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**Texas Board of Physical Therapy Examiners
Board Meeting**

**Vintage Villas
4209 Eck Lane
Austin, Texas 78734**

**November 13 - 14, 2015
9:00 am**

13 **Members Present:** Gary Gray, PT, Chair
14 Melinda Rodriguez, PT, DPT, Secretary
15 Harvey Aikman, PT
16 Barbara Sanders, PT, PhD
17 Jeffrey Tout, PT
18 Philip Vickers, Public Member
19 Daniel Reyna, Public Member
20

21 **Member Absent:** Shari Waldie, PT
22

23 **Legal Counsel:** Kara Holsinger, Assistant Attorney General
24

25 **Staff:** John Maline, Executive Director
26 Karen Gordon, PT Coordinator
27 Mark Turek, Chief Investigator
28 Cynthia Machado, Licensing Manager
29

30 **Guests (11/13/15):** Kathleen Manella, Texas Physical Therapy Association (TPTA) Liaison
31 Stacey Mather, TPTA Staff
32 Amber Townsley, TPTA Staff
33 Susan Layton, Federation of State Boards of Physical Therapy (FSBPT), COO
34 Mark Lane, FSBPT Vice President
35 Ken Gordon, FSBPT Board Public Member
36 Joe Walraven, Sunset Advisory Commission, Assistant Director
37 Erick Fajardo, Sunset Advisory Commission, Policy Analyst
38 Alan Leonard, Sunset Advisory Commission, Policy Analyst
39 Kathy Grant, Texas Association of Acupuncture and Oriental Medicine
40

41 **Guests (11/14/15):** Kathleen Manella, TPTA Liaison
42 Stacey Mather, TPTA Staff
43 Erick Fajardo, Sunset Advisory Commission, Policy Analyst
44 Henry Ebem, Mitroo
45 Eugene Ebem, Mitroo
46 Patrick Ayem, Mitroo
47 Lola Oyeyipo, Mitroo
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1 *This meeting will convene at 9:00 a.m. on November 13th. After the meeting is recessed on*
2 *November 13th, it will be reconvened at 1:00 p.m. on November 14th.*

3
4 Agenda items listed under several committee reports begin with the letter D intentionally. No items have been
5 omitted from the board agenda.

- 6
- 7 1. Call to order
- 8 2. Public comment
- 9 3. Approval of minutes from the August 28, 2015 meeting in Austin.
- 10 4. Discussion of and possible action on the future of physical therapy regulation in Texas,
11 including discussion of AG Opinion Request regarding dry needling, Physical Therapy
12 Licensure Compact, Telehealth, FTC Staff Guidance on Active Supervision of State Regulatory
13 Boards Controlled by Market Participants, and Sunset Review.
- 14 5. Discussion and possible action on Executive Director's Report concerning fiscal and budgetary
15 matters, performance measures, ongoing projects, agency personnel matters, Sunset Review,
16 and other agency business.
- 17 6. Investigation Committee Report and consideration by the Board of the following items:
18 A. Review and possible action on Agreed Orders for case #: 15066; 15175; 15368;
19 15392; 15405; 15417; 15419; 15434; 15443; 15452; 15458; 15461; 15463; 15464;
20 15469; 15472; 15473; 15477; 15481; 15482; 15483; 15484; 15495; 15499; 15065; 16011
21 and 16021.
22 B. Discussion and possible action on the Investigation Committee Meeting of October 8, 2015
23 and November 13, 2015.
24 C. Discussion and possible action on investigative activities to date.
- 25 7. Discussion and possible action on adopting changes to: §323.3. Adoption of Rules; §329.1.
26 General Licensure Requirements and Procedures; §329.6.Licensure by Endorsement; §341.20.
27 Licensees Called to Active Military Service; and Chapter 347. Registration of Physical Therapy
28 Facilities.
- 29 8. Rules Committee Report: discussion and possible action by the Board on the following items:
30 D. Discussion and possible action on proposing changes to §341.6. License Restoration per
31 SB 1307.
32 E. Discussion and possible action on proposing changes to §329.1. General Licensure
33 Requirements and Procedures and §341.1. Requirements for Renewal regarding Criminal
34 Background Checks.
35 F. Discussion and possible action on proposing changes to 322.1. Provision of Services
36 regarding dual credentialed PTs/PTAs and their role in the promotion of health, wellness,
37 and fitness.
38 G. Discussion and possible action on developing a policy regarding use of emails for Board
39 members and staff.
40 H. Discussion and possible action on regulation of schools offering physical therapy technician
41 certificates.
42 I. Discussion and possible action on proposing changes to §322.1. Provision of Services,
43 regarding adding (f) Telehealth.
- 44 9. Education Committee Report:
45 D. Discussion and possible action on the Texas Physical Therapy Association (TPTA)
46 Continuing Competence Approval Program (CCAP) report, including review of the updated
47 Memorandum Of Understanding (MOU) for approval recommendation.
48 E. Discussion and possible action on proposing changes to §329.1. General Licensure
49 Requirements and Procedures, including the Federation of State Boards of Physical
50 Therapy (FSBPT) alternate path for exam eligibility approval.
51 F. Discussion and possible action on proposing changes to §329.2. Licensure by
52 Examination, including NPTE Appeal process.
53 G. Discussion and possible action on proposing changes to §329.5. Licensing Procedures for
54 Foreign-Trained Applicants, including upcoming FSBPT changes, Duke University online
55 module on the US healthcare delivery system, utilization of PTA Coursework Tool, and
56 TOEFL requirements for endorsement applicants.

