

REGULAR SESSION MEETING MINUTES
May 24, 2005

MEMBERS PRESENT: Helene Fearon, P.T., President
Joni Kalis, P.T., Vice President
Merlin Gossman, Secretary
Randy Robbins, Member
Mark Cornwall, P.T., Ph.D., Member

MEMBERS ABSENT:

OTHERS PRESENT: Heidi Herbst Paakkonen, Executive Director
Peggy Hiller, P.T., Program Compliance Specialist (Investigator)
Carol Lopez, Licensing Administrator
Marc Harris, Assistant Attorney General

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:

April 22, 2005; Regular Session Meeting

Ms. Fearon introduced the agenda item and the Board noted that the minutes should reflect that during Board deliberation of the informal hearing of Erwin “Mike” Edwards, P.T. (Complaint #04-12) should reflect that there was discussion relative to whether Mr. Edwards did or did not provide skilled services to the patient and complainant, V.P., and whether Mr. Edwards documented and billed appropriately. Ms. Fearon moved the minutes be approved as corrected. Mr. Gossman 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:

#04-19; Lori Francoeur, P.T.

Ms. Fearon introduced the agenda item, and Ms. Francoeur and her attorney, Mr. Randall Hensch, appeared before the Board for the hearing. The Board members and staff exchanged introductions with the licensee and counsel. Ms. Fearon provided an overview of the informal hearing process, and identified the potential outcomes of the hearing. Ms. Francoeur was sworn in by Ms. Deborah Moreasch, court reporter. Ms. Hiller summarized the complaint filed by Spencer Codding, Senior Special Investigator for Geico Direct and reminded the Board that the initial review and discussion of this complaint was held during its regular session meeting on April 22, 2004. The complaint alleges

that over the course of 43 treatment visits for patient C.D. the treatment program never changed and it appeared that the patient never progressed. Additionally the complaint alleges that the average cost of \$295 per visit may have been excessive. In her response Ms. Francoeur described her treatment of patient C.D. and defended the appropriateness of the treatment program, affirming that the patient gained functional improvements even though her level of pain did not greatly change. Ms. Francoeur defended her charges for patient C.D. as being fair and comparable to other outpatient orthopedic facilities. A review of the physical therapy treatment and billing records found that the treatment program was nearly identical for all 43 visits, there were few objective measures of patient improvement over the course of 43 treatment visits, and there was little objective support for the efficacy of Ms. Francoeur's treatment program for C.D. Ms. Hiller noted that the Board directed staff to obtain additional information from Ms. Francoeur concerning more specific details of her treatment program for CD and concerning her billing methodology for the treatments provided at each visit. Ms. Herbst Paakkonen included several specific questions concerning treatment and billing details in Ms. Francoeur's Request to Attend Informal Hearing to which Ms. Francoeur issued her response in a letter received on 5/12/05. If true, the complaint allegations may be a violation of:

- 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."
- A.R.S. §32-2044 (12) "Failing to adhere to the recognized standards of ethics of the physical therapy profession."
 - **Code of Ethics** Principle 5 "Physical therapists seek remuneration for their services that is deserved and reasonable."
 - **Guide for Professional Conduct 5.1.B** "Fees for physical therapy services should be reasonable for the service performed, considering the setting in which it is provided, practice costs in the geographic area, judgment of other organizations, and other relevant factors."
- A.R.S. §32-2044 (13) "Charging unreasonable or fraudulent fees for services performed or not performed."
- A.R.S. §32-2044(20), "Failing to maintain adequate patient records."
- A.R.S. §32-2044 (22) "Providing treatment intervention unwarranted by the condition of the patient or treatment beyond the point of reasonable benefit."

