

**STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
STATE PHYSICAL THERAPY AND OCCUPATIONAL THERAPY BOARD**

MINUTES OF MEETING

APRIL 12-13, 2007

By the 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 12-13, 2007 in Conference Room A, State Office Building 333 Willoughby Ave, Juneau, Alaska.

Thursday, April 12, 2007

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
Jo Boehme, OT/L
Cheryl Abitz, OT/L
Alec Kay, PT
Gary Burleson, Public Member
Dr. Julius Brecht, MD

Staff Present:

Judy Weske, Licensing Supervisor

Agenda Item 2 Review/Approve Agenda

No changes to the agenda other than the inclusion of additional correspondence received. The board noted they would like to adjourn by noon on Friday.

**On a motion by Kay, seconded by McDiarmid and carried
unanimously it was**

RESOLVED to approve the agenda.

Agenda Item 3 Ethics Reporting

Ethic Violations – no reports – In her role as a new board member, Cheryl Abitz indicated that she watched the Department of Law Ethics Video.

Agenda Item 4 **Minutes**

On a motion by Kay, seconded by Abitz and carried unanimously it was

**RESOLVED to approve the October 5-6, 2006, November 17, 2006,
and January 4, 2007 minutes as written.**

Agenda Item 7 **Telehealth**

The board was ahead of schedule and took up the matter of Telehealth. Alec Kay had drafted proposed language and the feedback he received put the regulations under 12 AAC 54.510. The board reviewed the draft language and made comments. The board does not want aides supervised via telecommunication.

The board decided to postpone discussion until Dave Brower, Assistant Attorney General, was able to meet with board.

Agenda Item 5 **Public Comment**

Sundi Hondl, President of the Alaska Physical Therapy Association spoke to the board about concerns previously raised by Mary Olson regarding the school district issue. The board reviewed the October minutes and relayed to Sundi the discussion that took place at the October meeting with Tom Watson of the Department of Health and Social Services.

Sundi addressed the continuing concern of chiropractors advertising the use of physiotherapy and not being licensed to practice physical therapy. The board advised that legislative change is necessary for term protection and that the Association is the appropriate party to lobby for such change.

Agenda Item 6 **Investigative Report**

The board reviewed the investigative report dated April 6, 2007. It was noted that case 2750-06-1 Contested License Denial is no longer pending as the applicant withdrew her request for an appeal. The board had no comments regarding the investigative report.

Agenda Item 8 **Applications for Licensure**

The board discussed the application for Lynn Conrad, Occupational Therapy Assistant who has never been licensed as an OTA. Ms. Conrad graduated in 1974 and has not worked as an OTA since graduation 33 years ago. The board was concerned about the fact that she graduated so long ago and has not practiced; however, under 12 AAC 54.600 she qualifies for licensure; she passed NBCOT and has provided proof of work experience and continuing education, although, the board has questions regarding some of the continuing education she submitted.

The board requests course content showing applicability to Occupational Therapy as required by 12 AAC 54.715(c). Specifically, the board requests an outline for the course titled Behavior Management Approaches with Exceptional Children. Other courses taken in 2005 do not appear to be related to occupational therapy. Board staff will contact Ms. Conrad and ask her to provide additional information for the board's review during the meeting.

The board reviewed the application of Elina Smart, foreign-trained physical therapist. Ms. Smart's credentials evaluation states that her studies are not consistent in length with the U.S. Bachelor of Science in Physical Therapy. According to the credentials evaluation report, she has the U.S. equivalent of ninety-five semester units (three years) of undergraduate coursework, with a concentration in physical therapy.

The board recessed for lunch at 11:50 a.m.
Back on record at 1:00 p.m.

