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PHYSICAL THERAPY BOARD

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**BOARD MEETING MINUTES
September 7, 2018**

- Item 1-** Call to Order/ Roll call to determine the presence of a quorum. The meeting was called to order at 9:00 a.m. by Chairperson Smith.

Board Members in Attendance: Sherise Smith, PT, MSPT, CBIS, Chairperson; Eathan O'Bryant, Public Member; Jim McKivigan, DC, PT, MPA, MA Secretary/ Treasurer; Rebecca Cheema, PTA; Brian Fearnley, PT, MPT, Vice-Chairperson joined the meeting at 9:14 a.m.

Staff in Attendance: Debbie Dieter, PT, Investigator; Sarah Bradley, Deputy Attorney General; Greg Ott, Deputy Attorney General; Charles Harvey, Executive Director; Muriel Morin-Mendes, Licensing Coordinator; Danielle Devine, Administrative Assistant; Neena Laxalt, Lobbyist joined the meeting at 10:50 a.m.

- Item 2-** Pledge of Allegiance

- Item 3-** Public Comment

A. Jennifer Mogavero, PT #1256 – Ms. Mogavero addressed the Board about the verification website and the discipline section. She stated that she had a previous violation for failure to change address, but the verification site only states that she has had a violation. She asked that an additional section be added to the verification site that shows the date and type of violation, to make it easier for people being credentialed. Ms. Mogavero also asked if at some point a violation would be dropped. Deputy Attorney Greg Ott stated that the Board could not answer questions but could take a suggestion under consideration.

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

A. July 6, 2018

Motion: I move that we approve the minutes from the July 6, 2018 meeting with edits:
Jim McKivigan
Second: Rebecca Cheema
Motion Passes Unanimously

Director Harvey discussed a question raised during the public comment period of the July 6, 2018 board meeting, regarding the number of hours of training that PTs have in dry needling. The survey results were no longer available to answer that question.

Item 5-

Nevada Physical Therapy Association (NVPTA) Update
Jennifer Nash, NVPTA President, provided the following update:

- Thanked the Board for their support of the OT/PT combined conference in June.
- NVPTA district meeting being held September 212, 2018, Board Chair Smith will speak about Continuing Competence and the aPTitude Platform.
- October is National Physical Therapy Month
- NVPTA Annual membership meeting scheduled for October 6th, to be held on the campus of UNLV in room BHS 130. Meeting will include board member updates and report on national activities from national liaison from the Board of the APTA.
- Grass roots initiatives to make contacts and relationships within our state legislature.
- Second activity in celebration of October PT Month is a PT day of service blood drive. Carrington College will host the event on Saturday, October 13th.
- The Nevada Physical Therapy Association supports PT Licensure Compact legislation.

Item 6-

Review and Decision Regarding Pending Licensure Applications. **(For Possible Action)**
The Board will review, discuss and possibly decide the following pending licensure applications. The Board may grant or deny the applications, and the Board may grant licensure to the applicants under specific terms and conditions as specified in the meeting. If the applicant is present, the Board may ask questions of the applicant, and the applicant will have an opportunity to address the Board regarding his or her licensure application.

A. Barbara Aparicio

Ms. Aparicio was told she did not have to appear before the Board but she did submit the information requested by the Board.

Motion: I move that we grant Barbara Aparicio a Physical Therapy Assistant License:
Jim McKivigan
Second: Sherise Smith
Motion Passes Unanimously

B. Mindy Renfro

Ms. Renfro did appear before the Board. Ms. Renfro was put on a two-year probation but moved from Nevada to Montana before it was completed. Ms. Renfro explained that she had to leave the state to care for her son returning from service. At that time, it did not seem that she would return from Montana and no longer needed the Nevada license. Chairperson Smith weighed how to continue Ms. Renfro's probation. Deputy Attorney General Bradley stated that the board could continue her probation from where it was left

with thirteen months left. Ms. Renfro explained that she could find a spot to continue her probation if necessary. Deputy Attorney General Bradley clarified that Board Member McKivigan and Ms. Renfro work together at Touro University. Board Member McKivigan recused himself from the vote.

