



North Carolina Board of Physical Therapy Examiners NEWSLETTER

ISSUE 28

SUMMER 2002

Collaboration to Controversy and Back Again

By Judy A. White, PT, Chair



For over two years, the NCBPTE has been involved with the development and processing of rules changes.

These rules changes were primarily undertaken to modernize the language of PT practice to reflect the current practice of physical therapists and to provide more clarification of such areas as supervision and disciplinary processes. Many of you attended one of our three (3) statewide information sessions during which you gave valuable feedback and suggestions. In addition, a public hearing was held in Raleigh. As the Chair of NCBPTE, I can assure both the public and the licensees that, through the diligence and conscientiousness of Ben Massey, Executive Director, and John Silverstein, legal counsel, the rules process met *more* than a minimum requirement level. Publication and public information were highly visible and legislatively appropriate throughout the rules process. The NCBPTE is fortunate to have the commitment to excellence that Ben and John provide. In fact, the North Carolina Board is recognized nationally for its standards of excellence and efficiency!

After the proposed rules changes had already been approved by the Rules Review Commission in July, 2001, we were informed in February, 2002 that the national and state occupational therapy community were greatly concerned about these proposed rules. Their professional concerns were focused primarily on what was perceived as an attempt to “greatly expand

the PT scope of practice” through the rules process. Many of you may have been challenged by your co-workers about an expansion of PT practice. I suggest that this was truly the crux of the controversy presented by the North Carolina Occupational Therapy Association (NCOTA). As we communicated to them, I communicate to you now: these rules are NOT an expansion of the scope of PT practice. The NCOTA was able to present their concerns to the North Carolina Joint Legislative Administrative Procedure Oversight Committee (JLAPOC) in March and we were able to respond about their concerns to the JLAPOC members. Generally, legislators prefer to avoid “turf battles” and attempts by professions to limit one another. In addition, legislative action that might reduce consumers’ choice is often not encouraged. Fortunately for all of us, the JLAPOC advised the two groups to work these issues out in a collaborative manner. Given that PTs and OTs have worked collaboratively for most of our professional lives, we were prepared and ready to proceed. We knew that collaboration, and *not* confrontation, was the best method for reconciliation.

Professional licensure boards and professional associations have differences that need to be understood as a part of the negotiations process between the NCBPTE and the NCOTA. In 1951, the NC General Assembly created the NCBPTE to administer and enforce the Physical Therapy Practice Act, to ensure minimum level of competence, and to exercise disciplinary authority over licensees when their competence is below the minimum level required to protect the public. Indeed our purpose is to protect the public health, safety, and welfare. A professional association consists of voluntary members and is generally committed to the needs and interests of its mem-

bers and profession. The NCBPTE does *not* participate in legislative lobbying activities, whereas a professional association, such as the NCPTA or NCOTA could actively participate in legislative change activities. Although these differences between the NCBPTE and the NCOTA did not prevent resolution, it was important to understand what limitations each group had relative to legislative activities.

After several meetings and a change proposed by the NCOTA, we were indeed able to move beyond the controversy and reach a consensual agreement. We were able to return to our previous state of collaboration and fully focus on working together to serve those who benefit from the collaborative services that OT’s and PT’s provide. I especially want to thank Lynn Losada, President of NCOTA, for her role in facilitating a responsible approach to our resolution.

Now it is your responsibility to further facilitate the transition from confrontation to collaboration. Be willing to correct the existing misinformation or erroneous perceptions. Resume your previous professional relationships in which PTs and OTs work in common and collaboratively to help individuals gain maximum function and improve their quality of life. It is time to move forward with the public once again at the center. If you have more questions or concerns about this issue, please do not hesitate to communicate with Ben or myself. We are anxious to rectify misperceptions and to reconvene a positive atmosphere of collegiality.

Process Served

By John M. Silverstein, Board Attorney



Regular readers of this Newsletter, the Board's Web page or the *North Carolina Register* have been apprised of the Board's nearly two year effort to modify and update the N.C. Administrative code rules that define and describe the nature of the practice of physical therapy in North Carolina. Nearly 20 separate rules were involved, most of which were either new or had not been

changed in more than 10 years.

The process to adopt, amend or repeal a rule is delineated in North Carolina's Administrative Procedure Act (Chapter 150B, Article 2A). It starts with a Notice of Rule Making Proceedings that is published in the *North Carolina Register*, and is followed by publication of the proposed rules in the Register, a public hearing and public comment period, and review by the Rules Review Commission and the General Assembly. A proposed rule is subject to modification at each step along its journey. In fact, as a result of comments received during three statewide hearings held by the Board in 2001, and proposals made by the Rules Review Commission, the Board made several changes to the proposed rules first published in March, 2001, before adopting them in September.

