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BOARD OF PHYSICAL THERAPY

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

BOARD MEETING MINUTES

June 1, 2018

Item 1 - Call to Order/Roll call to determine the presence of a quorum: The meeting was called to order at 9:05 a.m.

Board Members in attendance: Sherise Smith, PT, MSPT, CBIS, Chairman; Eathan O'Bryant, Public Member; Jim McKivigan, DC, PT, MPA, MA, Secretary/ Treasurer; Brian Fearnley, PT, MPT, Vice Chairman, joined the meeting at 12:50 pm.

Staff in attendance: Charles Harvey, Executive Director; Sarah Bradley, Senior Deputy Attorney General; Michael Demer, Senior Deputy Attorney General; Debbie Dieter, Investigator; Neena Laxalt, Lobbyist; Danielle Devine, Administrative Assistant

Item 2 - Pledge of Allegiance

Item 3 - Public Comment

A. Edwin Suarez, PT 1700 - I am the owner of Suarez Physical Therapy. We have three clinics serving the valley. I am here to object to the Board May 4, 2018 decision on changes to NAC 640.595 as it relates to physical therapist technicians applying modalities, and also request they take what I have to say into consideration for today's potential vote as it relates to pt technicians' applications of heat and ice. Limiting pt technicians to administrative and janitorial work only, positions already filled by staff members will result in elimination and support of a necessary position it will not only result in the termination of pt technicians but also cost the jobs of other licensed personnel such as athletic trainers and massage therapists, a total of twelve combine employees in my practice alone. I currently employ six physical therapist assistants, but the poor reimbursement rates in Nevada mean we cannot afford to replace physical therapist technicians with pta's. Consequently, the decrease in staffing will mean our offices will neither be able to treat our existing patient population, who are desperately in need of physical therapy services, or take on new patients who are in need of care. As I am certain this effect many more practices than just ours this capricious action will significantly decrease the access to quality care which is contrary to the very mission of the Board "to protect the safety and wellbeing of the public consumer of physical therapy". Contrary to the Boards Small Business Impact statement, this decision to severely impact the activities of technicians will jeopardize the current small businesses like mine and drive up costs to future private practice entrepreneurs. This would simultaneously hurt our industry and our patient population. Limiting access to pt technicians will pull physical therapists away from performing skilled patient services such as evaluations, joint mobilizations, manipulations, taping, dressing changes, et

cetera. We are a doctoring profession and should have the autonomy to use pt technicians much like physicians use medical assistants to take vitals especially when the current NAC regulations already establish that we are “responsible for the conduct training and action of the pt technician”. Many pt’s and pta’s were employed as technicians and used this position to solidify their decision to pursue this career. The loss of the technician position destroys the bridge for future clinicians in this noble and rewarding profession. In closing I recommend the board take a hard look at the validity of the small business impact statement and strongly consider the current clear language already contained in NAC 640.595 be left intact. Instead, I encourage our board to seek out, find, and discipline the private practices that are not in compliance with these pt technicians and in doing so truly protect the safety and well-being of our patients, and the integrity of our profession. Thank you.

B. Cody Okuda, PT #1803- I am a part owner of Kelly Hawkins Physical Therapy and represent the Kelly Hawkins Physical Therapy Organization today. I support everything Edwin Suarez just said. As a business owner, we rely heavily on physical therapist technicians to help perform our work and by taking our ability to use them away your will be greatly crippling the outpatient physical therapist and the outpatient physical therapy business. I would like to read what the APTA defines as technicians. “Physical therapy aides are any support personnel who perform designated tasks related to the operation of physical therapy service”. Getting away from the statement, technicians defined by the APTA are allowed to perform physical therapy service and then reading on further, tasks are those activities that do not require the clinical decision making by the physical therapist or the clinical problem solving of the physical therapist assistant, tasks related to patient client management must be assigned to the physical therapy aide by the physical therapist or, where allowable by law the physical therapist assistant and may only be performed by the aide under the direct personal supervision of the physical therapist or where allowable by law the physical therapist assistant. Direct personal supervision requires a physical therapist or where allowable by law a physical therapist assistant to be physically present and immediately available to direct and supervise tasks that are related to patient client management. The direction and supervision are continuous throughout the time these tasks are performed the physical therapist or physical therapist assistant must have direct contact during each session. Telecommunication does not fit the requirements of direct personal supervision. I testify that in our company we follow these guidelines and the law that has been established here in Nevada and feel that it is well within good and proper treatment of patients as far as the treatment and safety they receive. Again, I stress that limiting the appropriate use of technician, the proper use of technicians you are hindering not only the care we can administer for the patients but also the business of many outpatient clinics.

