and seconded by Burleson and carried unanimously, IT WAS RESOLVED TO APPROVE FOR PUBLIC NOTICE 12 AAC 54.410 as proposed with (2)(B) to read: publication of an article in “

The board reviewed the CE regulation regarding waiving the continuing education for military service. The board decided that if a licensee was deployed for 6 consecutive months, the board would waive half of the continuing education hours required.

If a licensee was deployed for twelve or more months, then all continuing education hours are waived.

The board noted that work experience hours would not be waived regardless of deployment.

On a motion made by Brecht and seconded by Boehme carried unanimously, IT WAS RESOLVED TO APPROVE FOR PUBLIC NOTICE the military continuing education proposal as amended.

Mary Ann Paul had previously asked Mark Lane or Donna Borden with the FSBPT to speak to the board regarding the proposed language change for the supervision of PT/OT aides. Mark Lane was available and was connected telephonically.

Mr. Lane asked for background information before addressing the board; he stated that it seems like the direction the board is heading is not letting the aide do any patient care related activities; Mr. Lane wondered what the thought was behind that move. Mary Ann relayed that in April 2007 the board received a letter from therapists who were concerned that the board's existing regulation was confusing and could be misinterpreted as far as what an aide could do. Mary Ann said the board tried to make it clear although the board isn't sure there was a problem in the first place. The board has proposed changing 12

AAC 54.500 to read: "Services may not be stated or implied as being physical therapy unless performed by a licensed physical therapist or under the supervision of a licensed physical therapist." This change amends the existing language of: "Services may not be stated or implied as being physical therapy unless performed by a licensed physical therapist or physical therapy assistant, or under the supervision of a licensed physical therapist".

Mary Ann relayed the board's intention is to make sure that aides are not doing the treatment, that they aren't making the changes in the treatment and not doing hands-on treatment, etc.

Mark Lane felt that some of the problems with the proposed language in 12 AAC 54.520 is that the board may be challenged from the standpoint that Alaska is a rural state and has professional staffing shortages and if the perception of this rule is that aides can no longer do things they used to be able to do, the board may hear criticisms, which could come from legislators, etc. The board needs to be very clear about what it's trying to achieve. The other issue is related to the way it's worded; it appears that on-site supervision is required for any of the things an aide can do, such as scheduling, housekeeping, clerical and receptionist duties and that becomes problematic in that an aide couldn't even schedule a patient unless the therapist is present. Another concern is that it appears the board is closing the door to athletic trainers and massage therapists working under the supervision of a physical therapist as an aide; again they could only do the housekeeping duties, transportation, assembling and disassembling of equipment; a massage therapist could not perform a massage as an aide under the direct supervision of a physical therapist; he stated he was not saying it was a good thing or bad thing but that as a caution it is going to be limiting to therapists using potentially qualified people under their supervision.

He is not sure the board's proposed language really clarifies and feels it raises a lot of other questions. Mary Ann responded that what the board wants to say is that when an athletic trainer, massage therapist, or exercise physiologist or anyone in the clinic working under the supervision of a physical therapist, then they are an "aide"; Mr. Lane concurs. Mary Ann then stated that when those individuals are working "off-site" and out of the clinic such as an athletic trainer then they are working as an athletic trainer, etc. Mr. Lane said what he sees in the proposed language is that the athletic trainer could not put their hands on the patient other than doing the list of what the board has set out and he feels they are going to be limited in what they can do.

Gary Burluson responded that the board is trying to keep them from performing services and calling it physical therapy and billing it as physical therapy. Mr. Lane said he's not sure the proposed regulations accomplish that – he said that is something the board may eventually want to address in its practice act. He said the proposed regulations say what an aide can and can't do - the aide has to work under the supervision of a physical therapist so the aide could not bill as physical therapy and he feels the board has made that fairly clear.

