

REGULAR SESSION MEETING MINUTES
March 31, 2005

MEMBERS PRESENT: Helene Fearon, P.T., President
Joni Kalis, P.T., Vice President
Merlin Gossman, Secretary
Donna Borden, P.T., Member

MEMBERS ABSENT:

OTHERS PRESENT: Heidi Herbst Paakkonen, Executive Director
Peggy Hiller, P.T., Program Compliance Specialist (Investigator)
Carol Lopez, Licensing Administrator
Dawn Walton Lee, Assistant Attorney General
Victoria Mangiapane, Assistant Attorney General (Solicitor General Section)

CALL TO ORDER – 8:30 a.m.

The meeting was called to order by Helene Fearon, P.T., Board President, at 8:30 a.m.

1. Approval of Minutes:

February 22, 2005; Regular Session Meeting

Ms. Fearon introduced the agenda item and the Board identified 3 corrections to the minutes Ms. Fearon moved the minutes be approved as corrected. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

February 28, 2005; Special Session Meeting

Ms. Fearon introduced the agenda item and Ms. Borden moved the minutes be approved as drafted. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS AND INVESTIGATIONS

2. Consideration of State's Motion to Rescind Vote to Formal Hearing:

#02-11; Connie Hardin, P.T.

Ms. Fearon introduced the agenda item, and Ms. Walton Lee summarized the State's motion filed with the Board requesting reconsideration of the Board's vote on October 22, 2002 to send the case to a formal hearing. Ms. Fearon moved the Board meet in Executive Session for purposes of obtaining legal advice from the assigned representative, Victoria Mangiapane, Assistant Attorney General from the Solicitor General Section of the Arizona Attorney General's Office. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Upon resuming the public session meeting, Ms. Hiller provided a summary of the complaint filed against Ms. Hardin, P.T by the former Director of Nursing at Plaza Healthcare. The complaint alleges that on July 28, 2002 Ms. Hardin visited with

resident S.L., kissed him on the lips and inappropriately touched him. A further allegation is that Ms. Hardin was intoxicated at the time of this visit. The Board discussed the challenges associated with establishing that the violations occurred given that S.L. is not longer a patient at Plaza Healthcare; furthermore, the whereabouts of the witnesses to the alleged events have not been established. Ms. Hiller's recent investigational activity relative to the case indicated that while Ms. Hardin was re-employed at Plaza Healthcare during the summer of 2004, the licensee is currently not practicing and is studying culinary arts full-time. Ms. Borden moved the Board rescind its vote to send Complaint #02-11; Connie Hardin, P.T. to a formal hearing. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board then discussed the complaint allegations and noted that the very nature of the allegations were serious enough to warrant not dismissing the complaint. Ms. Borden moved the Board invite Ms. Hardin to an informal hearing and that Ms. Lee discuss with the licensee whether she would consider voluntarily surrendering her license given that she is not practicing physical therapy. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board directed staff to research whether any of the original investigative leads for the case still exist.

Note: the agenda was reordered as follows

5. Request for Termination of Probation:

#04-05; Jaye George, P.T.

Ms. Fearon introduced the agenda item and the Board reviewed the compliance report prepared by Ms. Hiller summarizing the terms of the Board's disciplinary Order issued to Ms. George. The Board commented on the reflective and insightful essay written by Ms. George following completion of her ethics course. Ms. Fearon moved the probation term for Ms. George conclude as of March 9, 2005 in accordance with the Board's Order. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

#04-08; Scott Richardson, P.T.

Ms. Fearon introduced the agenda item, and the Board discussed Mr. Richardson's probation compliance report. The Board expressed concerns with respect to Mr. Richardson's documentation where weaknesses were identified. Ms. Hiller had indicated in the report that Mr. Richardson had improved relative to the concerns and violations that were identified in the investigation of complaint #04-08. Ms. Kalis moved the probation term for Mr. Richardson conclude as of February 15, 2005 in accordance with the Board Order. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

6. Request for Early Termination of Probation - CONTINUATION

Dominic "Robert" Affuso, P.T.