- 1 H. Discussion and possible action on proposing changes to §341.2. Continuing Competence
- 2 Requirements regarding the ethics/professional responsibility requirement, including
- 3 FSBPT's online Jurisprudence Assessment Module (JAM).
- 4 I. Discussion and possible action on proposing changes to §341.3. Qualifying Continuing
- 5 Competence Activities, including item writers for exams other than NPTE and
- 6 Resident/Fellow Mentorship partial credit.
- 7 J. Discussion and possible action on a request for a continuing competence waiver by a
- 8 licensee.
- 9 10. Discussion and possible action on the Federation of State Boards of Physical Therapy (FSBPT),
- 10 including the Annual Meeting held October 16-17, 2015 and volunteer opportunities.
- 11 11. Discussion and possible action on the Board Coordinator's report concerning any item listed on
- 12 the agenda and on events that have occurred between this meeting and the Board's last
- 13 meeting.
- 14 12. Discussion and possible action on the Board Chair's report concerning any item listed on the
- 15 agenda and on events that have occurred between this meeting and the Board's last meeting.
- 16 13. Discussion and possible action on long-term planning for future meetings, including future
- 17 meeting dates and agenda items.
- 18 14. Adjournment

19
20 The Board may meet in closed session on any agenda item listed above as authorized by the Texas
21 Open Meetings Act, Texas Government Code Chapter 551.

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1 **1. Call to order**

2
3 Mr. Gray called roll and determined that a quorum existed. He called the meeting to order at 9:15
4 a.m.

5
6 **2. Public comment**

7
8 There was no public comment.

9
10 **3. Approval of minutes from the August 28, 2015 in Austin.**

11
12 *Motion: To approve the minutes as submitted.*
13 *Made by: Harvey Aikman*
14 *Second: Melinda Rodriguez*
15 *Motion passed unanimously.*
16

17 **4. Discussion of and possible action on the future of physical therapy regulation in**
18 **Texas, including discussion of AG Opinion Request regarding dry needling, Physical**
19 **Therapy Licensure Compact, Telehealth, FTC Staff Guidance on Active Supervision of**
20 **State Regulatory Boards Controlled by Market Participants, and Sunset Review.**

21
22 The Board entered open discussion on the following topics:

23
24 **AG Opinion Request (RQ-0068-KP):** The Texas State Board of Acupuncture Examiners requested
25 an opinion from the attorney general regarding whether or not the practice of dry needling is the
26 practice of acupuncture as defined by Texas Occupations Code §205.001(2) and whether or not the
27 legislature intended that the practice of acupuncture be encompassed under the scope of practice
28 of physical therapists. The Board will be preparing a brief in response to the request for submission
29 to the AG's Opinion Committee by December 14, 2015.

