



# North Carolina Board of Physical Therapy Examiners NEWSLETTER

ISSUE 24

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## Final Reflections of the Chairman

by J. HERMAN BUNCH, Jr., PT, M.Ed., Chairman

As I write my final chairman's message, I am filled with mixed emotions – sadness that my term is coming to an end and happiness in knowing that the Board will be in good hands and is headed in a good direction. I feel honored to have served the citizens of NC and licensees for the past six years and humbled to have been elected by my fellow Board members to serve as Chair for the past five years. I am proud of what we, the NC Board of PT Examiners, have accomplished and, with your indulgence, I would like to reflect back on these past six years with a little trip down memory lane.

The Board is only as strong as its members and we have been fortunate that Governor James B. Hunt, Jr. has appointed hard working and dedicated members to serve. They have gone above and beyond the call of duty. For example, in 1994, the Board appointed a joint task force with the NCPTA to address supervisory issues. The task force spearheaded the development of our reference book, *Practice Under Pressure (PUP)* which is now in its Fourth Edition and has become a required textbook in several of the North Carolina educational programs. In addition, because it is posted on our web page, it has earned praise from other states which have used it as a model to develop their own reference book on supervision. In an effort to continue the education process of licensees about supervision issues, the Board and NCPTA joined forces with AHEC to do a "road show" across the state on Supervision Issues. More than 500 participants from Greenville to Wilmington to Asheville attended these eight workshops.

In 1995, the Board again joined forces with the NCPTA to address whether physical therapists were legally permitted to perform EMG. As a result of the combined efforts of the NCBPTE

and the NCPTA, the NC Board of Medical Examiners concluded that, "physical therapists can perform EMG and nerve conduction studies and may make physical therapy interpretations, but not medical diagnoses based on the results." This ruling has been helpful on a national level as other states have undergone similar reviews.

Also, in 1995, the Board established the Investigative Committee to address a growing number of complaints. As chairman of the Board, I have served on the Investigative Committee since its inception. This has been one of the most difficult jobs of my career as we sit in judgement of fellow licensees to determine whether there is probable cause that a Practice Act violation has occurred. While serving on the Investigative Committee, I have developed a new appreciation for the fairness of our process and for the work of our investigator, Douglas Kearns. I would like to compliment my fellow Board members who have made some very difficult decisions in balancing what was required by law to protect the public and what was fair to the licensee. I continue to be concerned about the number of violations that are reported each year and hope that, as the physical therapy external environment improves, the number of violations will decrease.

In 1996, a legend with the Board, Constance W. Peake, PT, Executive Secretary, retired. To recognize her 27 years of dedicated service to the Board, an elegant, black-tie retirement dinner was held in her honor at the Siena Hotel in Chapel Hill, NC. Conny was surrounded by more than 70 friends, colleagues, and current and former Board members to help her celebrate the auspicious occasion.

After careful consideration, the Board voted to change the administrative position of the Board from an Executive



Secretary to an Executive Director. After establishing the job requirements and conducting an extensive search, Ben F. Massey, Jr., PT was hired as the first Executive Director for the Board. Ben's love of the profession, his desire to serve, and his dedication to the Board were well established within the physical therapy community and Ben was the ideal choice.

Also in 1996, the North Carolina Board was one of the first states to sign on for Computer Based Testing (CBT). This has proven to be the wave of the future as all 50 states have now moved to CBT. This allows candidates to take the exams quicker and have their results returned within a week; consequently, graduates are licensed more expediently and the need for temporary permits was eliminated.

In an effort to continue to improve the service of the Board's Office, in 1997 the Board made numerous changes. New computers were purchased and additional staff was added. A toll free telephone number was installed, email was connected, and our web page was launched. In addition, Board and staff continue to sponsor and attend educational programs at the state and national level.