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen summarized the matter, consisting of Mr. Affuso's application for renewal of licensure being granted on August 26, 2004 contingent upon him agreeing to sign a Consent Agreement that placed him on probation and required him to submit quarterly reports relative to his court-ordered probation. Mr. Affuso had answered yes to the question, "have you been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation. Mr. Affuso was charged with domestic violence by the City of Gilbert and pled guilty to that charge on November 10, 2003. Prior to the due date of his first quarterly report to the Board, Mr. Affuso was granted early termination of his probation, and his sentence was vacated. The Board discussed the fact that Mr. Affuso had requested a waiver for his appearance for the

consideration of his request. The Board agreed by consensus that it was necessary for Mr. Affuso to appear as they had questions to pose to him. On March 10, 2005 Mr. Affuso advised Ms. Herbst Paakkonen that he would appear before the Board during its meeting on March 31, however, a family obligation necessitated he conference into the meeting via telephone. Ms. Fearon moved the Board meet in Executive Session in order to obtain legal advice from Board counsel. Ms. Borden seconded the motion. The motion carried by a unanimous vote. When the meeting resumed in public session, Mr. Affuso responded to the Board's questions that his court-ordered counseling for the conviction consisted of a 26 week diversion course, one night per week for three hours. The counselor who facilitated the course is on contract with the City of Gilbert. He stated that at the time he pled guilty to the charge, he was not aware of the fact that completion of this course would result in early termination of his probation. Mr. Affuso advised the Board that the counseling sessions were typically conducted with groups of 10 participants in a lecture format – not one-on-one sessions. He did receive individual counseling monthly with a social worker as a term of his sentence. Mr. Affuso explained that the content of the group sessions focused on behavior modification. He noted that the outcome of the counseling was that he developed the tools to be pro-active in terms of not allowing issues to accumulate resulting in a poor choice in responding to those issues. He assured the Board that the entire experience was a “wake-up call” to him. Mr. Affuso insisted that his relationships with his peers are appropriate; it was a close relationship where his problem was exposed. The Board concluded the discussion with Ms. Affuso. Ms. Borden moved his probation be terminated. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

3. Initial Review:

#04-17; Dominic “Robert” Affuso, P.T.

Ms. Fearon introduced the agenda item, and Ms. Hiller summarized the complaint filed against Dominic “Rob” Affuso, P.T. by three members of assistive personnel staff, who worked with Mr. Affuso at Springdale West Rehabilitation Center in Mesa, Arizona. The complaint alleges that on April 28, 2004 Mr. Affuso left the facility while two physical therapist assistants were still working with patients, that he did not tell the assistive personnel or administration why he was leaving or whether he would return, that he did not arrange for alternative supervision for the assistive personnel, and that he abandoned the patients scheduled for treatment that day without providing for their transfer of care. Ms. Fearon reviewed the possible jurisdiction for this complaint as including A.R.S. §32-2044(1) “Violating this chapter, board rules or a written board order”; A.R.S. §32-2044(6) “Failing to supervise assistive personnel in accordance with this chapter and rules adopted pursuant to this chapter”; and A.R.S. §32-2044(12) “Failing to adhere to the recognized standards of ethics of the physical therapy profession [*Code of Ethics* Principle (1) “Physical therapists respect the rights and dignity of all individuals”, *Guide for Professional Conduct* 1.1.B. “Physical therapists are to be guided at all times by concern for the physical, psychological, and socioeconomic welfare of those individuals entrusted to their care” and *Code of Ethics* Principal (3) “Physical therapists accept responsibility for the exercise of sound judgment, *Guide for Professional Conduct* 3.2.B. “Adequate supervision requires, at a minimum, that a supervising physical therapist perform the following activities: #7. Direct and supervise supportive personnel in delegated tasks”]. In his written response, Mr. Affuso denied the allegations and provided his explanation of the events at Springdale West on April 28, 2004. He affirms that he was ill (chest pain, shortness of breath, elevated blood pressure and nausea) and that he informed the designated person (“Dee”) per the employment policies that he was ill and instructed her to contact other staff members and the Director of Rehabilitation that he was leaving to go home. Mr. Affuso stated in his response that his health status and the relationship he had with his employer leading up to April 28, 2004 is relevant and precipitated this complaint. He describes a previous

