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BOARD OF PHYSICAL THERAPY

7570 Norman Rockwell Lane, Suite 230
Las Vegas, NV 89143

BOARD MEETING MINUTES

May 4, 2018

Item 1 - Call to Order/Roll call to determine the presence of a quorum:

Board Members in attendance: Sherise R. Smith, PT, MSPT, CBIS, Chairperson; Eathan O'Bryant, Public Member; Rebecca Cheema, PTA; Brian Fearnley, PT, MPT, Vice Chairperson joined the meeting at 9:05 a.m.; Jim McKivigan, DC, PT, MPA, MA, Secretary/ Treasurer joined the meeting at 9:34 a.m.

Staff in attendance: Charles Harvey, Executive Director; Muriel Morin-Mendes, Licensing Coordinator; Danielle Devine, Administrative Assistant; Debby Dieter, Investigator; Sarah Bradley, Senior Deputy Attorney General; Henna Rasul, Senior Deputy Attorney General; Chelsea Wilson, Administrative Assistant joined the meeting at 1:00 p.m.

Item 2 - Pledge of Allegiance

Item 3 - Public Comment

- A. Nicole Guralny, Esq., Bar Number 7727 - I was not able to attend the workshop on the proposed regulation of NAC 640.595, but I did at that time prepare a letter that, to my understanding, was read at the workshop. At first, my concern with NAC 640.595 was the classification of athletic trainers as physical therapist technicians and my first letter was that it didn't seem fair, that people who had superior education and qualifications, to be lumped in with others who did not have such qualifications and all to be termed "techs". Upon further legal research, I then sent another letter, dated April 26, 2018, regarding the statutory history of the creation of NRS 640B, which is the athletic trainer's statutory guidelines. Back in 2003 athletic trainers were added to NRS 640.029, as one of three professions that NRS chapter 640 was not applicable. If you look at what regulations may be promulgated by this Board, in order to carry out NRS 640, to oversee physical therapist assistants, physical therapist technicians, and physical therapists. Since athletic trainers are not a part of that chapter, there is no authority for the Board to be creating any kind of regulation to redefine an athletic trainer as a physical therapist technician and I think that the letter talks about the legislative history. At that time, the Physical Therapy Association was

involved with discussing the educational requirements of athletic trainers. It mentioned how a compromise was made those only athletic trainers who had reach the level of a Master's Degree would be allowed to evaluate injury and to perform joint mobilization, so I think a lot of forethought went into creating a scope of practice for athletic trainers and defining them and creating an entity to oversee them, regulate them, and make sure they had the proper education and proper licensing. My comment is that, I believe that this board does not have the authority to reclassify the athletic trainers, that their purview and the body that must oversee these professionals is the Athletic Trainers' Board of Nevada.

- B. Steve McCauley, Nevada Athletic Trainers' Association- We concur with everything that was just stated so eloquently and make a formal request, that with regard to NAC 640.595 section 4, that the term "athletic trainers" be stricken from this language.

Item 4 - Review, discuss, amend and approve Board Meeting Minutes (**For Possible Action**)

- A. April 6, 2018

Motion: I move to approve the minutes of April 6, 2018 with the edits: Rebecca Cheema

Second: Eathan O'Bryant

Motion Passes Unanimously

Item 5- Nevada Physical Therapy Association (NVPTA) Update (**For Discussion Only**)

- A. Jennifer Nash, PT License # 2234 President of Nevada Physical Therapy Association - I want to just give an update for the Board. I look forward to providing this update to the Board every month. There are a few things going on in the Association. First, we do have a June 2nd conference with the Occupational Therapy Association of Nevada and we have already received registrations so we are at 50% capacity. We still have plenty more spots available but we are filling up so we are thrilled. It will be at the Henderson Convention Center on June 2nd, from 8:00 a.m. - 5:00 p.m. and we welcome the board members as well as all physical and occupational therapist and their assistants to come to this conference. We are going to be posting, on the Listserv and different social media sites, about nominations for outstanding physical therapists and physical therapist assistants as well as great duos between PT and OT. For this conference, we will be giving out several different recognition awards, so look for that and nominate your colleagues. I have met recently with the Chiropractic Association and we are working to stay transparent and professional to try to open communication lines. So, we are following in line with the board because they have done that as well. Since the last meeting, the Nevada Physical Therapy Association has also created a student special interest group, we are looking forward to becoming more active and allowing our students a voice and also opportunities for leadership. Last but not least, the next district meeting here in the south coming up on Tuesday, May 8, 2018. It will be at 7:00 p.m. at UNLV in room BHS 130. We will have Dr. Jenelle Lauchman