30
31 **Physical Therapy Licensure Compact (PTLC):** Mark Lane, FSBPT Vice President, presented an
32 update on the PTLC with language for legislative consideration. The Board members discussed the
33 next steps to getting the language introduced as a bill in the 2017 legislative session.

34
35 **Telehealth:** The Board discussed the relationship that telehealth would have within the PTLC.

36
37 **FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market**
38 **Participants:** The Board reviewed and discussed the guidelines developed by FTC staff for active
39 supervision of state regulatory boards.

40
41 **Sunset Review:** The Board discussed the agency's Sunset Self Evaluation Report and the timeline
42 of the review.

43
44 Mr. Gray recessed the meeting at 10:35 a.m. and reconvened at 10:50

45
46 **5. Discussion and possible action on Executive Director's Report concerning fiscal and**
47 **budgetary matters, performance measures, ongoing projects, agency personnel matters,**
48 **Sunset Review, and other agency business.**

49
50 Mr. Maline reported on the following:

- 51 • Agency budget and fiscal status for FY 2015 and to date for FY 2016
- 52 • Performance Measures
- 53 • Completion of the Sunset Self-Evaluation Report

54
55
56 Mr. Gray reordered the agenda to consider items #7 and #10.
57

1 **7. Discussion and possible action on adopting changes to: §323.3. Adoption of Rules;**
2 **§329.1.General Licensure Requirements and Procedures; §329.6.Licensure by**
3 **Endorsement; §341.20. Licensees Called to Active Military Service; and Chapter 347.**
4 **Registration of Physical Therapy Facilities.**

5
6 *Motion: To adopt changes to §323.3. Adoption of Rules as proposed.*

7 *Made by: Harvey Aikman*

8 *Second: Melinda Rodriguez*

9 *Motion passed unanimously.*

10
11 There were no comments or discussion on this amendment.

12
13 *Motion: To adopt changes to §329.1. General Licensure Requirements and Procedures and*
14 *329.6. Licensure by Endorsement as proposed.*

15 *Made by: Philip Vickers*

16 *Second: Harvey Aikman*

17 *Motion passed unanimously.*

18
19 There were no comments or discussion on this amendment.

20
21 *Motion: To adopt changes to §341.20. Licensees Called to Active Military Service as*
22 *proposed.*

23 *Made by: Barbara Sanders*

24 *Second: Melinda Rodriguez*

25 *Motion passed unanimously.*

26
27 There were no comments or discussion on this amendment.

28
29 *Motion: To adopt changes to Chapter 347. Registration of Physical Therapy Facilities as*
30 *proposed.*

31 *Made by: Harvey Aikman*

32 *Second: Philip Vickers*

33 *Motion passed unanimously.*

34
35 There were no comments or discussion on this proposal.

36
37 (See Attachment A for the adopted changes)

38
39 **10. Discussion and possible action on the Federation of State Boards of Physical Therapy**
40 **(FSBPT), including the Annual Meeting held October 16-17, 2015 and volunteer**
41 **opportunities.**

42
43 Mr. Aikman, Mr. Tout, and Ms. Gordon reported on the sessions that they attended at the FSBPT
44 Annual Meeting and the results of the elections as follows:

45 Tom Caldwell (Ohio), Secretary

46 Natalie Harms (Nebraska), Treasurer

47 Dave Relling (North Dakota), Board member

48 Tom Ryan (Wisconsin), Nominating Committee.

49
50 Ms. Layton informed the Board that there were available openings on task forces and committees,
51 and that anyone interested should contact the Federation.

52
53
54 Mr. Gray recessed the meeting at 11:48 a.m. and announced that the meeting will reconvene at 1:00
55 p.m. on November 14, 2015.

