

## **AGENDA**

### **PHYSICAL THERAPY LICENSING BOARD**

**MAY 21, 2013 – 9:00 a.m.**

**Room 403 – 4th Floor**

**Heber M. Wells Building**

**160 E. 300 S. Salt Lake City, Utah**

*This agenda is subject to change up to 24 hours prior to the meeting.*

#### **ADMINISTRATIVE BUSINESS:**

1. Sign Per Diem
2. Call Meeting to Order
3. Review and approve March 4, 2013 minutes
4. Compliance report

#### **APPOINTMENTS:**

- 9:00 a.m. - Rules Hearing**
- 9:20 a.m. - James Nackos, probation interview**
- 9:40 a.m. - Craig Bischoff, probation interview**
- 10:00 a.m. - Paul LaStayo, new application.**
- 10:30 a.m. - Steven Orrock, new Order**

#### **BOARD BUSINESS/DISCUSSION ITEMS:**

1. Environmental Scan
  - Discussion of issues and updates regarding the physical therapy profession
  - Statute and Rule clarifications.
2. Update on issuance of temporary licenses
3. Open and Public Meetings Act Training (changes were made during the 2013 Legislative session)

#### **Next Scheduled Meeting: August 20, 2013**

Meeting scheduled for the next quarter: December 17, 2013

**Note:** In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

# REVISED CHECKLIST FOR PUBLIC MEETINGS

(Fill in the blanks to correspond to each respective board, commission, or committee.)

I am, J. Trent Casper, chairperson of the Physical Therapy Licensing Board.

I would like to call this meeting of the Physical Therapy Licensing Board to order.

It is now (time) \_\_\_\_\_ : \_\_\_\_\_ am on May 21, 2013.

This meeting is being held in room 403 of Heber Wells Building in Salt Lake City UT.

Notice of this meeting was provided as required under Utah's Open Meeting laws.

In compliance with Utah's Open Meetings laws, this meeting is being recorded in its entirety. The recording will be posted to the Utah Public Notice Website no later than three business days following the meeting.

In compliance with Utah's Open Meeting laws, written minutes will also be prepared of this meeting. Appropriately marked "*pending approval*" minutes will be available to the public no later than 30 days after the close of the meeting. "*Approved*" minutes will be posted to the Utah Public Notice Website no later than three business days after approval.

The following Board members are in attendance:

	YES	NO
<u>J. Trent Casper</u> , Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Anne H. Jones</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Lindsi Gordon</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kim Cohee</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kim W. Reid</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The following Board members are absent: (Refer to the above list.)

The following individuals representing DOPL and the Department of Commerce are in attendance:

	YES	NO
<u>Mark B. Steinagel</u> , Division Director	<input type="checkbox"/>	<input type="checkbox"/>
<u>Debra Hobbins</u> , Bureau Manager	<input type="checkbox"/>	<input type="checkbox"/>
<u>Shirlene Kimball</u> , Board Secretary	<input type="checkbox"/>	<input type="checkbox"/>
<u>Susan Hogg</u> , Compliance	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

We welcome any visitors and interested persons at this time. Please be sure to sign the attendance report for the meeting and identify yourself before speaking.

As a courtesy to everyone participating in this meeting, at this time we ask for all cell phones, pagers, and other electronic devices to be turned off or changed to silent mode.

Board motions and votes will be recorded in the minutes.

Let us now proceed with the agenda.

\_\_\_\_\_ (End of the Meeting) It is now (time) \_\_\_\_\_ : \_\_\_\_\_ (am / pm), and this meeting is adjourned.

State of Utah  
Administrative Rule Analysis

## NOTICE OF PROPOSED RULE

- \* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- \* Please address questions regarding information on this notice to the agency.
- \* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- \* The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Date Filed:	Date Filed:	Date Filed:
State Admin. Rule Filing #: _____	_____	_____

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 24b	- 503
Changed to Admin. Code Ref. (R no.):	R	-	-

<b>1.</b>	<b>Agency:</b>	Commerce/Division of Occupational and Professional Licensing		
	<b>Room no.:</b>			
	<b>Building:</b>	Heber M. Wells Building		
	<b>Street address 1:</b>	160 East 300 South		
	<b>Street address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City UT 84111-2316		
	<b>Mailing address 1:</b>	PO Box 146741		
	<b>Mailing address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City UT 84114-6741		
	<b>Contact person(s):</b>			
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>
	Debra Hobbins	801-530-6789	801-530-6511	dhobbins@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