episode on March 19, 2004 when he left the facility because of illness (similar to the symptoms he experienced on April 28th) and on that occasion he informed “Dee” about his symptoms and subsequently went to the emergency room. Mr. Affuso states that he was ultimately diagnosed as having stress related to work and marital discord as well as Reactive Airway Disease. Mr. Affuso describes his relationship with his employer as “contentious” because the Director of Rehabilitation was pressuring the use of a physical therapy technician beyond what Mr. Affuso thought was appropriate. His relationship with the nurse practitioner who represented Banner Health at Springdale West, who frequently disagreed with him about patient length of stay, deteriorated over time. He adds, “I was the only full-time P.T. for the entire facility. The facility had a high P.T. turn over rate and had difficulty attracting P.T.s. If a P.T. called in sick or went home sick, it would be a major problem.” Mr. Affuso requested and was granted approval to address the Board via telephone. In response to the Board’s questions, he indicated that he was participating in the court-ordered counseling classes for his domestic violence charge at the time of the alleged incident on April 28, 2004. Mr. Affuso insisted that on that date he reported his illness in accordance with his employer’s policies and procedures, and as he had done previously on March 19, 2004. He also noted that he went to a nurse at the facility to take his blood pressure; after receiving the reading he deemed it “inappropriate” and he claimed that he informed “Dee” (Matheny) that he was leaving work. Mr. Affuso affirmed that he was aware that by leaving the facility, he was leaving his patients with only assistive personnel and no other physical therapist present. The Board discussed the fact that enough information was presented in the investigative report to warrant a hearing. Ms. Fearon moved Mr. Affuso be invited to an informal hearing relative to the complaint. Ms. Borden seconded the motion. The motion carried by a unanimous vote.

4. Initial Review:

#04-18; Clinton Borman, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint which was filed by B.G., a former patient who was treated by Mr. Clinton Borman, P.T. at Physicians Physical Therapy from January 16, 2004 through February 10, 2004 for neck pain. The complaint alleges that Mr. Borman’s billing practices were misleading as to the cost of services and that Mr. Borman misdiagnosed the patient’s condition and provided treatment that made him worse. If true, these allegations may be a violation of 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.” Ms. Hiller noted that B.G.’s billing dispute with Mr. Borman does not involve allegations of fraudulent, excessive or improper fees and as such does not fall under the jurisdiction of A.R.S. § 32-2001 *et seq.* B.G. was referred to Physicians Physical Therapy by Dr. George Roso on January 13, 2004 for evaluation and treatment of neck pain. He was initially evaluated and treated on January 16, 2004 by Mr. Borman who diagnosed a facet and nerve root irritation in the mid-cervical spine with radicular symptoms into the right arm. B.G. was treated by Mr. Borman at five subsequent visits until treatment was discontinued after the visit on February 10, 2004. In his complaint, B.G. stated that “What started as a stiff neck and sore shoulder from repetitive action at work . . . turned into chronic neck pain.” He believes that his neck problem was misdiagnosed and that, following his last treatment visit, he noticed significant decrease in strength in his right arm that was not present prior to therapy. Additionally, his condition subsequently involved his left side as well as his right, including neck pain, “twinges” down both arms when sneezing, muscle spasms in the right biceps and “electrical pulses” in his neck and shoulders. In his written response Mr. Borman affirmed the appropriateness of his diagnosis and treatment based on his objective evaluation findings and B.G.’s response to treatment. Mr. Borman supported his defense by citing specific language included

in the physical therapy treatment record including his daily SOAP notes, the objective data recorded, and documented telephone conversations with B.G. regarding his billing concerns. Mr. Borman affirmed that he followed the standard of care in his treatment of Mr. Gilroy, and that his objective findings improved despite B.G.'s lack of subjective reports of improvement. Mr. Borman noted that B.G.'s condition over the course of therapy was impacted by concurrent professional and self-administered treatments, which confuse the issue of what might have made B.G.'s condition worse. Ms. Hiller advised the Board that the physical therapy treatment records were reviewed for compliance with A.R.S. §32-2044(20) "adequate patient records". The treatment records meet the minimum standards in that they are legible and contain an initial evaluation of objective findings, a diagnosis, the plan of care, a record of daily treatment and a discharge summary. Ms. Hiller highlighted for the Board B.G.'s records as provided by Dr. Roso; the records noted that medical visits for neck pain dating from mid-2003, and an office visit on December 2, 2003 recommending physical therapy that was not acted upon by B.G., an office visit on February 12, 2004 documented B.G.'s reported lack of progress with physical therapy treatment and subsequent referral to a neurologist but did not make note of complaints by B.G. that his therapy treatments worsened his condition, a February 23, 2004 neurologist's report from Dr. Keith Nachmanson noted an impression of possible C5-C6 nerve root irritation, and a March 3, 2004 follow-up note by Dr. Nachmanson documented subjective reports of improvement and objective improvements in strength and reflexes. Ms. Hiller concluded the summary by stating that the physical therapy record and medical documentation reviewed support Mr. Borman's response to the complaint allegations. The complainant, B.G. requested and was granted approval to address the Board. He stated that his problems began with shoulder pain that resulted from repetitive motion while working. He sought medical care, and advised the Board that x-rays of his shoulder were done, but he did not have an MRI. B.G. noted that after his second physical therapy session, he could not sleep that night due to severe pain. With each successive visit, he continued to experience pain. B.G. insisted that he only saw a chiropractor on one occasion, but he did not return because Mr. Borman advised him that seeing a chiropractor may adversely affect his rehabilitation. B.G. explained that he felt a "no pain, no gain" approach was pressed upon him, therefore he continued to participate in physical therapy despite his pain. Since discharging himself from therapy, B.G. stated that his symptoms have improved under the care of a different physician and a chiropractor. Mr. Borman requested and was granted approval to address the Board. He stated that his treatment plan for B.G. was appropriate, and that his documentation indicates that B.G. experienced objective improvement in his condition during his course of therapy. Mr. Borman also noted that he was familiar with B.G.'s medical history relative to his decision to not pursue physical therapy when originally recommended by Dr. Roso. The Board discussed the investigative report and concurred that Mr. Borman's treatment plan was appropriate given the patient's history and condition, and agreed that his documentation was complete and met the minimum standards established in the law. Ms. Fearon moved the complaint be dismissed; Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