1 Mr. Gray reconvened the meeting at 1:02 p.m. on November 14, 2015. He called roll and determined
2 that a quorum existed.

3
4 **Public comment:** Mr. Henry Ebem from, Mitroo presented information on his company's compliance
5 software for continuing education management.

6
7 **6. Investigation Committee Report and consideration by the Board of the following items:**

8
9 **A. Review and possible action on Agreed Orders for case #s:** 15066; 15175; 15368;
10 15392; 15405; 15417; 15419; 15434; 15443; 15452; 15458; 15461; 15463; 15464;
11 15469; 15472; 15473; 15477; 15481; 15482; 15483; 15484; 15495; 15499; 15065; 16011
12 and 16021.

13
14 The Board reviewed and approved the following Agreed Orders presented by Mr. Turek:

15
16 15066; 15405; 15419; 15434; 15443; 15452; 15458; 15461; 15463; 15464; 15469;
17 15472; 15482; 15483; 15484; 15495; 15499; 16011 and 16021.

18
19
20 **B. Discussion and possible action on the Investigation Committee Meeting of October 8,**
21 **2015 and November 13, 2015.**

22
23 Mr. Turek reported that the Committee reviewed 144 cases and issued 29 agreed orders. Mr.
24 Reyna reported that the Committee had discussed the recent facility registration disciplinary action
25 and had decided to reduce the disciplinary action to a letter of reprimand and administrative fines as
26 follows:

- 27 \$1000 for owner
- 28 \$500 each for PTs and PTAs working in facility during expired registration
- 29 \$1500 if PT working in facility is also the owner of the facility
- 30 \$1000 for Therapist in Charge

31 He also related that 2nd or 3rd offense could result in revocation of registration.

32
33 *Motion: To accept the disciplinary action of a letter of reprimand and administrative fines for*
34 *expired facility registration disciplinary action.*

35 *Made by: Committee*

36 *Second: None required*

37 *Motion passed unanimously.*

38
39 **C. Discussion and possible action on investigative activities to date**

40
41 Mr. Turek reported on performance measures and on the number of investigations and school visits
42 completed since the last meeting.

43
44
45 **8. Rules Committee Report and discussion and possible action by the Board on the**
46 **following items:**

47
48 **D. Discussion and possible action on proposing changes to §341.6. License Restoration**
49 **per SB 1307.**

50
51 Mr. Aikman brought forth a motion from Committee to amend §341.6. License Restoration to add
52 military service member and military veterans as qualifying for expediting the restoration of a
53 license per SB 1307 which passed during the 84th Legislature (2015).

54
55 *Motion: To propose changes to §341.6. License Restoration as submitted.*

56 *Made by: Committee*

57 *Second: None required*

1 *Motion passed unanimously.*

2
3 There were no comments or discussion on this proposal.

4
5 (See Attachment B for proposed rule amendment)

6
7 **E. Discussion and possible action on proposing changes to §329.1. General Licensure**
8 **Requirements and Procedures and §341.1. Requirements for Renewal regarding**
9 **Criminal Background Checks.**

10
11
12 Mr. Aikman reported that the Committee had discussed different types of background checks that
13 are available from using social security number and address to fingerprinting. The Committee also
14 discussed that in order to participate in the Physical Therapy Licensure Compact (PTLC), the Board
15 would need to obtain biometric-based information from each physical therapy licensure applicant
16 and submit the information to the Federal Bureau of Investigation (FBI) for a criminal background
17 check. The Committee had no recommendations.

18
19 **F. Discussion and possible action on proposing changes to 322.1. Provision of Services**
20 **regarding dual credentialed PTs/PTAs and their role in the promotion of health,**
21 **wellness, and fitness.**

22
23 Mr. Aikman reported that the agency staff has been fielding a number of calls from PTs who have
24 credentials as licensed athletic trainers, certified personal trainers, certified yoga instructors, etc.
25 and want to know how to use their additional credentials for wellness and fitness of their patients.
26 The Committee discussed the response to caution licensees who hold dual licenses/credentials not
27 to blur the lines between the two when providing physical therapy as this can cause confusion or
28 misunderstanding as to what is being provided to the patient/client and could result in violations of
29 the PT Practice Act/Rules. And to recommend that the provision of both disciplines needs to be
30 clear and distinct from each other, and not intermingled within one treatment session. The
31 Committee had no recommendation for action on the Rule.