<b>2.</b>	<b>Title of rule or section (catchline):</b>	Physical Therapist Supervisory Authority and Responsibility
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<b>3.</b>	<b>Type of notice:</b>	New <input type="checkbox"/> ; Amendment XXX; Repeal <input type="checkbox"/> ; Repeal and Reenact <input type="checkbox"/>
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<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>	The proposed amendment clarifies that a physical therapist shall provide treatment to a patient at least every tenth treatment, not every tenth day. Members of both the Physical Therapy Licensing Board and the Utah Physical Therapy Association have received calls requesting clarification on the issue of physical therapist treatment frequency and physical therapist aide treatment and supervisor requirements.
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<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>	No XXX; Yes <input type="checkbox"/>
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<b>6.</b>	<b>Summary of the rule or change:</b>	The proposed amendment in paragraph (2) reflects the Board's interpretation of the intent of the rule, which is that the physical therapist should provide at least every tenth treatment to a patient, not a treatment every tenth day.
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<b>7.</b>	<b>Aggregate anticipated cost or savings to:</b>	
	<b>A) State budget:</b>	
	<b>Affected:</b>	No <input type="checkbox"/> ; Yes XXX <input type="checkbox"/>

The Division will incur minimal costs of approximately \$50.00 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

**B) Local government:**

**Affected:**  No XXX; Yes

The proposed amendment applies to licensed physical therapists and their supervisory authority and responsibility of a physical therapist assistant or physical therapy aide. As a result, the proposed amendment does not apply to local governments.

**C) Small businesses ("small business" means a business employing fewer than 50 persons):**

**Affected:**  No \_\_\_; Yes XXX

The proposed amendment applies to licensed physical therapists and their supervisory authority and responsibility of a physical therapist assistant or physical therapy aide. There is the potential that physical therapists currently providing treatment every tenth day would begin providing every tenth treatment once the proposed amendment is made effective. This may result in an increase in costs to patients and third-party payers. However, it is just as likely that the more frequent evaluation by a physical therapist could result in decreased costs and actual savings. The proposed amendment may affect small physical therapy offices, rural medical, or home health businesses due to an increase in the number of physical therapist treatments, as opposed to physical therapist assistant treatments, that a patient receives. The Division; however, is unable to estimate any exact costs or savings due to a wide range of circumstances.

**D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):**

**Affected:**  No ; Yes XXX

The proposed amendment applies to licensed physical therapists and their supervisory authority and responsibility of a physical therapist assistant or physical therapy aide. There is the potential that physical therapists currently providing treatment every tenth day would begin providing every tenth treatment once the proposed amendment is made effective. This may result in an increase in costs to patients and third-party payers. However, it is just as likely that the more frequent evaluation by a physical therapist could result in decreased costs and actual savings. The proposed amendment may affect small physical therapy offices, rural medical, or home health businesses due to an increase in the number of physical therapist treatments, as opposed to physical therapist assistant treatments, that a patient receives. Physical therapists may experience a slight increase in patient treatment demand; physical therapist assistants may experience a slight decrease in patient treatment demand. Patients may experience better outcomes due to more appropriate treatment plans and increased physical therapist oversight of their treatment. The Division; however, is unable to estimate any exact costs or savings due to a wide range of circumstances.

**8. Compliance costs for affected persons:**

The proposed amendment applies to licensed physical therapists and their supervisory authority and responsibility of a physical therapist assistant or physical therapy aide. There is the potential that physical therapists currently providing treatment every tenth day would begin providing every tenth treatment once the proposed amendment is made effective. This may result in an increase in costs to patients and third-party payers. However, it is just as likely that the more frequent evaluation by a physical therapist could result in decreased costs and actual savings. The proposed amendment may affect small physical therapy offices, rural medical, or home health businesses due to an increase in the number of physical therapist treatments, as opposed to physical therapist assistant treatments, that a patient receives. Physical therapists may experience a slight increase in patient treatment demand; physical therapist assistants may experience a slight decrease in patient treatment demand. Patients may experience better outcomes due to more appropriate treatment plans and increased physical therapist oversight of their treatment. The Division; however, is unable to estimate any exact costs or savings due to a wide range of circumstances.

**9. A) Comments by the department head on the fiscal impact the rule may have on businesses:**

The proposed amendment modifies existing rule language to clarify that a patient receiving care from a physical therapist must be treated by the physical therapist at least every 30 days or tenth treatment, with it being permissible for additional treatments to be provided by supportive personnel who are supervised by the physical therapist. Any fiscal impact to businesses will result from their changing their scheduling practice to distribute appointments among physical therapists and supportive personnel in a manner that complies with the rule. Those costs are incidental to the rule itself and cannot be estimated, but are anticipated to be minimal.

