

## Board Members

BRIAN J. FEARNLEY, PT, MPT  
*Board Chair*

JENNIFER NASH, PT, DPT  
*Board Vice-Chair*

EATHAN O'BRYANT  
*Board Secretary/Treasurer  
Public Member*

SHERISE SMITH, PT, MSPT  
*Board Member*

Laura Cerame, PTA  
*Board Member*

## STATE OF NEVADA STEVE SISOLAK *Governor*



## Staff

CHARLES D. HARVEY, MPA  
*Executive Director*

MURIEL MORIN-MENDES  
*Licensing Coordinator*

CHELSEA WILSON  
*Administrative Assistant*

APRIL RAMIREZ  
*Board Operations Support  
Specialist*

DEBORAH DIETER, PT  
*Board Inspector*

## PHYSICAL THERAPY BOARD

3291 North Buffalo Drive, Suite 100  
Las Vegas, NV 89129

### BOARD MEETING MINUTES May 8th, 2020

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**Item 1 -** Call to Order/Roll Call to determine the presence of a quorum.

The meeting was called to order at 10:29 a.m. by Chair Fearnley.

**Board Members in Attendance:** Brian Fearnley, Board Chair; Jennifer Nash, Vice-Chair; Ethan O'Bryant, Secretary/Treasurer;

**Item 2 -** Pledge of Allegiance

**Item 3 -** Public Comment

None.

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

A. March 6, 2020

**Motion:** Motion to accept the minutes as presented with edits as given: Sherise Smith

**Second:** Jennifer Nash

**Motion Passes Unanimously**

**Item 5 -** Nevada Physical Therapy Association (APTA Nevada) Update

Update provided by Nicole Lange, Secretary, APTA Nevada.

APTA Nevada is working to support its members during the pandemic by communicating daily changes and responding to questions, especially with payers. Medicare is now approving telehealth for private practice outpatient settings for PTs and PTAs. The APTA House of Delegates has converted to a virtual format. The NV Chapter received survey results from a project conducted by UNLV third-year students in coordination with APTA Nevada's Membership Committee. They surveyed PT & PTA students, gathering information on why some people are members and others are not, what prevents them from getting involved, and overall perceptions of the association. The detailed survey results provided the following action items:

- Volunteer opportunities
- Adequately using the platform for communications
- Effectiveness of communications
- Updating technology to better serve members in rural communities

**Item 6 – Probationary License Review (For Possible Action)**

- A. Request for release from probationary status for Ryan Resnik for approval, denial or other administrative action. The Board will review a request for release from probation for approval, denial or other administrative action pursuant to NRS 640.160(1)(d).

Mr. Resnik was present via videoconference, requesting release from probation. Chair Fearnley discussed Mr. Resnik's June 30, 2017 probationary license, and the requirement to appear before the Board to terminate his probation after satisfying the terms of his credentialing in the State of Washington. Board Member Smith stated that she checked with the state of Washington licensure online verification and confirmed that Mr. Resnik had fulfilled his requirements with the State of Washington PT Board and had been released from his informal probation.

**Motion:** Motion to release Mr. Resnik from his probation: Jennifer Nash

**Second:** Ethan O'Bryant

**Motion Passes Unanimously**

**Item 7 -** 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:** Motion to approve the licenses as presented: Sherise Smith

**Second:** Brian Fearnley

**Motion Passes Unanimously**

**Item 8 - Investigation Department (For Possible Action)**

- A. Review and Discussion regarding Outstanding Cases & Case Inventory
- B. Cases Recommended for Dismissal. The Board will review, discuss and possibly approve cases recommended for dismissal.

Deputy Attorney General Detmer provided an overview of outstanding cases and the 18 cases that have moved past the investigation phase. Seven of the 18 cases are in the negotiation phase and one case is getting ready to sign a settlement agreement as early as next week. No cases are being recommended for dismissal at this time.

Chair Fearnley requested a status on the potential hearing that was supposed to take place in the spring. Attorney General Detmer stated that this case is in the settlement negotiation phase. If the case does not resolve shortly, the hearing will proceed on tentative scheduled dates of June 26th, 27th, and 28th. If the hearing proceeds it may be a virtual hearing depending on Governor Sisolak's COVID-19 orders.

