



New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION
Board of Physical Therapy

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BOARD MEETING MINUTES

September 19, 2008 (1:00 p.m.)

Location: Best Western Pine Springs Inn
1420 W. Hwy 70
Ruidoso Downs, New Mexico 88346

1. CALL TO ORDER/ROLL CALL

Michelle Gutierrez, Chair, called the Regular Meeting of the New Mexico Physical Therapy Board to order at 1:47 p.m. Roll call was taken and a quorum was determined present.

MEMBERS PRESENT:

Michelle Gutierrez, Chair, Professional Member
Kim Osborne, Vice-Chair, Professional Member
Robert P. Romero, Professional Member
Harold Melnick, Public Member
Alfred Cata, Public Member

BOARD COUNSEL:

Mona Valicenti, Assistant Attorney General (Excused)

STAFF PRESENT:

Stephen Oliver, Boards & Commissions, Team Leader
Velma Rodriguez, Board Administrator
Amanda Niño, Compliance Liaison

2. APPROVAL OF AGENDA

MOTION was made by Kim Osborne to accept the agenda as amended. **SECONDED** by Harold Melnick. **MOTION CARRIED** unanimously.

3. APPROVAL OF MINUTES

3.1 June 19, 2008

MOTION was made by Alfred Cata to approve the minutes from June 19, 2008 as written. **SECONDED** by Kim Osborne. **MOTION CARRIED** unanimously.

4. EXECUTIVE SESSION (closed to the public)

For the record, Chair Gutierrez stated "The Board will go into Executive Session Pursuant to Section 10-15-1 of the Open Meetings Act, to discuss matters listed on the agenda under Executive Session".

MOTION was made by Harold Melnick to close the New Mexico Board of Physical Therapy meeting while the Board enters into Executive Session to discuss licensing matters as listed in the amended agenda under Executive Session pursuant to §10-15-1 (H) (1) and (3) of the Open Meetings Act. **SECONDED** by Al Cata. **MOTION CARRIED** unanimously.

Date 9/2008

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For the record, Kim Osborne announced that agenda item # 8.2 (a) (2) – Inappropriate billing by unlicensed technicians listed under “New Business” is considered a complaint and shall be heard in Executive Session. The Board will hear this item in Executive Session rather than in Open Session.

MOTION was made by Kim Osborne to amend the agenda as well as the previous motion, and proposed to move item # 8.2 (a) (2) – Inappropriate billing by unlicensed technicians to Executive Session. **SECONDED** by Harold Melnick. **MOTION CARRIED** unanimously.

Roll was taken:

Michelle Gutierrez, present
Kim Osborne, present
Robert Romero, present
Harold Melnick, present
Alfred Cata, present

Let the record show that at 1:55 p.m. the board entered into executive session and the recorder was turned off.

Executive Session was held and ended at 2:45 p.m.

MOTION was made by Al Cata to take a short break and then return to Open Session.

Back in Open Session

Chair Gutierrez reconvened to Open Session and stated “Let the record show that the recorder was turned back on at 3:00 p.m. and the New Mexico Board of Physical Therapy is back into open session. During Executive Session, the Board reviewed and discussed only matters related to the items as listed on the amended agenda under Executive Session as specified in the motion”.

Chair Gutierrez announced that Kim Osborne cannot attend today’s meeting to its entirety and proposed to move item #8.4 entitled Board Annual Election, and that this item be heard immediately after item #5 of the amended agenda.

MOTION was made by Michelle Gutierrez to move up item #8.4 – Board Annual Election. This item will be heard immediately after item #5 of the amended agenda. **SECONDED** by Al Cata. **MOTION CARRIED** unanimously.

5. BOARD ACTION ON MATTERS DISCUSSED IN CLOSED SESSION

Case 01, 04-08: No motion – waiting on response from Respondent.

Case 04, 08-06:

MOTION was made by Al Cata to dismiss this case without prejudice secondary to the statute of limitation expiration. **SECONDED** by Harold Melnick. **MOTION CARRIED** with Kim Osborne abstaining.

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For the record and relative to Case 04,08-06, Al Cata and members of the Board expressed concerns over the two-year statute of limitations rule and the impact that this is having on complaints which are not being handled in a timely fashion. The Board recommended that Andrew Vallejos, Director of Boards and Commissions be notified by letter of such concern and suggested that appropriate action be taken to remedy this situation.

Case 04, 09-07:

MOTION was made by Michelle Gutierrez to close this case as this case was previously forwarded to the State of New Mexico Medicaid Fraud Unit. **SECONDED** by Al Cata. **MOTION CARRIED** with Kim Osborne abstaining.

Case 05, 09-01:

MOTION was made by Al Cata to dismiss this case as respondent is now in compliance with Child Support obligations. **SECONDED** by Michelle Gutierrez. **MOTION CARRIED** with Kim Osborne abstaining.

