

DOUGLAS A. DUCEY
Governor



CHARLES D. BROWN
Executive Director

MELINDA RICHARDSON, PT, MA
President

ARIZONA STATE BOARD OF PHYSICAL THERAPY
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REGULAR SESSION MEETING MINUTES
May 19, 2015

MEMBERS PRESENT:

Melinda Richardson, PT, MA; President
James E. Miller, PT, DPT, Vice President
Al D'Appollonio, PT, MBA; Secretary
Michael S. Clinton, CPA; Member
Peggy Hunter, PTA, CLT; Member
Nushka Remec, PT, MS, PCS

MEMBERS ABSENT:

None

OTHERS PRESENT IN PERSON:

Charles D. Brown, Executive Director
Veronica Cardoza, Licensing Administrator
Karen Donahue, Senior Investigator
Karen Whiteford, Office Manager
Mona Baskin, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

Ms. Richardson called the meeting to order at 8:30 a.m. (A recording of the meeting is available through the Board Office)

1) Review and Approval of Draft Minutes

a) April 21, 2015; Regular Session Meeting Minutes

Ms. Hunter moved the Board to approve the May 19, 2015, regular session meeting minutes with no amendments. Mr. Clinton seconded the motion. The motion carried by unanimous vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

2) CONSENT AGENDA: REVIEW, CONSIDERATION and ACTION

a) Applications for Licensure and Certification

Mr. Brown explained the scenarios in which Program Director letters were received prior to transcripts and how those scenarios affect the approval of applications. Mr. Brown presented options to the Board for approval of these applications.

i) Review, Consideration and Approval of Applications of Physical Therapist Licensure upon Receipt of Passing Scores on the NPTE/AZLAW and Final Transcript

Ali Asadi	Mark Beaty	Andrea Bernier
Kasey Boyd	Cassady Busellato	Matthew Dawson
Bradley Day	Michele Glowacki	Katlyn Hannan
Rhonda Heckathorn	Karen Howell	Ashley Ingram
Monique Johnson	Deborah Kowatch	David Kreis
Jennifer Lis	Kimberly Lutterloh	Michael Millanes
Jaree Price	Lauren Primerano	Melissa Schussman
Evan Short	Brian Smith	Adam Squire
Jason St. Pierre	Joseph Thompson	Dustin Titcomb
Melanie Vermeulen		

iii) Review, Consideration and Approval of Applications for Physical Therapist Assistant Certification upon Receipt of Passing Scores on the NPTE/AZLAW and Final Transcript.

Kelly Amaturro	Tina Bellgarde	Jason Cummings
Elaina Freij	Jeffrey Gorman	Courtney Grimm
Bryan Kass	Ashley Knerr	Shellby Kuhar
Christopher Lindsey	Philip Lloyd	Robin Longacre
Petko Petrov	Patricia Racina	Eric Renshaw
Nigel Reyes	Cheryl Rogers	Deana Rosales
Lisa Shelly	Victor Salinas	Joseph Stanislawski
Matthew Swift	Megan Thomas	Rebecca Tolomei
Catherine Topp	Melissa West	Stacy Widstrand
Cortney Whyte	Hannah Zargar	

Board members requested the removal of Deborah Kowatch from the consent agenda. Ms. Hunter moved the Board approve the remaining applications upon receipt of passing scores and final transcripts. Dr. Miller seconded the motion. Following review and discussion the motion carried by unanimous vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Board staff was directed to validate through their processes that transcripts are received before applicants sit for the exam. Early testers will continue to go through the normal process.

Deborah Kowatch

Ms. Richardson stated that Ms. Kowatch previously held a Physical Therapist license in Arizona in 2010 and that CEUs for two renewal periods would be required in order to grant a license. Mr. Brown stated the Board’s options for requirements. Ms. Richardson moved the Board require 40 hours of CEUs. Mr. D’Appollonio seconded the motion. Following review and discussion the motion passed by unanimous vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

ii) Review, Consideration and Approval of Applications for Physical Therapist Licensure upon Receipt of Passing Scores on the NPTE/AZLAW and Final Transcript and with documentation Related to Disclosure on “Personal Information” section of the application

Nicole Christine	Emily DeMeulenaere	Morgan Denny
Allison Kelly	Ryan Wallace	Samantha Swartz

Ms. Hunter moved the Board approve all applications upon receipt of passing scores and final transcripts. Mr. D’Appollonio seconded the motion. Following review and discussion the motion carried by unanimous vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

iv) Review, Consideration and Approval of Applications for Physical Therapist Assistant Certification upon Receipt of Passing Scores on the NPTE/AZLAW and Final Transcript and with documentation Related to Disclosure on “Personal Information” section of the application

David Graves	Laura Nicolai	Daniel Sobol
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Ms. Richardson moved the Board approve all applications upon receipt of passing scores and final transcripts. Ms. Hunter seconded the motion. Following review and discussion the motion carried by unanimous vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

4) Review, Consideration and Action on Applications for Licensure and Certification

- a) Substantive Review of Documentation Related to Disclosure on “Personal Information” Section of Application
 - (1) Physical Therapist Applications and Approval to take the NPTE and the AZLAW (Jurisprudence) Exam and Possible Certification.