Mary Ann stated that Mr. Lane's comments help the board; she said the first group of letters was from athletic trainers who misinterpreted the board's intention and who thought the board was trying to get rid of them which was not the case. Mr. Lane said he would interpret the board's language as saying an athletic trainer could not work under the direction of a physical therapist as an aide and do any patient care activities other than transportation and that sort of thing. Mary Ann said the board just wants to word it so that they can work and anybody working under the therapist is considered an aide. Mr. Lane agrees that is the direction the board should go. He referred the board to the Nebraska and Oregon practice acts for examples of good language. For example, one of the boards has set out treatment related tasks and non-treatment patient related tasks and they say when an aide is doing a treatment related task they must work under direct supervision, but when they are doing non-treatment patient related tasks they don't have to work under the direction supervision of a therapist. He feels that language is very clear and clearly delineates what can be done under direct supervision and what doesn't require direct supervision. He feels the board has to do that if the board is going to allow an aide to participate in some patient care activities

Dr. Brecht asked if other states allow an athletic trainer or massage therapist to do manipulation or massage – that if a therapist was doing that then it would be called physical therapy but if the aide is doing it, it's called what – how do you define that? Mr. Lane said first of all, a lot of practice acts are weak in this area because of the very issues the board is struggling with; but if an athletic trainer is working under the supervision of a physical therapist they should be an aide – so when they are doing any kind of patient care activities it's the supervising therapist that's responsible and it is physical therapy but that's only because it's under the supervision of the physical therapist – it has nothing to do with their athletic trainer certification or any of those types of things – they are strictly an aide. Mary Ann followed-up with “and they don't carry their own patient list”. Mr. Lane responded “correct”. He said either Oregon or Nebraska says that the therapist has to see the patient every single time – a person couldn't come in and be treated by an aide, aka: athletic trainer – the therapist has to see the patient.

Joyce Barnett said so a physical therapy aide under the supervision of a physical therapist is providing some physical therapy treatment and we can limit what those treatments are and which ones we will allow, if at all. Mr. Lane responded “correct” – he said under the Model Practice Act, the definition of physical therapy means the care and services provided by or under the direction and supervision of a physical therapist. He said what the aide is doing is physical therapy but it's the physical therapist who's responsible; the aide is an extension of the therapist; it's still physical therapy but it's not an athletic trainer who's doing it – they may have an athletic trainer certification but it's the aide that's doing it.

Mr. Lane stated that the board is on the right track but he thinks there are some things the board could clear up and make very clear when an aide is under supervision and when they're not; he said that anytime anyone is working that's not licensed as a physical

therapist or physical therapist assistant and they're working under the supervision of a therapist they are an aide – whether it's an athletic trainer, a massage therapist, etc., that

is the physical therapist's responsibility - it's still physical therapy – it's not athletic training, it's not massage therapy, it's physical therapy, but it's being performed by an aide.

The board had no other questions for Mr. Lane and thanked him for taking the time to talk with the board.

Dr. Brecht asked where the physical therapy assistant fits in. Mary Ann said a PTA can work off-site without direct supervision. A PTA can do manipulation and have their own patient load. Jo Boehme said the board's regulation as it stands is very vague and the board's intention over the past 18 months has been to try and clarify it and make it more black and white – Jo thought the board's intention was quite a bit different than what Mark Lane is encouraging the board to do; she thought the board's intention was to separate out that aides do non-treatment related routine clinic tasks and that's it. Jo thought the board had spent a lot of time during the last couple of meetings trying to clarify that and now she has the sense that Mark Lane was suggesting the board do a “180”. Mary Ann said she is all for setting aside the laundry list and going back to our original regulations and look at those again.

Joyce Barnett went back to the discussion regarding off-site physical therapy assistants – we have no restrictions on what their hands can do; they can't do evaluations and they can't establish or change the treatment plan, but their hands can do the work. Joyce said so now the board is up to deciding can the hands of an aide do any work. Jay said one thought is to go back to telehealth and if you are evaluating a patient via computer, is there going to be a person there moving that person's limb to assess range of motion – maybe, maybe not, and if's going to be okay in that setting, but not okay in the clinic setting -- Jo felt there was a big difference in the telehealth example in that the therapist is on the other end of the computer and is doing the treatment and billing for the treatment as opposed to a clinic setting whether the massage therapist or athletic trainer is doing the treatment and billing for it as physical therapy without a physical therapist being involved – Jo stated that is a huge fundamental difference.

Jay feels the board is getting too restrictive on what we are allowing people in remote communities to do to treat their patients. He said if we are talking about people committing fraud, for example, a therapist who leaves his/her clinic while their massage therapists treats patients is a very different situation than using skills of other professions to benefit patients in small communities that may not have access physical therapists. Mary Ann asked what is the definition of a small, rural or remote community? It's hard to define that.

Mary Ann said she does not work in a setting where an aide does hands-on work so her point of view may be different; however, as board members, we are also licensees and may each work in different settings; we have to take one hat off (as licensees) and put the

other hat on to (as board members) and look at this in our role of protecting the public regarding the proposed regulation.