Mr. Hensch advised the Board that his client wished to waive her opportunity to offer an opening statement prior to questioning. The Board began by questioning Ms. Francoeur concerning how she documented "e-stim" for purposes of billing. The licensee explained that she routinely billed for attended e-stim when she would place the pads on the patient, and she would then leave allowing the technician to administer the hot pack. The Board noted that she was actually performing unattended e-stim and therefore documenting and billing inappropriately. The Board also questioned whether she actually performing manual therapy (as was billed) when there was little to no documentation to support it. Ms. Francoeur insisted that she was spending 20-30 minutes of manual therapy with the patient, but admitted that her documentation did not establish this fact. She explained the duration of the treatment program for C.D. by advising the Board that in the beginning she had focused on joint mobilization and pain improvement during which time the patient had demonstrated improvement, but that C.D. eventually experienced a set-back which required that treatment continue. Ms. Francoeur admitted that this event and her reason for continuing the treatment plan were not clearly documented. Ms. Francoeur also noted that toward the end of the treatment program C.D. did show some

improvement in strength, but that because she did not show marked improvement Ms. Francoeur felt it was necessary to wean her from the treatment program as opposed to ending it abruptly. The licensee also indicated to the Board that because she realized that C.D. would not be able to see her neurologist immediately, she felt it was important to continue physical therapy treatment in the meantime. The Board commented that these assessments and treatment decisions were not clearly documented by Ms. Francoeur. In response to the Board's questions, Ms. Francoeur admitted that she should have performed and documented a re-evaluation of C.D. prior to her seeing her neurologist, and that over the course of 43 treatment visits she should have performed periodic re-evaluations. She also noted that she gave C.D. a home exercise program earlier than the date that it first appears in the patient documentation. Ms. Francoeur noted that it was she who completed the charge-sheet portion that appears at the top of the treatment notes; she admitted that at the time she was treating C.D. she was not aware of the differences between attended and unattended e-stim. She also stated that she is not aware of how the billing is prepared after she submits it to the billing personnel, but commented that this is a "typical" bill for patients who are treated at Foothills Physical Therapy. Ms. Francoeur also advised the Board that their patients are typically in the clinic for 2 hours at each treatment visit, but that she is not with the patient the entire time. She also stated that she was not certain whether C.D. was aware of the cost of her therapy; she didn't advise C.D. of the cost, but assumed that she was receiving statements from the insurance company covering the costs. In his closing statement offered on behalf of Ms. Francoeur, Mr. Hensch advised the Board that the licensee's charting could have been better. He commented that while it was not optimal, according to the Board's statutes it does meet the minimal standards. Mr. Hensch offered to arrange for Ms. Francoeur to submit to the Board additional patient charts to demonstrate that she has improved her patient documentation skills. He also noted the "adversarial" position of the complainant in terms of him representing the insurance company that assumed responsibility for C.D.'s physical therapy treatment subsequent to the automobile accident in which she was injured. Mr. Hensch also stated that the treatment program for the patient was appropriate given that she had a pre-existing condition and that she was a "fragile" patient. He noted that the patient was very pleased with the physical therapy care that she received, and that she improved – albeit in a two-steps-forward-one-step-back fashion given her physically demanding job. Mr. Hensch concluded his statement by stating that Ms. Francoeur's conduct does not rise to the level of requiring disciplinary action.

The Board concluded the interview and deliberated the case. The Board discussed the fact that there were no findings to support that Ms. Francoeur had provided substandard care to C.D. in violation of A.R.S. §32-2044(4). The Board also determined that while the billing for the patient contains some problems and possible ignorance, her actions do not rise to the level of a violation of A.R.S. §32-2044(12), violating the recognized standards of ethics of the physical therapy profession. After discussing whether there was a violation of A.R.S. §32-2044(20), failing to maintain adequate patient records, the Board concluded that Ms. Francoeur met only the minimal standards of the law, but that the content of her notes do not support the treatments she provided. The Board determined that Ms. Francoeur's documentation of C.D.'s care indicates that she did not show measurable improvement over 43 treatment visits, and that her treatment plan for C.D. did nothing to address this. The Board also concluded that the home exercise program should have been given to C.D. earlier than was documented in the treatment notes given that the patient had "plateaued". Additionally, the Board determined that Ms. Francoeur should have conducted and documented periodic re-evaluations of C.D. Finally, the Board found that Geico Direct was billed for services that were not provided (i.e. attended e-stim), Ms. Francoeur's documentation does not support what treatment she provided to C.D., and the \$30 charge for hot and cold packs was excessive. Ms. Fearon moved to find Ms. Francoeur in