By the time rules are presented to the Legislature for final review, most groups that might be impacted have had the opportunity to provide input, and of the thousands of rules that are presented to the Legislature for review each year, only a handful receive legislative scrutiny. Unfortunately, one Board rule relating to the scope of practice of physical therapy became subject to that scrutiny this year. In February, the Board became aware that occupational therapists were concerned that 21 NCAC 48C.0101 (Permitted Practice) actually expanded the scope of practice of physical therapy and infringed upon the scope of practice of occupational therapy.

On February 12, 2002, representatives of the Board met with representatives of the N.C. Occupational Therapy Association (NCOTA) to see if there was a way to resolve the concerns raised by the OT's. At that time, the OT's were committed to seeking a modification of the rule in the General Assembly. Since the rules were scheduled to become effective on October 1, 2002, and the rule could not be modified by that date if the process outlined above was followed, the OT's requested that the Board endorse a proposal to introduce a bill in the Legislature to modify 21 NCAC 48C .0101.

The Board's representatives opposed the introduction of a bill for two basic reasons: (1) changing the rule in the Legislature would limit the ability of those who had responded to publication in the Register and notice of public hearings to comment on any new change and (2) any bill introduced in the Legislature would be subject to amendment by any Legislator. With the two groups

at an impasse, the NCOTA took the matter to the Legislature by filing a request with the Joint Legislative Oversight Committee (JLOC), which is the entity that initially reviews rules, to propose a modification in 21 NCAC 48C.0101. At its meeting on March 27, 2002, the JLOC was requested by the NCOTA to introduce a bill requesting a modification. However, the Committee members commenting on the proposal made it clear that they preferred that the groups work out their differences to avoid a Legislative solution that might be detrimental to the interests of both groups.

With that impetus, representatives of the Board met with representatives of the NCOTA to see if they could reach common ground. It quickly became apparent that the OT position that PT's were attempting to expand their scope of practice into areas traditionally reserved for OT's was based on sincere concerns. The Board representatives assured the OT's that there was never any intent to expand the scope of PT practice. The rule was designed to, among other things, modernize the language defining elements of "activities of daily living" that had traditionally been offered as a component of the practice of physical therapy.

The Board's representatives maintained that the process was of utmost importance to the Board. Since the rule about which the OT's had been concerned was adopted following compliance with all the requirements of the Administrative Procedure Act, the Board's representatives felt strongly that any modification to that rule should be accomplished in the same manner. While the NCOTA continued to prefer the quicker resolution offered by Legislative involvement, the Board continued to reject this alternative as fraught with risk, and unwarranted in light of the Board's compliance.

Several meetings between the two groups followed, and the results have been mutually beneficial. The NCOTA recommended changes in 21 NCAC 48C .0101 that were acceptable to the Board. The Board has agreed to support the proposed changes before the Rules Review Commission and Legislature, and to involve OT representatives at each step of the rule-making process. That process has already begun, and we are anticipating that the modified rule (as set forth elsewhere in this Newsletter) will be effective April 1, 2003.

Dialogue and compromise prevented a potentially damaging rift between the two professions. Passionate advocacy led to careful consideration; initial distrust was replaced by mutual respect. It was appropriate to reexamine the rule in light of the objections raised by the NCOTA, and it is appropriate to recommend the restructuring that will satisfy those objections. Judy White, Board Chair, and Ben Massey, Executive Director, deserve a great deal of credit for helping defuse a potentially volatile situation and working toward a reasonable resolution.

North Carolina Board of Physical Therapy Examiners

Board Orders / Consent Orders / Other Board Actions Jan. 2002 – June 2002

Suspension

Parcell, James L. PT (Suspension)

Location: Winston-Salem, NC, Forsyth County
License #: P-3320
Conduct: Documenting and billing for treatments that were not performed.
Discipline: 6 month suspension, 1 month active and the remaining period stayed with conditions (executed Mar. 21, 2002)

Probation

Russell, Elise, PTA (Probation)

Location: Melbane, NC, Alamance County
License #: A-613
Conduct: Being under the influence of intoxicating liquors while in the performance of her duties as a physical therapist assistant.
Discipline: Probation for 24 months with restrictions and conditions (executed June 13, 2002)

Joint Statement Regarding Proposed Rule 21 NCAC 48C.0101 From: NCBPTE & NCOTA

The North Carolina Board of Physical Therapy Examiners (NCBPTE) will amend (21 NCAC 48C.0101) to respond to issues raised by the North Carolina Occupational Therapy Association (NCOTA). This rule relates to the scope of physical therapy practice. NCOTA thanks the NCBPTE for its willingness to review the issues and address its concerns.