The board discussed the history behind the changes to the PT and OT aide project. It initially started with receiving a letter in April 2007 from therapists at North Pole Physical Therapy regarding the use of aides in the clinic and their desire to have the board clarify the regulations, specifically by repealing 12 AAC 54.520 in its entirety. Dave Brower, an Assistant Attorney General was present at that meeting and told the board that there was no statutory authority in AS 08.84 for regulating physical therapy aides. He agreed that the issues in the April 2007 letter were valid.

The board continued discussion. Jay asked whether the Model Practice Act workshop with the state association was going to happen. Mary Ann said she would like to pursue it. Jo Boehme said the state OT association had not yet been contacted. Mary Ann mentioned that Sundi Hondl, president of the AkPTA was supposed to coordinate and contact parties; Mary Ann said she will follow-up.

Mary Ann reviewed the Oregon law regarding the practice of physical therapy. Mary Ann said that the Oregon law was lengthy and purposeful. Discussion continued regarding what practice of physical therapy; Jay gave an example of a patient that needs an ultrasound – Jay sets the setting of the ultrasound and the aide administers the ultrasound – that service is billed as physical therapy.

After additional discussion, the board decided to withdraw proposed regulation 12 AAC 54.520, 12 AAC 54.815. The board would like to revisit this issue in the future. In the meantime, members will review the Oregon and Nebraska laws; also, the board is hoping the combined AkPTA/FSBPT/AkOTA/AOTA workshop will take place.

**On a motion made by Brecht and seconded by
McDiarmid and carried unanimously, IT WAS
RESOLVED TO withdraw 12 AAC 54.520 and 12 AAC
54.815.**

The board would also like the Department of Law to advise if the board has authority to amend language for PT and OT aides.

The board recessed for lunch at 12:45 p.m. – Back on record at 1:42 p.m.

Agenda Item 9

Liaison Reports

Mary Ann presented the board's report to the conference in Girdwood. Jo stated that she did not attend the annual OT association conference, but following each board meeting she does present a written report to the association. Jo hasn't had any input from the association; only issues she presents to them.

why boards should be involved in determining sanctions and disciplines. Publicize the infractions and the disciplinary actions taken; remedial education may be a part of the action – self-learning so that another infraction does not occur. Professional standards based on risk and not standards – educate licensees on what kinds of infractions are

Agenda Item 10 **NBCOT October 2007 Conference**

Jo attended the two day conference in Alexandria, Virginia. A couple of the highlights included why licensing board's should be strong and clear in disciplinary sanctions and occurring. "Boundaries" was another issue that was addressed – the professional is always the responsible party in setting boundaries.

Disciplinary cases by NBCOT included 198 total cases – 53 were OTAs – 24 exam candidates; trends – practicing without a license/felonies/fraudulent billing/inadequate supervision, etc. Source of cases include self-reporting on initial application and renewal application; complaints, etc.

Jo stated it was an interesting and helpful conference. The next NBCOT conference is October 25-27, 2008 in Phoenix, Arizona. Jo recommended that the new OT board member, Kathy Lind, be given the opportunity to attend the Fall conference.

Agenda Item 11 **Review Board Brochure**

The board reviewed the Brochure and other than a few typos, no changes need to be made.

Agenda Item 12 **Goals and Objectives / Annual Report**

Jay brought up the exception to licensure in AS 08.84.150(6) and whether the board wanted to amend that language and add it as a recommendation to the list of suggested statute changes. Jay said the board discussed this issue at the October 2007 board meeting but in listening to the meeting recording, it was unclear what direction the board wanted to take.

Add goal 15: delete AS 08.84.150(5) and (6).

Amend AS 08.84.065 to change the length of the temporary permit from 8 months to 3 months.

Agenda Item 13 **Budget Report**

Chris Wyatt, Administrative Officer for the division, answered the board's questions regarding the proposed fee increase. A discrepancy was noted in the budget report under FY 2007; specifically, the "Total Revenue" column showed receipt of \$95,800.00. This amount is questionable since FY 07 is not a renewal year. Why is the revenue so high for that time frame? Ms. Wyatt will research and get back to the board.

On a motion made by Brecht and seconded by Boehme and carried unanimously, IT WAS RESOLVED TO accept the fees as proposed.