On a motion by Boehme, seconded by Abitz and carried unanimously it was RESOLVED to approve the names read into the record for licensure:

Approved for Licensure:

Babich, Kenneth - PT
Beter, Erica – PT
Beverly, Judith – OT
Foster, Debra – OT
Hassan, Jennifer – OTA
Lange, Mark – PT
Libert, Christina – PT
McCauley, Deborah – PT
Miller, Alison – OT
Morgan, Rebecca – OT
Morgan, James – PT
Nelson, Jennifer – PT
Peavey, Alicia – PT
Perkunas, Jaime – PT
Richard, Leon – PT
Swan, Matthew – OT
Wylie, Suzanne – PTA

On a motion by Kay, seconded by Brecht and carried unanimously it was RESOLVED to approve the names read into the record for licensure pending items noted:

Approved for Licensure Pending:

Adams, Maila – PT – passing TWE and TSE
Cattuccio, Daniel – PT – license verification from California
Cattuccio, Lorraine – PT – license verification from Connecticut
Rahn, Peter – PT – license verification from Illinois

On a motion by Brecht, seconded by Kay and carried unanimously it was RESOLVED to approve licensure reinstatement for Garth Buresh, physical therapist.

On a motion by Boehme, seconded by Kay and carried unanimously it was RESOLVED to approve the proposed internship needed for licensure reinstatement for Sandy Graham, physical therapist.

On a motion by Brecht, seconded by Burleson and carried unanimously it was RESOLVED to approve licensure for Karen Mello, PTA pending successful passage of the FSBPT examination.

Denied Licensure:

On a motion by Kay, seconded by Abitz and carried unanimously it was RESOLVED to deny licensure for Christine Cunanan, foreign-trained physical therapist for failure to meet AS 08.84.032(a)(1) based on the FCCPT Credentials Evaluation which reflects that Ms. Cunanan's education is not equivalent to a U.S. Physical Therapy Degree.

On a motion by Kay, seconded by Abitz and carried unanimously it was RESOLVED to deny licensure for Elina Smart, foreign-trained physical therapist for failure to meet AS 08.84.032(a)(1) based on the International Education Research Foundation, Inc., credentials evaluation which reflects that Ms. Smart's has the U.S. equivalent of ninety-five semester units (three years) of undergraduate coursework, with a concentration in physical therapy and that these studies are not consistent in length with the U.S. Bachelor of Science in Physical Therapy.

Agenda Item 9 Follow-up from October 5-6, 2006 Meeting

The board discussed limiting the number of attempts an applicant can take the physical therapy application. Jay provided a printout from FSBPT showing other states' practices.

On a Motion made by Kay and seconded by Burleson it was resolved to approve for public notice amending 12 AAC 54.080(c) to require that an applicant for licensure who does not pass the examination on the first attempt may retake the examination two additional times without reapplication for licensure within 12 months of the first failure. Before the board may approve an application for subsequent testing beyond three attempts, an applicant shall reapply for licensure under 12 AAC 54.030 and shall submit evidence satisfactory to the board of having successfully completed additional course work offered by the board's approved examination body.

Agenda Item 10 Correspondence

Board staff had received recent email inquiries as to why physical therapists in Alaska have direct access and occupational therapists don't. Alec Kay recommend that they board speak with Hal Egbert, Physical Therapist for background information on how PTs gained direct access. Mr. Egbert was dialed in and relayed that in 1982 he had been a part of a group to gain direct access for physical therapists. The group worked with a lobbyist (Sharon Macklin) and went through the legislative process; they met with representatives from the Alaska State Medical Association and the Chiropractor Association to advise those groups of their efforts. Hal relayed that legislation was enacted allowing physical therapists direct access. The board confirmed after the phone conversation with Hal that the statutes do not clearly speak to "direct access" and believe that any change that occurred probably is tied to the definition of the practice of physical therapy.

The board read the email from Jeff Stroke, PTA who asked "If a patient is ready for discharge does a PT need to write the discharge note or can the PTA document that the patient is being discharged after reaching goals?" The board reviewed AS 08.84.190(7) and 12 AAC 54.590 and discussed the question. It was the board's consensus that the physical therapist is responsible for the discharge evaluation of a patient.

The board read a letter received April 6, 2007 from physical therapists Juliana Ament, Brenda Wolverton and Heather Agustines regarding the use of aides in the clinic setting and their desire for the board to clarify the regulations. Specifically, they request the board repeal 12 AAC 54.520 in its entirety.

Dave Brower, Assistant Attorney General joined the meeting at 1:30 p.m. Mr. Brower spoke to the board about physical therapy aides and advised there appears to be no statutory authority for the regulation of physical therapy aides.

