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

**333 Guadalupe, Suite 2-510
Austin, Texas 78701**

**January 17, 2020
9:00 am**

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- 11
12 **Members Present:** Harvey Aikman, PT, DPT, Chair
13 Barbara Sanders, PT, PhD, Vice Chair
14 Liesl Olson, PT, Secretary
15 Manuel "Tony" Domenech, PT, DPT
16 Melissa Skillern, PT, DPT
17 Kathryn Robe, PT, DPT
18 Glenda Clausell, Public Member
19 Donivan Hodge, Public Member
20 Jacob Delgado, Public Member
21
- 22 **Legal Counsel:** Rosalind Hunt, Assistant Attorney General
23
- 24 **Staff:** Ralph Harper, Executive Director
25 Karen Gordon, PT Coordinator
26 Amy Carter, Chief Investigator
27 Ebony Holley, Senior Accountant
28 Karissa Rodriguez, Program Specialist/RMO
29 Michael Briscoe, Licensing Manager
30
- 31 **Guests:** Craig Tounget, ED - Texas Physical Therapy Association (TPTA)
32 Lindsey Green, TPTA Staff
33 Kathleen Manella, TPTA Liaison
34 Christopher Smith, Budget & Policy Advisor – Office of the Governor
35
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37
38 Agenda items listed under several committee reports begin with the letter D intentionally. No items have been
39 omitted from the board agenda.
40

- 41 1. Call to order
42 2. Excusing board member absences.
43 3. Public comment
44 4. Minutes from the October 11, 2019 meeting.
45 5. Executive Director's Report concerning fiscal and budgetary matters, performance measures, ongoing
46 projects, agency personnel matters, and other agency business.
47 6. Investigation Committee Report concerning:
48 A. Agreed Orders for case #: 16444, 17419, 19122, 19193, 19423, 19475, 19485, 20002, 20004,
49 20012, 20021, 20040, 20060, 20065, 20088, 20119, 20125, and 20140.
50 B. Number of cases reviewed, Agreed Orders issued, informal conferences, and other investigative
51 matters discussed during the Investigation Committee of December 10, 2019.
52 C. Recommendation to amend 22 Texas Administrative Code (TAC) §344.1 regarding changes to the
53 Schedule of Sanctions.
54 D. Performance measures, on-site investigation visits, school presentations, and other investigative
55 activities that have occurred between this meeting and the Board's last meeting.
56 7. Final adoption of amendments to the following:
57 A. 22 TAC §322.5. Telehealth
58
59

- 1 8. Education Committee Report:
 - 2 D. The Texas Physical Therapy Association (TPTA) Continuing Competence Approval Program (CCAP)
 - 3 report.
 - 4 E. Request to amend 22 TAC §341.3. Qualifying Continuing Competence Activities, to include a category
 - 5 for providing physical therapy on a pro bono basis.
 - 6 F. Request(s) for appeal to re-take the FSBPT National Physical Therapy Examination (NPTE).
 - 7 G. Request(s) for review of educational equivalency from a foreign educated applicant(s).
 - 8 H. Request to waive the speaking section of the Test of English as a Foreign Language (TOEFL).
 - 9 I. Issues related to physical therapy entry-level education and continuing competence.
 - 10 9. The Federation of State Boards of Physical Therapy (FSBPT) Annual Meeting and the Compact
 - 11 Commission Annual Meeting in Oklahoma City, OK, October 24 – 27, 2019.
 - 12 10. The creation of a division within the Office of the Governor to review certain state agency rule changes for
 - 13 market-competition purposes pursuant to SB 1995 during the 86th Legislative Session.
 - 14 11. The addition of human trafficking training for health care practitioners as a requirement for license renewal
 - 15 pursuant to HB 2059 during the 86th Legislative Session.
 - 16 12. Consequences of criminal conviction pursuant to HB 1342 during the 86th Legislative Session.
 - 17 13. Consumer opt-out protections for non-emergency health care services or supplies pursuant to SB 1264.
 - 18 14. Governor's initiative to reform Texas's occupational-licensing rules.
 - 19 15. Board meeting minutes and record-keeping requirements per the Open Meetings Act and Board policy.
 - 20 16. Board Coordinator's report concerning meetings attended since last Board meeting, Continuing
 - 21 Competence Audit results number of current licensees, NPTE pass/fail statistics, TX Jurisprudence
 - 22 Assessment Module statistics, PT Compact statistics, and other events that have occurred between this
 - 23 meeting and the Board's last meeting.
 - 24 17. Board Chair's report concerning meetings attended since last Board meeting, correspondence received on
 - 25 behalf of the Board, and other events that have occurred between this meeting and the Board's last
 - 26 meeting.
 - 27 18. Long-term planning for future meetings, including future meeting dates and agenda items.
 - 28 19. Adjournment
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32 **1. Call to order**

33
34 Dr. Aikman called roll and determined that a quorum existed. He called the meeting to order at 9:00
35 a.m. He welcomed new Board members Kate Roby, PT and Jacob Delgado, Public Member

36

37 **2. Excusing board member absences.**

38
39 All Board members were present.