Agenda Item 14

Requests for CE Approval

The board reviewed the continuing education submitted by Foley Weems, Clinical Decision Making through Temple University for 3 semester credit hours. The board determined the course meets the continuing education requirements and approved the course for 24 contact hours.

On a motion made by Brecht and seconded by Boehme and carried unanimously, IT WAS RESOLVED TO accept the education submitted by Mr. Weems.

Megan Ciana is requesting approval for Myokinematic Restoration course for 15 contact hours.

On a motion made by Brecht and seconded by McDiarmid and carried unanimously, IT WAS RESOLVED TO accept the education submitted by Mr. Ms. Ciana.

The reviewed the Balanced Body Pilates course submitted by Paul Columb, PT. Mr. Columb was submitting the course on behalf of several therapists at his clinic. The board determined that Mr. Columb did not provide adequate information to make a determination. The board wants to see learning objectives and course syllabus. Also, the board recommends that each individual licensee seek approval. If licensees want approval for a course, they should have the course sponsor apply to AKPTA.

Reviewed email from Jeff Trotter asking for credit for taking and passing the CSCS – The board did not approve this request.

Agenda Item 15 Correspondence

The board reviewed the email from Angela Dorn - the board's consensus is that she take the examination; the board recommends that she also take the refresher course.

Emails regarding home health care were reviewed – regular standards of practice of apply regardless of the setting.

Refer to OT Code of Ethics providing Wound Care in home health setting – principle 4 E and principle 6 A.

The board recessed until 8:00 a.m. April 11, 2008.

FRIDAY, APRIL 11, 2008

Agenda Item 1 Call to Order/Roll Call

The meeting was called to order by Mary Ann Paul, PT, Chair at 8:00 a.m.

Those present, constituting a quorum of the Board, were:

Mary Ann Paul, PT, Chair
Jay McDiarmid, PT, Secretary
Jo Boehme, OT/L
Joyce Barnett, OT
Stephen Brecht, MD
Gary Burleson, Public Member

All members present except Kathleen Lind, PT who was unable to attend due to a prior commitment.

Staff present: Judy Weske, Licensing Supervisor

The board reviewed the request for accommodations for a physical therapy assistant applying by examination. The board is willing to offer 100% extra time and separate room but wants the applicant to take the regular examination and no reader.

The board reviewed the information from Manuel Mauri, foreign-trained PT requesting approval to do an internship. No report from FCCPT regarding education had been received; Mr. Mauri did submit a report from WES but the WES is not acceptable to the board for credentials evaluation.

On a motion made by Burleson and seconded by Brecht and carried unanimously, IT WAS RESOLVED TO approve the internship for Manuel Mauri pending receipt of the FCCPT credentials evaluation report.

Agenda Item 13 (Cont'd) Budget Report

The board reviewed the corrected budget report which was amended to reflect the Total Revenue for FY 2007 as \$37,800.00. Ms. Wyatt explained that even with the corrected revenue amount, an increase in fees is needed. Ms. Wyatt was unable to explain why \$95,800.00 was first reflected as revenue for FY 07. She believes the \$37,800.00 is a correct assessment of revenue received for that fiscal year – that amount is in line with other non-renewal years for the board.

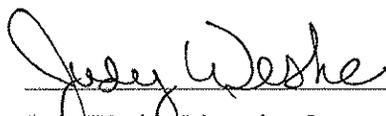
The board reviewed their assignments re: PTA (Nebraska and Oregon's law); staff will ask the Department of Law if the board can set out specific duties for PTAs and OTAs in regulation.

The next meeting date was set for October 2-3, 2008 in Anchorage. A teleconference will be scheduled for June 30, 2008 at noon to take action on proposed regulations.

Mary Ann Paul and Jay McDiarmid will attend the FSBPT September meeting.

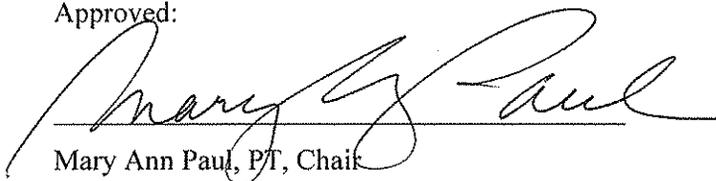
The Board having no further business to discuss adjourned the meeting at 11:00 a.m.

Respectfully Submitted:



Judy Weske, Licensing Supervisor

Approved:



Mary Ann Paul, PT, Chair

Date: 4-17-09