

BOARD NEWS

Spring/Summer 2002

Dear Physical Therapists and Assistants:
(By: Sally B. Oxley PT, CRT, Board Chair)

The Board has had a busy winter licensing new Physical Therapists and Physical Therapist Assistants, answering your questions about the Law and Continuing Education; all the while working on strategies to best serve you all. Please take time to fill out the Quality Assurance Questionnaire and mail it back to me as soon as possible. We are very much interested in your feedback and welcome all comments. We had two representatives attend the Spring Education Meeting of the Federation of State Boards of Physical Therapy - - Shirliabeth Wooton who is one of our Public Members and Frankie Cayton our Board Administrator. Frankie has been attending Federation Meetings since 1994 on an annual basis and I have asked her to formulate a brief synopsis of their experience at this most recent meeting.

Regards,
Sally Oxley, Board Chair

Spring Meeting of the Federation of State Boards of Physical Therapy (FSBPT)

(By: Frankie S. Cayton, Board Administrator)

This year's spring education meeting was held in Orlando, Florida, March 14th through March 17th. The weather was a welcome change as it was in the 80's most days and of course all the flowers were in bloom. Row do I know this? I got to experience some of the beauty of the hotel surroundings during our fifteen minute breaks from the sessions which ran from 8:00 am until 6:00 or 7:00 pm. daily. The Federation Meetings are often arranged into three teaching tracks and prior to making the trip, I am given the opportunity to select those topics that are of most interest to me as an Administrator. We have lately been making it our practice to buy a complete set of audio tapes of all the sessions in order that other Board Members can avail themselves of the information that is presented. The theme of this meeting was "Public Protection: Advocacy in Action" which is why the Federation provided additional funding for one of our Public Members to attend. Session topics included "Don't Be in the Dark About Discipline", "Credentials Evaluations"; "Validation Study of the Coursework Evaluation Tool"; "Credentialing and Remediation for Foreign-Education PT's"; "Substantial Equivalency and the Coursework Evaluation Tool"; "Changes in Practice: The Job Analysis"; and "Board Ethics and Conflicts of Interest"; just to name a few. The opportunity to network with other Administrators and Board Members is ever present and I always enjoy "talking shop" in order to discover how methods and procedures in other states compare to West Virginia. Often times current dilemmas we are experiencing have already been tackled and solved by another state - - or vice versa. Currently we are facing the next phase of technology via internet in the form of online registration for candidates applying for the exam; online license renewals; and verifications of licenses that can be accessed through individual State's Web Sites. While we are not quite ready to accept credit card payments in WV, I see it as something that will become a reality in future years.

-And so the World Gets Smaller-

- Frankie S. Cayton -

(For information about future Federation Meetings,
please check their Web Address at www.fsbpt.org)

WHY WON'T THE BOARD DO ANYTHING ABOUT MY COMPLAINT?!!

(By: Cynthia A. Fox PT)

As a member of the Board, I sometimes hear complaints from licensees and members of the public "that they know of a certain individual (nearly always unnamed) who is practicing in violation of the law, but there is no point in complaining about it because no one will do anything about it." Pursuit of a complaint CAN seem laborious, cumbersome, and very slow. Furthermore, the outcome may not always be what the complainant had in mind. For the Board to pursue a complaint, the complaint needs to meet several conditions. These conditions are set in place to protect the constitutional rights of the accused, and to allow for full findings of the facts. Although a complaint can be initiated by a phone call or conversation, no investigation can begin until the complainant fills out and signs a simple one page standard form. In order for this process not to pose as a barrier to anyone, including those with limited literacy skills, the board staff can fully assist anyone in completing this form. Failure or refusal to complete the form is one reason the Board cannot follow up a complaint. Additional reasons that an investigation is not begun or cannot be completed (1) no jurisdiction; (2) lack of sufficient or critical information; or (3) obvious lack of probable cause.

(1) No Jurisdiction:

The scope of the Board's authority is spelled out by WV Code in that the Board's immediate reach is limited to its own licensees - - that is, the Board can fine, censure, revoke or otherwise limit only the licenses it has granted. In other cases, the Board cooperates with other agencies to protect the public.