*continued on page 2*

# The Right Way to Respond to a Complaint

JOHN M. SILVERSTEIN, Attorney



This edition of the Board's newsletter features the final article by the Board's outgoing Chairman, Herman Bunch. Herman has distinguished himself during two separate terms on the Board, and for the past five years, as Chairman of the North Carolina Board of Physical Therapy Examiners. In terms of service to the public, Herman deserves the highest accolades for not only establishing the

Board's first Investigative Committee to handle complaints regarding licensees, but also in devoting unwavering attention to the work of the Committee to ensure that investigations received prompt attention and adequate resources. Under Herman's direction, the Investigative Committee met monthly to clear a backlog of complaints that existed several years ago. As a direct result of Herman's involvement and Ben Massey's diligent efforts, that backlog has been cleared. The Committee now meets approximately every six weeks, and completes most investigations within four months. All licensees and consumers of physical therapy services are indebted to Herman for his stalwart efforts to protect the integrity of the profession by enforcing the requirements of the Physical Therapy Practice Act.

Despite the importance of the work of the Investigative Committee, many licensees and citizens do not understand the role it plays in assisting the Board to perform its primary duty of protecting the public health, safety and welfare. The Investigative Committee has no authority to impose disciplinary action against licensees. That is solely within the province of the Board. Instead, the Board's rules authorize the Investigative Committee to act as a probable cause committee to investigate complaints made to the Board against licensees with a view toward determining whether a Practice Act violation might have occurred. The members of the Investigative Committee are the Executive Director and a member appointed by the Board Chairman. They are assisted by the Board's investigator, who conducts most of the interviews, and by the Board's attorney.

When a complaint is received by the Board, it is immediately referred to the Investigative Committee. The board members who are not on the Investigative Committee are insulated from information regarding complaints until it is presented to the Board in the

form of a recommendation from the Investigative Committee or in a contested case hearing. This enables the board members to remain impartial by only considering evidence that is presented to them in the appropriate forum. Board Members are instructed not to discuss complaints or pending investigations with anyone. It is the task of the Investigative Committee to interview witnesses who have specific information regarding a complaint, to examine patient records that may be relevant to a complaint, and to compile evidence for presentation to the Board.

Obviously, the ability of the Investigative Committee to perform its duties and responsibilities is made easier when witnesses, including the licensee against whom a complaint is made, cooperate with the investigation. Since some complaints are even dismissed by the Committee before ever reaching the Board, presumably licensees would be anxious to cooperate with the Committee. Surprisingly, however, some licensees offer incomplete responses to requests for information, engage in unreasonable delays in making those responses, or simply fail to furnish the information that is requested.

The Investigative Committee recognizes that any time a licensee is the subject of an investigation, it is only natural to react with fear and consternation. Nevertheless, the licensee is usually best served by cooperating with the Investigative Committee in furnishing a complete response in a prompt fashion. It is not unfair for the members of the Investigative Committee to consider whether a licensee who does not respond in an appropriate time or manner has something to hide, while licensees who furnish prompt and complete responses give the Investigative Committee the impression they are giving immediate attention to serious matters.

A licensee who is the subject of a disciplinary investigation is always well-advised to seek the advice of counsel, especially if the disciplinary action could result in licensure suspension or revocation. What the licensee should not do is ignore the problem, or simply blame the complainant as a difficult or irrational patient. It is the role of the Investigative Committee to find out what really happened, and even if it is determined that the licensee engaged in conduct that does violate the Practice Act, cooperation with the Investigative Committee and the Board generally leads to better results than does the failure to do so.

## CONTINUED FROM PAGE 1, BUNCH

1998 and 1999 have been marked by continuing efforts of Board and staff to offer superior service to its customers (general public and licensees). Due to the increased costs related to running a responsive and efficient office, the Board found it necessary to ask the General Assembly to increase its fees. Thanks to the support by the NCPTA and the General Assembly, the legislation passed and the fee increase became effective in November, 1999. The Board has made a concerted effort to keep fees reasonable. The current renewal fee of \$60.00 is approximately half of what most

licensure Boards charge for license renewal. Additionally, in November of 1999, the Board sponsored a successful education program on the Model Practice Act and approved the relocation of the Board office to a larger suite (900 square feet to 1600 square feet.)