(a) Ann Hogan Patriquin

Mr. Brown provided a summary of documents received in regard to Ms. Patriquin’s application. Ms. Richardson moved the Board grant licensure with the stipulation that Ms. Patriquin enter into a consent agreement that would require a clinical diagnostic evaluation within three months by a Board approved substance abuse evaluator who is licensed in the state of Arizona that has a minimum of three years of experience. If Ms. Patriquin does not agree to the consent agreement, her application will be denied and she will have the right to request a hearing. She must comply with the recommendations of the evaluator, including but not limited to drug screening, counseling, and any other types of provisions. The Board may restrict practice settings based on the evaluation. Dr. Miller seconded the motion. Following review and discussion the motion carried.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye		X		X	X	X
Nay	X		X			
Recused						
Abstained						
Absent						

5) COMPLAINTS, HEARINGS, INVESTIGATIONS and COMPLIANCE

- a) Formal Hearing
 - i) Case No. 12-65; Timothy Whalen, PT

At 9:07 a.m., Ms. Richardson noted that the formal hearing for case 12-65 (Timothy Whalen) was scheduled for 9:00. Mr. Whalen was not yet in attendance so the Board decided to continue the meeting to give Mr. Whalen at least an additional 15 minutes to arrive.

4) Review, Consideration and Action on Applications for Licensure and Certification

- (2) Review of and possible action on approval of Final SCPP and possible licensure upon receiving passing scores.

(a) Shipra Sethi

Ms. Hunter moved the Board approve Ms. Sethi’s application. Mr. D’Appollonio seconded the motion. Following review and discussion the motion carried by unanimous vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

The Board recessed for a break at 9:08 a.m.
 The Board returned from break at 9:15 a.m.

5) COMPLAINTS, HEARINGS, INVESTIGATIONS and COMPLIANCE

- b) Initial Review, Discussion and Action on Complaint
 - i) Complaint #14-37; Katrina Herron, PT

Ms. Herron was present and not represented by legal counsel. Ms. Donahue provided a summary of the complaint. The Board asked questions of Mr. Herron. Dr. Miller moved the Board move the case to an informal hearing. Ms. Hunter seconded the motion. Following review and discussion the motion passed by unanimous vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Dr. Miller moved the Board open a complaint against Linda Amado for violating A.R.S. §32-2044(4), A.R.S. §32-2044(17), A.R.S. §32-2044(20), and R4-24-303(G)(1), and R4-24-303(G)(5). Ms. Hunter seconded the motion. Following review and discussion the motion passed by unanimous vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

- ii) Complaint #14-49; Anthony Granger, PT

Mr. Granger was present and requested the review of the complaint against him be postponed 15 minutes to give his attorney an opportunity to arrive.

- iii) Complaint #14-51; Lisa Brady, PT

Ms. Brady was present and was represented by legal counsel Lisa Weinzweig. Ms. Donahue provided a summary of the complaint. Ms. Weinzweig made an opening statement. Ms. Brady made a statement, noting that she had taken a course on documentation in December 2014. The Board asked questions of Ms. Brady. Ms. Richardson moved the Board issue a consent agreement. Ms. Hunter seconded the motion. Following review and discussion Ms. Richardson withdrew her motion and Ms. Hunter withdrew her second.

After further discussion, Dr. Miller moved the Board issue a consent agreement that Ms. Brady will have 21 days to accept or the case will go to an informal hearing. The consent agreement will include probation for six months with eligibility for early termination, six months of monthly monitoring to include the review of a minimum of five charts for six months, which must include daily schedules, evaluations, reevaluations, and discharge summaries. The monitoring must also include the licensee's responsibility for administration,

supervision, and documentation. Ms. Hunter seconded the motion. Dr. Miller requested a friendly amendment to one year of probation. Ms. Hunter accepted the friendly amendment. Following review and discussion the motion passed.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X		X
Nay					X	
Recused						
Abstained						
Absent						

Ms. Richardson moved the Board adopt the following Conclusions of Law:

A.R.S. §32-2044(1) “Violating this chapter, Board rules or a written board order.”

A.R.S. §32-2044(4): “Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.”

1. Ms. Brady documents co-signature for PTA documentation on DOS in which the patient status has changed. Documentation does not indicate that she performs a re-assessment of the patient prior to further delegation of care to assistive personnel.
2. Ms. Brady may not be performing re-assessments or discharges directly with the patient, but may be deriving her information from the PTA documentation in prior visits.
3. Ms. Brady does not assess patient MF after she co-signs documentation that she has fallen out of bed.
4. Ms. Brady does not assess the patient on 7/21/14 after the PTA documents that the patient has had a significant change in status.
5. Ms. Brady delegates care of patients in which she may not have determined the acuity of the patient or reviewed the treatment plan prior to the PTA engaging in treatment.
6. Ms. Brady, as Rehab director, may have enabled the PTA to engage in provision of physical therapy services that exceeded their authority to perform.
7. Ms. Brady may have delegated entire DOS of care to physical therapy aides without determining the acuity of the patient or reviewed the treatment plan prior to the aide engaging in treatment.
8. It may appear that the assistive personnel performed all of the treatment of the reviewed records, with minimal if any communication with the supervising physical therapist.
9. Ms. Brady delegated care of the three patient records reviewed to assistive personnel without adequate POC or direction for treatment. The assistive personnel are dependent on the evaluation goals to determine treatment interventions, even when treatment was not documented as being performed at the initial evaluation.