Occasionally the board receives a complaint about an individual who does not hold a WV PT or sue allegations against other licensed professionals. A complaint lodged against an RN, for example, will be forwarded to the WV Board of Nursing. It will then be up to that licensing board to determine if their licensee has acted unethically or outside the recognized scope of practice. Some of these complaints merely represent "turf battles". The complainant fails to recognize that the scopes of practice of many health care professions legitimately overlap. Such practice is legally defensible as long as this same individual does not falsely represent himself or herself as a PT or PT A.

When an untrained person holds himself or herself out to be a PT/PTA, or provides treatment represented as Physical Therapy, the first step the Board takes in correcting the problem is to send a "cease and desist" letter. These infractions sometimes arise from ignorance, as when a ". tanning bed owner naively publishes an ad that states his or her facility -provides Physical Therapy, unaware that the term "Physical Therapy" is protected by State Law. If this warning fails to stop the behavior, the matter is forwarded to the District Attorney in the appropriate county.

In both cases, the Board will never pursue the case to the point of a hearing or any type of judgment because the Board has no jurisdiction to judge or penalize that individual.

(2) Lack of Sufficient or Critical Information:

A complainant's failure to provide vital information can stall out any investigation, even with the help of a paid professional investigator. In some cases a follow up interview over the phone with the complainant is enough to elicit a more coherent story, or needed information. But in some cases repeated attempts to contact the complainant are unsuccessful, and the complaint cannot be pursued any further.

It may be understandable that a complainant might desire to remain anonymous, or at least to remain unidentified on any official paperwork. There are a couple of problems with this. With rare exceptions, the accused (the "respondent") has a constitutional right to confront the accuser. Although theoretically a case could be assembled without testimony from a "whistle blower", in the vast majority of cases it is beyond the resources of the Board to develop a case without the assistance of an insider - - be that an employee, patient, or family member. (Stakeouts, having the Board "plant" an employee to get evidence, and other ploys that have been suggested by complainants who wish to remain anonymous are not practical for a number of reasons.)

(3) No Probable Cause:

"No probable cause" is simply a legal term, which essentially means there just isn't a convincing case that the accused licensee has done anything in infraction of the WV State Code. Sometimes this is straight forward, as in accusing the licensee of doing something, which falls easily within universally accepted scope of PT/PT A practice. Such complaints are generally raised by members of the public, or sometimes other professionals, who are not aware of accepted areas of practice and autonomy in PT.

In the arena of personal conduct, where the Board must exercise some discretion, it is guided by generally accepted standards of professional conduct, including "The Code of Ethics" and the "Standards of Practice" of the American Physical Therapy Association. It is possible for a licensee to make errors of taste or judgment, be less than a model employee or even to be a generally disagreeable person without actually violating these standards of ethics. Thus the board is sometimes asked to get involved in cases of interpersonal conflict where we find "no probable cause".

As a footnote to this, however, even in the most straightforward cases (i.e., Joe Smith complains he observed John Jones PT, OSC performing shoulder joint mobilizations on patient Mrs. Smith, when Mr. Smith knows John Jones is not a chiropractor), the Board must then follow a specific series of steps with specified time frames, before making a determination of "no probable cause".

- Cynthia A. Fox PT -

---NEXT INSTALLMENT: "ON THE SUBJECT OF BEING A WHISTLE BLOWER"---

Recently Asked Questions:

Question:

What are the PTA supervisory requirements for clinics that are attached to nursing homes? Can in-patients and outpatients be treated at the same time? Can the PT be on the premises or must he or she be physically in the same room as the outpatient? Does the PT have to be present for every treatment delegated to a licensed PTA or may the PTA be indirectly supervised with co-visits every two weeks?

Answer:

The supervisory requirements for clinics attached to nursing homes is the same as any other out-patient clinic. Inpatients and outpatients can be treated at the same time as long as there is a PT in the clinic to supervise. The PT must be in the clinic to supervise staff or assistive personnel. There must be a licensed PT present at all times that patients are being treated by a PT A in a clinic.