In my final column, I would be remiss if I did not recognize the tremendous contribution of our board attorney, John M. Silverstein. Our Board is very fortunate to have someone of John's caliber serving in this role. His legal background, his attention for detail, his wit and dry sense of humor, and his dedication to our Board have been unsurpassed.

In closing, we have a Board and office that are highly respected nationally and the envy of licensees throughout the country. The Board is heading in the right direction as it continues to look at regulatory and professional issues that affect physical therapy from the perspective of protecting the public. We have important issues to address in the future including telemedicine and continuing competency. I encourage you to become informed about potential changes in the Practice Act or Board's rules as they will definitely affect the way we practice in the future. Thank you for allowing me to serve and best wishes for peace, happiness, and good times as we enter a new millennium.

# North Carolina Board of Physical Therapy Examiners

## Board Orders / Consent Orders / Other Board Actions

June – December, 1999      January – March, 2000

### Suspension

**Merkwa, Barbara D., PT (Suspension)**

**Location:** Cleveland County

**License #:** P2297

**Conduct:** Failure to adequately check the temperature of the water for a non-verbal patient in a whirlpool and for breaching patient confidentiality.

**Discipline:** 06/24/99 Twenty-four month suspension, all of which is stayed so long as Ms. Merkwa complies with the terms of the Consent Order for Disciplinary Action.

### Probation

**Donald K. Shaw, PT (Probation)**

**Location:** Greenville, NC

**License #:** P6537

**Conduct:** Felony conviction for concealment of assets.

**Discipline:** 06/24/99 Placed on probation on the same terms as the United States District Court Order.

### Warning

**Diane M. Donahue, PTA (Warning)**

**Location:** Charlotte, NC

**License #:** A752

**Conduct:** Failure to renew her license in 1997 and 1999 by the required date.

**Discipline:** 06/24/99 Warning

### Warning

**Richardson, Brian, PT (Warning)**

**Location:** Hendersonville, NC

**License #:** P 7053

**Conduct:** Practicing physical therapy prior to becoming licensed and without applying for a new graduate permit pursuant to GS §90-270.31.

**Discipline:** 06/24/99 Warning

**Wagoner, Theresa, PT (Warning)**

**Location:** Hendersonville, NC

**License #:** P4661

**Conduct:** Failure to submit a supervisor's form for a new graduate that she was supervising.

**Discipline:** 06/24/99 Warning.

**Flannery, Sheila, PT (Warning)**

**Location:** Chapel Hill, NC

**License #:** P 4440

**Conduct:** Used modalities (magnets) in her practice that are not within the scope of physical therapy practice.

**Discipline:** 12/09/99 Warning

Reprimands: In 1999, 17 individuals received reprimands, 15 resulting from failure to renew their license by the required date. In 2000, 10 individuals received reprimands for failure to renew their license by the required date. Additionally in 2000, 1 physical therapist received a reprimand for failure to provide adequate supervision.

## Call for Licensee Input

The General Assembly enacted Senate Bill 951 on July 15, 1999, set forth below. The law, which required identification badges to be worn, became effective October 1, 1999, but from October 1, 1999, to October 1, 2001, all health care practitioners are required to wear name badges only. Effective October 1, 2001, all health care practitioners shall be in full compliance with this act. (Bill can be seen in its entirety at the following web page: [www.ncga.state.nc.us](http://www.ncga.state.nc.us).)

The law provides Licensure Boards the opportunity to adopt rules for exemption. The NC Physical Therapy Board would like your input as it explores possible rules exemptions. Please e-mail or send your comments in writing to Board Office prior to May 12, 2000.