Motion: I make a motion to grant licensure with supervision for the remaining thirteen months with previously stipulated requirements and supervision: Brian Fearnley

Second: Rebecca Cheema

Motion Passes Unanimously

C. Mary Alcantara

Ms. Alcantara informed the Board she has been trying to pass her TOEFL- ETS for a number of years but has not been successful. She stated that she has passed it before in order to be licensed in New Jersey. Ms. Alcantara said she was initially licensed in Indiana then Michigan and then New York before her last license in New Jersey where she said she was required to take the TOEFL-iBT. The Board asked if the applicant could show proof and asked Ms. Alcantara to provide her passing scores to be discussed at the next meeting.

Motion: I make a motion that Ms. Alcantara provide the Board with her passing TOEFL score and we will discuss this at the next meeting: Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

D. Whitney Housel

Ms. Housel explained that she did not mean to conceal any charges, but she was unaware that any offenses were on her record. Chairperson Smith explained the importance of self-reporting.

Motion: I move that we grant Whitney Housel a physical therapy assistant license: Jim McKivigan

Second: Eathan O'Bryant

Motion Passes Unanimously

Item 7- Consideration of requests to take the National Physical Therapy Examination (NPTE) (For Possible Action)

A. Physical Therapist Applicant

i. Jason Yokubison

Mr. Yokubison appeared via Skype before the Board to request an appeal to take the NPTE for a seventh time. Mr. Yokubison explained an issue he has with anxiety to which he is treating, but was heightened after a traumatic event. Chairperson Smith explained that accommodations are available if medical documentation is provided. Mr. Yokubison believed that accommodations would be helpful when taking the exam. Board Member Cheema explained some resources that could aid Mr. Yokubison in studying for the National Physical Therapy Exam. Vice-Chairperson Fearnley asked if Mr. Yokubison had pursued classes to aid him in studying in areas where he has had problems. Vice-Chairperson Fearnley recommended a few requirements such as a detailed study schedule.

Motion: I move that we grant Jason Yokubison the opportunity to take the NPTE a final time with the recommendation that he provide the Board with medical records and a request for accommodations for extra time and a separate room if he feels he needs it. I also want him to submit a written study plan for what he plans to do and have the ability to take the test at the January or April 2019 testing date so that he has the option to extend if needed: Sherise Smith

Second: Brian Fearnley

Board Member McKivigan recused himself due to Mr. Yokubison being his student.

Motion Passes Unanimously

Item 8- Ratification of licenses approved and issued by the authority of the Board pursuant to NRS 640.090, NRS 640.146, NRS 640.240, and NRS 640.250 (For Possible Action)

Motion: I move that we ratify all the licenses that were submitted for approval that were issued by the authority of the Board pursuant to NRS 640.090, NRS 640.146, NRS 640.240, and NRS 640.250: Jim McKivigan

Second: Rebecca Cheema

Motion Passes Unanimously

Chairperson Smith thanked the board staff for a quick processing of licenses.

Item 9- Disciplinary Actions (For Possible Action). The Board will discuss, review, and possibly approve a settlement agreement for disciplinary action in the following cases:

A. Taylor Kucera, PT# 3208, Case No. 2016-02

Motion: I make a motion to accept the settlement agreement for Case No. 2016-02: Brian Fearnley

Second: Jim McKivigan

Chairperson Smith recused herself having been the investigating board member.