A.R.S. §32-2044(6): “Failing to supervise assistive personnel, physical therapy students or interim permit holders in accordance with this chapter and rules adopted pursuant to this chapter.”

1. Ms. Brady, as Rehab Director, may have delegated treatment of patients in the facility in which she did not know the acuity of the patient on each date of service.
2. Ms. Brady may not have any communication with the assistive personnel in which she delegated care. Ms. Marr reports that she was available if any assistive personnel had any questions.
3. Ms. Brady, as Rehab Director, engaged in enforcement of policies in which the PTA’s would document who their supervising physical therapist was based upon who was present in the building.

A.R.S. §32-2044(12) “Failing to adhere to the recognized standards of ethics of the physical therapy profession.”

~~1. 2.1(A) “A physical therapist shall place the patient’s/client’s interest above those of the physical therapist.”~~

~~2. 4.1(A) “A physical therapist shall make professional judgments that are in the patient’s/clients best interests.”~~

3. 4.1(B) “Regardless of the practice setting, a physical therapist has primary responsibility for the physical therapy care of a patient and shall make independent judgments regarding that care consistent with accepted professional standards.

4. 4/1(E) “Upon accepting a patient/client for physical therapy services, a physical therapist shall be responsible for: The examination, evaluation, and diagnosis of that individual; the prognosis and intervention; re-examination and modification of the plan of care; and the maintenance of adequate patient records, including progress reports. A physical therapist shall provide and/or supervise and direct appropriate interventions.”

A.R.S. §32-2044(14): “Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession.”

1. Ms. Brady provided co-signatures and approved billing for DOS, indicting skilled care provided, for patients in which she may not have adequately delegated or supervised the patient’s care.

A.R.S. §32-2044(20): “Failing to maintain adequate patient records. For the purposes of this paragraph, “adequate patient records” means legible records that comply with board rules and that contain at a minimum and evaluation of objective findings, a diagnosis, and the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.”

Mr. D’Appollonio seconded the motion. Following review and discussion, the motion failed.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye						X
Nay	X	X	X	X	X	
Recused						
Abstained						
Absent						

Dr. Miller moved the Board adopt the following Findings of Fact/Conclusions of Law:

A.R.S. §32-2044(1) “Violating this chapter, Board rules or a written board order.”

A.R.S. §32-2044(4): “Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.”

1. Ms. Brady documents co-signature for PTA documentation on DOS in which the patient status has changed. Documentation does not indicate that she performs a re-assessment of the patient prior to further delegation of care to assistive personnel.
2. Ms. Brady may not be performing re-assessments or discharges directly with the patient, but may be deriving her information from the PTA documentation in prior visits.
3. Ms. Brady does not assess patient MF after she co-signs documentation that she has fallen out of bed.
4. Ms. Brady does not assess the patient on 7/21/14 after the PTA documents that the patient has had a significant change in status.
5. Ms. Brady delegates care of patients in which she may not have determined the acuity of the patient or reviewed the treatment plan prior to the PTA engaging in treatment.

6. Ms. Brady, as Rehab director, may have enabled the PTA to engage in provision of physical therapy services that exceeded their authority to perform.

7. Ms. Brady may have delegated entire DOS of care to physical therapy aides without determining the acuity of the patient or reviewed the treatment plan prior to the aide engaging in treatment.

8. It may appear that the assistive personnel performed all of the treatment of the reviewed records, with minimal if any communication with the supervising physical therapist.

9. Ms. Brady delegated care of the three patient records reviewed to assistive personnel without adequate POC or direction for treatment. The assistive personnel are dependent on the evaluation goals to determine treatment interventions, even when treatment was not documented as being performed at the initial evaluation.

A.R.S. §32-2044(6): “Failing to supervise assistive personnel, physical therapy students or interim permit holders in accordance with this chapter and rules adopted pursuant to this chapter.”

1. Ms. Brady, as Rehab Director, may have delegated treatment of patients in the facility in which she did not know the acuity of the patient on each date of service.

2. Ms. Brady may not have any communication with the assistive personnel in which she delegated care. Ms. Marr reports that she was available if any assistive personnel had any questions.

3. Ms. Brady, as Rehab Director, engaged in enforcement of policies in which the PTA’s would document who their supervising physical therapist was based upon who was present in the building.

A.R.S. §32-2044(12) “Failing to adhere to the recognized standards of ethics of the physical therapy profession.”

1. 2.1(A) “ A physical therapist shall place the patient’s/client’s interest above those of the physical therapist.”

2. 4.1(A) “A physical therapist shall make professional judgments that are in the patient’s/clients best interests.”

3. 4.1(B) “Regardless of the practice setting, a physical therapist has primary responsibility for the physical therapy care of a patient and shall make independent judgments regarding that care consistent with accepted professional standards.