**B) Name and title of department head commenting on the fiscal impacts:**

Francine A. Gian, Executive Director

10.	<b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b>		
	<b>State code or constitution citations (required)</b> (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :		
	Section 58-24b-101	Subsection 58-1-106(1)(a)	
	Subsection 58-1-202(1)(a)		
11.	<b>This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i> ):		
		<b>First Incorporation</b>	<b>Second Incorporation</b>
	<b>Official Title of Materials Incorporated (from title page)</b>		
	<b>Publisher</b>		
	<b>Date Issued</b>		
	<b>Issue, or version</b>		
	<b>ISBN Number (optional)</b>		
	<b>ISSN Number (optional)</b>		
	<b>Cost of Incorporated Reference</b>		
	<b>Action: Adds, updates, or removes</b>		
	(If this rule incorporates more than two items by reference, please attach additional pages)		
	12.	<b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b>		05/31/2013	
<b>B) A public hearing (optional) will be held:</b>			
<b>On (mm/dd/yyyy):</b>		<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
05/21/2013		9:00 am	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah
13.	<b>This rule change may become effective on (mm/dd/yyyy):</b>	06/07/2013	
	NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	<b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency:		
	licensing	physical therapy	
	physical therapist	physical therapist assistant	
15.	<b>Attach an RTF document containing the text of this rule change (filename):</b>	R156-24b.pro	
<p><b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i>, and delaying the first possible effective date.</p> <p style="text-align: center;"><b>AGENCY AUTHORIZATION</b></p>			

<b>Agency head or designee, and title:</b>		<b>Date</b> (mm/dd/yyyy):	
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eRules v. 2: ProposedRule.doc 09/03/2009 (<http://www.rules.utah.gov/agencyresources/forms/ProposedRule.doc>)

**R156. Commerce, Occupational and Professional Licensing.**

**R156-24b. Physical Therapy Practice Act Rule.**

**R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.**

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

(1) a full-time equivalent physical therapist can supervise no more than three full-time equivalent supportive personnel unless approved by the board and Division; and

(2) a physical therapist shall provide treatment to a patient at least every tenth treatment [~~day~~] but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

**KEY: licensing, physical therapy, physical therapist, physical therapist assistant**

**Date of Enactment or Last Substantive Amendment: [~~November 13, 2012~~]2013**

**Notice of Continuation: November 15, 2011**

**Authorizing, and Implemented or Interpreted Law: 58-24b-101; 58-1-106(1) (a); 58-1-202(1) (a)**

## MINUTES

### UTAH PHYSICAL THERAPY LICENSING BOARD MEETING

March 4, 2013

Room 402, 4th Floor – 9:00 A.M.  
Heber M. Wells Building  
Salt Lake City, UT 84111

**CONVENED:** 9:01 a.m.

**ADJOURNED:** 11:00 a.m.

**Bureau Manager:**  
**Board Secretary:**

Debra Hobbins, DNP, APRN, LSUDC  
Shirlene Kimball

**Division Staff:**

Richard J. Oborn, Bureau Manager  
Susan Higgs, Compliance Specialist

**Conducting:**

J. Trent Casper, Chairperson

**Board Members Present:**

J. Trent Casper, Chairperson  
Kim Cohee  
Lindi Gordon, By telephone

**Board Members Excused:**

Anne H. Jones, public member

#### TOPICS FOR DISCUSSION

#### DECISIONS AND RECOMMENDATIONS

##### **ADMINISTRATIVE BUSINESS:**

Introduction of New Bureau Manager,  
Dr. Debra Hobbins:

Mr. Oborn reported the Division has created a new Bureau and has rearranged the professions under each Bureau Manager. Mr. Oborn indicated he has been reassigned to the pharmacy profession. Mr. Oborn introduced Dr. Hobbins as the new Bureau manager for the physical therapy profession. Dr. Hobbins and Shirlene Kimball, Board Secretary, were welcomed by Board members.

Susan Higgs, Compliance report:

Ms. Higgs reported James Nackos works one day a week in a clinical setting and continues to teach at Provo College. Mr. Nackos submitted evaluations from both supervisors. Mr. Nackos' urine screens have been negative with the exception of one prescription positive urine screen. Ms. Higgs reported Mr. Nackos provided a copy of the prescription. Mr. Oborn indicated Mr. Nackos questioned whether his Order would allow him to

provide pro bono services with a city athletic team. Mr. Oborn stated he informed Mr. Nackos he could provide services without supervision; however, the final decision would be up to the school athletic team who carries the liability.

Ms. Higgs reported Craig Bischoff is in compliance with the terms and conditions of his Order. Ms. Higgs reported there is a question whether or not the Board reviewed and approved Mr. Bischoff's essay. Board members will need to review the essay and the minutes will need to reflect the approval.

James Nackos, PT  
Probation telephone interview:

Ms. Cohee interviewed Mr. Nackos. Mr. Nackos reported he is doing well and returning to work in the clinical setting has been a good experience for him. He reported the therapists have been excellent to work with and his supervisor is available at all times. He reported he sees a variety of patients and is only working in the clinical setting one day a week. Mr. Nackos stated he is attending four 12-step meetings per month. **Mr. Nackos is in compliance with the terms and conditions of his Order and he will be seen again May 21, 2013.**

Craig Bischoff, PT  
Probation interview:

Mr. Casper conducted the interview. Mr. Bischoff reported things are going well. He reported he has been seeing several home health care patients at Highland Care Center since December and is conducting exercise classes at Millcreek Home Health. He reported he is working 44-46 hours per week and has a good support system at home. Mr. Casper informed Mr. Bischoff he still needs to submit an essay for the Board's approval. Mr. Casper stated the essay should include his conduct that led up to the probation and how his conduct has affected his practice. Mr. Casper stated the Order also lists what is required in the essay. Mr. Bischoff needs to submit the essay within the next week. **Mr. Bischoff is in compliance with the terms and conditions of his Order. He will be seen again May 21, 2013.**