Motion Passes Unanimously

B. Todd Mansel, PTA # A-0261, Case No. 2017-006

Motion: I move that we accept the terms of the settlement agreement for case number 2017-006: Jim McKivigan

Second: Brian Fearnley

Motion Passes Unanimously

C. Donald Nobis, PT # 2630, Case No. 2017-012, Case No. 2017-013, Case No. 2017-023, Case No. 2017-024, Case No. 2017-027, Case No. 2017-028, Case No. 2017-029, Case No. 2017-030, Case No. 2017-034, Case No. 2018-05

Mr. Nobis attorney Mr. Breen Arntz was present at the meeting to explain that Mr. Nobis is ready to agree to most of the settlement agreement, but there is a small part that they do not yet agree to. Mr. Arntz stated that he and his client needed more time. Chairperson Smith remarked that Mr. Nobis has been granted a continuance from the May meeting. Deputy Attorney General Bradley stated that she was not ready to proceed with a hearing as there were witnesses who would have needed to be called. Deputy Attorney General Ott explained that due to the way the item was agendaized a hearing would not be possible. Board Member Fearnley asked that when the Board looks at a settlement agreement or has a hearing

Motion: I move that we grant a continuance, under very specific parameters of it being agendaized at the next meeting as a full hearing or a settlement agreement if one is reached prior to that date. That Mr. Nobis be present for either of those things and that he needs to be here in person: Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

Meeting Recessed 10:40 a.m.

Meeting Reconvened 10:50 a.m.

Item 10- Formal Hearing for Pamela Juhrend, PT # 1555, Case No. 2016-60. **(For Possible Action)** (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033)

Chairperson Smith swore in the court reporter in preparation of the hearing. Deputy Attorney General Greg Ott explained to Ms. Juhrend that he is the Board's representation for the hearing and the board will direct any questions that they have to him in order to ensure that the hearing was fair. Deputy Attorney General Bradley confirmed that the Complaint and Notice of Hearing was indeed filed and asked if Ms. Juhrend had any formal response she wanted filed. DAG Bradley made her opening statement explaining

the complaint against Ms. Juhrend. Ms. Juhrend gave her opening statement explaining that she had worked in California for 24 years where she did not have to update her address, she also explained that the complaint was made on January 13, 2015 but she was not notified until February 2018, during which she had again changed her professional address. Ms. Juhrend stated that had she been notified in January 2015 about the complaint she would have known to then notify the Board when she made another change in employment. DAG Bradley called Investigator Debbie Dieter, who was then sworn in by Chairperson Smith. Investigator Dieter explained the nature of the initial complaint as well as the breakdown of the pages from Exhibit 2. Ms. Dieter gave a walkthrough of her visit to Alliance Home Health Services, where she explained that she found an expired copy of Ms. Juhrend's license. Investigator Dieter explained that the office administrator looked online to confirm that Ms. Juhrend had a current license but did not say that Ms. Juhrend no longer worked at that office. AG Bradley asked if Investigator Dieter found out that Ms. Juhrend had changed employment at a later date, which was confirmed by Investigator Dieter. DAG Bradley asked Investigator Dieter to explain Exhibit 5. Investigator Dieter explained that it was an email she had sent to DAG Bradley regarding the discovery that Ms. Juhrend had been working but was no longer employed with The Continuum. DAG Bradley asked Investigator Dieter to explain Exhibit 6, which she explained was an email sent to Muriel Morin- Mendes at the Board Office asking for information regarding a change in professional address. Ms. Morin- Mendes confirmed that she had changed her professional address according to the 2015/2016 renewal but documentation of the address change prior to that was not received. DAG Bradley asked Investigator Dieter when the Board was notified of the second address change where Investigator Dieter explained that it was not until the 2017/2018 renewal that the Board was notified of the professional address change to the current location at Eden Home Health. DAG Bradley confirmed that the email included as Exhibit 7 was from Investigator Dieter breaking down the dates as discovered by Investigator Dieter regarding a second address change. Investigator Dieter was asked why it was important for the Board to have updated information, to which she responded that it makes it easier to contact an individual as well as know where to find them in case of a Board inspection. Ms. Juhrend asked Investigator Dieter about the timeliness of her being notified by the Board. Investigator Dieter explained the process that she uses to inform the Board of the issue. Vice-chair Fearnley asked how long it generally takes for the office to notify a respondent of a complaint. DAG Ott explained that this falls under procedures that do not add to the current case so it would not be eligible for discussion during this hearing. Ms. Juhrend was able to proceed with her case. DAG Greg Ott explained the procedures for Ms. Juhrend. Ms. Juhrend was sworn in and stated on her behalf that she did not notify the Board of her address change but had she been notified of the incident in 2015 that she would not have failed to notify the Board when she left The Continuum. Board Member Cheema asked if Ms. Juhrend was currently licensed in the state. Chairperson Smith did make a statement that as a licensee in Nevada, Ms. Juhrend is responsible to be current in her knowledge of the requirements as a physical therapist.

