



North Carolina Board of Physical Therapy Examiners NEWSLETTER

ISSUE 26

SUMMER 2001

What we hear you saying is...

by JUDY A. WHITE, PT, Chair

My last message focused on the Board's mission to the public and our responsibility to maintain this emphasis throughout all decisions that we make based on the North Carolina Practice Act. Because of this public protection mandate, the Board recently completed a 10-month process of re-examining the rules and regulations that are the interpretive guidelines used in making our decisions. The Board believed that an essential part of this process would be to share our recommendations with the public and physical therapy licensees prior to submitting our request to the North Carolina Rules Review Commission. Of course, the information was available on our website and, in addition, the Board welcomed all written comments. We were very excited about "going on the road" and hearing your questions and comments. And, indeed, we were rewarded!

First and foremost, we are grateful to Grace

Hospital in Morganton, UNC Friday Center in Chapel Hill, and ECU PT Department in Greenville for providing excellent accommodations for our January and February forums. We were pleased with the response to these events. A total of 88 people attended the three sessions! Pat Stavrakas, Ben Massey, John Silverstein and I very much enjoyed the questions and discussions about the intent of the rules. It was also a wonderful opportunity for us to explain how rules are interpreted in general, as well as to hear the comments and concerns from those who have to adhere to these rules. These comments were discussed at our March meeting by the entire Board. The appropriate clarifications were made to enhance the intent and interpretation of the proposed rules, based on all the input we received from the forums and in writing.

Is the NCBPTE required to promote forums for discussion of proposed rules changes? No,

but we felt that these forums could only improve something which would have a direct impact on the public's experiences with physical therapy services. Did the NCBPTE respond to the comments? Yes, each and every one was thoughtfully considered. Does the adoption of the forum process suggest that the NCBPTE's focus has shifted to the licensees? No, the public mission remains the same! We thank you for your participation in helping us carry out the mission!



Service and Efficiency



Service and efficiency...the creed of our Board and staff...service to the general public and service to licensees. The purpose of the Licensure Board is to protect the health, safety,

and welfare of the general public. We strive to provide service in an expeditious manner.

We know that we are the conduit through which the applicant must travel before he/she can become a licensee. Last year, we licensed 352 new PTs and 148 new PTAs. For endorsements, once all the application information was received at the office, the average time that it took to get the person licensed was only 5.7 days. Examination candidates were licensed the same day we received their scores. In addition, we sent out approximately 1600 application packages to applicants from the United States and around

the world, usually the same day that we received their request.

We strive to provide service in a friendly, yet professional manner. For example, we receive telephone calls from individuals who wish to report incidents involving licensees. Sometimes these complaints are sensitive and personal in nature. Usually, the complainant, who may be extremely hesitant to make the call in the first place, has never dealt with a Licensure Board. It is incumbent upon us to provide all the information we can to enable the caller to determine if a complaint must be filed. In 2000, the Investigative Committee investigated 47 complaints and the Board issued 4 suspensions, 3 probations, 2 warnings, 10 reprimands, and 7 letters of caution / warning. Additionally, the Board sent out 11 letters regarding inappropriate advertising of physical therapy. Finally, 3 cases were dismissed with a conclusion that no further action was warranted.

In responding to questions regarding practice issues, the Board office processes approximately 1200 telephone calls each year. In addition, the Board responds to approximately 2600 e-mails and numerous faxes and letters. Our goal is same day service and on most occasions, we succeed. We are extremely fortunate to have Mr. Silverstein, our attorney,

readily available to assist in responding to legal issues. In addition, Board Committee Members, and especially the Chairs, are dedicated and committed.

The Board has dedicated itself to promote competent practice. A perfect example is the great lengths that the Board has gone to include the general public and licensees in the revision of the Board's proposed rules. There is no requirement that the Board publish proposed rules on the web page and certainly no requirement to have statewide Forums; however, the Board has chosen to take these extra steps to ensure communication with the public and licensees.

Our web site (www.ncptboard.org) had 14,000 hits last year. We are constantly updating it so that we can continue to improve and provide better service. If you haven't visited our web site recently, I encourage you to check it out.