40

41 **3. Public comment**

42
43 There was no public comment.

44

45 **4. Minutes from the October 11, 2019 meeting.**

46
47 Motion: To approve the minutes as submitted.
48 Made by: Barbara Sanders
49 Second: Liesl Olson

50 Motion passed unanimously.

51

52 **5. Executive Director's Report concerning fiscal and budgetary matters, performance**

53 **measures, ongoing projects, agency personnel matters, and other agency business.**

54
55 Mr. Harper gave the Executive Director's Report that included the following:

- 56 • Financial reports including FY 2019 Annual Financial Report, FY 2020 Operating Budget,
- 57 and revenue/expenses for FY 2020 to date;
- 58 • Performance Measures;

- 1 • Governor's appointment of new PT Board members/chair and presiding officer of the
- 2 Executive Council;
- 3 • Completion of the Governor's Executive Director Program;
- 4 • Upcoming fieldwork for financial audit;
- 5 • Renewal applications scanning project;
- 6 • Completion of converting facilities paper files to digital format; and
- 7 • Completion of space programming forms for Georg H. W. Bush State Office Building move.

8
9 **6. Investigation Committee Report and consideration by the Board of the following items:**

10 **A. Agreed Orders for case #s:** 16444, 17419, 19122, 19193, 19423, 19475, 19485, 20002,
11 20004, 20012, 20021, 20040, 20060, 20065, 20088, 20119,
12 20125, and 20140.

13
14 The Board ratified the following Agreed Orders: #s 19122, 19193, 19423, 19475, 19485, 20002,
15 20004, 20012, 20040, 20060, 20065, 20088,
16 20125, and 20140.

17
18 **B. Number of cases reviewed, Agreed Orders issued, informal conferences, and other**
19 **investigative matters discussed during the Investigation Committee Meeting of**
20 **December 10, 2019.**

21
22 Ms. Carter reported that the Committee reviewed 129 cases and issued 18 Agreed Orders with 14
23 being accepted. There was one informal conference for reinstatement held.

24
25 **C. Recommendation to amend 22 Texas Administrative Code (TAC) §344.1 regarding**
26 **changes to the Schedule of Sanctions.**

27
28 Ms. Carter presented the proposed changes to the Schedule of Sanctions which includes adding
29 *+investigative costs* under the Maximum Discipline column and deleting all of the disciplinary
30 violations pertaining to facility registration.

31
32 Motion: To approve the proposed changes to the Schedule of Sanctions.
33 Made by: Investigation Committee
34 Second: None needed

35 Motion passed unanimously.
36
37

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

39
40 Ms. Carter reported on performance measures, on-site investigation visits, and school
41 presentations since the last meeting.
42

43 **7. Final adoption of amendments to the following:**

44 **A. 22 TAC §322.5. Telehealth**

45
46 Motion: To approve adopting the amendment as listed above.
47 Made by: Barbara Sanders
48 Second: Glenda Clausell

49 Motion passed unanimously.
50

51 (See Attachment A)
52

53 Dr. Aikman recessed the Board at 9:55 a.m.

54 Dr. Aikman called the Board back into session at 10:06 a.m.
55
56

1 **8. Education Committee Report:**

2
3 **D. The Texas Physical Therapy Association (TPTA) Continuing Competence Approval**
4 **Program (CCAP) report.**
5

6 Dr. Sanders reported that Lindsey Green, TPTA Communications Manager, had presented the
7 following at the Education Committee meeting:

- 8 • Peer Review System (PRS) processing time;
- 9 • Quarterly analysis of processing times for 2018 and 2019;
- 10 • Types and number of issue applications;
- 11 • Peer Reviewers numbers and Panel categories;
- 12 • Accredited Provider System (APS) Audit update; and
- 13 • New and renewed APS providers.

14
15 She also reported that TPTA is working with their program developer to get confirmation emails and
16 approval letters automatically generated for PRS applications; and that there is currently no way to
17 get a total count of licensees using the CCU Tracking System.

18
19 An issue with a sponsor who provides monthly Journal Club type courses arose with how to submit
20 for approval in one single application but provide completion certificates for participation on a
21 monthly basis. The committee agreed that the monthly courses could be submitted under the
22 regular inservice programs category.