The May 15, 2002 *North Carolina Register* published a notice to announce rulemaking to clarify Physical Therapy Scope of Practice. A draft of the proposed changes is attached to this statement.

NCBPTE desires to preserve and protect the quality of physical therapy services. NCOTA was concerned about the scope of the rule and sought its clarification. During the past several months, NCBPTE and NCOTA met many times to determine the best and most expeditious means by which these issues could be resolved. Both groups are pleased by the result and are grateful for the dialogue. We believe this resolution will enable OT and PT practitioners to continue to work as colleagues in providing quality health care to the citizens of North Carolina.

2002 Appointments

Governor Michael Easley has reappointed Patricia Stavrakas Hodson, PT and James C. Harvell, MD to serve three-year terms on the NC Board of Physical Therapy Examiners. The Board is fortunate to have these experienced Board members reappointed and is grateful for their willingness to serve the citizens of North Carolina for another three years. The appointment to replace outgoing public member, Gloria Lewis, is still pending.

Important Notice!!!

Barring any unforeseen complications, the Physical Therapy Board's rules that were proposed in January 2000 are scheduled to become effective in August 2002. As soon as the official rules are forwarded to the Board Office, they will be posted on the Web page (www.ncptboard.org). Please read the rules carefully as there have been numerous changes (*see article by Silverstein in Issue 25, Fall 2000 of the Board Newsletter*).



Change of Address/Name Changes/E-mail Address Changes

Don't forget to keep the Board updated of changes in home and work addresses. This can now be done by the licensee on the Licensure Board's Web page (www.ncptboard.org) or by letter, fax (919-490-5106), or call the Board's office @ 919-490-6393 or 800-800-8982.

North Carolina Board of Physical Therapy Examiners

Board Members

- Judy A. White, PT
Chair, Chapel Hill, NC
- Eric J. Smith, PTA
*Secretary-Treasurer
Sanford, 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
- Patricia S. Hodson, PT
Greenville, NC
- Randall C. Stewart, PT
Rocky Mount, NC

Staff

- Ben F. Massey, Jr., PT
Executive Director
- Cynthia D. Kiely
Administrative Assistant
- Diane Kelly
Office Coordinator
- Marie Turner
Application Coordinator

Legal Counsel

John M. Silverstein, Esquire

ADDRESS

NC Board of PT Examiners
18 West Colony Place, Suite 140
Durham, NC 27705
919-490-6393
800-800-8982
Fax 919-490-5106
E-mail:
NCPTBoard@mindspring.com
Web page: www.ncptboard.org

Calendar of Events

- July 11, 2002 Investigative Committee Meeting*
 - Aug. 13, 2002 Public Hearing for Proposed Rules Change**
 - Aug. 13, 2002 Investigative Committee Meeting*
 - Aug. 14, 2002 End of Comment Period for Proposed Rules Change
 - Sept. 12, 2002 Board Meeting**
 - Oct. 7, 2002 Deadline for returning ballots to NCPTA office for election to the Board.
 - Dec. 5, 2002 Board Meeting**
- *Dates are tentative / please confirm on Web page or contact Board Office (800-800-8982).
**For details, see Web page (www.ncptboard.org).

Summary of Fees for 2002

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 1, 2002)

	Licensed in NC	Reside in NC	Work in NC
PTs	4,649	3,633	3,076
PTAs	2,092	1,846	1,530

Forum: Questions and Answers

Question: Is dry needling within the scope of practice of physical therapists in North Carolina?

Answer: NO. Dry needling is a form of acupuncture. In North Carolina, a practitioner who performs acupuncture must have a license from the NC Board of Acupuncture.

Question: Can physical therapists independently determine impairment ratings (percentages) for disability?

Answer: NO. The physical therapist cannot determine impairment ratings independently, but should serve in the role of assisting physicians in making the final determination. The physical therapist may serve as an adjunct to the physician; however, ultimately it is the physician's responsibility to recommend a percentage of impairment.

7000 copies of this public document were printed at a cost of \$1,037.00 or .148 cents per copy.

**North Carolina
Board of Physical Therapy Examiners**
18 West Colony Place, Suite 140
Durham, N.C. 27705

PRSRST STD
U.S. POSTAGE
PAID
RALEIGH, N.C.
PERMIT NO. 2100