Byron Thompson,  
Formal Adjudicative Proceeding:

Mr. Oborn reviewed Mr. Thompson's case with Board members and indicated the Division is looking for a formal recommendation to revoke the license. Mr. Oborn reported Mr. Thompson was licensed in California and in Utah in 1997. In November of 2002, his California license was revoked, with a stay, and his license was placed on five-year probation. Utah mirrored the

California action. The California probation was terminated November 2008 and the Utah probation was terminated January 2009. In May 2011, California again took action, based on inappropriate touching and harassing patients. These charges are similar to the 2002 action. California outlined ten allegations in their formal document. Utah investigators contacted Mr. Thompson and gave him the option to surrender his Utah license. Mr. Thompson chose not to surrender the license and the Division issued a Notice of Agency Action that lists eight counts of gross negligence and two counts of unprofessional conduct/sexual harassment. Mr. Thompson failed to respond to the Notice of Agency Action and lost his right to appear before the Board. The Division is seeking revocation of his Utah license. Mr. Oborn stated the Board could add strong language to make it difficult for him to reapply due to the egregiousness of the charges. Board members reviewed the information provided. Ms. Cohee made a motion to revoke the license indefinitely based on the eight counts of gross negligence and two counts of unprofessional conduct/sexual harassment. Ms. Gordon seconded the motion. All Board members voted in favor of motion.

December 4, 2012 Minutes:

Ms. Gordon made a motion to approve the December 4, 2012 minutes as written. Ms. Cohee seconded the motion. All Board members voted in favor of the motion.

Discussion of Medicaid and VA requirements regarding co-signatures:

Ms. Cohee reported she reviewed Medicaid's provider manual for physical therapy and found that Medicaid does require a co-signature for the PTA. Ms. Cohee indicated Medicaid also requires immediate supervision and the therapist needs to be present in the area where the person is being supervised and immediately available to assist the person being supervised.

Ms. Cohee stated she is not aware of any specific Medicare requirements; however, she will see what information she can find and report to the Board at the next meeting. Ms. Gordon reported she checked with several individuals at the VA Hospital and no one was aware of Medicare Rules regarding co-signatures. Mr. Casper stated Medicaid requirements are usually more stringent than Medicare requirements. Mr. Casper stated he will review Tri-Care and Medicare requirements to see what he can find.

Jared Stohel,  
Application review:

Mr. Oborn indicated he spoke with Mr. Stohel who was going to submit an application for the Boards review. Mr. Stohel has not yet submitted the application.

Discussion regarding a PT Newsletter:

Mr. Oborn stated he consulted with the Division Director who indicated Board members could put together a newsletter; however, Division staff could not be involved due to the limited time and shortage of funds. If Board members developed the newsletter, the Division would send it out by email. Ms. Cohee stated she would consider writing the newsletter and will report on her decision at the next meeting.

Clarification Physical Therapist Practice Act Rule R156-24b-503(2) that establishes how often physical therapy treatments must be provided by PT and the PTA:

Mr. Osborn reported he received a question from Doug Groneman regarding clarification of the Rule that states that a physical therapist shall provide treatment to a patient at least every tenth treatment day but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less. Mr. Groneman requested clarification whether this means that at every tenth treatment provided by the PTA, the PT must provide treatment, or is it on the tenth day? If it is every ten days, the PTA could have provided 20 treatments. Mr. Oborn stated he feels it is the tenth treatment day because the standard links to the number of days not the treatment. Mr. Casper stated he is not concerned with the tenth treatment day due to the supervision and oversight. Ms. Cohee stated she feels it should be every tenth treatment. Ms. Gordon stated she agrees that it should be every tenth treatment. Significant changes can take place quickly and she indicated she would prefer the PT see the patient every tenth treatment. Ms. Cohee stated Medicare guidelines indicate the patient needs to be seen by the PT if there are significant changes, and she stated she also feels there are significant changes every couple of days. Mr. Oborn stated the wording "but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less" is also causing confusion. Ms. Cohee made a motion in section R156-24b-503(2) eliminate the word "day" and have the Rule read "every tenth treatment but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less". Ms. Gordon seconded the motion. All Board members voted in favor of the motion. Mr. Oborn indicated a letter would be send to the Utah Physical Therapy Association regarding the

motion and have them respond to the recommendation. If agreed, the Rule will be changed to reflect this standard.

Legislative Update:

Mr. Oborn reported that if S.B.165 passes, physical therapist assistants whose temporary licenses expired last July will be allowed to have their temporary license extended until July 1, 2014. Mr. Oborn stated the Board sent a letter expressing concern regarding the bill and the Utah Physical Therapy Association does not support the bill.