AS 08.84.150 is clear that it is unlawful to practice physical therapy without being licensed unless exempt from licensure. There is no statutory authority for an aide to practice physical therapy. He agreed that the issues in the letter from Ms. Ament, Ms. Wolverton and Ms. Agustines were valid. Mr. Brower also referenced the federal register and medicaid/medicare billing regulations which state that aides cannot independently perform a skilled service.

Jay asked if there was a difference between “practice” and “service” of physical therapy. Mr. Brower said “no”.

Mary Ann referenced the Model Practice Act regarding the definition of aides.

Mr. Brower left the meeting at 2:05 p.m.

The board addressed 12 AAC 54.520 and after much discussion decided to repeal all of 12 AAC 54.520 (except for 12 AAC 54.520(d) which is to be moved to 12 AAC 54.500 in a new section (e)) and replace 12 AAC 54.520 with the following language:

On a Motion made by Burluson and seconded by Boehme it was RESOLVED to approve for public notice amendments to repeal all of 12 AAC 54.520 (except for 12 AAC 54.520(d) which is to be moved to 12 AAC 54.500 in a new section (e)) and replace 12 AAC 54.520 with the following language:

As defined in AS 08.84.150(a) only a physical therapist or physical therapy assistant may practice physical therapy. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the on-site supervision of a physical therapist.

- (a) a designated routine task does not include components of physical therapy intervention.**
- (b) “on-site supervision” means the physical therapist is on the premises, readily visible to the aide and available for immediate and direct supervision.**

The board confirmed that the same changes should be made to the occupational therapy regulations as well.

On a Motion made by Boehme and seconded by McDiarmid it was resolved to approve for public notice amendments to repeal all of 12 AAC 54.815 (except for 12 AAC 54.815(c) which is to be moved to 12 AAC 54.800 in a new section (a)) and replace it with the following language:

As defined in AS 08.84.150(b) only an occupational therapist or occupational therapy assistant may practice occupational therapy. An occupational therapist may use occupational therapy aides for designated routine tasks. An occupational therapy aide shall work under the on-site supervision of an occupational therapist.

(a) a designated routine task does not include the practice of occupational therapy.

(b) “on-site supervision” means the occupational therapist is on the premises, readily visible to the aide and available for immediate and direct supervision.

Board staff will respond to Ms. Ament, Ms. Wolverton and Ms. Agustines thanking them for the comments and advising of the board’s proposed action.

**Agenda Item 9
(cont’d)**

Follow-up from October 5-6, 2006 Meeting

The board discussed the concerns Mary Olson has addressed at previous meetings regarding physical therapists who work in the school system and the completion of the Individual Education Plan (IEP). Frequently, physical therapy is listed as the service provided, and a teacher, aide or paraprofessional listed as the provider. What is meant to be relayed on the IEP is that they are providing a program written by a physical therapist, but that is not what the IEP lists.

The board went on the record to clarify their goal is to respond to Mary Olson directing her to October 5-6, 2006 minutes and also to refer the matter to Rick Younkins as referenced in the October 5-6, 2006 minutes.

Jo Boehme addressed a question she received from the president of the AKOTA regarding continuing education course approval. The AKOTA said they review and approve courses and wanted confirmation that this process was okay with the board. The board confirmed it was.

Agenda Item 11

Regulation Projects

On a motion by Boehme and seconded by McDiarmid it was resolved to approve the changes to 12 AAC 54.500(a) for public notice.

The board set a teleconference for June 7, 2007 at 2:00 for regulation follow-up.

Agenda Item 12

Annual Report

Jay McDiarmid presented the annual report for FY 2007. The board reviewed the goals and objectives and added Telehealth as Goal #12; under Legislative Recommendations added term protection for the word “physiotherapy” so that only physical therapists may use that term in relation to their practice; and, the board deleted the legislative recommendation increasing the minimum penalty for

practicing without a license to \$1000.00 as that had been met under AS 08. The board thanked Jay for his work on the report.

On a motion by Abitz and seconded by Brecht it was resolved to approve the FY 07 Annual Report as amended

Agenda Item 13 Liaison Reports

Jo advised that following the October 2006 meeting, she submitted a brief summary of the board's actions for the AKOTA newsletter; she also advised the AKOTA president of the board's April meeting and will continue liaison efforts with the association.