4. 4.1(E) “Upon accepting a patient/client for physical therapy services, a physical therapist shall be responsible for: The examination, evaluation, and diagnosis of that individual; the prognosis and intervention; re-examination and modification of the plan of care; and the maintenance of adequate patient records, including progress reports. A physical therapist shall provide and/or supervise and direct appropriate interventions.”

A.R.S. §32-2044(14): “Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession.”

1. Ms. Brady provided co-signatures and approved billing for DOS, indicting skilled care provided, for patients in which she may not have adequately delegated or supervised the patient’s care.

A.R.S. §32-2044(20): “Failing to maintain adequate patient records. For the purposes of this paragraph, “adequate patient records” means legible records that comply with board rules and that contain at a minimum and evaluation of objective findings, a diagnosis, and the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.”

Ms. Hunter seconded the motion. Following review and discussion the motion passed.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X		
Nay					X	X
Recused						
Abstained						
Absent						

iv) Complaint #14-53; Nicole Marr, PT

Ms. Marr was present and not represented by legal counsel. Ms. Donahue provided a summary of the complaint. Ms. Marr made an opening statement, noting that she had also taken a course on documentation in December 2014. The Board asked questions of Ms. Marr. Ms. Hunter moved the Board issue a consent agreement to offer of probation for six months to include a minimum on one audit which will include three randomly selected patient files, and a requirement within the six months to complete a presentation to a minimum of ten PTA students and/or practicing certified PTAs. If Ms. Marr does not accept the consent agreement, the case will go to an informal hearing. Ms. Richardson seconded the motion. Following review and discussion the motion failed.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye			X		X	X
Nay	X	X		X		
Recused						
Abstained						
Absent						

Mr. D'Appollonio moved the Board issue a consent agreement that Ms. Marr will have 21 days to accept or the case will go to an informal hearing. The consent agreement will include probation for six months with eligibility for early termination, six months of monthly monitoring to include the review of a minimum of five charts per month, which must include daily schedules, evaluations, reevaluations, and discharge summaries, and a requirement within the six months to complete a presentation to a minimum of ten PTA students and/or practicing certified PTAs. Dr. Miller seconded the motion. Following review and discussion the motion passed unanimously.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Richardson moved the Board accept the following as Findings of Fact/Conclusions of Law:

A.R.S. §32-2044(1) “Violating this chapter, Board rules or a written board order.”

A.R.S. §32-2044(5): “Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform tasks selected and delegated by the supervising licensee regardless of whether actual injury to the patient is established.”

1. Ms. Marr’s responses may indicate that Ms. Marr utilizes her supervising physical therapist as a resource and informs the physical therapist of information that she deems is pertinent or when she feels she needs additional guidance or information regarding the treatment of her patients. This indicates that she may not receiving daily delegation by a physical therapist.
2. Ms. Marr confirms that she utilizes the CPT codes and goals as her basis for making intervention decisions. This may indicate that she is not receiving daily delegation by a physical therapist.
3. Ms. Marr confirms that she prints off her daily patient schedule, but most often does not communicate with a physical therapist prior to engaging in treatment. This may indicate that she is not receiving daily delegation by a physical therapist.

4. Ms. Mar confirms that she independently determines the specific treatment interventions for the patient’s that she provides physical therapy services. This may indicate that she is exceeding the authority to perform tasks selected and delegated by the supervising licensee. This may indicate that she is not receiving daily delegation by a physical therapist.
5. Ms. Marr confirms that she identifies her supervising physical therapist by whoever is present in the facility on that DOS in order to obtain a co-signature. This may indicate that she is not receiving daily delegation by a physical therapist.
6. Ms. Marr failed to notify her supervising physical therapist of a fall sustained by MF prior to 6/24/14 and proceeded to engage in the provision of therapy services.
7. Ms. Marr failed to notify her supervising physical therapist on 7/21/14 of significant changes in status to patient MF and continued to engage in provision of therapy services.
8. Ms. Marr does not notify her supervising physical therapist that patient MF is not making any progress toward goals, is resistant to receiving services, and resistant to any weight bearing activities. The supervising physical therapist does not perform a re-evaluation or modify the POC. Indicating that neither individual may be engaging in communication with each other.

A.R.S. §32-2044(20): “Failing to maintain adequate patient records. For the purposes of this paragraph, “adequate patient records” means legible records that comply with board rules and that contain at a minimum and evaluation of objective findings, a diagnosis, and the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.”