Mr. Oborn reported there were 234 temporary licenses that expired July 2012. Two hundred and three individuals have applied for the regular license. Thirty-one individuals have not applied for the regular PTA license. Eight individuals have been denied. Twenty-four applicants are still pending and of the twenty-four applicants, twelve individuals have taken the exam three or more times and still have not passed.

Ms. Cohee:

Ms. Cohee reported she took the Practice Review Tool to see what it was like. She reported it was difficult and she received the sufficiently qualified score. She reported the report comes back as needs improvement or sufficiently qualified. Dr. Hobbins stated it sound like this would be a good tool to use if an individual has been out of practice for a period.

Mr. Casper:

Mr. Casper reported he will serve on the FSBPT Proposal Committee. Mr. Casper stated he could serve on the FSBPT Committee for a period of six months after his term expires on the Board. His Board term will expire June 30, 2014.

Mr. Oborn stated that the vacant position on the Board may not be filled until after the August Board meeting,

*Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.*

5/24/2013  
Date Approved

(ss) J. Trent Casper  
J. Trent Casper, Chairman  
Physical Therapy Licensing Board

5/21/13  
Date Approved

(ss)   
Debra Hobbins, Bureau Manager, Division of  
Occupational & Professional Licensing

**SWORN STATEMENT**  
**SUPPORTING CLOSURE OF BOARD MEETING**

DOPL-FM-010 05/02/2006

I, J Trent Casper acted as the presiding member of the Physical Therapy  
Licensing Board Board, which met on May 21, 2013.

Appropriate notice was given of the Board's meeting as required by §52-4-202.

*Closed at  
9:22 a.m.*

A quorum of the Board was present at the meeting and voted by at least a two-thirds vote, as detailed in the minutes of the open meeting, to close a portion of the meeting to discuss the following:

*closed 11:17  
open 11:37*

- the character, professional competence, or physical or mental health of an individual (52-4-205(1)(a))
- strategy regarding pending or reasonably imminent litigation (§52-4-205(1)(c))
- deployment of security personnel, devices, or systems (§52-4-205(1)(f))
- investigative proceedings regarding allegations of criminal misconduct (§52-4-205(1)(g))

The content of the closed portion of the Board meeting was restricted to a discussion of the matter(s) for which the meeting was closed.

With regard to the closed meeting, the following was publically announced and recorded, and entered on the minutes of the open meeting at which the closed meeting was approved:

- (a) the reason or reasons for holding the closed meeting;
- (b) the location where the closed meeting will be held; and
- (c) the vote of each member of the public body either for or against the motion to hold the closed meeting.

If required, and/or kept or maintained, the recording and any minutes of the closed meeting will include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent; and
- (c) the names of all others present except where such disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

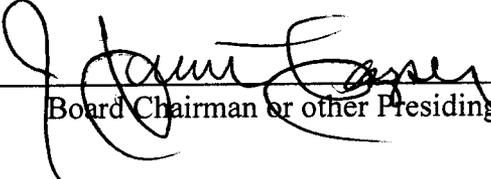
Pursuant to §52-4-206(5), a sworn statement is required to close a meeting under §52-4-205 (1)(a) or 52-4-205(1)(f), but a record by tape recording or detailed minutes is not required.

- A record was not made
- A record was made by:       Tape Recording       Detailed Written Minutes

Pursuant to §52-4-206(1), a record by tape recording is required for a meeting closed under §52-4-205(1)(c) or 52-4-205(1)(g), and was made.

- Detailed written minutes of the content of a closed meeting although not required, are permitted and were kept of the meeting.

I hereby swear or affirm under penalty of perjury that the above information is true and correct to the best of my knowledge.

  
Board Chairman or other Presiding Member

5/21/2013  
Date of Signature



State of Utah  
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT.  
*Governor*

FRANCINE A. GIANI  
*Executive Director*

MARK B. STEINAGEL  
*Division Director*

May 1, 2013

PAUL LASTAYO  
UNIVERSITY OF UTAH  
DEPT OF PHYSICAL THERAPY  
520 WAKARA WAY  
SALT LAKE CITY UT 84108

Dear Mr. LaStayo:

The Utah Division of Occupational and Professional Licensing is in receipt of your application as a physical therapist in the state of Utah. Upon review of the application, Debra Hobbins, Bureau Manager, requested that you meet with the Physical Therapy Licensing Board to discuss your application. According to Rule, an individual who has not been engaged in licensed practice may be required to meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy.

Your meeting with the Utah Physical Therapy Licensing Board has been scheduled for Tuesday, May 21, 2013 at 10:00 a.m., room 474 (fourth floor) in the Heber Wells Building, 160 East 300 South, Salt Lake City Utah.

Please be aware that your meeting with the Physical Therapy Licensing Board is a public meeting. According to the Open and Public Meetings Act, all public meetings are recorded and available to the public. SB 77 amended the Open and Public meetings Act during the 2013 Legislative session and beginning May 14, 2013, the Division will be required to post the audio recordings to the web site within three business days of the meeting. Minutes will be posted as pending thirty days after the meeting and approved minutes posted within three days of being approved by the Board.