Alec advised that he provided a written report for the newsletter and presented an oral report at the association conference. Alec relayed that he has fielded questions from licensees and will continue to provide board meeting updates via newsletter and association meetings.

Agenda Item 13 Budget Report

The board reviewed the budget report.

Agenda Item 7 Telehealth Issue

The board reviewed the draft that Alec had prepared. The proposal will need to be drafted into regulatory language, but the board's intent and recommendations are reflected the draft prepared by Alec. The board would like the Department of Law to review the language before going out to public notice.

On a motion by Kay and seconded by Burleson it was RESOLVED to approve the telehealth draft language:

Article 4 - Physical Therapist Standards of Practice

- 1. Supervising a licensed physical therapist assistant or an occupational therapist assistant via interactive telecommunication is within the current scope of practice as described in 12 AAC 54.510**
- 2. One-on-one consultations, including initial evaluation, between physical therapists and patients via telecommunications is within the current state regulations.**
- 3. Interaction between physical therapist and the patient maintain the same ethical conduct and integrity per 12 AAC 54.500 (c) (d).**
- 4. At a minimum, the interactive telecommunications system must include audio and video equipment permitting two-way, real-time communication between the practitioner and the patient at the distant site. Facsimile machines, electronic mail, and telephones do not meet the definition of an interactive telecommunication system.**
- 5. The physical therapist participating must be licensed in the state of Alaska and be physically in Alaska for the interaction.**

6. **The intent is to provide physical or occupational therapy services to Alaskans who live in areas without reasonable access to care.**

7. The physical therapist is responsible for providing and assuring appropriate client confidentiality and HIPPA compliance. Secure connections need to be established and practitioners shall ensure firewalls are active and encryption techniques have been established.

Article 7 - Occupational Therapist Standards of Practice

1. Supervising a licensed occupational therapist assistant via interactive telecommunication is within the current scope of practice as described in 12 AAC 54.810
2. One-on-one consultations, including initial evaluation, between occupational therapists and patients via telecommunications is within the current state regulations.
3. Interaction between occupational therapist and the patient maintain the same ethical conduct and integrity per 12 AAC 54.800 (c) (d).
4. At a minimum, the interactive telecommunications system must include audio and video equipment permitting two-way, real-time communication between the practitioner and the patient at the distant site. Facsimile machines, electronic mail, and telephones do not meet the definition of an interactive telecommunication system.
5. The occupational therapist participating must be licensed in the state of Alaska and be physically in Alaska for the interaction.
6. The intent is to provide physical or occupational therapy services to Alaskans who live in areas without reasonable access to care.
7. The occupational therapist is responsible for providing and assuring appropriate client confidentiality and HIPPA compliance. Secure connections shall be established and practitioners shall ensure firewalls are active and encryption techniques have been established.

Agenda Item 15 Continuing Education Audit Review

The board reviewed approximately 66 continuing education audit responses and approved the majority of those responses. Individuals must have completed continuing education during July 1, 2004 and June 30, 2006.

On a motion by Boehme and seconded by Kay it was RESOLVED to take the following action for continuing education audits as read into the record and reflected in these minutes regarding Stephanie McCoy, Jessica Marshall, Pamela Lloyd, Robert McElroy and Kay Levenson.

Stephanie McCoy, PTA, license number 1384. The board did not accept the Managing Cardiac Emergencies course for 7.5 hours. The course does not contribute directly to the professional competency of an occupational therapist nor is it directly related to the skills and knowledge required to implement the principles and methods of occupational therapy. The board did accept other courses submitted by Ms. McCoy for a total of 19.5 hours. Ms. McCoy will need to provide proof of an additional 4.5 hours of continuing education.

Jessica Marshall, PT, license number 1137. The continuing education submitted is acceptable, however, need clarification regarding number of hours awarded for the Advanced Jin Shin Do Acupressure course.

Pamela Lloyd, OT, license number 367. Submitted a total of 27 continuing education hours, but 12 hours were completed after the licensing period. The board accepted 15 hours and proof of 9 more hours must be submitted.

Robert McElroy, PT, license number 1326. Mr. McElroy submitted more than enough hours of continuing education, however, 9 of those hours were earned out of the qualifying time period of July 1, 2004 through June 30, 2006. The board did accept 15 hours and 9 more hours are needed.