7. Request to Negotiate Conclusions of Law in Consent Agreement:

Kathleen Parke, P.T.

Ms. Fearon announced the agenda item and Ms. Herbst Paakkonen summarized the history of the case. During its regular session Board meeting held on December 21, 2004, the Board reviewed information concerning Ms. Kathleen Parke's failure to submit her continuing competence documentation in response to a notice of audit that she received on November 12, 2004. Ms. Parke had affirmed on her licensure renewal application that she had met the requirement, but did not submit any documentation in response to the Board's notice of selection of audit. During its the December 21, 2004 meeting, the Board discussed this fact, and voted unanimously to find her in violation of A.R.S. §32-2044(1),

violating this chapter, Board rules or a written Order of the Board relative to A.A.C. R4-24-401(G)(2), “within 30 days of receipt of a notice of audit, a licensee shall submit evidence to the Board that shows compliance with the requirements of continuing competence”. Ms. Parke was offered a Consent Agreement establishing the findings of fact and conclusions of law, and containing disciplinary terms; the Board offered Ms. Parke the opportunity to sign the Agreement in lieu of conducting a hearing relative to the alleged violations of law. Ms. Parke contacted Ms. Herbst Paakkonen and indicated that because she lived in New York State and was not practicing physical therapy, she would likely submit a request for voluntary surrender of her license. The Board voted on January 25, 2005 to accept the surrender under the terms of a Consent Agreement. Ms. Herbst Paakkonen was again contacted by Ms. Parke via telephone on January 17, 2005 – one day prior to the postmark due date of the Agreement. Ms. Parke indicated that she had reservations about signing the Agreement due to the violation of law identified in the document stating that she had violated A.R.S. §32-2044(3), obtaining or attempting to obtain a license or certificate by fraud or misrepresentation. Ms. Herbst Paakkonen advised Mr. Parke that she would suspend the February 18, 2005 deadline for signing of the Consent Agreement pending negotiations on modifications to the Agreement. The Board reviewed the proposed revisions to the Consent Agreement that Ms. Parke submitted to the Board for consideration, and questioned why Ms. Parke proposed that the Conclusions of Law be removed with some of the language moved to the Findings of Fact section. Ms. Walton Lee advised the Board that, at a minimum, the Board must establish the basis upon which the voluntary surrender of Ms. Parke’s license would be accepted. She further advised that the Board retain the violation of §32-2044(1) and A.A.C. R4-24-401(G)(2), but that the Board can use its discretion whether to retain the violation of §32-2044(3). The Board also discussed what information from this investigation would be retained in the Board’s investigative files should Ms. Parke ever reapply for a physical therapist license in Arizona; the Board was informed by Ms. Herbst Paakkonen that the agency archives information on investigations for 25 years. Board staff also assured the Board that its action of acceptance of the voluntary surrender of the license would be reported to the Healthcare Integrity and Protection Data Bank (HIPDB). Ms. Borden moved Ms. Lee contact Ms. Parke and renegotiate the terms of the Consent Agreement to eliminate the violation of A.R.S. §32-2044(3), attempting to obtain a license or certificate by fraud or misrepresentation. Ms. Fearon seconded the motion. The motion carried by a unanimous vote. Ms. Borden further moved that if Ms. Parke does not sign the new proposed Agreement within 10 days after receipt, the case will be scheduled for an informal hearing.