Please contact me at (801) 530-6736 or by e-mail at [skimball@utah.gov](mailto:skimball@utah.gov) to confirm the appointment or if you have any questions.

Sincerely,

Shirlene Kimball, Secretary  
Bureau 7  
DOPL



# State of Utah Department of Commerce

## Division of Occupational and Professional Licensing

GARY R. HERBERT,  
*Governor*

FRANCINE A. GIANI  
*Executive Director*

MARK B. STEINAGEL  
*Division Director*

April 2, 2013

Dear Applicant:

The Physical Therapy Practice Act allows the Division to issue a temporary physical therapist assistant license to individuals who meet the following requirements:

- Was working as a physical therapist assistant in Utah before July 2, 2009; and
- Complies with the requirements in Subsections 58-24b-302(2)(a),(b),(c),(f),(g).

Subsection 58-24b-302 reads:

(2) An applicant for a license as a physical therapist assistant shall:

- (a) be of good moral character;
- (b) complete the application process, including the payment of fees set by the division, in accordance with Section 63J-1-504, to recover the costs of administering the licensing requirements relating to physical therapist assistants;
- (c) submit proof of graduation from a physical therapist assistant education program that is accredited by a recognized accreditation agency;
- (f) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
- (g) meet any other requirements established by the division, by rule.

According to Division records, you previously held a physical therapist assistant temporary license that expired July 1, 2012. Senate Bill 165, "Physical Therapy Practice Act Amendments," passed the 2013 General Session of the Utah State Legislature. This bill extends the expiration date that applies to a temporary license as a physical therapist assistant from July 1, 2012 to July 1, 2014. Therefore, the Division of Occupational and Professional Licensing reactivated the temporary license and applied a new expiration of July 1, 2014.

You will need to meet all licensure requirements for the physical therapy assistant prior to the July 1, 2014 date. Please note: If you have a current pending Physical Therapy Assistant application, you will not need to submit a new application. However, you must pass the FSBPT's National Physical Therapy Examination with a passing score as determined by the FSBPT.

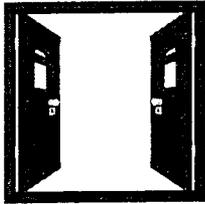
If you have not submitted the Physical Therapy Assistant application, you will need to submit an application with all required documentation and register for the FSBPT's National Physical Therapy Examination. Once you have registered, you will be made eligible for the for the NPTE PTA level examination. Upon passing the examination, your Physical Therapy Assistant License would be issued. Again, this must happen prior to July 1, 2014.

The PTA application can be found on the Division's website at [www.dopl.utah.gov](http://www.dopl.utah.gov). You may register for the NPTE PTA level exam and pay the examination fee by credit card via the FSBPT (Federation of State Boards of Physical Therapy) Internet site at [www.fsbpt.net/pt](http://www.fsbpt.net/pt).

Sincerely,

Debra Hobbins, DNP, APRN, LSUDC  
Division of Occupational and Professional Licensing  
Bureau 7

## Open and Public Meetings Act Training



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## Training Outline

- Background
- Public Policy
- Definitions
- General Rule
- Notice Requirements
- Minutes of Open Meetings
- Closing a Meeting
- Record of Closed Meetings
- Electronic Meetings
- Disruptive Behavior
- Litigation and Enforcement



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## Background - Training Requirement- §52-4-104

The presiding officer of each public body is responsible to ensure that all members of the public body are provided with annual training on the Open and Public Meetings Act.



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### Background: DOPL Licensing Board Structure - §58-1-201

- Typically consist of 5 members: 4 licensees and 1 public member.
- Members nominated by associations, submitted by the Division, confirmed by the Governor, and appointed by the Executive Director of the Department of Commerce.
- Members serve 4-year staggered terms.
- Duties and responsibilities set forth in Utah Code Ann. Sections 58-1-202 and 58-1-203.
- Members elect a chair annually who conducts meetings using parliamentary procedure: Robert's Rules of Order.
- Board Secretary is provided by the Division.
- Division liaison is the Bureau Manager.

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### Public Policy - §52-4-102

- Public bodies exist to aid in the conduct of the people's business.
- Their actions and deliberations should be taken and conducted openly.



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### Definitions - §52-4-103(4)

- "**Meeting**" means the convening of a *public body*, with a *quorum* present, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.
- Includes a workshop or executive session of a public body.
- Does not mean a chance or social meeting.



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### Definitions - §52-4-103(7)

"Public body" means any administrative, advisory, executive, or legislative body of the state or its subdivisions that:

1. is created by the Utah Constitution, a statute, rule, ordinance, or resolution;
2. consists of two or more persons;
3. expends, disburses or is supported in whole or part by tax revenue; and
4. is vested with the authority to make decisions regarding the public's business.

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### Definitions - §52-4-103(9)(a)

"Quorum" means a simple majority of membership of a public body, unless otherwise defined by applicable law.