**Item 9 - Board Operations / Legislative Update**

- A. Executive Director Harvey presented an update on the May 4, 2020 meeting with the Sunset Subcommittee of the Legislative Commission. During this video-conferenced meeting, Director Harvey reported on four items:
  - 1. Improve training for board members
  - 2. Improve budgeting process
  - 3. Establish an annual audit cycle
  - 4. Results on the board investigation into the conduct of the board's previous Executive Director.

The Sunset Subcommittee followed up with questions in the following areas:

- 1. Approval process for endorsement licenses
  - 2. Status of dry needling regulations
  - 3. Board training
  - 4. The Board's strategic plan.
- B. Reports were presented by other Nevada Boards, including the Chiropractic Physicians Board, the Board of Massage Therapy, the Occupational Therapy Board, and the Board of Accountancy. The Subcommittee asked each of the Boards about their emergency plans for expedited licensure, licensure fees, renewal fees, and excess reserves. The Subcommittee also wants to make sure that Boards are working together to eliminate Boards coming forward with scope of practice issues.

C. Update from Board Lobbyist Neena Laxalt.

**Recess at 11:13 a.m.**

**Reconvene at 11:20 a.m.**

**Item 10 -** Review, Discussion, and possible action regarding the Inlumon Licensing System **(For Possible Action).**

Executive Director Harvey presented a report and reviewed the history of the project, summary of issues and current status of the inLumon Licensing System. Director Harvey requested direction from the board on how they would like to proceed.

**Motion:** Motion to task Director Harvey to begin the process of exploring other database software options: Brian Fearnley

**Second:** Sherise Smith

**Motion Passes Unanimously**

**Item 11 -** Advisory Committee on Continuing Competence Update **(For Possible Action).** The Board will review, discuss and possibly approve recommendations from the Advisory Committee relating to the ACCC Model and White Paper.

The Board discussed recommended changes to the following documents relating to the ACCC Model and White Paper:

1. ACCC Application Review Guidelines
2. Continuing Competence Verification Form
3. Continuing Competence Application and Instructions
4. Continuing Competence Model Guidelines

Sherise Smith recommended an August 1, 2020 announcement of the new documents, to avoid confusion with the current licensing renewal period. Chair Fearnley thanked Vice-Chair Nash for her time and efforts on this item.

**Motion:** Motion to accept the documents as presented, with the discussed changes, for approval and use by the Nevada Physical Therapy Board: Brian Fearnley

**Second:** Laura Cerame

**Motion Passes Unanimously**

**Item 12 -** Review, Discussion, and Possible Action regarding COVID-19 Executive Orders **(For Possible Action).** The Board will review, discuss and possibly approve additional actions, exemptions and or waivers in response to the Governor's Executive Orders, as it may apply to the following:

## A. Physical Therapy Licensing

Board members discussed concerns from applicants who were out of work and unable to pay for their licenses or were unable to complete continuing requirements due to coronavirus. Chair Fearnley stated that it was his desire that the Board be viewed as collaborative rather than punitive in helping licensees' practice and giving them tools and concessions that allow them to provide essential services. The Board discussed measures to help applicants obtain licensure during the COVID-19 pandemic, including acceptance of electronic transcripts, provisions for issuance of temporary licensure including graduate status, NPTE testing dates, and the communication of this information using bulk email, the Board website, and APTA NV Listserv. The Board also discussed the Alternate Approval Pathway, an initiative that will streamline the eligibility process by 10-14 days. Language allowing for use of the Alternate Approval Pathway was included in the Board's proposed regulation R137-18, which is awaiting approval by the Legislative Counsel Bureau. The current regulation NAC 640.040(3), reads: "The applicant must file a completed application with the Executive Director of the Board." This section was revised in R137-18 to read: "The applicant must file a completed application with the Board office or the FSBPT through the Alternate Approval Pathway." The Alternate Approval Pathway will be agendaized as a future agenda item.