In closing, we hope that we have been successful in serving our citizens of North Carolina and the licensees. We invite your comments and encourage you to tell us ways that we can continue to improve the quality and efficiency of our service.

Ben F. Massey, Jr., PT
Executive Director

Investigations

JOHN M. SILVERSTEIN, Attorney



The Physical Therapy Practice Act is the source of the specific powers delegated to the North Carolina Board of Physical Therapy Examiners (Board) to ensure that the practice of physical therapy in North Carolina is conducted in accordance with the requirements of the Act. G.S. 90-270.26, which is titled "Powers of the Board," contains eight separate subsections, which include such

responsibilities as administering the licensure process and granting authority to employ clerical assistance and rent office space. Fully half of the eight subsections deal to some extent with the disciplinary process.

G.S. 90-270.26(2) gives the Board the power to "Issue, renew, deny, suspend, or revoke licenses to practice physical therapy in this State, or reprimand or otherwise discipline licensed physical therapists and physical therapist assistants;" G.S. 90-270.26(5) gives the Board the authority to conduct contested case administrative hearings. G.S. 90-270.26(8) allows the Board to promulgate rules to carry out the purposes of the Practice Act. These rules are codified in Chapter 48 of Title 21 of the North Carolina Administrative Code (NCAC). Additional guidance is furnished to the Board by the following language that appears immediately following the eight subsections of G.S. 90-270.26: "The powers and duties enumerated above are granted for the purpose of enabling the Board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of physical therapy and are to be liberally construed to accomplish this objective."

The purpose of this article is to examine the power described in G.S. 90-270.26(3): "Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensed physical therapists or physical therapist assistants exist;" The Board has adopted 21 NCAC 48G.0504 to address the manner in which it will conduct investigations. 21 NCAC 48G.0504(a) requires that names and addresses be furnished for both the complainant and the licensee against whom the complaint is filed, along with a succinct statement of the conduct giving rise to the complaint. The Complaint Form can be found on the Board's web page, or a copy can be obtained from the Board office. In extremely unusual circumstances, an investigation may be commenced without complete written documentation if there is a potential for imminent danger to the public health or safety. However, an investigation will not be undertaken if it is based simply on hearsay.

All complaints filed with the Board are immediately referred to its Investigative Committee, which consists of the Board's Executive Director and a member appointed by the Board Chair. The member currently serving in that capacity is Pat Stavrakas. The Investigative Committee serves as a probable cause committee to determine if a Practice Act violation has occurred. In conducting its investigation, the Investigative Committee is assisted by the Board's attorney and the Board's investigator.

Additionally, the Committee has the power to issue subpoenas for the production of documents.

The Board's investigator conducts most of the interviews with witnesses who have information regarding the complaint. He will frequently be accompanied by the Executive Director when knowledge of aspects of the practice of physical therapy are integral to the understanding of the complaint. 21 NCAC 48.0504(c) also provides that a former member of the Board can be retained to assist in investigations.

The Investigative Committee meets every six to eight weeks, and it generally takes from three to six months to complete an investigation, although some complicated investigations can take a longer period of time. Some complaints are dismissed before an investigation is ever started. For example, if someone other than a patient files a complaint about the treatment of a particular patient, and the patient refuses to cooperate with the investigation, the Investigative Committee has no alternative but to dismiss the complaint if the patient has the only first-hand information regarding the conduct that occurred. Also, complaints involving conduct that is not a violation of the Practice Act must be dismissed. Approximately 13.5% of the complaints filed with the Board are eventually dismissed. Complaints can take longer to resolve when interviews with key witnesses are difficult to schedule or they lead to other persons who may have knowledge of the complaint or documents that would be relevant in the investigation.

There is no rule that addresses whether or when the licensee is to be informed that a complaint has been filed. Some complainants or witnesses ask to remain anonymous, but the Investigative Committee is not always able to accommodate such requests. Before disciplinary action can be taken, the licensee is entitled to present a defense to the charges, which includes the ability to confront and cross-examine witnesses who testify in support of the complaint. If a complainant or witness insists on remaining anonymous, it may be necessary to dismiss the complaint. Therefore, all witnesses are asked if they would be willing to testify against the licensee if a contested case hearing becomes necessary.