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### Definitions - §52-4-103(8)

- "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.



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## General Rule - §52-4-201(1)

Every meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.



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## Notice Requirements - §52-4-202(1)-(3)

- Annual public notice of the date, time, and place of regularly scheduled board meetings.
- At least 24 hour public notice of the agenda, date, time and place of each of its meetings.
- The 24 hour public notice is satisfied by:



- posting on a public bulletin board at the Heber M. Wells Building;
- posting a notice on the Utah Public Notice Website created by Section 63F-1-701, provided it is set up to deliver notice to a newspaper or local media correspondent.

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## Emergency Meetings - §52-4-202(5)

- When due to unforeseen circumstances it is necessary for a public body to hold an emergency meeting to discuss matters of an emergency or urgent nature, the notice requirements may be disregarded and the best notice practicable given.
- Before such a meeting is held an attempt must be made to notify all of its members and a majority must vote in favor to hold such a meeting.



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### **Agenda Requirements - §52-4-202(6)**

- A public notice that is required to include an agenda must be specific enough to notify the public as to the topics to be considered at a meeting.
- Except for emergency meetings, a public body may not consider a topic that is not listed under a properly noticed agenda.
- A topic not included on an agenda that is raised by the public during an open meeting may be discussed but no final action may be taken at that meeting.

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### **Minutes and Recordings of Open Meetings - §52-4-203**

- Except for site visits and field tours, written minutes and recordings must be kept of all open meetings.
- The minutes and recordings are public records, but minutes are the official record of action taken.
- Anyone in attendance can make their own recording unless it interferes with the conduct of the meeting.



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### **Minutes and Recordings of Open Meetings - §52-4-203(2)**

Written minutes and recordings must include:

- the date, time and place of the meeting;
- the names of members present and absent;
- the substance of all matters proposed, discussed, or decided, which may include a summary of comments made by members of the public body;
- a record by individual member, of votes taken;

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## Minutes and Recordings of Open Meetings - §52-4-203(2)

(continued):

- the name of each person who is not a member of the public body, and upon recognition by the presiding officer of the public body, provided testimony or comments to the public body;
- the substance, in brief, of the testimony or comments provided by the public; and
- any other information that is a record of the proceedings of a meeting that any member requests be entered in the minutes or recording.

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## Minutes and Recordings of Open Meetings - §52-4-203(2)

Written minutes and recordings of an open and public meeting are public records as follows:

- Pending minutes that have been prepared in a form awaiting only formal approval by the public body are a public record.
- Pending minutes that have not been adopted by the public body shall be marked "awaiting formal approval" or "unapproved" or with some other similar notice that the minutes are subject to change until formally approved.
- Appropriately marked pending minutes must be posted on the Utah Public Notice Website within 30 calendar days after the end of the public meeting.

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## Minutes and Recordings of Open Meetings - §52-4-203(2)

(continued):

- Public bodies are required to establish and implement procedures for the public body's approval of the written minutes of each meeting.
- Written minutes are the official record of action taken at the meeting.
- Within three business days after approving written minutes of an open meeting, a public body is required to post to the Utah Public Notice Website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at a meeting.
- A recording of an open meeting must be posted to the Utah Public Notice Website within three business days after the end of the meeting.
- Written minutes or recordings of an open meeting have a permanent retention schedule.

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### Closing a Meeting - §52-4-204

Closed meetings are never required, but may be held provided:

- a. a quorum is present;
- b. two-thirds of the members in a properly noticed open meeting vote to close the meeting;
- c. the only matters discussed in the closed meeting are those permitted in Section 52-4-205; and
- d. no ordinance, resolution, rule, regulation, contract or appointment is approved in the closed meeting.



NO ADMITTANCE

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### Closing a Meeting - §52-4-204(4)

The following must be publicly announced and entered on the minutes of the open meeting:

- the reason or reasons for holding a closed meeting;
- the location where the closed meeting will be held; and
- the vote by name, of each member of the public body, either for or against the motion to hold a closed meeting.



NO ADMITTANCE

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### Closing a Meeting - §52-4-205

The purposes for closing a meeting include:

- discussion of the character, professional competence, or physical or mental health of an individual;
- strategy sessions to discuss pending or reasonably imminent litigation;
- deployment of security personnel, devices, or systems; and
- investigative proceedings regarding allegations of criminal misconduct.



NO ADMITTANCE

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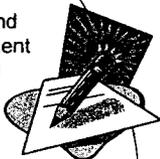
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**Record of Closed Meetings -  
§52-4-206(1) & (2)**

- Except where a sworn statement is required, a recording of the closed meeting is required and detailed written minutes may be kept.
- Recordings must be a complete and unedited record from commencement through adjournment of the closed meeting.