23
24 **E. Request to amend 22 TAC §341.3. Qualifying Continuing Competence Activities, to**
25 **include a category for providing physical therapy on a pro bono basis.**
26

27 Dr. Sanders reported that the committee reviewed several documents that were submitted by a
28 licensee in support of providing CCU credit for licensees who provide physical therapy services on
29 a pro bono basis. It was the consensus on the Committee that further investigation was needed
30 before making a decision.

31
32 **F. Request(s) for appeal to re-take the National Physical Therapy Examination (NPTE).**
33

34 Dr. Sanders reported that the Committee reviewed information from the Federation of State Boards
35 of Physical Therapy (FSBPT) regarding granting exceptions for exam limits and reconsiderations for
36 denials of appeals, and a request for appeal from a candidate who already had seven attempts on
37 the PTA NPTE.

38
39 Motion: To recommend that the request for an additional appeal to re-take the
40 NPTE be approved.

41 Made by: Education Committee

42 Second: None needed

43 *Motion passed unanimously.*
44

45 It was also reported that an applicant who previously appealed and was approved, re-took the
46 NPTE on October 24, 2019, passed, and has been issued a PT license; that one individual whose
47 appeal had been granted missed the one-year deadline to re-take the exam and will no longer be
48 eligible; and that there are two individuals whose appeals have been granted who must test on April
49 28, 2020 in order to meet the one-year deadline.
50

51
52 **G. Request(s) for review of education equivalency from a foreign educated applicant(s).**
53

54 Dr. Sanders reported that the Committee reviewed 2 requests for review of education equivalency
55 and brings forth the following motions.
56

1 Motion: To recommend that the education of G1 be deemed substantially
2 equivalent pending receipt of an updated Coursework Evaluation Tool
3 (CWT) showing completion of the general education mathematics
4 requirement.

5 Made by: Education Committee

6 Second: None needed

7 *Motion passed unanimously.*

8
9 Motion: To recommend that the education of G2 be deemed substantially
10 equivalent.

11 Made by: Education Committee

12 Second: None needed

13 *Motion passed unanimously.*

14
15 **H. Request to waive the speaking section of the Test of English as a Foreign Language**
16 **(TOEFL)**

17
18 Dr. Sanders reported that the Committee reviewed the request and determined that the conditions
19 for a waiver or an exception were not met.

20
21 **I. Issues related to physical therapy entry-level education and continuing competence.**

22
23 Dr. Sanders reported on a letter from the FSBPT that denied the Foreign Academic Credentialing
24 Tools & Services (FACTS) application to use the FSBPT's Coursework Evaluation Tools (CWT).

25
26 **9. The Federation of State Boards of Physical Therapy (FSBPT) Annual Meeting and the**
27 **Compact Commission Annual Meeting in Oklahoma City, OK, October 24 – 27, 2019.**

28
29 Liesl Olson reported on the presentations, Delegate Assembly motions, and election of officers
30 during the FSBPT Annual Meeting. Harvey Aikman reported on the Compact bylaw changes,
31 forgiveness of debt by FSBPT, and Medicare's decision to recognize a Compact Privilege as
32 equivalent to licensure for reimbursement purposes. He also reported that he was elected as Vice-
33 Chair of the Compact Commission at the Annual Meeting.

34
35 **10. The creation of a division within the Office of the Governor to review certain state**
36 **agency rule changes for market-competition purposes pursuant to SB 1995 during the**
37 **86th Legislative Session.**

38
39 Informational only. The Board took no action.

40
41 **11. The addition of human trafficking training for health care practitioners as a requirement**
42 **for license renewal pursuant to HB 2059 during the 86th Legislative Session.**

43
44 Informational only. Amendments to Chapter 341. License Renewal to be proposed at April 24, 2020
45 meeting.

46
47 **12. Consequences of criminal conviction pursuant to HB 1342 during the 86th Legislative**
48 **Session.**

49
50 The Board discussed the entirety of PT Rules §343.9. Licensure of Persons with Criminal
51 Convictions (a) – (e), and determined that further rulemaking was not indicated in order to
52 implement the provisions of HB 1342. Also, discussion included the availability of the *Request for*
53 *Criminal History Evaluation* form online through the agency's website for individuals who have a
54 criminal history to seek an individualized determination of licensure eligibility.

1 Dr. Aikman referred the matter to the agency's Investigations Department and the Board's
2 Investigation Committee for review of the internal procedures for determining licensure eligibility
3 based on criminal history and the method of notification if a denial of licensure is pending; and
4 tasked the Chief Investigator and the PT Coordinator, to collaborate with the state auditor in
5 developing a physical therapy guide of best practices for an applicant with a prior conviction to use
6 when applying for a license, with a link on the agency's website to the guide upon completion.
7

8 **13. Consumer opt-out protections for non-emergency health care services or supplies**
9 **pursuant to SB 1264.**

10
11 Informational only. The Board took no action.
12

13 **14. Governor's initiative to reform Texas's occupational-licensing rules.**

14
15 Informational only. The Board took no action.
16

17 **15. Board meeting minutes and record-keeping requirements per the Open Meetings Act**
18 **and Board policy.**

19
20 The Board discussed the requirement to maintain and post meeting minutes per the Open Meetings
21 Act.