32
33 **G. Discussion and possible action on developing a policy regarding use of emails for**
34 **Board members and staff.**

35
36 Mr. Aikman reported that the Committee discussed a session that Ms. Gordon had attended at
37 FSBPT Annual Meeting regarding the pitfalls of using private email for Board business which
38 could create problems for transparency and disclosure. The Committee considered the issue and
39 determined that as long as emails were limited to communication with the agency and not used for
40 discussion of board business between the members there should not be any problem. The
41 Committee had no recommendations.

42
43 **H. Discussion and possible action on regulation of schools offering physical therapy**
44 **technician certificates.**

45
46 Mr. Aikman reported that the Committee had discussed schools offering a 10-month Physical
47 Therapy Technician program for a tuition of \$15,000+. The Committee determined that the Board
48 does not have the authority to regulate these types schools, and recommended no action.

49
50 **I. Discussion and possible action on proposing changes to §322.1., Provision of Services,**
51 **regarding (f) Telehealth.**

52
53 Mr. Aikman reported that there was no new development on Teladoc vs. Texas Medical Board
54 (TMB) lawsuit, and that the Committee decided to defer any action on proposing rules on telehealth
55 until the lawsuit is resolved.

1 Mr. Gray recessed the meeting at 2:40 p.m. and reconvened at 2:50.
2
3

4 **9. Education Committee Report**

5 6 **D. Discussion and possible action on the Texas Physical Therapy Association (TPTA) Continuing Competence Approval Program (CCAP) report, including review of the updated Memorandum of Understanding for approval recommendation.** 7 8 9

10 Dr. Sanders reported that the Committee reviewed the TPTA CCAP quarterly report which included
11 an updated Memorandum of Understanding and a request to TPTA from a licensee to accept the
12 Master Certified Health Education Specialist examination as an approved Specialty Examination.
13

14 *Motion: To recommend approval of the updated Memorandum of Understanding.*

15 *Made by: Committee*

16 *Second: None required*

17 *Motion passed unanimously.*
18

19 *Motion: Not to recommend acceptance of the MCHES as an approved Specialty Examination.*

20 *Made by: Committee*

21 *Second: None required*

22 *Motion passed unanimously.*
23
24

25 **E. Discussion and possible action on proposing changes to §329.1. General Licensure Requirements and Procedures, including the Federation of State Boards of Physical Therapy alternate path for exam eligibility approval.** 26 27 28

29 Dr. Sanders reported that Ms. Layton from FSBPT presented the upcoming changes to the exam
30 eligibility including the option of an alternate path for exam eligibility approval that will be available
31 in late 2016. The Committee discussed the effect that the option would have on the staff's workload
32 especially during peak application periods, and that the Committee is interested in participating in
33 the pilot program once further details are known.
34

35 **F. Discussion and possible action on proposing changes to §329.2. Licensure by Examination including the National Physical Therapy Examination (NPTE) Appeal Process.** 36 37 38

39 Dr. Sanders reported that Ms. Layton presented details of the NPTE Appeal Process for candidates
40 that reach the maximum exam takes or score two (2) very low scores or 400 or less. The
41 Committee discussed adding language to §329.2 regarding the appeal process but deferred action
42 until the January meeting as the section's previous amendments will not be effective until
43 1/01/2016.
44

45 **G. Discussion and possible action on proposing changes to §329.5. Licensing Procedures for Foreign-Trained Applicants, including upcoming FSBPT changes, Duke University online module on the US healthcare delivery system, utilization of PTA Coursework Tool, and TOEFL requirements for endorsement applicants.** 46 47 48 49