C. Nicole Evans, PT #2003- I am the owner of Synergy Physical Therapy. We currently have three clinics in the Las Vegas Valley. We just opened are third which we are very excited about. I am a UNLV graduate and I really love this profession and I want to be able to keep treating patients like we have for years. Today I would like to take a little different approach and provide you with some insight as to how we utilize technicians in our practice. Over the years I have employed 94 technicians, I am appreciative of all the assistance they have given us over the years. Of those 94, 27 have gone on to become physical therapists, physical therapist assistants, or physicians. We recruit our physical therapy technicians from the UNLV LKD program, which is like a pre-physical therapy honors society. We recruit our technicians from this program because they are passionate about physical therapy like we are and we only want people in our clinics that understand that and are striving to become physical therapists. The training they receive in our clinics is extensive, I believe that as a physical therapist the technicians are a reflection of me, an extension of me in the clinics. So, everything that I ask them to do it is just as if I were doing it. I would never ask a technician to apply a hot pack, perform an ultrasound or do an electrical stimulation procedure unless they are adequately trained and unless the parameters are directly set by me. So, in our locations there is no instance

when a physical therapy technician is deciding what a patient needs, how they need it or what those settings or parameters are. I don't know that I can say that every clinic in Nevada runs that way but I can attest to the fact that our clinics do. The reason we do that is because we as physical therapist take our jobs very seriously. We love this profession and we care about our patients and in no way would I ever want any of my patients being treated by somebody that was not trained to do that. Our technicians, on day one, when they come in receive a checklist and I brought that if you would like a copy of it. It requires them to perform check offs, similar to what we did in PT school which nobody loved but we all had to do. So, each of them gets their check list and they are required to set up a check off with us a. That includes applying hot packs, cold packs, greeting patients; answering phones and performing electrical stimulation and they are all bound to those tasks even under our direct supervision unless they have checked off those items. I think that maybe something like this could be implemented, to maybe put some of these clinics who are not following those laws in check and make sure they aren't over utilizing technicians in the Valley. If this law passes it will significantly impact my business. The reimbursement rates in Nevada are one of the worst in the country if not the lowest. In our clinic it is a little bit lower at \$49 per visit. The reason for that is I have chosen to take insurance companies that pay at a lower rate. It may not be the smartest decision as a business owner but I feel very strongly that I want those patients to have access to excellent care which I know we provide and so I have chosen to keep those contracts. We are consistently trying to negotiate with the insurance companies to raise those contracts. We are not always successful but I still have not come to a point where we need to get rid of those contracts. If this law passes I will be required to do that because we will not be able to operate without those technicians' assistance setting up those hot packs while I perform manual treatment on the patient or perform an ultrasound after I have prepared the patient and set the parameters for that ultrasound. So, I would like you guys to consider not only the impact of the jobs that will be lost, again I have 22 current technician who are all working part time and all going to school to become physical therapist but it will have a huge impact on business and a huge impact on accessibility and I think that is something we need to focus on. I want the patients in this valley to have access to excellent care and I know that we provide that. I have no hesitation in saying that to you guys right now, I know that we can't provide that same quality of care without their assistance and continue to keep our doors open. Right now, we are required to see 4 patients per hour per physical therapist that is much higher than other states in the country, in order for us to do that and do it effectively to get them the care they need we need these technicians. These are not just people off the street, these are very qualified intelligent and passionate individuals that want to be physical therapists and we give them the opportunity to come in and learn and grow and to be assistants for us. I hope that you guys will consider that. I would be happy to sit down with any of you to discuss the options that we have. I have talked to many other private practitioners this week that have never had the Board come in and investigate their office. Not that I want them in all the time, but I have never had them come to my office and do any kind of audits in my office and I would welcome that. I would hope that they would go into every office in the valley because I am tired of patients coming into my office and telling me about some of the care they are receiving in other clinics. I want every patient who walks into any physical therapy clinic in this valley to know that they are receiving excellent care. I don't want them to come to my office and say that this is extremely different from the experience I have had before in physical therapy in this valley. So, my task to you is to crack down on these companies that are doing this and let's not pass a law that would punish companies who for decades have been doing things correctly. Thank you very much.