talking about reimbursement and contract negotiations, so we can educate our members on creating better contracts as reimbursement rates are very much on the forefront of our members' minds. We thank you for all the discussion you are having and thoughtful dialogue that is going to into putting the NAC's into motion and really making them the best they can be for our profession.

Chairperson Smith added that she and Jennifer Nash have been having monthly meetings to keep each other abreast of what is going on with the Board and the Association and they look forward to continue a positive relationship.

Item 8- Disciplinary Actions. (**For Possible Action**)

A. Ross Waltz, PT License Number 1111, Case No. 2015-11

AG Bradley presented a settlement agreement for Case Number 2015-11, recommending Board acceptance. The licensee in this case is not admitting the alleged conduct. However, he agrees to accept a fine not to exceed \$500 and has to complete three hours of continuing competency units in patient interaction and/ or efficient patient communication. Licensee must also provide the Board with a written summary of what he learned in these units within 30 days of the classes. All units and payments must be completed within six months of the settlement agreement approval. Licensee understands that the settlement agreement is discipline and will be reported publicly to all databanks the Board reports to, and available to anyone that asks for a copy.

Motion: Motion to approve the settlement agreement for Ross Waltz; Sherise Smith

Second: Brian Fearnley

Motion Passes Unanimously

B. Taylor Kucera, PT License Number 3208, Case No. 2016-02

AG Bradley asked that this item be removed from the agenda as more discussion is needed and no settlement agreement is able to be presented. The Board acknowledges the removal of this item, asks that it be set for a later date.

C. Bryan Ganitano PTA License Number A-0788, Case No. 2016-03

AG Bradley presented a settlement agreement for Case Number 2016-03, and is recommending Board acceptance. The licensee in this case is not admitting the alleged conduct. However, he agrees to accept a public reprimand and to reimburse the Board for its costs not to exceed \$300, the total amount being due within six months from the date of the Board's order approving the settlement. Licensee understands that the settlement agreement is discipline and will be reported publicly to all databanks the Board reports to, and available to anyone that asks for a copy.

Motion: Motion to accept the settlement agreement for Item C; Brian Fearnley
Second: Sherise Smith
Motion Passes Unanimously

D. Catherine Bodner, PT License Number 0691, Case No. 2016-122

AG Bradley presented a settlement agreement for Case Number 2016-122 and is recommending Board acceptance. The licensee in this case is not admitting the alleged conduct. However, she agrees to accept a public reprimand, to reimburse the Board for its costs not to exceed \$500, and three hours of continuing competency units in patient interaction and / or efficient patient communication all to be completed within six months of the Board's order approving the settlement. Licensee understands that the settlement agreement is discipline and will be reported publicly to all databanks the Board reports to, and available to anyone that asks for a copy.

Motion: Motion to accept the settlement agreement for Item D; Brian Fearnley
Second: Eathan O'Bryant
Motion Passes Unanimously

Item 6- Consideration of applicants and possible selection of Outside Legal Counsel (**For Possible Action**)

The Board discussed the candidates for the Outside Legal Counsel position and spoke with the applicants in attendance.

Motion: I move that we have Sarah Bradley and the AG's office take over for our Outside Counsel needs; Jim McKivigan
Second: Rebecca Cheema
Motion Passes Unanimously

Item 7- Review and Decision Regarding Pending Licensure Applications. (**For Possible Action**)

A. Barbara Aparicio-

Chairperson Smith acknowledged that the Board reviewed Barbara Aparicio's application. The Board agreed that there were questions Ms. Aparicio needs to answer. The Board asked for Ms. Aparicio to appear before the Board in person, video chat, or if absolutely necessary via telephone.