Once all potential witnesses have been interviewed and documents produced, the members of the Investigative Committee review the materials obtained to determine if there is probable cause to believe that the licensee has engaged in conduct that violates the Practice Act. The licensee receives a letter that details the results of the Board's investigation and the basis for the Committee's recommendation that probable cause exists. If the Investigative Committee determines that the conduct is serious enough to warrant revocation or suspension of a license, the licensee is invited to have an informal meeting with the Investigative Committee to determine if an agreement can be reached with regard to the disciplinary action that should be taken. The licensee is advised to consult with an attorney before the meeting, and approximately one-half of the licensees who have attended informal meetings have appeared with counsel.

At the informal meeting, there is no record kept of the proceedings, nor is there any sworn testimony presented. The

Board's attorney reviews the evidence that has been obtained in support of the violations, and the licensee (including the licensee's representative) are given an opportunity to respond. Following their presentation, the licensee and counsel are requested to leave the room, and the Investigative Committee discusses whether a recommendation for disciplinary action can be made to the licensee. The recommendation will be for revocation or suspension (which frequently involves periods of both active and inactive suspension) and conditions that must be followed during any period of inactive suspension, such as restrictions on practice settings, gender of patient treated, or completion of additional course work or instruction. The conditions also include payment of the Board's costs of investigation. In some cases, following the meeting, the Committee has recommended that the licensee be placed on probation or receive a warning rather than have the license revoked or suspended.

The licensee is given a period of time in which to respond to the Committee's recommendation, and if consent is obtained, the matter is submitted to the Board at its next regularly scheduled meeting for final approval. If the Board approves the Committee's recommendation, a Consent Order for Disciplinary Action is executed. If the Board does not approve the recommendation, or if the licensee does not accept the Committee's recommendation, a contested case hearing is scheduled before the Board. At the hearing, the Board is not limited in any way by the recommendation made by the Committee. The Board member who is the member of the Investigative Committee does not participate in contested case hearings.

If the Investigative Committee initially determines that license revocation or suspension is not warranted, then it can recommend that the licensee be placed on probation, or receive a warning or reprimand. The reprimand is not considered to be disciplinary action. If the recommendation is for probation, warning or reprimand, the Committee does not usually have an informal meeting with the licensee, but does furnish the licensee with a detailed response indicating the basis for the recommendation, and invites the licensee to attend the next regularly scheduled meeting of the Board to participate in an informal meeting pursuant to 21 NCAC 48G.0404. At this informal meeting before the Board, the Board's attorney will present the evidence to the Board, and the licensee and the licensee's representative have an opportunity to present any evidence or information they wish the Board to consider in an effort to convince the Board that placing the licensee on probation, or issuing a warning is unwarranted. No formal record is kept of the proceedings, and there is no sworn testimony. If the Board does place the licensee on probation or issue a warning, the costs of investigation can be assessed against the licensee.

The Board and the Investigative Committee take the investigation of complaints very seriously. Each and every board member understands that the imposition of disciplinary action against a licensee can have a direct impact on the licensee's ability to practice physical therapy, can result in professional and personal embarrassment and can cause financial hardship. Nevertheless, the protection of the public health, safety and welfare must be of paramount concern. The credibility of licensure is dependent upon making sure that conduct that violates provisions of the Practice Act is investigated, and if warranted, subjected to disciplinary action.

North Carolina Board of Physical Therapy Examiners

Board Orders / Consent Orders / Other Board Actions October 2000 – June 2001

Suspension

Arlene Johns, PT (Suspension)

Location: Elkin, NC, Surry County, NC
License #: P-4820
Conduct: Entering false or misleading information into patient records
Discipline: 1 year suspension, 6 months active and the remaining period stayed (executed January 25, 2001)

Hatfield, Teresa A., PT (Suspension)

Location: Burlington, NC, Alamance County, NC
License #: P-2472
Conduct: Documenting and charging for treatments that were not performed
Discipline: 1 year suspension, 6 months active and the remaining period stayed (executed March 28, 2001)

Probation

Richard Hultz, PT (Probation)

Location: Orange County, NC
License #: P-7136
Conduct: Failure to complete documentation of patients' interventions
Discipline: Probation for 2 years (issued January 11, 2001)

Warning

Calla Wallace, PT (Warning)

Location: New Bern, NC, Craven County
License #: P-279
Conduct: Failure to provide appropriate supervision of a physical therapist assistant
Discipline: Warning (issued December 14, 2000)

Aguila, Gerjard V., PTA (Warning)

Location: Fairview, NC
License #: A-1310
Conduct: Entering erroneous information in patient records
Discipline: Warning (issued March 3, 2001)

(10 individuals received letters of reprimand for failing to renew their license by February 1, 2001.)