Board Member McKivigan asked for the copy of the Synergy Physical Therapy Technician Checklist.

D. Brianne Sykes- I am here to represent Rapid Rehab. We have two clinics within the Las Vegas Valley. I will just start off by saying I agree with the statements everyone made before me. In just saying we agree with what the board is trying to do but we feel there are better ways

to do it. So, it is our belief that by restricting technicians from performing patient related tasks the new administrative code will lead to severe access issues in Nevada. As a community we already have a low ratio of therapists to residents. By threatening licensed therapists from delegating to their technicians, we will see significantly fewer residents receiving timely physical therapy. While I understand the financials of clinics and clinicians is not in the board's purview, I hope you may be able to consider some of the effects on the community. On top of individual therapist reducing their patient loads, I also fear the economic impact of fewer daily visits may result in the closing of many facilities or their relocation to other jurisdictions. In a state where many of the per diem visit rates are less than average therapists hourly wage this could be a very real issue. Should this code result in our state having less clinics and licensed clinicians this access issue will continue to compound, especially as it eventually affects our ability to recruit out of state therapists. If Nevada does face a large-scale access issue we will have to rely on therapist to essentially triage each patient and attempt to see those with time sensitive diagnosis first. However, I fear that therapist with the fear of insufficient reimbursements may also consider the health of their practice when scheduling each patient. We may see patients with lower reimbursement plans struggling to find a facility that can afford to treat them. We may see patients who need post- op care unable to find an available provider. For all of the reasons above and more delegation exists in almost all healthcare specialties and is a necessary component to affordable and accessible healthcare for our residents. Instead of relying on a therapist to use their doctorate level education, clinical experience, and ethical code to triage patients we should rely on those same traits and skills for them to safely oversee the technicians they choose to work with. I believe this community supports the Board motives to make physical therapy as safe as possible in Nevada however we strongly encourage the board to reconsider its Small Business Impact Statement and take more time to meet with its community so we can develop an approach to technicians' restrictions that will not affect access to Nevadans.

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

A. May 4, 2018

Motion: I move to approve the minutes of April 6, 2018 with the edits: Jim McKivigan

Second: Eathan O'Bryant

Motion Passes Unanimously

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

Jennifer Nash, PT License # 2234 President of Nevada Physical Therapy Association - I appreciate again being an agenda item. I am here to update you on a few things going on with the association. This Saturday is the combined inaugural Occupational Therapy and Physical Therapy Conference happening on June 2nd. I do appreciate Dr. McKivigan's presence for the Board at that conference. It has sold out so we are very excited and looking forward to a successful conference tomorrow. Thank you again for your support. I am looking forward to having the Board there. We are also working with our lobbyist about our position going into the legislative session coming in 2019. We are looking forward to conversations with the Board about the compact licensure as well as discussing things that the members are bringing forward as some things they are interested in like a protection for DPT adding possibly wellness and health promotion into our scope, as well as talking about the possibility of adding diagnosis in. So, we are continuing to investigate those and looking forward to having open dialogue with the board and moving forward in the best interest of our profession in Nevada. On top of that, I think that I wanted to just mention that I had two members reach out to me just this week about NAC 640.595. Two members who are practice owners who are concerned about their clinics ability to provide great service to our community. I do feel there is a general concern about the

ability to have access to good care for our community. I do appreciate that you have taken the time and did not make any rash decisions last meeting and really wanted to hear comments. We do appreciate that you listen to the all the licensees and understand the positions because full compliance is definitely what we strive for, we all want to abide by the laws but also provide quality care for our community. Lastly, I think that the Association is continuing to work on a grass roots effort that you might hear more about trying to make sure that we are in line and have all of our licensees, physical therapists and physical therapist assistants in the state involved with advocacy and understanding what may come before the legislature in the 2019 session. Particularly making sure that we are ready and in line with the board in case there is any movement from the Chiropractors or the Oriental Medicine Board, so we will continue with those efforts and make sure that our licensees or members are out at the polls next week. I urge us all to be out and making sure our vote counts and our voices are heard and continue to align with the elected officials to educate them about what physical therapy can do, particularly with the opioid crisis as well as many other urgent needs that our community needs physical therapy for. Thank you.