Motion: Motion to table Item A. and ask Barbara Aparicio to appear before the Board; Sherise Smith
Second: Jim McKivigan
Motion Passes Unanimously

B. Anthony Dalmaso-

Chairperson Smith acknowledged that the Board has reviewed Anthony Dalmaso's application. The Board agreed that there are questions that need to be answered by the applicant.

Motion: Motion to table Item B until we have a chance to talk to Anthony Dalmaso in person or telephonically; Jim McKivigan

Second: Brian Fearnley

Motion Passes Unanimously

C. Alonzo Vasquez-

Mr. Vasquez was present at the meeting. Chairperson Smith acknowledged that the Board members had seen all the court documents submitted. Mr. Vasquez informed the Board about all the dispositions. Mr. Vasquez was asked by Board Member Cheema if he had sought licensure in Arizona. Mr. Vasquez stated that he had always planned to come back to Nevada and did not seek to be licensed in Arizona.

Motion: Motion to grant Alonzo Vasquez a physical therapist assistant license; Sherise Smith

Second: Jim McKivigan

Any Opposed: Rebecca Cheema

Motion Passes

D. Richard DeAgrella –

Mr. DeAgrella was present at the meeting. Board Member Cheema recused herself after submitting a letter in support of Richard DeAgrella. Some dispositions were discussed. Chairperson Smith noted that it had been quite a while without issue.

Motion: Motion to grant Richard DeAgrella a license as a physical therapist assistant; Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

The Board discussed some reasons why they would or would not like to have an applicant appear before the Board.

Meeting recessed at 10:50 a.m.

Meeting reconvened at 10:58 a.m.

Item 9- Investigation Department. Review and Discussion of Outstanding Cases Status Report
(For Possible Action)

AG Bradley discussed the amount and types of cases the Investigation Department is handling, as well as recommended two cases for dismissal.

Motion: Motion to dismiss 2017-008 and 2017-021 as recommended; Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

Item 10- Ratification of licenses approved and issued by the authority of the Board pursuant to NRS 604.090, NRS 640.146, and 640.250 (**For Possible Action**)

Motion: Motion to ratify the licenses in Item 10; Brian Fearnley

Second: Jim McKivigan

Motion Passes Unanimously

Item 11- Report from Board Chair (**For Discussion and Possible Action**)

A. Sunset Subcommittee Review-

Chairperson Smith gave an update about the subcommittee meeting

B. Advisory Committee on Dry Needling-

Chairperson Smith gave an update about the meetings of the advisory committee and steps going forward regarding NACs.

C. FSBPT Update: aPTitude CCU Tracking, ProCert Implementation-

Chairperson Smith gave an update about how licensee's will track their continuing competency units, and how the information will be sent out to licensees. It was also noted that the wording of clinical and non-clinical classes would be changing. Procert classes would be considered "certified activities" as well as those approved by the Advisory Committee on Continuing Competency. Multiple ways Continuing Competency Units could be earned including the Option Self-Assessment tool, which would hopefully help a licensee plan out their future units, were discussed.

The Board discussed the calculations of Clinical Instructor Credit for Continuing Competency Units. Andrea Avruskin, PT # 1223, had submitted a letter to the Board with some suggestions about how to clinical instructor credits may be broken down. The Board decided that one unit of continuing competency would equal 80 hours as a clinical instructor.

Motion: Motion to change the primary clinical instructor verbiage to state one unit equals eighty hours of clinical instruction for a maximum of eight hours per year; Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

D. Proposed Waiving of CCU Fee for NVPTA Courses

The Board discussed waiving the Continuing Competency Fees for all the Nevada Physical Therapy Association similar to the way Universities submit Continuing Competency Courses.

Motion: Motion that the Board waives the Continuing Competency Fee for the NVPTA for any courses that they provide as well as automatic approval status for courses that they submit; Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

E. NOTA & NVPTA Joint Conference, June 2, 2018

The Board discussed having a table at the conference to reach out to the profession. It was discussed that we could also have a laptop available so people could sign up for aPTitude. Jim McKivigan will attend the conference, along with staff.