1. As outlined in the individual patient records review.

Dr. Miller seconded the motion. Following review and discussion the motion passed unanimously.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

- ii) Complaint #14-49; Anthony Granger, PT

Mr. Granger was present and was represented by Charles Bassett. Ms. Donahue provided a summary of the complaint. Mr. Bassett made an opening statement. Mr. D’Appollonio moved the Board issue an advisory letter to better communicate with parents of the children he is treating in the in-home or childcare settings. Dr. Miller seconded the motion. Following review and discussion the motion failed.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye		X		X		X
Nay	X		X		X	
Recused						
Abstained						
Absent						

Ms. Remec stated she would like to have Ms. Sanchez, Ms. Rodriguez, and Ms. Hubbert interviewed. Ms. Richardson moved the Board request additional investigative findings as discussed and have it returned to the Board. Mr. Clinton seconded the motion. Following review and discussion the motion passed unanimously.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

c) Review, Discussion, and Possible Action on Consideration of Complaint

i) Keith Shaull, PT

Ms. Donahue provided a summary of the allegations. Ms. Richardson moved the Board take no action. Dr. Miller seconded the motion. Following review and discussion the motion passed unanimously.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

5) COMPLAINTS, HEARINGS, INVESTIGATIONS and COMPLIANCE

a) Formal Hearing

i) Case No. 12-65; Timothy Whalen, PT

Mr. Whalen was not present and was not represented by legal counsel. Ms. Richardson called the formal hearing to order. Board members and staff introduced themselves. All Board members had been furnished with copies of the Complaint and Notice of Hearing. There was no respondent's answer. Karen Donahue was sworn in. Ms. Baskin reviewed process by which the respondent was served with the Notice of Hearing. Mr. Brown confirmed that Ms. Baskin's statements were correct. Ms. Richardson provided a review of the proceedings and possible outcomes. Ms. Baskin made an opening statement. Ms. Baskin requested the Board take judicial notice under Rule 201 Arizona Rules of Evidence regarding some facts in this case. The flying time from Phoenix, AZ, to Beijing, China, is approx 13.5 hours and the distance is approx 6,512 miles. As far as the time zone for phone calls and contact, there is a time difference and China is 15 hours ahead of Phoenix, AZ. State's Exhibits 1 through 7 were provided to the Board members by Ms. Baskin. Ms. Donahue provided testimony. Ms. Baskin made a closing statement. The Board discussed the case.

Following review and discussion Ms. Richardson moved the Board accept Parties 1 and 2, and Allegations 1 through 14 as Findings of Fact.

PARTIES

1. The Arizona State Board of Physical Therapy is the duly constituted authority for licensing and regulating the practice of physical therapy in the State of Arizona.

2. Timothy Whalen, PT, holds License No. 7852, to practice physical therapy in the State of Arizona. On September 1, 2014, Respondent's license was placed on administrative suspension for failure to renew.

FINDINGS OF FACT

1. In August of 2012, Respondent was employed as a physical therapist for the Physical Therapy Clinic at Southeast Arizona Medical Center, in Douglas, Arizona. According to Respondent, he was on contract with the physical therapy clinic and had been employed for approximately 8 months. Respondent left on a two-week vacation to China, commencing on August 17, 2012. Prior to his departure, Respondent hired a physical therapist assistant (“PTA”) and a physical therapist (“PT”) to cover his absence. Respondent’s office staff coordinated the hiring of the PTA and the PT. According to Respondent’s recorded interview on September 13, 2015, he was the supervising physical therapist for the PTA while he was in China. Respondent did not speak with the PTA at any time because he felt that it was adequate to leave instructions with his office staff and the PTA was required to follow those instructions without any deviation.

2. On or about September 11, 2012, Respondent filed a complaint with the Board against the PTA, alleging that while he was on a two-week vacation in China she failed to follow his “oversight” instructions for patient care, specifically in the care of Patient JO. Respondent stated in his complaint that, “My instructions to my staff and office manager was that no treatment protocols nor any plans of care be altered or modified in my absence.” Respondent stated he was on vacation for two weeks and asserted that he was the supervising physical therapist for the PTA. Respondent further stated that the PTA disregarded his “admonishments” in the care of Patient JO and “she stretched and compressed the fragile joint into extension causing significant hemorrhage and subsequent pain.” Respondent stated, “In summary I am stating the following, that no PTA has the authority to override direct instructions from the Director of Rehab and certainly no latitude to introduce treatment techniques that cause harm to a client. It is in violation of the rules and regulations that limit there [sic] role in the clinic setting, these regulations are there to prevent such incidents from occurring and these were completely ignored by this individual.”

3. The investigation revealed that the PTA was contacted by the office manager of Southeast Arizona Medical Center, in Douglas, Arizona, to provide coverage as a physical therapy assistant from August 20th through August 31, 2012, while Respondent was on vacation in China. The PTA agreed to provide coverage during that two week period. Respondent did not contact the PTA in any manner at any time either prior to his vacation, during his vacation, or upon his return from vacation. The PTA did not know who was assigned as her supervising physical therapist while she was providing patient care at the clinic. She was told by the office manager that a physical therapist named “Max” was coming in from Safford. The PTA did not know Max’s last name and did not meet Max until the last day that she worked. The PTA advised Board staff that Max was not her supervisor and he did not direct her patient care because he “did not know the patients either.” The PTA, with the exception of the morning of August 31, 2012, did not have any communication or interaction with a physical therapist during the entire two weeks that she worked at the clinic.