### General Assembly of North Carolina Session 1999; Session Law 1999-320

**Senate Bill 951: Act to Protect Patients' Rights by Requiring Name Badges or Other Identification for Health Care Practitioners**  
The General Assembly of North Carolina enacts: Section 1. Chapter 90 of the General Statutes is amended by adding the following new Article to read: "ARTICLE 37. "Health Care Practitioner Identification." §§ 90-640. **Identification badges required.**

(a) For purposes of this section, 'health care practitioner' means an individual who is licensed, certified, or registered to engage in the practice of medicine, nursing, dentistry, pharmacy, or any related occupation involving the direct provision of health care to patients.

(b) When providing health care to a patient, a health care practitioner shall wear a badge or other form of identification displaying in readily visible type the individual's name and the license, certification, or registration held by the practitioner. If the identity of the individual's license, certification, or registration is commonly expressed by an abbreviation rather than by full title, that abbreviation may be used on the badge or other identification.

(c) The badge or other form of identification is not required to be worn if the patient is being seen in the health care practitioner's office and, the name and license of the practitioner can be readily determined by the patient from a posted license, a sign in the office, a brochure provided to patients, or otherwise.

(d) Each licensing board or other regulatory authority for health care practitioners may adopt rules for exemptions from wearing a badge or other form of identification, or for allowing use of the practitioner's first name only, when necessary for the health care practitioner's safety or for therapeutic concerns.

(e) Violation of this section is a ground for disciplinary action against the health care practitioner by the practitioner's licensing board or other regulatory authority."

## North Carolina Board of Physical Therapy Examiners

### Board Members

JoDell F. King, PTA  
*Erwin, NC*

James C. Harvell, Jr., MD  
*Greenville, NC*

Geraldine K. Highsmith, PT  
*Raleigh, NC*

Gloria Lewis  
*Public Member, Oxford, NC*

Eric J. Smith, PTA  
*Sanford, NC*

Patricia A. Stavrakas, PT  
*Greenville, NC*

Randall C. Stewart, PT  
*Rocky Mount, NC*

Judy A. White, PT  
*Chapel Hill, NC*

### Staff

Ben F. Massey, Jr., PT  
*Executive Director*

Cynthia D. Kiely  
*Administrative Assistant*

Diane Kelly  
*Receptionist*

### Legal Counsel

John M. Silverstein, Esquire

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## Appointments to the Board

Governor James B. Hunt, Jr. has re-appointed Judy A. White, PT for a second 3 year term. Ms. White currently serves as Clinical Associate Professor at the Division of Physical Therapy at the University of North Carolina. In addition, Governor Hunt appointed Eric J. Smith, PTA to replace Thomas D. Wilson. Mr. Smith is currently employed at AMI Central Carolina Hospital in Sanford, NC. Recently, Governor Hunt appointed Randall C. Stewart, PT to replace J. Herman Bunch, Jr., PT. Mr. Stewart is owner and president of Carolina Physical Therapy of Rocky Mount, NC.

## Salute to the Chairman

With the Governor's appointment of Randall C. Stewart to the Board, an era of a distinguished Chairman, John Herman Bunch, Jr., has been brought to an end. Mr. Bunch joins an extremely elite group of individuals who have been elected by their peers to serve as chairman for five consecutive years. These individuals are as follows: Helen Kaiser (1952-1956), Anne Parrish (1957 - 1961), and Eleanor Flanagan Branch (1963 - 1967).

Mr. Bunch is to be commended for his dedication, commitment, and time that he has given to the Board during his two terms. I can personally attest to an incredible number of hours that he has dedicated to board issues and to the investigation process. Very few days passed that he did not call the Board office to discuss an issue or a new idea. His attention to detail was only surpassed by his longevity and history with physical therapy issues. Throughout his tenure, he was always thinking of ways that we could take our current level of service to a higher plane. In so doing, he never lost sight of the mission of the Board, "to protect the health, safety, and welfare of the citizens of North Carolina who receive physical therapy service."

To Herman, your fellow Board members and the Board staff salute you and express our sincerest appreciation to you for the thousands of hours that you devoted to serving licensees and citizens of North Carolina over these past six years. Our hats are off to you for a job well done!!!

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