Item 6- Review and Decision Regarding Pending Licensure Applications **(For Possible Action)**

- A. Barbara Aparicio
Barbara Aparicio appeared before the board via Facetime. Ms. Aparicio was asked to provide a copy of the paperwork from her inpatient/ outpatient treatment, a substance abuse evaluation with its recommendations, as well as some documentation that recommendations are being followed, and documentation that the criminal probation is complete. Ms. Aparicio was given until the next board meeting on August 3, 2018.
- B. Anthony Dalmaso
Anthony Dalmaso was not present for the meeting. The board did not wish to proceed without speaking with him. Mr. Dalmaso will be notified that he has one more chance to appear before the board or his application will be denied.

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

- A. Taylor Kucera, PT, License # 3208, Case No. 2016-02
- B. Todd Mansel, PTA, License #A-0261, Case No. 2017-006

AG Bradley asked for these items to be removed from the agenda as there was no confirmation that the settlement agreements had been signed. The items were moved to the August 3, 2018 Board Meeting.

Item 9- Formal Disciplinary Hearing Regarding Donald Nobis (Case Numbers:2017-012, 2017-013, 2017-023, 2017-024, 2017-027, 2017-028, 2017-029, 2017-030, 2017-034) **(For Possible Action)**

AG Bradley asked for this item to be continued to August 3, 2018, due to Mr. Nobis hiring of a new attorney.

Item 10- Investigation Department. Review and Discussion of Outstanding Cases Status Report **(For Possible Action)**

- A. Review of Cases Recommended for dismissal and possible vote by the Board to dismiss these cases as recommended by Staff and Legal Counsel Report **(For Possible Action)**
 - i. 2016-126
 - ii. 2017-009
 - iii. 2017-015

- iv. 2017-019
- v. 2017-501
- vi. 2018-03
- vii. 2018-06
- viii. 2018-08

AG Bradley decided to remove item ii. 2017-009 due to newer information being sent. It is recommended by AG Bradley and Investigator Dieter to keep this item open until fully reviewed.

Motion: I move that we dismiss the cases that Sarah Bradley recommended with the exception of item number ii.: Jim McKivigan

Second: Eathan O'Bryant

Motion Passes Unanimously

B. Update from Board Legal Counsel on LCB process and timeline for regulations. (For Discussion Only)

AG Bradley gave a brief update about the LCB process and the Board's options and moving forward. The Board can expect to also have a public workshop after the Nevada Administrative Code is drafted which could take about 60 days. The Legislative Commission will vote on the approved draft, then it is sent to the Secretary of State for stamping. The Board decided to send in the Dry Needling Regulation separately so they can submit the changes from the workshop which will be held July 6, 2018.

Item 11- 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 approve the ratification of the licenses as presented; Sherise Smith.

Second: Jim McKivigan

Motion Passes Unanimously

Item 16- Board Operations **(For Discussion and Possible Action)**

A. Renewals-

Director Harvey discussed the process the Board Office went through to ensure the ease of renewals, with this meeting date being the first day of renewals.

B. InLumon-

Director Harvey discussed the tests the Board Office conducted and that the InLumon team is aware that this is our priority.

C. Discussion on Board Meeting schedules and possible change to bimonthly meetings.

Director Harvey discussed the tight turn around with the board meetings being every month. Chairperson Smith talked about the change to the schedule and how the Board is comfortable moving to that schedule after the August 3, 2018 Board Meeting.

Item 13- Legislative Update from Board Lobbyist **(For Discussion Only)**

Board Lobbyist Laxalt gave an update about what the Board can expect in the upcoming Legislative Session. The Board Members were reminded of the positions the Board represents

as far as the balance of the profession and public safety. Chairperson Smith thought it was important to mention that the Board does not need to take a stance on some of the legislation coming up in the next session. Ms. Laxalt also mentioned setting up some legislative training for board members and board staff.