8. Review of and Possible Action on Unlawful Practice Investigations:

#05-02-UPI ; Mark Duckworth

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen summarized the investigation consisting of a report received via telephone on February 16, 2005 from Ms. Robbie McNulty, supervisor of Mark Duckworth, P.T.A. at Plaza Healthcare in Scottsdale, Arizona, contacted the office of the Arizona Board of Physical Therapy to inquire into the certification status of Mr. Duckworth. She was advised by Peg Hiller, P.T. that Mr. Duckworth’s certification had lapsed as of August 31, 2004 as he had failed to renew his certificate for the current compliance period. Ms. McNulty assured Ms. Hiller that she would notify Mr. Duckworth of the fact that he did not possess the required certification to work as a physical therapist assistant in Arizona, and that she would send him to the Board office to file an application for renewal and reinstatement of his certificate. Mr. Duckworth filed his application within a few hours of that telephone call. Mr. Duckworth disclosed on the Affirmation of Employment Status form that he worked as a physical therapist assistant from September 1, 2004 through February 16, 2005. The Board reviewed A.R.S. §32-2044(1), Grounds for disciplinary action: “violating this chapter, Board rules, or a written order of the Board”, and A.R.S.

§32-2048(A), “it is unlawful for any person to practice or in any manner claim to practice physical therapy or for a person to claim the designation of a physical therapist unless that person is licensed pursuant to this chapter.” Ms. Borden moved Mr. Duckworth be found in violation of both §32-2044(1) and §32-2048(A). Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Ms. Fearon offered a motion that in lieu of conducting a hearing, Mr. Duckworth be offered a Consent Agreement that would place him on probation for one year, impose a \$100 civil penalty, require a written essay of at least 500 words reviewing the Board’s statutes and rules, and complete 40 hours of community service. Mr. Gossman seconded the motion. After discussion, Ms. Fearon amended the original motion to include a requirement that Mr. Duckworth conduct an in-service presentation to the licensed staff at Plaza Healthcare addressing timely renewal of licensure and unlawful practice. The motion carried by a unanimous vote.

**9. Review and Possible Action Concerning Refusal to Sign Consent Agreement for Failure to Respond to Notice of Continuing Competence Audit
Donna Macia, P.T.**

Ms. Fearon introduced the agenda item and the Board reviewed Ms. Macia’s continuing competence compliance history. Ms. Macia was selected at random for audit of her continuing competence activities for the 2002-2004 licensure compliance period. Ms. Macia received that notice on November 2, 2004 resulting in a submission deadline of December 4, 2004. Ms. Macia failed to submit any documentation or materials on or before that date. On December 21, 2004 the Board reviewed the recommendations of the Continuing Competence Audit Committee and learned that Ms. Macia had failed to respond to the notice of audit within the 30 days required by Board rule [A.A.C. R4-24-401(G)(2)]. The Board discussed this failure to respond as a violation of A.R.S. §32-2044(1), violating this chapter, Board rules or a written Board Order. The Board voted to attempt to offer Ms. Macia the opportunity to enter into a Consent Agreement for purposes of settling the case in lieu of conducting a hearing. On or about February 28, 2005 Ms. Macia telephoned Ms. Herbst Paakkonen with questions about the Consent Agreement and her options. She also stated that she is not currently practicing physical therapy. Ms. Macia returned the Consent Agreement unsigned on March 21, 2005 with a letter requesting that the Board delay taking any action on her license until such time that she could concentrate on this matter, and she raised objections about the continuing competence requirements for licensees who elect to not practice. As of the meeting date, the Board had not received any documentation from Ms. Macia relative to her continuing competence requirements for the 2002-2004 licensure compliance period. The Board questioned whether Ms. Macia was aware that her failure to sign the Consent Agreement would result in the case being sent to a hearing. Ms. Herbst Paakkonen read from the cover letter that was sent to Ms. Macia with the Agreement notifying her of that fact. The Board discussed whether Ms. Macia would consider surrendering her physical therapist license if she has no plans at this time to return to practice. Ms. Herbst Paakkonen advised the Board that she could provide that information to Ms. Macia in conjunction with a notice of informal hearing. Ms. Fearon moved the Board open a complaint concerning this matter, invite Ms. Macia to an informal hearing, and offer her the option of voluntarily surrendering her license. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

10. Review and Possible Action Concerning Refusal to Sign Consent Agreement for Unlawful Practice Case, and Review and Possible Action Concerning Failure to Disclose Information on Licensure Reinstatement Application:

#05-01-UPI ; Todd Lukasik, P.T.