Board Member Cheema asked Chairperson Smith to read factual allegations 13- 17 due to an issue with the copies sent to the south board members.

Motion: I make a motion that factual allegations 1-17 have been proven: Sherise Smith

Second: Brian Fearnley

Motion Passes Unanimously

Motion: I move that the claim for relief has been proven: Jim McKivigan

Second: Brian Fearnley

Motion Passes Unanimously

The Board discussed disciplinary options for this case. Deputy Attorney General Bradley recommended that the Board be reimbursed for its legal cost with no other fine to be required. DAG Bradley explained the Brunzell Factors when looking at the fees accrued by the Board and how the fees were compiled by the Attorney General's Office. DAG Bradley spoke up in favor of not requiring the full amount and broke down her assessment of her work on according to the Brunzell Factors. Chairperson Smith asked if a settlement agreement was proposed. DAG Bradley explained that a settlement was sent to the respondent but no response was given. Ms. Juhrend asked a few questions regarding the origin of some of the charges, to which DAG Bradley explained where they had come from. Board Member O'Bryant stated that he believed that the settlement amount of \$500 was reasonable to which Board Members voiced support for.

Motion: I make a motion that cost incurred by the Board totaling \$500 be assessed against Ms. Juhrend pursuant to NRS 622.400, that these costs be paid within a six-month period: Sherise Smith

Second: Jim McKivigan

Motion Passes Unanimously

Meeting Recessed 11:50 a.m.

Meeting Reconvened 12:43 p.m.

Item 11- Investigation Department

A. Review and Discussion of Outstanding Cases Status Report

B. Review of Cases Recommended for Dismissal (**For Possible Action**)

- i. 2017-10
- ii. 2018-04
- iii. 2018-07
- iv. 2018-10
- v. 2018-11

DAG Bradley gave a brief overview of the cases that were recommended for dismissal. Chairperson Smith asked that the Board be given a review of the investigative procedures at the next meeting

Motion: I move that we dismiss the cases recommended for dismissal: Jim McKivigan

Second: Rebecca Cheema

Motion Passes Unanimously

Item 12- Request for Advisory Opinion. (**For Possible Action**) In accordance with NAC 640.310, the Board will review and discuss a petition for an Advisory Opinion regarding the use of Percutaneous Tibial Neuromodulation (PTNM) to treat residents diagnosed with symptoms of urge incontinence.

Vice-Chairperson Fearnley stated that this request for advisory opinion is too broad for the Board to give an opinion on. Chairperson Smith agreed that the advisory opinion

request is not the proper place to address this subject. Deputy Attorney General Bradley went further to explain that the Board typically offers advisory opinions to more specific questions and from licensees under the jurisdiction or moving to the jurisdiction of the Board. This request is more about a procedure across the profession because it falls under regulating without following the appropriate process. Investigator Dieter explained that this differs from other modalities because it is invasive, so it would require a certain amount of skill. DAG Bradley believed that this may need further consideration in our regulations. Chairperson Smith asked if there was any issue with the Board taking no action regarding this advisory opinion.