F. Executive Director 6- Month Review/ Goal Setting

Chairperson Smith reviewed that she and Director Harvey met yesterday regarding his 6-month review and goals for the first year. Director Harvey will present the goals in his report.

G. Spring/Summer 2018 Newsletter: estimated to go out the end of June.

The Board discussed what would be included in the next newsletter. It was decided to include a link to the NAC's as submitted to the Legislative Counsel Bureau (LCB).

Item 12- Operations/ Report by Executive Director (**For Discussion and Possible Action**)

A. Executive Director- Goals and Objectives

The Board reviewed goals and objectives submitted by Executive Director Harvey. Chairperson Smith noted the improvement in the workings of the Board office.

B. Current Budgetary Numbers-

The Board reviewed the budgets and outcomes from the last few years. It was discussed about the growth in the number of licensees as well as where the Board stands financially.

C. Quarterly Licensing Report-

Director Harvey let the Board know that the Board office had begun to setup a list of places where he Board must submit different report. AG Bradley informed the Board that one more report was to be added to the list.

D. InLumon Software-

Director Harvey informed the Board of the work being done with the InLumon staff to begin the Boards move to the InLumon database. The Board was also made aware of the meetings and the schedule the Board office has with InLumon staff.

Meeting recessed at 12:00 p.m.

Meeting reconvened at 1:00 p.m.

Item 13- Review and Discussion of Nevada Administrative Code (NAC) changes (**For Possible Action**)

A. NAC 640.010-

The Board addressed a suggestion presented during the last workshop regarding the Nevada Physical Therapy Association (NVPTA) to receive a mailing list free of charge. The Board discussed that since the NVPTA no longer has to pay for Continuing Competency Course Reviews the \$50 mailing list fee was not too big of a burden.

Motion: Motion to not accept suggestion of the waive of the mailing list fee for the NVPTA; Sherise Smith

Second: Jim McKivigan

Opposed: Brian Fearnley

Motion Passes

B. NAC 640.025-

The Board discussed the suggestion to strike “annual” from the verbiage. Chairperson Smith noted that it would only need to be stricken from the wording if the Board were to move away from the license term of one year. AG Bradley stated that if the Board was to move away from the one year term the NAC would need to be changed further. It was agreed that no change would be made.

C. NAC 640.070-

Chairperson Smith introduced the changes to this regulation. AG Bradley stated some issues that may present themselves with the wording of the regulation. Chairperson Smith noted that the Board can put together a meeting if the

wording of this regulation has any issues in the Legislative Counsel Bureau (LCB).

D. NAC 640.590 Patient Care Management New Language-

Chairperson Smith introduced the suggestion that was given to revise the amount of days/ visits between evaluations. Board Member Cheema read the suggestions that the reevaluations be every 30 days. Chairperson Smith noted that this timeline would line up with Medicare guidelines which may take some confusion out of the scheduling.

Motion: Motion to amend the new language in 640.590 under patient care management subsection B number 4 to read “not less than every 30 days”; Brian Fearnley

Second: Sherise Smith

Motion Passes Unanimously

E. NAC 640.594-

The Board received a suggestion that a student be added to the limit of three under supervision. Chairperson Smith said that perhaps it may encourage physical therapist to take a student. Both educators on the Board, Board Members McKivigan and Cheema believed that it would be a good addition only in the case of a student. AG Bradley gave some input about how to properly word the addition of a student.

F. NAC 640.595- Usage of the term “Athletic Trainers”-

The suggestion was made to take out athletic trainers from the wording of NAC 640.595(4). Chairperson Smith said that no matter the training, if a person is directed by a physical therapist they will be considered a physical therapist technician for that treatment. AG Bradley read a letter from the Nevada State Board of Athletic Trainers asking for some language to be stricken from this regulation. AG Bradley stated the wording of NRS 629.076 about name badges including having their certification with their name. Chairperson Smith believed that athletic trainers must be represented as physical therapist technicians so it was clear that they are working under the license of a physical therapist and while the billing codes are under physical therapy. It was noted that the Board had already voted to remove the terminology naming athletic trainers specifically.