50 Dr. Sanders reported that the Committee discussed the upcoming changes to the NPTE eligibility
51 requirements scheduled for 2017, a module being developed by Duke University to introduce the
52 US healthcare delivery system that could be used as a licensure requirement for applicants from
53 outside the US, utilization of the PTA Coursework Tool to evaluate educational equivalency of
54 military and non-CAPTE graduates, and TOEFL requirements for endorsement applicants who are
55 US citizens educated abroad. The Committee took no action as ongoing discussion was needed.
56

57 **H. Discussion and possible action on proposing changes to §341.2. Continuing**

1 **Competence Requirements regarding the ethics/professional responsibility**
2 **requirement, including FSBPT's online Jurisprudence Assessment Module (JAM).**
3

4 Dr. Sanders reported that the Committee discussed the ethics/professional responsibility renewal
5 requirement and the possibility of combining the ethics and jurisprudence exam requirements. Ms.
6 Layton presented the option for jurisdictions to have the FSBPT develop an online Jurisprudence
7 Assessment Module (JAM) to satisfy the requirement. The Committee took no action as further
8 investigation was needed.
9

10 **I. Discussion and possible action on proposing changes to §341.3. Qualifying Continuing**
11 **Competence Activities, including item writers for exams other than NPTE and**
12 **Resident/Fellow Mentorship partial credit.**
13

14 Dr. Sanders reported that the Committee discussed amendments to §341.3 to correct a
15 discrepancy between rule and Board adopted policy for approving a specialty examination, to allow
16 the Board to consider partial credit for mentoring a resident/fellow who rotates through several
17 facilities with separate mentors, and to add credit for item writer for ABPTS specialty examinations
18 as recommended by TPTA and individual licensees.
19

20 *Motion:* *To recommend approval of amendments to §341.3. Qualifying Continuing*
21 *Competence Activities.*

22 *Made by:* *Committee*

23 *Second:* *None required*

24 *Motion passed unanimously.*
25

26 (See Attachment C for proposed rule amendment)
27

28 **J. Discussion and possible action on a request for a continuing competence waiver by a**
29 **licensee.**
30

31 Dr. Sanders reported that the Committee reviewed a request for a continuing competence waiver
32 and the support medical documentation submitted by a licensee.
33

34 *Motion:* *To recommend approving the continuing competence waiver request.*

35 *Made by:* *Committee*

36 *Second:* *None required*

37 *Motion passed unanimously.*
38

39 **11. Discussion and possible action on the Board Coordinator's report concerning any item**
40 **listed on the agenda and on events that have occurred between this meeting and the**
41 **Board's last meeting.**
42

43 Ms. Gordon reported on the meetings that she had attended since the last Board meeting, on the
44 updates to the website, the 4th Quarter CC Audit, the October NPTE results, and the total number
45 of PTs, PTAs, and PT facilities as of 11/05/2015.
46

47 **12. Board Chair's report concerning any item listed on the agenda and on events that have**
48 **occurred between this meeting and the Board's last meeting.**
49

50 Mr. Gray reported that he attended the October 8th and November 13th Investigation Committee
51 meetings.
52

53 **13. Discussion and possible action on long-term planning for future meetings, including**
54 **future meeting dates and agenda items**
55

56 The Board's next scheduled meetings are January 28-29 and April 28-29.
57

1 Mr. Gray revisited Agenda Item #6 for further discussion on the rationale for facility registration. Mr.
2 Turek gave the historical perspective which dated back to 1993 when facility registration was
3 included in the Practice Act revisions during Sunset Review, and that the intent is public protection
4 to ensure that only facilities with PT and/or licenses are offering physical therapy services.

5
6 **14. Adjournment**

7
8 *Motion: To adjourn the meeting.*

9 *Made by: Harvey Aikman*

10 *Second: Jeff Tout*

11 *Motion passed unanimously.*

12
13 Mr. Gray adjourned the meeting at 3:42 p.m.
14

15
16 **Date reviewed by the Board:** 01/29/2016

17 **Action taken by the Board:** approved as corrected