Case 05, 09-08: (For the record, this case was incorrectly numbered as 05, 10-08 and corrected.)

MOTION was made by Robert Romero that the Board hire an investigator to investigate this case and suggested to expedite the investigating process. **SECONDED** by Harold Melnick. **MOTION CARRIED** with Kim Osborne abstaining.

Case 06, 09-08: (For the record, this case was incorrectly numbered as 06, 11-08 and corrected.)

MOTION was made by Michelle Gutierrez to have a hearing with the Respondent and requested that Respondent be present before the Board at its next meeting. Ms. Gutierrez also motioned that the Board will avoid issuing a permanent license until passage of the National Physical Therapy Exam (NPTE), the score results must be received and the hearing takes place. **SECONDED** by Al Cata. **MOTION CARRIED** with Kim Osborne abstaining.

Case 07, 08-07: No motion – waiting on response from Respondent.

Item 8.2 (a) (2) – Inappropriate billing by unlicensed technician.

MOTION was made by Al Cata that the Board will respond to this item when a formal complaint is filed. **SECONDED** by Robert Romero. **MOTION CARRIED** unanimously.

Ratification of Licenses Issued: PT's/PTA's

MOTION was made by Kim Osborne that all the PT's whose license numbers are 3535 through 3580, and that all the PTA's whose license numbers are A-0623 through A-0638 as listed on the amended agenda be licensed as physical therapist's and physical therapy assistants. **SECONDED** by Harold Melnick. **MOTION CARRIED** unanimously.

6. PUBLIC COMMENT

No public comments made.

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As stated previously, item 8.4 – Board Annual Election will be heard out of order.

a. Election of Chair:

MOTION was made by Kim Osborne to re-elect Michelle Gutierrez as Board Chair. **SECONDED** by Robert Romero.

Michelle Gutierrez reported that she enrolled in a doctor of science program and feels that, at this point in her career, her time is limited; therefore, she wishes to pass the duty of Board Chair to another officer.

MOTION was made by Michelle Gutierrez to elect Robert Romero as Board Chair. **SECONDED** by Al Cata. **MOTION CARRIED** unanimously.

b. Election of Vice-Chair:

MOTION was made by Michelle Gutierrez to elect Al Cata as Vice-Chair. **SECONDED** by Harold Melnick. **MOTION CARRIED** unanimously.

c. Election of Secretary/Treasurer:

MOTION was made by Michelle Gutierrez to elect Harold Melnick as Secretary/Treasurer. **SECONDED** by Al Cata. **MOTION CARRIED** unanimously.

7. OLD BUSINESS

7.1 New Jurisprudence Exam posted on website.

After some discussion, Al Cata announced that the Federation of State Boards of Physical Therapy (FSBPT) is now developing and administering the jurisprudence exam for several jurisdictions. Licensing authorities who are interested in having the jurisprudence exam administered by FSBPT would need to register for this service. FSBPT will assign a committee to review the rules and regulations for each participating jurisdiction and selects test questions based on importance of each licensing authority rules. Mr. Cata also reported that applicants taking the exam would be required to familiarize themselves with the rules and regulations for passage of the exam. Members of the Board expressed interest in having our NM Jurisprudence Exam administered by FSBPT. Board staff will check with Regulation and Licensing IT Department and FSBPT about having this exam administered through FSBPT.

8. NEW BUSINESS

8.1 a. Introduction of Board Administrator and FSBPT report - Steve Oliver

Steve Oliver introduced Velma Rodriguez as the recently selected Board Administrator; however, as the Team Leader/Staff Manager of several boards, Mr. Oliver will continue to oversee the board's operation. Mr. Oliver went on to say that he will also continue working with FSBPT on board matters, and reported that he recently attended the annual FSBPT Conference where he gathered a wealth of information. Additionally, Mr. Oliver announced that while at this conference, he was elected to Chair the Counsel of Board Administrators at next year's conference.

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b. FSBPT reports by Robert Romero and Al Cata

Along with Steve Oliver, Robert Romero and Al Cata also attended the annual FSBPT Conference. Mr. Romero acknowledged Steve Oliver for his efforts that he put forth at the conference, particularly with the comparison of the NM Physical Therapy Practice Act to the FSBPT Model Practice Act. Al Cata reported that at the FSBPT meeting he focused primarily on sessions related to ethics and remediation, and suggested that the current rule related to remediation be updated in order to handle complex cases more consistently in the future. Mr. Romero and Mr. Cata jointly stated that this meeting was quite informative and emphasized on issues more closely related to the current practice in physical therapy. As a resource tool, FSBPT and its Model Practice Act are readily available when dealing with diverse questions or compliance cases.

c. Sunset Review Hearing with LFC Sunset Subcommittee

Steve Oliver reported that the Sunset Review Hearing is scheduled on Tuesday, September 23, 2008 at the State Capital Building. Robert Romero and Steve Oliver will attend the hearing.