G. NAC 640.595- Defining “skilled intervention”

The Board discussed multiple ways to define “skilled intervention” in this regulation. AG Bradley stated that the Board should try to clarify skilled intervention to make it easier for cases going forward. The Board agreed to adopt most of New Jersey’s Practice Act but did not agree about the use of

physical therapist technicians for heat and ice modalities. Board Member Fearnley stated that the removal of modalities would be acceptable, which the Board agreed. It was ultimately decided that the Board would continue debate about heat and ice at the next meeting.

Motion: Motion to approve the New Jersey rules A-1 and 2, B while using the term “skilled intervention” subsections 1, 2, 3, and 5 to read “Administer or apply modalities with the exception of heat or ice. Then move to South Carolina’s Practice Act starting with B (1) which states that a 1. physical therapy technician may not perform an activity which requires licensure under this chapter 2. an activity which requires the exercise of professional judgment of a physical therapist or physical therapist assistant 3. the interpretation of referrals screenings, assessments, evaluations, or reassessments, 4. the development or modification of therapeutic exercise programs, treatment plans or discharge plans. In addition: It is the responsibility of the physical therapist to ensure competency in all duties performed by a physical therapist technician; Sherise Smith

Second: Brian Fearnley

Opposed: Jim McKivigan and Rebecca Cheema

Motion Does Not Pass

Chairperson Smith noted that the Board may not want to be too restrictive in the description of skilled intervention. AG Bradley suggested that the Board submit the NAC’s without the definition of skilled intervention to help move the process forward. Chairperson Smith asked that this definition be moved to the June Board Meeting Agenda.

H. NAC 640.596 (1) b –

The Board received a suggestion to change the number of patients a physical therapist assistant can see during a group therapy from 2 to 3. Leslie Adrian from the FSBPT submitted an opinion that 2 patients may be restrictive. The Board agreed to extend the number of patients from 2 to 3. This was agreed upon by the Board.

I. NAC 640.610 –

The Board received a suggestion to remove the time frame for documentation. The Board did not agree with this statement.

J. NAC 640.650-

The suggestion was made to the Board about the physical therapist assistant making notations about the physical therapist responsible for the supervision of the physical therapist assistant. The Board decided to strike NAC 640.650 and to add a portion to NAC 640.590.

Item 14- Public Comment

A. Nicole Guralny-

In 2003 NRS 640.029 was amended to include athletic trainers as a healthcare provider. The athletic trainers who have obtained their master's degree are allowed to evaluate injury and perform joint mobilization by statute.

Chairperson Smith clarified the Boards mention of athletic trainers stating that it is only applicable when the athletic trainer is working under the direction of a physical therapist.

B. Jennifer Nash, PT #2234-

I want to applaud you for working so hard on all this. To get aPTitude running will be great for the profession and the professionals in this state. I appreciate the Board giving clinical instructors credit for their mentorship, I think this is wonderful. It is great that we have a Board looking out for the interest of our public, because physical therapy is at times diluted by the services that you see in clinics. I appreciate you taking so much time to define what is and is not skilled intervention. I think it is a large weight, but I do think the public will benefit from licensed professionals providing physical therapy, particularly physical therapists and physical therapist assistants who are the members providing this care to our public who is in need of our service. I feel that this time, discussing these issues, is put to good use. I applaud you for taking the time to do that. As a faculty member of this community, I do have to stress that many physical therapists out there do not feel that the burden of supervising 3 people is the reason they are not taking students. Our Clinical Education Program has many physical therapists out there willing to take students and it is more the burden that we place on them when we allow them to supervise as well as mentor. So I continue to ask you to keep in mind that we have had these regulations and they do serve the public well in minimizing how much a physical therapist is burdened with regarding supervision and mentorship. We continually encourage physical therapists to be mentors, but it is also a decision and many are choosing not to be mentors because it is not where they want to spend their time. Lastly, my comment would be that the NVPTA has heard that reimbursement rates are one of the biggest concerns of our members. I do think the work of your Board in defining and spending time on NAC's will help to give us a clear understanding of what skilled intervention is, and possibly be able to increase the ability of our public to get quality care from licensed individuals. Thank you for your time.

Item 15- Adjournment- The meeting was adjourned at 3:14 p.m. by Chairperson Smith.