4. On or about August 20, 2012, the PTA reported for duty however, learned that Respondent did not leave any written instructions or communication regarding patient care and physical therapy supervision. Respondent did not document any current interventions or treatment. Upon learning that Respondent had not left any information regarding patient care, the PTA asked the office manager to print off available documentation from the computerized charting system to use as a guide for providing treatment. Respondent failed to document in Patient JO’s medical record any treatment he provided prior to August 20, 2012, with the exception of the initial evaluation dated July 12, 2012, and a physical therapy note dated August 14, 2012. Respondent documented the plan of care in the initial evaluation as follows, “Physical Therapy recommended 3 times a week for 4 weeks. Interventions include exercises for range of motion, and strength, gait training, manual therapy and massage. Modalities include hot or cold pack.” In the August 14, 2012, note Respondent documented the plan of care as, “Plan developed with patient.”

5. The PTA treated Patient JO, an AHCCS patient, during Respondent’s absence and made four handwritten entries in Patient JO’s medical record for the following dates: August 20, 22, 27, and 29, 2012. Respondent failed, on each date of service, to delegate Patient JO’s care and to determine based on Patient JO’s acuity and treatment plan whether it was appropriate to delegate to the PTA to perform selected treatment interventions. Respondent failed, on each date of service, to provide and document all of the therapeutic interventions that required the expertise of a physical therapist and determine the use of a PTA to ensure that delivery of care to Patient JO was safe, effective, and efficient.

6. Upon his return from China, Respondent treated Patient JO. On Sunday, September 2, 2012, at 13:00, Respondent documented in Patient JO's Physical Therapy Progress Note, in part: "What I see today angers me, he has hemorrhage in the popliteal space extending laterally in the prox 1/3 peroneal region. The client reports that during my absence the PTA compressed his knee into extension, applying heat during the process, nevertheless inducing significant and debilitating pain. Client also reports onset of fever and malaise for 2 days with loss of weight bearing capacity and markedly increased pain with loss of weight bearing capacity and markedly increased pain." Respondent further documented, "I am at a loss as to why she [the PTA] persisted in this change of protocol even after repeated warnings from the staff that this was against my expressed wishes. . . . I am concerned about the blatant disregard of my instructions to staff as well as client voiced concerns, and will file a complaint with the state association, which will be the first time in my 40 years of practice that I have been concerned enough to do so. Prognosis for Goal Achievement is good. Plan developed with patient." Respondent failed to document a re-evaluation of Patient JO following a change in his status and failed to document an adequate plan of care. Respondent's documentation does not include specific information that would have enabled another physical therapist to assume the patient's care at any point in the course of therapeutic intervention. The medical record does not contain a corresponding bill for this date of service and documentation of Respondent's dated signature with his legal designation.

7. On September 17, 2012, Respondent documented a physical therapy note for Patient JO without corresponding billing. Respondent's note fails to contain adequate documentation regarding Patient JO's subjective report, response to the therapeutic intervention, current functional status, objective data from tests or measurements, if collected, and specific information that would have enabled another physical therapist to assume the patient's care at any point in the course of therapeutic intervention. The note lacks Respondent's dated signature with his legal designation.

8. During the course of the investigation, Patient JO's medical and billing records were subpoenaed and reviewed. Patient JO's medical and billing records contained the following deficiencies. Respondent failed to document in Patient JO's medical record on the following 13 dates of service that were billed for 4 units of therapeutic exercise: July 13, 2012, July 17, 2012, July 18, 2012, July 23, 2012, July 25, 2012, July 26, 2012, August 1, 2012, August 3, 2012, August 6, 2012, August 8, 2012, August 10, 2012, August 15, 2012, and August 17, 2012. On July 20, 2012, Respondent billed Patient JO for 8 units of therapeutic exercise but did not document what services were rendered to support the billing.

9. On July 12, 2012, Respondent documented his initial physical therapy evaluation of Patient JO. Respondent failed to adequately document the medical history, interpretation of the results of the examination, justification and clinical rationale for therapeutic intervention, support of the diagnosis, any advice or cautionary warnings that were provided to the patient, specific information that would have enabled another physical therapist to assume the patient's care at any point in the course of therapeutic intervention, and provide Respondent's dated signature with his legal designation.

10. On July 31, 2012, and August 14, 2012, Respondent documented identical notes in Patient JO's medical record under the section titled, "Physical Therapy Assessment" as follows, "Physical Therapy assessment. He reports that his epidemiologist feels he has ongoing infection, most likely in the hardware. He is to return to his surgeon in 2 weeks, will continue on his antibiotic protocol." Respondent failed to document Patient JO's subjective report, therapeutic intervention provided or appropriately supervised, and patient's response to the therapeutic intervention. On these dates, Respondent failed to provide a dated signature with legal designation. Respondent did not provide corresponding billing documentation for these dates.

On August 14, 2012, Respondent documented a second Physical Therapy Progress Note for Patient JO as follows: "Client PWB but I reduced his load because he began to develop some significant pain at the proximal lateral tibia. He is now back to approx. 50-60 lbs compression. The coloration and swelling are much improved, he is drinking some type of chlorophyll mixture that his local homeopathic physician gave him. I will continue in the same manner with his treatment, low high rep to achieve increased ROM and strengthening within a load level that does not induce pain. Prognosis for Goal Achievement is good. Plan developed with patient." The note omits documentation of Patient JO's subjective report, therapeutic intervention provided or appropriately supervised, patient's response to the

therapeutic intervention, current functional status, objective data from tests or measures, rational for continuing therapeutic intervention, adequate plan of care, and specific information that would have enabled another physical therapist to assume the patient’s care at any point in the course of therapeutic intervention.