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**Record of Closed Meetings -  
§52-4-206(3)**

The recording and any minutes of a closed meeting must contain:

- the date, time, and place of the meeting;
- the names of members present and absent; and
- the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

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**Record of Closed Meetings -  
Sworn Statements - §52-4-206(6)**

- Instead of a recording, a sworn statement is required from the person presiding at a meeting if a public body closes a meeting exclusively for the purpose of:
  - discussing character, professional competence, or physical or mental health of an individual; or
  - discussing the deployment of security personnel, devices, or systems.
- DOPL has prepared a sworn statement form to assist the person presiding in closing such a meeting.

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## Electronic Meetings - §52-4-207(2)

A public body may not hold an electronic meeting unless it has adopted a resolution, rule, or ordinance governing the use of electronic meetings. Commerce R151-1-2 provides:



- Such meetings are permitted but may be limited based on budget, public policy, or logistical considerations.
- A director or designee may establish such meetings on his or her own initiative or acting upon a timely request from a board member.
- A quorum of a board is not required to be present at a single anchor location.
- Any number of separate connections are permitted unless limited based upon available equipment, etc.

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## Electronic Meetings - §52-4-207(3)

A public body convening or conducting an electronic meeting must:

- give public notice under Section 52-4-202;
- post written notice at the anchor location(s);
- provide at least 24-hour notice to the public body, including how members will be connected, so members may participate in and be counted as present for all purposes;
- establish one or more anchor locations, at least one of which must be in the normal meeting location; and
- provide space and facilities at the anchor location so interested persons and the public can attend, monitor and participate.

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## Definitions - §52-4-103

- "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.
- "Anchor location" means the physical location from which an electronic meeting originates or the participants are connected.
- "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

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### Disruptive Behavior at a Meeting - §52-4-301



- A public body may remove any person who willfully disrupts a meeting to the extent that orderly conduct is seriously compromised.
- Such a removal does not constitute closing the meeting.

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### Voiding a Public Meeting - §52-4-302

- Final action in a meeting held in violation of the requirements for open, emergency, and electronic meetings is voidable in court.
- A lawsuit to void any final action must be filed within 90 days after the date of the action.



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### Voiding a Public Meeting - §52-4-302

- A court may not void a final action taken by a public body for failure to comply with posting notice on the Utah Public Notice Web Site if:
  - the public body otherwise complies with the notice requirements in Section 52-4-202; and
  - the failure was the result of unforeseen Internet hosting or communication technology failure.



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## **Criminal Penalty for Improperly Maintaining Records - §63A-12-105**

Intentionally mutilating, destroying, or otherwise damaging or disposing of the record-copy of a record knowing it is in violation of the laws governing retention of the record is a class B misdemeanor and the employee involved may also be subject to disciplinary action.



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## **Enforcement of Open and Public Meetings Act - §52-4-303**

- The attorney general and county attorneys are responsible for enforcement of the Open and Public Meetings Act.
- The attorney general is required on at least a yearly basis to provide notice to all public bodies of any material changes to the Open and Public Meetings Act.
- A person denied any right under the Act may bring suit to compel compliance with or enjoin violations or determine the applicability of the Act, and may be awarded attorney fees and court costs if successful.

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## **Action Challenging Closed Meeting - §52-4-304**

- In a lawsuit brought to challenge the legality of a closed meeting a court is required to review the recording or written minutes of the closed meeting in camera, and decide the legality of the closed meeting.
- If the court determines that the public body did not violate the Act regarding closed meetings, it must dismiss the case without disclosing or revealing the information from the recording or minutes of the closed meeting.
- If the court determines the public body did violate the Act regarding closed meetings, it must publicly disclose or reveal from the recording or minutes all information about the portion of the meeting that was illegally closed.

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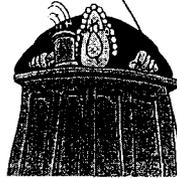
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## Criminal Penalty for Closed Meeting Violation - §52-4-305

A knowing or intentional violation or aiding or advising in the violation of the closed meeting provisions of the Open and Public Meetings Act is classified as a class B misdemeanor.



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## Questions?



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Kathryn Ann Clark  
465 S Timberwood Circle  
Palmer, Alaska 99645  
(permanent address)  
1-435-640-3352  
kathyvclark@gmail.com

Lucerna 6359  
CP 11400  
Montevideo, Uruguay  
(current address)

March 11, 2013

Division of Occupational and Professional Licensing  
PO Box 146741  
Salt Lake, Utah 84114-6741

Dear DOPL,

I am a Utah licensed Physical Therapist (License # 5050953-2401, issued January 17, 2002) who has been living out of the country since August 2011.

From August 2011 to January 2012, I was living in Tbilisi, Republic of Georgia and from January 2012 to the present time, I have been living in Montevideo, Uruguay.

Because of this, I have not been able to obtain the required 40 contact hours of continuing education.

I am writing to ask for a one time waiver of my continuing education hours in order to renew my license in May 2013.

While living out of the country, I have been working as a physical therapy consultant to non-governmental organizations, schools and private clients.

I appreciate your consideration.

Thank you,



Kathryn Ann Clark  
Utah Physical Therapist license #5050953-2401