After some discussion, members inquired about a “Super Board” meeting that was held in Farmington which would oversee health care boards particularly with changes to or expansion of the scope of practice. The purpose of this meeting as well as the outcome was ambiguous.

MOTION was made by Michelle Gutierrez that the NM Board of Physical Therapy is opposed to a Super Board as this Board is responsible for their own rules and for the protection of the community.

SECONDED by Al Cata. **MOTION CARRIED** unanimously.

d. Board Membership Appointments/Reappointments

No report at this time; however, Steve Oliver continues to keep in contact with the Governor’s Office regarding the vacant position.

8.2 Update by Board Administrator – Velma Rodriguez

Velma Rodriguez presented the following licensee inquiries/concerns:

a. Dry Needling

The Board reported that this question is continuously brought up; however, the current practice act is silent and does not recognize this type of procedure.

b. Medicare billing –vs- personal billing.

After some discussion, it was determined that a healthcare organization has a right to opt out of accepting medicare beneficiaries; therefore, the organization has the right to refuse a patient who is willing to pay on a cash basis only. The Board suggested that this inquiry be directed to his legislative representative as this matter is out of the Board’s jurisdiction.

c. CEU question regarding MBA courses.

MOTION was made by Michelle Gutierrez to approve 10 contact hours for the marketing management course – the maximum allowed for a management course; and, upon successful completion of the

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Information Systems Security course with a grade of “C” or better, 20 contact hours shall be awarded upon receipt of an unofficial transcript. **SECONDED** by Al Cata. **MOTION CARRIED** unanimously.

8.3 Proposed Rule Changes

Part 3: Issuance of Licenses (16.20.3.13 – Inactive License)

After some discussion on Board rules, the Board determined that at the November 2007 rule hearing the following rule was included with the rule changes and adopted; however, this particular rule was omitted during filing with the New Mexico Register:

16.20.3.13 INACTIVE LICENSE:

[A. A physical therapist and/or physical therapist assistant in good standing may place the valid license on inactive status upon written request to the board and prior to the expiration of the license.]

[B. Practicing with an inactive license, subjects the licensee to disciplinary action by the board.]

[C. An annual inactive fee must be submitted to the board. (Refer to Part 5, Schedule of Fees.)

[D. A licensee may reactivate the inactive license by submitting the following:

(1) a renewal form for the year in which the licensee wishes to reactivate;

(2) payment of the applicable annual renewal fee;

(3) proof of continuing education units for each year of inactive status;

(4) if the license was on inactive status for five years or more, the board may require additional proof of competency;

(5) passing the jurisprudence exam; and

(6) completion of a verification of employment of employment form for licensees that have practiced outside New Mexico while on inactive status.

Because this particular section was omitted when filing the adopted rules, administrative staff will inquire about the process for filing this omitted section and will report back at the next board meeting.

Michelle Gutierrez reported that continuous questions arise for clarification on direction, supervision and direct care requirements of PTA's; therefore, the following parts of the current rules were briefly discussed for consideration for possible rule change:

Part 6: Physical Therapist Assistants

Part 7: Supervision

Part 10: Direct Care Requirements

Documents from the American Physical Therapy Association (APTA), which describes the scope of practice for the physical therapist assistant, were distributed for review and to be used as a reference guide during the next rule change in order to conform to the APTA's House of Delegates recommended practice patterns and appropriate utilization of PTA's. Proposed changes to the above parts will closely reflect the NM Physical Therapy Act, whereas the current rule is limited.

Additionally, discussion on biennial renewal will also be considered at an upcoming board meeting. Further discussion will take place when Board Counsel is present at the next board meeting.

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Al Cata briefly touched on the Standards of Competence exam that FSBPT is working on developing. FSBPT is committed to the development of a national framework that jurisdiction licensing boards may use to assess continuing competence of physical therapy practitioners. Upon completion of the Standards of Competence exam, each jurisdiction would have the option to adopt the exam, which could be utilized by each jurisdiction in lieu of continuing education hours.

8.4 This item was heard out of order, and was heard before item 7. – Old Business

8.5 Adoption of Board Code of Conduct Resolution

MOTION was made by Robert Romero to table the voting on the Board Code of Conduct Resolution until the next meeting. **SECONDED** by Al Cata. **MOTION** carried unanimously.

9. NEXT BOARD MEETING

December 4, 2008: Presbyterian Health Plex in Albuquerque, NM at 11:00 a.m.

10. ADJOURNED

MOTION was made by Robert Romero to adjourn. **SECONDED** by Al Cata. **MOTION CARRIED** unanimously.

Meeting adjourned at 2:32 p.m.

Submitted by: _____
Velma Rodriguez, Board Administrator

Date: _____

Approved by: _____
Robert Romero, Chair

Date: _____