22 Motion: To post only minutes of the Board meeting to the website.
23 Made by: Tony Domenech
24 Second: Barbaara Sanders

25 *Motion passed unanimously.*
26

27 **16. Board Coordinator's report concerning meetings attended since last Board meeting,**
28 **Continuing Competence Audit results number of current licensees, NPTE pass/fail**
29 **statistics, TX Jurisprudence Assessment Module statistics, PT Compact statistics, and**
30 **other events that have occurred between this meeting and the Board's last meeting.**

31
32 Ms. Gordon reported on the following:

- 33 • Meetings that she had attended since the last Board meeting;
- 34 • Treatment without referral Disclosure forms (English and Spanish) posted online;
- 35 • TX JAM item writing as the result of treatment without referral;
- 36 • CC Audit results;
- 37 • Total number of PTs, PTAs as of 12/01/2019;
- 38 • NPTE Pass/Fail statistics for 2019;
- 39 • TX JAM statistics; and
- 40 • PT Compact statistics.

41
42 **17. Board Chair's report concerning meetings attended since last Board meeting,**
43 **correspondence received on behalf of the Board, and other events that have occurred**
44 **between this meeting and the Board's last meeting.**

45
46 Dr. Aikman reported that he would be making committee assignments and that elections of the
47 Vice-Chair, Secretary, and representatives to the Executive Council (EC) would be on the agenda
48 for the April Board meeting. He appointed Donivan Hodge as the public member representative to
49 the EC until the elections.
50

51 **18. Long-term planning for future meetings, including future meeting dates and agenda**
52 **items.**

53
54 The Board scheduled 2020 meetings as follows: April 23 – 24; July 23 – 24; and October 8 – 9.
55

56 **19. Adjournment**

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Motion: To adjourn the meeting.
Made by: Melissa Skillern
Second: Glenda Clausell
Motion passed unanimously.
Dr. Aikman adjourned the meeting at 11:18 a.m.

Date reviewed by the Board: 4/24/2020
Action taken by the Board: approved as submitted

Attachment A

The Texas Board of Physical Therapy Examiners adopts the amendment to §322.5. Telehealth in response to a petition for adoption of rule changes.

The amendment is adopted in order to clarify the role of the physical therapist assistant in the provision of physical therapy via telehealth.

The amendment is adopted without changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 *TexReg* 7298).

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

<rule>

§322.5. Telehealth.

(a) When used in the rules of the Texas Board of Physical Therapy Examiners, telehealth is the use of telecommunications or information technology to provide physical therapy services to a patient who is physically located at a site in Texas other than the site where the physical therapist or physical therapist assistant is located, whether or not in Texas.

(b) Physical therapy telehealth services must be provided by a physical therapist or physical therapist assistant under the supervision of the physical therapist who possesses a current:

- (1) unrestricted Texas license; or
- (2) Compact Privilege to practice in Texas.

(c) The provision of physical therapy services via telehealth requires synchronous audiovisual or audio interaction between the physical therapist or physical therapist assistant and the patient/client, which may be accompanied by the use of asynchronous store and forward technology.

(d) Standard of Care. A physical therapist or physical therapist assistant that provides telehealth services:

- (1) is subject to the same standard of care that would apply to the provision of the same physical therapy service in an in-person setting; and
- (2) the physical therapist is responsible for determining whether an evaluation or intervention may be conducted via telehealth or must be conducted in an in-person setting.

(e) Informed Consent. A physical therapist that provides telehealth services must obtain and maintain the informed consent of the patient, or of another individual authorized to make health care treatment decisions for the patient, prior to the provision of telehealth services.

(f) Confidentiality. A physical therapist or physical therapist assistant that provides telehealth services must ensure that the privacy and confidentiality of the patient's medical information is maintained during and following the provision of telehealth services, including compliance with HIPAA regulations and other federal and state law.

(g) The failure of a physical therapist or physical therapist assistant to comply with this section shall constitute detrimental practice and could subject the licensee to disciplinary action by the Board.

(h) Provision of telehealth services by a physical therapist assistant, must occur under the supervision of the physical therapist in accordance with rule §322.3 of this title (relating to Supervision).

(i) Telehealth is a mode for providing one-on-one physical therapy services to a patient/client and is not a means for supervision of physical therapy aides.