## B. License Renewals

## C. Continuing Competence Course Approvals

The Board discussed measures to assist licensees during the COVID-19 pandemic, including an extension of the Governor's statement: "*All licenses and permits issued by the State of Nevada, Boards, Commissions, Agencies, or political subdivisions of the State of Nevada that expire or are set to expire during the period the Declaration of Emergency dated March 12, 2020 is in effect shall be extended for a period of 90 days from the current expiration date, or 90 days from the date the state of emergency declared on March 12, 2020 is terminated, whichever is later, if reduced government operations due to the state of emergency makes timely renewal of the license or permit impracticable or impossible*". The license renewal period for renewal fees and continuing competence, acceptance of online continuing competence courses, and a forbearance process for COVID-19 hardships was discussed. Deputy Attorney General Detmer advised the Board of Governor Sisolak's COVID-19 Declaration of Emergency (Directive 009), which includes a provision for the renewal of licenses that expire during the state of emergency. This provision contained in section 3 of Directive 009 reads:

*All licenses and permits issued by the State of Nevada, Boards,*

*Commissions, Agencies, or political subdivisions of the State of Nevada that expire or are set to expire during the period the Declaration of Emergency dated March 12, 2020 is in effect shall be extended for a period of 90 days from the current expiration date, or 90 days from the date the state of emergency declared on March 12, 2020 is terminated, whichever is later, if reduced government operations due to the state of emergency makes timely renewal of the license or permit impracticable or impossible.*

**Motion:** Motion that if a licensee demonstrates the inability to pay licensure fees or CCUs to the Executive Director, the Executive Director can make a determination on the extension of that license for a period of 90 days: Brian Fearnley

**Second:** Sherise Smith

**Motion Passes Unanimously**

D. Status of National Physical Therapy Exam

The Board discussed the impact of Prometric testing center closures due to COVID-19. Chair Fearnley stated that the latest communication indicated that they would be closed through May 31, 2020, except for essential services programs. FSBPT is considered an essential services program, which means that our candidates will be allowed to test. Board Member Cerame mentioned that Prometric testing centers were operating at 50% capacity to adhere to social distancing guidelines, and people will need to wear facemasks. This will significantly reduce the number of seats available in Nevada because there is only one Prometric testing center in the state.

E. Communication with Licensees

**Motion:** Motion that the Board charge the Executive Director with communicating with our licensees on our actions regarding the COVID-19 crisis and their license renewal: Jennifer Nash

**Second:** Brian Fearnley

**Motion Passes Unanimously**

Item 13 - Report from Board Chair (**For Possible Action**).

A. Future Agenda Items. Board members may request that items be added to the next Board meeting agenda and future meeting dates may be scheduled or changed, as needed.

1. Chair Fearnley stated that the Sunset Committee Report prepared by Director Harvey was fantastic. It is a positive thing for the Board to be well prepared and represented at the meeting. Chair Fearnley recognized the extra work and efforts of Board staff

working from home and at the office during the pandemic.

2. The Board discussed future agenda items for the July 2020 Board Meeting:
  - i. Minimum Data Set
  - ii. Board Model Action Guidelines
  - iii. Jurisprudence Assessment Model
  - iv. Board Assessment Resource
  - v. Update on Board COVID-19 extensions
  
3. Deputy Attorney General Detmer presented addition information for the Board's consideration on the Motion approved for Item 12A & B, which delegated authority to the Executive Director. DAG Detmer advised the Board of the possibility for an objection or compliant for arbitrary and capricious action. He stated that the Board may receive a complaint if there is not uniformity across the board. If the Board continues with the action of delegating authority to the Executive Director, they have to be comfortable knowing that a complaint may arise regarding the specific parameters that are provided. The alternative route would be one were there can be no argument or complaint for arbitrary and capriciousness, as it is uniform across the board. For example, a steadfast rule that cannot be interpreted any other way. If the Board wants to open discussion on this item, the Chair will need to recall Item 12.

**Item 12A/B** - Reopened by Chair Fernley for additional discussion and possible revision of previous motion.

Deputy Attorney General Detmer advised the Board that they may revisit the manner in which they wish to address considerations for continuing competence credits, as well as license fees and renewals. Concerns for arbitrary and capricious complaints should be considered and possibly re-voted on, if the board has these concerns.

Discussion by the Board on the above and Chair Fernley requested input from the Board.

**Motion:** Motion that the Board give Executive Director Harvey the authority to extend any licensee who contacts the Board Office to request delay of payment or renewal of license for a period of 90 days from the date of expiration: Brian Fearnley

**Second:** Sherise Smith

**Motion Passes Unanimously**

Item 14 - Public Comment

None.

Item 15 - Adjournment (**For Possible Action**).

**Motion:** Motion to adjourn at 1:06 p.m.: Brian Fearnley

**Second:** Sherise Smith

**Motion Passes Unanimously**