Ms. Fearon introduced the agenda item and moved that the Board meet in Executive Session for purposes of obtaining advice from Board counsel. Ms. Borden seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session, Ms. Herbst Paakkonen reviewed the case with the Board beginning with December 30, 2004 at which time Todd Lukasik filed a licensure renewal/reinstatement application form, and an Affirmation of Employment Status form with the Arizona Board of Physical Therapy. Previously he had contacted the Board office inquiring why he was unable to locate his name on the Board's web-site (licensee search page), and he was advised that his physical therapist license had lapsed as of August 31, 2004. Mr. Lukasik filed a complete reinstatement application on January 5, 2005 and licensure reinstatement was processed effective that day. Mr. Lukasik disclosed on the Affirmation of Employment Status form that he has performed contract physical therapy work from September 1, 2004 through December 29, 2004. The Board initially reviewed this unlawful practice investigation case during a public session meeting on January 25, 2005; Mr. Lukasik did not attend this meeting. The Board voted to send the case to a hearing, but to offer Mr. Lukasik a Consent Agreement in lieu of conducting the hearing. The Consent Agreement established as its findings that Mr. Lukasik practiced physical therapy without a license in violation of A.R.S. §32-2044(1) and §32-2048(A), and the Agreement contained probationary terms consisting of a civil penalty, community service, a written review of the Board's statutes and rules, and notice to his employer that he was not licensed as a physical therapist between the dates of September 1 and December 29, 2004. Mr. Lukasik was granted 10 days from receipt of the agreement to agree to its terms. The document was mailed on January 31, 2005, but as of March 21, 2005, the Agreement has not been returned to the Board office with Mr. Lukasik's signature.

During the course of the Unlawful Practice Investigation concerning Mr. Lukasik, Board staff learned that the licensee holds a Certificate to Engage in a Clinical Training Program in naturopathic medicine in accordance with A.R.S. Title 32, Chapter 14, section 32-1501 *et seq.*, as granted by the State of Arizona Naturopathic Physicians Board of Medical Examiners. Mr. Lukasik answered "yes" to two questions on this application he filed with the Naturopathic Physicians Board of Medical Examiners on February 3, 2004: (1) Have you ever been arrested, and (2) Have you ever been charged with, convicted of, or entered into a plea of no contest to a felony or misdemeanor? Copies of the court records Mr. Lukasik submitted to the Naturopathic Physicians Board of Medical Examiners appear to indicate that on August 12, 2002 he was issued a citation by the City of Mesa for driving with a suspended driver's license. A misdemeanor arrest warrant was then issued on September 25, 2002 for Mr. Lukasik's failure to appear in court for this charge on August 19, 2002 as ordered. A "Response to Disposition Request" report completed by an official of the Mesa Municipal Court where the charges were filed indicated that as of January 16, 2004, the status of the case (docket #2002051062) was dismissal. However, this information was not disclosed by Mr. Lukasik on his licensure renewal and reinstatement application filed with the Board of Physical Therapy on December 30, 2004. Presumably, Mr. Lukasik should have answered "yes" to the question on his application for reinstatement of his physical therapist license, "Since your last licensure renewal, have you been the subject of any criminal investigation by a federal, state or local agency or had criminal charges filed against you?"

Ms. Herbst Paakkonen also updated the Board with respect to Mr. Lukasik's failure to respond to the offer of the Consent Agreement. The investigative file indicated that while the post office stamped the

certified mail receipt for the document that was mailed to Mr. Lukasik, the on-line tracking system for the United States Postal Service could not locate the document. Mr. Lukasik met with Ms. Herbst Paakkonen on March 25, 2005 and at that time insisted that he had never received the Agreement. The Board questioned Mr. Lukasik as to why he did not report the history of his criminal charges to the Board on his application for licensure renewal/reinstatement. Mr. Lukasik responded that he filled out the application quickly and it did not occur to him to record that information. He stated to the Board that he was anxious to have his license reinstated, and he rushed the application to the office once he realized that he had failed to file it with the Board office on or before August 31, 2004. In response to the Board's questions concerning whether he would be willing to sign the Consent Agreement should it be re-extended to him, he responded that he had already signed it and agreed to leave the document with the Board office.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