11. During the course of the investigation, on or about September 13, 2012, Respondent contacted Board staff regarding the complaint that he had filed against the PTA. During this conversation Respondent confirmed that he was on a two-week vacation to China, from August 18, 2012, and returning on September 2, 2012. Prior to his departure, he had arranged for the hire of the PTA and a PT to cover the practice during his absence. Respondent stated that the PTA and the PT did not know each other. Respondent confirmed that he was the supervising physical therapist for the PTA and that the temporary PT was not her supervising physical therapist. Respondent stated that he never spoke to the PTA prior to his departure because he did not need to. According to Respondent, it was sufficient that he gave his office staff specific instructions to relay to the PTA. Respondent told his office staff before he left that the PTA was to follow his protocols on all patients and that the PTA was not to change anything in his plan of care. Respondent told Board staff that it was unnecessary for him to communicate with the PTA because it was sufficient that he gave the instructions to his office staff and the PTA should have followed them without any deviation. Respondent stated that he has used this same procedure during his 35-year career as a physical therapist and has never had any problems as he encountered in this instant. Respondent also stated that when he returned from China he noted that Patient JO suffered a hemorrhage, increased pain, and a setback in his progress.

12. On or about September 20, 2012, Respondent contacted Board staff regarding the investigation. During this conversation Respondent discussed Patient JO’s medical records with Board staff. Respondent stated that he does not write daily notes for each date of service a patient is treated but that he does write weekly progress updates on each patient. Respondent stated that he sets up a plan of care for each patient and that if he changes the plan of care he will document that in his weekly progress note. Respondent stated that he keeps track of the daily therapeutic exercises or what was performed on a daily basis by the billing codes. Respondent also explained that he does not write daily notes for each date of service for an AHCCCS patient because “the facility loses money on every case” (quotes added).

13. On or about November 27, 2012, after reviewing the complaint against the PTA the Board voted to open a complaint against Respondent’s license.

14. On or about December 13, 2012, Respondent submitted a written response to the Board’s complaint. Respondent stated that all clients were “thoroughly evaluated and the plan of care is established,” and that “all assistive personnel are directly supervised by me, all patients are treated by me during each attendance.” Respondent stated “that no fee is ever charged inappropriately, I fully understand the need for honest in billing, having billed thousands of clients over 4 decades.” Regarding the allegations of inadequate record keeping, Respondent wrote that, “all records kept on these individuals is [sic] complete, can easily be followed and proper care administered by any professional.” Respondent also stated that, “My instructions to my staff and subsequently relayed to [the PTA] were very explicit and very firm ‘no altering of protocol nor POC’ on any patients that I had seen. I have never in my career allowed a PTA to alter these in any aspect, unless I had given written approval.” Respondent further wrote, “These baseless accusations are an attempt to deflect attention from the true core issue. . . no PTA can override the express instructions of the supervising therapist, whether given in writing or verbally relayed by very competent staff members.”

Dr. Miller seconded the motion. Following review and discussion the motion passed by roll call vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						

Abstained						
Absent						

Ms. Richardson moved the Board accept as Conclusions of Law, the allegations of unprofessional conduct which include violations of A.R.S. §32-2044(6), A.R.S. §32-2044(4), A.R.S. §32-2044(1), A.R.S. §32-2044(12), A.R.S. §32-2044(13), and A.R.S. §32-2044(20) as outlined in the Allegations of Unprofessional Conduct. Ms. Hunter seconded the motion. Following review and discussion the motion passed by roll call vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Richardson moved the Board revoke Mr. Whalen’s license and impose a \$1,000 civil penalty to be paid within 60 days. Dr. Miller seconded the motion. Following review and discussion the motion passed by roll call vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

6) BOARD BUSINESS AND REPORTS

a) Executive Director’s Report – Discussion and Possible Action

- i) Financial Report
- ii) Board Staff Activities
- iii) Legislation
- iv) Rule Activity
- v) FSBPT
- vi) Update of Formal Hearing Discussion With The Office of The Attorney General

Mr. Brown reviewed the written report for the Board. No action was requested or taken on the Executive Director report.

b) Review, Discussion, and Possible Action on Draft Rules; Dry Needling Standards of Education, Training, and Standard of Care

Mr. Brown provided a summary of the public comment period, current status, and upcoming deadline for submission of the draft rules for dry needling. John Rhodes addressed the Board, requesting the data from the survey be available on the website. Mr. Brown stated that Board staff would be able to publish the data on the website. Sara Demeure, PT, addressed the Board regarding her experience with dry needling training, the number of hours required, and teacher training.

Ms. Richardson moved the Board adopt as final, the draft rules as they appear on the website. Mr. D’Appollonio seconded the motion. Following review and discussion the motion passed unanimously.