Item 15- Report from Board Chair (For Discussion and Possible Action)

- A. aPTitude and Continuing Competence Model Update-
Chairperson Smith informed the Board of the start of Nevada's use of aPTitude and the start of mandating licensees to upload their information and certificates to aPTitude. The terminology of approved which is up to 8 hours and certified would be the remaining 7 hours which is PROCERT certified or what has been approved by the ACC Committee. On the aPTitude website it may be harder to find a specific course that is certified. If a person attends a conference or class that is not approved they can receive half credit for that class.
- B. Newsletter (June 15 distribution date)
Chairperson Smith filled the Board in with the progress of the articles going into the Newsletter.
- C. Board representation of NVPTA/ NOTA Conference, June 2, 2018 (**For Discussion Only**)
- D. Compact discussion; discussion regarding having Sarah Bradley review compact bylaws to see if they would be in line with our NRS and NAC.
Chairperson Smith wanted to ask Sarah Bradley to research the possible restrictions of compact licensure. Chairperson Smith asked Jennifer Nash from the NVPTA to join the conversation. Jennifer Nash agreed that the Compact Licensure goes alone to the legislative session which would be better for the Board to bring forward so the Association can move forward with other legislation. If the Board does take the compact the NVPTA would like to help as necessary.

Chairperson Smith allowed one question from the public about the progress of the new NRS and the public was notified that they have not been codified yet.

Meeting Recessed at 10:41 AM.

Meeting Reconvened at 11:58 AM.

Item 7- Discussion and possible action regarding financial reports and budgetary approvals (For Discussion and Possible Action)

- A. FY19 Proposed Budget-
Director Harvey explained the budget he had proposed for FY19 including a 3% reduction in expenditures. Director Harvey also suggested the Board approve a Reserve Policy. Chairperson Smith asked a few questions about the detail of some expenditures to which more research needed to be done.

Motion: Motion to approve the budget for FY19 and create a reserve policy to equal funds for 6 months; Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

Item 14- Review and discussion on the proposed definition, regulations, and consent form from the Advisory Committee on Dry Needling (**For Possible Action**)

Chairperson Smith filled the board members in on the decision from the Advisory Committee on Dry Needling. It was noted that the decision was not unanimous but was a majority of the committee. Board Member Fearnley asked if there was an addition made stating that dry needling is not acupuncture. Chairperson Smith explained that there was such an addition but it had been taken out. AG Bradley added that the model consent form should be added to the Board's website to show the requirements for the consent form each clinic that dry needles will need to have. Jenelle Lauchman was invited to comment and she talked about how a physical therapist who is certified in dry needling would want to go on to learn more for their continuing competency. Board Member McKivigan asked how the competency of a physical therapist practicing dry needling would be measured. Chairperson Smith added that the Advisory Committee on Continuing Competency will need to be careful to approve quality courses to help ensure the quality of education a physical therapist receives for dry needling.

Motion: I make a motion to accept the recommendations of the committee as well as the regulation and consent form: Brian Fearnley

Second: Sherise Smith

Motion Passes Unanimously

Item 12- Review and discussion of the Nevada Administrative Code (NAC) 640.595 "with the exception of heat and ice" phrase. All other aspects of the presented NAC have been voted on and finalized.

Chairperson Smith reviewed NAC 640.595 as currently worded as well as the previous discussion. Board Member Fearnley noted that the Board may not want to be too restrictive. Mr. Fearnley mentioned a subsection of NAC 640.595 where the NAC gives all the responsibilities to the physical therapist. Chairperson Smith talked about how the Board does not want to hurt small business and that the NAC's will be revisited every year or two. The Board decided it was best to take out number 5 subsection c subsection 4 and make the rest of the regulation stronger.

Motion: Motion on NAC 640.595 number 5 subsection c strike number 4 and on subsection d include the words "ensure and document competency of all tasks performed by the physical therapist technician." Brian Fearnley

Second: Sherise Smith

Motion Passes Unanimously

AG Bradley informed the Board that the regulations that have not changed do not need to be submitted to the Legislative Counsel Bureau. Chairperson Smith added notes for LCB to read while drafting the NAC's.

Item 17- Public Comment

Meeting Adjourned at 1:15 PM