11. Substantive Review and Possible Action on the Following Applications for Physical Therapist Licensure:

Eric R. Muse		
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Ms. Fearon read the name of the applicant for the record, and noted that his file was administratively complete. Ms. Borden moved licensure be granted to Mr. Muse. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

12. Review and Possible Action Concerning Compliance with Continuing Competence Requirements

a. Licensees Recommended by Audit Committee as In Compliance with Continuing Competence Requirements for 2002-2004 Licensure Period:

Jerald Bleacher	Leslie Bowers	Valerie Burr
Jeffrey Lace	Elise Mandel	Gregory Neas
Deborah Pratt	Gregory Predmore	Sandra Salazar
Julia Schwalenstocker	Amber Zimmer	

**b. Licensees Recommended by Audit Committee as Out of Compliance with Continuing Competence Requirements for 2002-2004 Licensure Period:
 None**

Ms. Fearon introduced the agenda item, and commended the licensees for their efforts to come into compliance with the Board's continuing competence requirements. She moved the listed licensees be noticed of their compliance. Ms. Borden seconded the motion. The motion carried by a unanimous vote.

**13. Request for Accommodation to the National Physical Therapy Examination Under the Americans with Disabilities Act
 Pamela M. Shultz**

Ms. Fearon introduced the agenda item, and the Board reviewed the materials submitted by Ms. Shultz that formed the basis upon which Northern Arizona University granted her academic accommodations under the Americans with Disabilities Act. Ms. Shultz requested and was granted approval to address the Board concerning her request. She clarified some of the information in the documentation, and addressed the question concerning her eye fatigue as it relates to her comprehension efforts to thwart her dyslexic tendencies. The Board also debated the advantages and disadvantages to granting approval for time and a half with which to take the examination (seven hours) versus double-time (ten hours) in terms of potential fatigue on the part of Ms. Shultz. The Board also noted that by granting

the accommodation of a paper and pencil examination, Ms. Shultz would automatically be placed in a separate examination room. Ms. Kalis moved the Board grant Ms. Shultz the accommodations of double-time with which to take the examination, as well as a paper and pencil examination and a separate testing room. Ms. Borden seconded the motion. The motion carried by a unanimous vote.

Seongok Chang

Ms. Fearon introduced the agenda item, and the Board discussed whether the letter she submitted from her physician with the United States Department of Military Affairs which stated that her disability rating is "70%" provided enough support to vote upon Ms. Change's request. The letter explained that she suffers from cervical disc degenerative disease and myofascial pain, and that she consistently wears a TENS unit to manage her pain. Ms. Chang's physician supported her request to be granted the accommodation of additional time with which to take the national examination. Ms. Lopez advised the Board that she discussed this situation with Susan Layton, Managing Director of Examination Administration with the Federation of State Boards of Physical Therapy (FSBPT), and Ms. Layton stated that as long as the TENS unit is worn underneath the candidate's clothing and is worn routinely, it will be allowed in the testing center. Ms. Fearon moved the accommodation of time and a half with which to take the examination be granted to Ms. Change. Ms. Borden seconded the motion. The motion passed on a three to one vote.

BOARD BUSINESS AND REPORTS

**14. Discussion and Possible Action Concerning Request for Time Limits for Reporting
Complaint Activity to Agency Web-Site**

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen summarized the request filed by Mr. Greg Hritz, P.T. Mr. Hritz had a complaint filed against him in March of 2002 (#02-05), and although the complaint was dismissed by the Board on May 28, 2002, he expressed concerns that insurance companies and credentialing agencies must investigate his complaint history. The request he presented to the Board proposes that a limit be placed on the length of time a dismissed complaint be reported on the Board's web-site. The Board reviewed the report that is returned when Mr. Hritz's name is entered into the search feature on the web-site; it indicates that while he has had a complaint filed against him, the Board has not taken any disciplinary action against him. The Board members discussed the negative stigma associated with having a complaint history reported to the public on the web-site. The Board also considered the public perspective in terms of what expectations and information should be provided concerning licensees' compliance and complaint history. Ms. Walton Lee advised the Board that any complaint history is permanently retained in the agency's public record, but that the Board has the authority to make the determination of how long the agency elects to report dismissed complaints on its web-site. The Board questioned the financial impact that a significant modification to the web-site would create. Ms. Herbst Paakkonen indicated that she was not certain what those costs might be at this time; this must be researched and discussed with the Board's data-base contractor. Ms. Kalis moved Board staff be directed to investigate the costs associated with modifying the licensee search report to limit the time frame for reporting dismissed complaints. Mr. Gossman seconded the motion. The motion carried by a vote of three to one.