Kay Levenson, OT, license number 903. Refer to division paralegal for follow-up.

Recess 4:10 p.m.

Friday, April 13, 2007 **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
Jo Boehme, OT/L
Cheryl Abitz, OT/L
Alec Kay, PT
Gary Burleson, Public Member
Dr. Julius Brecht, MD

Staff Present:

Judy Weske, Licensing Supervisor

Agenda Item 8 Applications for licensure (cont'd)

The board reviewed the email from Lynn Conrad regarding her course work and accepted a total of 15 hours for the fall 2005 course behavior management approaches with exceptional children at Arizona State and the 1.0 contact hour for the SI course; Ms. Conrad needs remaining 8 contact hours which will be satisfied by attending the April 28-29, 2007 AKOTA conference. The board approved her application pending receipt of the CE certificate from that conference.

The letter to Ms. Conrad is to include a statement that she is not authorized to practice until licensed.

On a motion by Kay and seconded by Burleson it was RESOLVED to approve Lynn Conrad for licensure as an OTA pending receipt of the remaining 8 contact hours which will be satisfied by attending the April 28-29, 2007 AKOTA conference.

The board discussed the issue of defining course work – how many hours can be from self-study, and does academic training count towards full CE. The board members will review other states' requirements. Issue to be placed on October 2007 Agenda.

The board nominates Jo Boehme to attend the Fall NBCOT Annual Conference and Jay McDiarmid and Mary Ann Paul to attend the Fall FSBPT conference. The board would also like the licensing examiner to attend the FSBPT conference.

The board confirmed that October 4-5, 2007 is next meeting date in Anchorage.

The Board having no further business to discuss adjourned the meeting at 9:20 a.m.

Respectfully Submitted:

Judy Weske, Licensing Supervisor

Approved:

Mary Ann Paul, PT, Chair

Date: _____

State Physical Therapy and Occupational Therapy Board

Minutes of Meeting

April 12-13, 2007

Page 13 of 13

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sarah Palin, Governor
Emil Notti, Commissioner
Rick Urion, Director

Division of Corporations, Business and Professional Licensing

May 8, 2007

To: Alaska Public School Superintendents

Re: School System Physical and Occupational Therapy Services and the IEP

Dear Superintendent:

The Alaska Physical Therapy and Occupational Therapy Licensing Board has received several contacts from licensed therapists about a misrepresentation of therapy services being provided in some school districts in Alaska. Of specific concern is the practice of calling a service "physical therapy" or "occupational therapy" on the student's Individual Education Plan (IEP), but having that service carried out by a teacher, classroom aide or other non-licensed personnel. When this occurs, it potentially misleads the parents and student about professional therapy services being received, and it may lead to fraudulent billing in districts that bill Medicaid for therapy services.

As defined in the Regulation **12 AAC 54.500** Physical Therapy Standards:

"Services may not be stated or implied being physical therapy unless performed by a licensed physical therapist or physical therapy assistant, or under the supervision of a licensed physical therapist."

Article 3, Unlawful Acts, **AS 08.84.150(a)** states it is unlawful for a person to practice physical therapy without being licensed under this chapter. Further, **AS 08.84.150** further details that teachers and teacher's aides may use occupational therapy skills, only if there is direct supervision of the person's use of these skills (6)(B) , and the person does not represent to be an occupational therapist (6)(C)(i) or practice occupational therapy (6)(C)(ii) .

The Alaska State Physical Therapy and Occupational Therapy Licensing Board is responsible for protecting the public as well as identifying and referring to investigation "every supposed violation of this chapter coming to its notice"...**AS 08.84.180**. We wish to advise you that this issue has been forwarded to the investigative staff for the State of Alaska, Division of Corporations, Business and Professional Licensing.

It is the intent of our Licensing Board to present this issue of concern to all Alaska public school districts, and provide you the reference to the statutes and regulations, which may be found at www.commerce.state.ak.us/occ/pphy.htm.

If you have questions or comments, please reply to Judy Weske, Licensing Supervisor, Division of Corporations, Business and Professional Licensing at 907-465-3262.

Mary Ann Paul, PT, Chair
Board of Physical Therapy and
Occupational Therapy

cc: Lucy Richardson, Investigator

PO Box 110806, Juneau, AK 99811-0806

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