Item 13- Board Operations/ Report by Executive Director Harvey

A. InLumon

Director Harvey brought the Board up to date with the current status of the InLumon database. In a meeting with InLumon, Director Harvey had assurances from the InLumon team but the Board staff will still set milestones to be met in a timely manner. One item that the Board has asked for more control over was the sending of emails. in order to see which ones and how many come back or even to be sure they have been sent the Board would like to take the lead in this matter.

B. Continuing Competence Audit

Of those who have renewed their licenses the Board office will be auditing 5% of the active licensees. Those who are chosen by the random number generator will be notified by email and mail, and be able to send their certificates in via email, mail and fax.

C. Executive Branch Audit

When the executive branch audit was completed no recommendations were issued specifically to this board. What was recommended was that boards comply with statutes and guides regarding pay and salaries, the second was for boards to use the office of the attorney general for the baseline of legal support, and third was for boards to do a cost benefit analysis of using in house attorneys in combination with the Attorney General's Office.

D. Annual Audit of Board Financials

The Board is going through an audit with Kohn and Company and the Board will be given a report which should help the Board be sure they are meeting all expectations.

E. Review and approval of Board Financial Reports (For Possible Action)

- i. Balance Sheet
- ii. Profit and Loss Report
- iii. Expenses by Vendor Summary/ Check Detail

Director Harvey explained the set up of the financial report and how the board is doing since the closure of the northern office as well as the change in frequency of meetings.

Item 14- Report from Board Chair. (For Possible Action) The Board will review and discuss the Physical Therapy Licensure Compact and changes and updates from the FSBPT. The

Board may decide to approve the Physical Therapy Licensure Compact. The Board may direct staff or members to follow up on these topics. The Board may determine the next steps for implementation, adoption and/or preparation for the next legislative session.

A. Physical Therapy Licensure Compact

When the compact is adopted it must be adopted in full. So far there are 22 states in the compact with more looking to join. The Compact Commission is made up of members from each jurisdiction. Chairperson Smith asked for the Board to vote to officially move forward with the physical therapy licensure compact.

Motion- I am going to make a motion that the board move forward for the 2019 legislative session to put in a BDR that we join the physical therapy compact; Sherise Smith

Second- Jim McKivigan

Motion Passes Unanimously

B. FSBPT Update- Leadership Issues Forum (LIF)

i. Alternate Approval Pathway

This was added to the proposed NAC 640.040 (3). The key difference is who grants the access for the applicant to sit for the exam. Provided that the applicant has met all the qualifications to sit for the exam the alternative pathway allows them to be approved through the FSBPT and the jurisdiction does not step in until they have passed the exam. The NPTE on the second failed attempt the FSBPT automatically sends a report to the candidate of the breakdown of scores.

ii. Model Board Action Guidelines

The model has been simplified and the board may want to add a few options to allowed discipline such as continuing education requirements or supervision to a license.

iii. Minimum Data Set (MDS)

A survey tool that collects workforce data and an agency in Nevada is collecting this data. Chairperson Smith asked if the board can contact this agency and talk about added some questions to the end of the renewal process to aid in data collection. Any questions that may help in understanding the work force in Nevada.

iv. Board Assessment Tool

This tool includes operational metrics and public safety metrics, board functioning licensing statistics, legislative process, and education outreach. The goal is to have the finalized tool in a year.

Item 15- Legislative Update- Neena Laxalt

Ms. Laxalt suggested that we put together a Legislative Advisory Committee for certain issues that come up without the need of scheduling a board meeting. Ms. Laxalt will be

making bi weekly calls as bills arise. DAG Bradley suggested adding the appointment of the committee on the November Agenda. Now that the Board has voted to move forward with the licensure compact Ms. Laxalt stated that she had found a sponsor. It was explained that some training could be done about the legislative website to help keep the board informed. The Chiropractic Board may be introducing a bill that may be controversial and a dry needling bill which will need to be looked at when more information becomes available.

Item 16- Public Comment

Item 17- Adjournment – Meeting was adjourned at 1:55 p.m.