Appointments to the Board

Governor Michael F. Easley has appointed J. Herman Bunch, Jr., PT, for a 3-year term replacing outgoing member Geraldine K. Highsmith, PT. Mr. Bunch currently serves as Sports Physical Therapist for the Carolina Cobras Professional Football Team and resides in Raleigh, NC. Mr. Bunch has previously served as Chairman of the Board, and his experience will serve the Board well. In addition, Governor Easley appointed Joanna W. Nicholson, PTA, to replace JoDell F. King, PTA. Ms. Nicholson is a faculty member at Central Piedmont Community College and resides in Mooresville, NC.

The Board wishes to express its sincerest appreciation to Ms. Highsmith and Ms. King for 6 years of dedicated service to the Board, citizens of North Carolina, and to physical therapy licensees.

North Carolina Board of Physical Therapy Examiners

Board Members

Judy A. White, PT
Chair, Chapel Hill, NC
 J. Herman Bunch, Jr., PT
Raleigh, NC
 James C. Harvell, Jr., MD
Greenville, NC
 Gloria Lewis, Public Member
Oxford, NC
 Joanna W. Nicholson, PTA
Charlotte, NC
 Eric J. Smith, PTA
Sanford, NC

Patricia A. Stavarakas, PT
Greenville, NC

Randall C. Stewart, PT
Rocky Mount, NC

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Executive Director

Cynthia D. Kiely
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Diane Kelly
Office Coordinator

Marie Turner
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Legal Counsel

John M. Silverstein, Esquire

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Calendar of Events

Aug 2, 2001Investigative Committee Meeting*
 Sept 6, 2001Investigative Committee Meeting*
 Sept 13, 2001 ...Board Meeting*
 Dec 13, 2001Board Meeting*
 Jan 1, 2002Recommended deadline for license renewal
 Jan 31, 2002Final deadline for license renewal
 Feb 1, 2002Licenses not renewed, lapse

*Dates are tentative / please confirm on web page

Summary of Fees

Renewal (PT & PTA)	\$60.00
Revival Fee and Renewal Fee	90.00
Application Fee PT & PTA	120.00
Exam Cost (PT & PTA)**	285.00
Exam Retake Fee	50.00
Verification/Transfer Fee	25.00
Licensee Directory	10.00
License Card	10.00
Labels of Licensees (PT or PTA)	60.00
Certificate Replacement	20.00

**plus PT or PTA Application Fee

Licensure Statistics (As of June 01, 2001)

	Licensed in NC	Reside in NC	Work in NC
PTs	4540	3456	2890
PTAs	2044	1791	1650

Forum: Questions and Answers

Q: Can a PTA perform peripheral and spinal mobilization in North Carolina?

A: This question was addressed by the Board at its March 29, 2001 meeting. GS 90-270.24(3) authorizes the PTA to perform patient-related activities "...which are commensurate with the PTA's education and training..." The same section prohibits a PTA from interpreting and implementing referrals from licensed medical doctors or dentists, performing evaluations, or determining treatment programs, and making major modifications thereof.

The Board was clear in its determination that it would be inappropriate for a PTA to engage in spinal mobilization under any circumstances. The question of whether a PTA can engage in peripheral mobilization is less clear. Some members felt that it is difficult to perform peripheral mobilization without continuing evaluations. However, it was also recognized that PTAs have been engaged in peripheral mobilization in this State. Under any circumstances, a PTA must have the requisite knowledge and skill to engage in peripheral mobilization.

The Board was advised that since the typical PTA education program does not provide the sufficient education and training for a graduate to be able to perform peripheral mobilization, those skills must be developed by additional training before a PTA can perform peripheral mobilization in a practice setting.

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