15. Executive Director's Report:

- a. Financial Report:** no additional information to report
- b. Board Staff Activities:** no additional information to report
- c. FSBPT Initiatives and News:** no additional information to report
- d. Legislative Update:** no additional information to report

16. Review, Discussion and Possible Approval of Proposed Revisions to A.A.C. Title 4, Chapter 24, Articles 1 and 2

Ms. Fearon introduced the agenda item, and Ms. Borden reviewed with the Board and staff the draft Interim Period Evaluation Form for physical therapist assistant permit holders. The form was drafted for the purpose of inclusion in the draft changes to Article 2 of the Board's administrative rules. She and Peter Zawicki, P.T., Chair of the Health Sciences Division and Director of the Physical Therapist Assistant Program at Gateway Community College, made several revisions to the form using the Evaluative Criteria for Accreditation of Education Programs for the Preparation of Physical Therapist Assistants, a publication of the Commission on Accreditation in Physical Therapy Education (CAPTE). Ms. Borden assured the Board that verbal permission to use the Evaluative Criteria was granted by MaryJane Harris, P.T., Director of CAPTE. The Board commented on other possible changes to consider under the Communication and Professional Behavior sections. The Board charged Ms. Borden and Ms. Hiller with the task of working on these sections and delivering the final draft to Ms. Herbst Paakkonen for forwarding to the Board's contract rule writer, Kathleen Phillips.

17. Review, Discussion and Possible Approval of Draft Substantive Policy Statement – Graduates of Physical Therapist Education Programs

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen reminded the Board that staff had previously been directed to draft a Substantive Policy Statement (SPS) that would clarify the Board's statutes and rules with respect to what physical therapy tasks a graduate of a physical therapist education program may do while awaiting licensure. Ms. Herbst Paakkonen and Ms. Hiller prepared a draft SPS with guidance from a memorandum prepared by Ms. Walton Lee. Several tangential issues were also addressed in the draft such as appropriate use of titles, co-signing on the part of the supervising physical therapist, and supervision of assistive personnel. The Board concurred that these topics were important to address as questions relating to use of title, supervision and documentation are often posed to the Board. The Board discussed A.R.S. §32-2043(H) in terms of the potential difficulty for supervising physical therapists to document daily the basis upon which delegation to assistive personnel was determined. The Board also discussed concerns related to whether the draft SPS appears too permissive with respect to allowing graduates who are not yet licensed to virtually practice and treat patients as would a licensed physical therapist (albeit without conducting the initial evaluation, establishing the plan of care, and discharging patients. Mr. Gossman moved the Board continue the review of the draft SPS during its April meeting. Ms. Borden seconded the motion. The motion carried by a unanimous vote. Board staff will correct some typographical errors in the interim, and indicated to the Board that any suggested revisions to the draft would be welcome.

18. Review and Possible Approval of Proposed Budget with Salary Adjustments– Fiscal Year 2006

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen summarized the key points of the proposed fiscal year 2006 budget that she has drafted. Some of the specifics in the budget were unknown at the time the final budget submission request was due to the Governor's Office of Strategic Planning and Budget (OSP) on October 1, 2004. She has been very pleased with the fact that the anticipated appropriation of \$268,400 will allow the agency to hire contract investigative and compliance support, share an administrative assistant with the Veterinary Board and the Optometry Board, contract for a comprehensive information technology service package with the End User Support Division of the Department of Administration, and increase several budget line items. Given the state of the budget, Ms. Herbst Paakkonen requested the Board consider endorsing her plan to grant

salary adjustments of 5% to Board staff, and consider an adjustment of up to 5% for the Executive Director. The Board agreed by consensus to prepare a performance evaluation for Ms. Herbst Paakkonen

CALL TO THE PUBLIC

Public input is encouraged. Presentations will be limited to five minutes. Please be aware, however, that the Board may not discuss, consider or take action at this meeting on any item not appearing on its agenda. During the Board meeting, additional public comment may be requested, but is generally not allowed.

ADJOURNMENT

The meeting was adjourned at 11:48 a.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Merle Gossman
Secretary