RULES:

A.A.C. R4-24-313: PROFESSIONAL STANDARDS OF CARE AND TRAINING AND EDUCATION QUALIFICATIONS FOR DELIVERY OF DRY NEEDLING SKILLED INTERVENTION

A. EFFECTIVE JULY 1, 2015 AND IN ACCORDANCE WITH A.R.S. §32-2044(25), A PHYSICAL THERAPIST SHALL MEET THE QUALIFICATIONS ESTABLISHED IN PARAGRAPH (C) BEFORE PROVIDING THE SKILLED INTERVENTION “DRY NEEDLING”, AS DEFINED IN A.R.S. §32-2001(4).

B. A PHYSICAL THERAPIST OFFERING TO PROVIDE OR PROVIDING “DRY NEEDLING” INTERVENTION SHALL PROVIDE DOCUMENTED PROOF OF COMPLIANCE WITH THE QUALIFICATIONS LISTED IN PARAGRAPH (C) TO THE BOARD WITHIN 30 DAYS OF COMPLETION OF THE COURSE CONTENT IN PARAGRAPH (C) OR WITHIN 30 DAYS OF INITIAL LICENSURE AS A PHYSICAL THERAPIST IN ARIZONA.

C. COURSE CONTENT THAT MEETS THE TRAINING AND EDUCATION QUALIFICATIONS FOR “DRY NEEDLING” SHALL CONTAIN ALL OF THE FOLLOWING:

1. THE COURSE CONTENT SHALL BE APPROVED BY ONE OR MORE OF THE FOLLOWING ENTITIES PRIOR TO THE COURSE(S) BEING COMPLETED BY THE PHYSICAL THERAPIST.

- a. COMMISSION ON ACCREDITATION IN PHYSICAL THERAPY EDUCATION,
- b. AMERICAN PHYSICAL THERAPY ASSOCIATION,
- c. STATE CHAPTERS OF THE AMERICAN PHYSICAL THERAPY ASSOCIATION,
- d. SPECIALTY GROUPS OF THE AMERICAN PHYSICAL THERAPY ASSOCIATION, OR
- e. THE FEDERATION OF STATE BOARDS OF PHYSICAL THERAPY.

2. THE COURSE CONTENT SHALL INCLUDE THE FOLLOWING COMPONENTS OF EDUCATION AND TRAINING:

a. STERILE NEEDLE PROCEDURES TO INCLUDE ONE OF THE FOLLOWING STANDARDS:

- i. THE U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, OR
- ii. THE U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

- b. ANATOMICAL REVIEW,
- c. BLOOD BORNE PATHOGENS
- d. CONTRAINDICATIONS AND INDICATIONS FOR “DRY NEEDLING”,

3. THE COURSE CONTENT REQUIRED IN PARAGRAPH (C) OF THIS SECTION SHALL INCLUDE, BUT IS NOT LIMITED TO, PASSING OF BOTH A WRITTEN EXAMINATION AND PRACTICAL EXAMINATION BEFORE COMPLETION OF THE COURSE CONTENT. PRACTICE APPLICATION COURSE CONTENT AND EXAMINATIONS SHALL BE DONE IN PERSON TO MEET THE QUALIFICATIONS OF PARAGRAPH C.

4. THE COURSE CONTENT REQUIRED IN PARAGRAPH (C) OF THIS SECTION SHALL TOTAL A MINIMUM OF 24 CONTACT HOURS OF EDUCATION.

D. THE STANDARD OF CARE FOR THE INTERVENTION “DRY NEEDLING” INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

1. “DRY NEEDLING” CANNOT BE DELEGATED TO ANY ASSISTIVE PERSONNEL.
2. CONSENT FOR TREATMENT FOR THE INTERVENTION “DRY NEEDLING” IS THE SAME AS REQUIRED UNDER A.A.C. R4-24-301.
3. DOCUMENTATION OF THE INTERVENTION “DRY NEEDLING” SHALL BE DONE IN ACCORDANCE WITH A.A.C. R4-24-304.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Richardson moved the Board insert the final rules of dry needling as R4-24-313. Dr. Miller seconded the motion. Following review and discussion the motion passed by unanimous vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

7) CALL TO THE PUBLIC

Cynthia Driskell from the Arizona Physical Therapy Association addressed the Board regarding dry needling. Ms. Richardson moved to re-open Item 6.b. Dr. Miller seconded the motion. The motion passed by unanimous vote.

Vote	Mr. Clinton	Mr. D’Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

6) BOARD BUSINESS AND REPORTS

- b) Review, Discussion, and Possible Action on Draft Rules; Dry Needling Standards of Education, Training, and Standard of Care

Mr. Brown stated the information that will be included in the Frequently Asked Questions of the dry needling section on the Board website.

7) CALL TO THE PUBLIC

No additional public figures came forward to address the Board.

Ms. Richardson moved to adjourn the meeting. Mr. Clinton seconded the motion. The motion carried by unanimous vote.

Vote	Mr. Clinton	Mr. D'Appollonio	Ms. Hunter	Dr. Miller	Ms. Remec	Ms. Richardson
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Meeting adjourned at 2:19 p.m.

Prepared by,

Charles D. Brown
Executive Director

Approved by,

Al D'Appollonio, PT, MBA
Secretary