violation of A.R.S. §32-2044(13), charging unreasonable or fraudulent fees for services performed or not performed and in violation of A.R.S. §32-2044(22), providing treatment intervention unwarranted by the condition of the patient or treatment beyond the point of reasonable benefit. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board discussed discipline options to address the violations. Ms. Fearon moved the Board place Ms. Francoeur on probation for 6 months with the following requirements: within the first 3 months the licensee will submit for review 5 patient charts (selected at random by Ms. Hiller) with 2 of those for active patients and 3 discharged, and one of those to be for a patient seeking treatment subsequent to a motor vehicle accident; within the term of probation she must complete a patient care documentation, coding and billing course; within the term of probation the licensee must provide evidence of having conducted an in-service at her place of employment addressing what she learned from the documentation, coding and billing course; within the term of probation Ms. Francoeur must submit a written review of the documentation, coding and billing course documenting what she learned from the course and how she had modified her practices accordingly; and she must prepare a written analysis of the billing prepared for C.D.'s treatment and notify Geico Direct of any adjustments. Ms. Kalis seconded the motion. The roll call vote on the motion was unanimous.

3. Request for Board Consideration of Settlement of Complaint in Lieu of Informal Hearing:

#05-06; Donna Macia, P.T

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen briefed the Board on the status of the case. Ms. Donna 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 but failed to submit any documentation or materials on or before that date. During its regular session meeting 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 [see attached Consent Agreement]. Ms. Macia received the Consent Agreement on February 25, 2005 and was granted 15 days from its receipt to agree to its terms and sign and return the document. The deadline for receipt of the signed Agreement was March 14, 2005. On or about February 28, 2005 Ms. Macia telephoned Ms. Herbst Paakkonen with questions about the Consent Agreement and her options and was advised of the continuing competence requirements, the audit process, the time frames established by law, the purpose of the Consent Agreement, and the option to refuse to sign the Agreement. Ms. Macia stated that she is not currently practicing physical therapy and did not indicate during that conversation what her intentions relative to signing the Agreement were. Ms. Macia returned the Consent Agreement unsigned on March 21, 2005 along with a letter stating that she was not willing to agree to the terms of the Agreement as personal demands prevent her from focusing her time to attend to this matter. The Board again reviewed the status of the case on March 31, 2005 and voted unanimously to open a complaint against Ms. Macia and to invite her before the Board for an informal hearing. Ms. Macia was noticed of the Board decision, and of the date of the informal hearing – May 24, 2005. Ms. Macia telephoned Ms. Herbst Paakkonen on April 25, 2005, and indicated that she was not willing to attend a hearing, but that she was interested in revisiting negotiations with the Board for resolving the complaint through a Consent Agreement. Ms. Walton Lee advised Ms. Herbst Paakkonen to again offer to Ms. Macia the original Consent Agreement for her consideration and to offer her an opportunity to negotiate the terms of that

Agreement if she again declines to sign it. In response to the offer, Ms. Macia submitted the attached letter in which she asks for a “different agreement”, but fails to provide specificity with respect to what Consent Agreement terms to which she would be willing to agree. Ms. Herbst Paakkonen noted that her letter seems to suggest that she would be willing to complete additional courses in order to remedy her failure to comply with the Board’s continuing competence requirements for the 2002-2004 licensure compliance period. To date, the Board has received no documentation from Ms. Macia relative to her continuing competence requirements for the 2002-2004 licensure compliance period. Ms. Herbst Paakkonen advised that the Board’s options include accepting the Consent Agreement terms proposed by Ms. Macia or rejecting the Consent Agreement terms proposed by Ms. Macia and stipulating what Consent Agreement terms are necessary for the Board’s acceptance; failure to agree to them would result in the rescheduling of the informal hearing for June 28, 2005. The Board discussed the status of case and expressed concerns relative to Ms. Macia’s seemingly indecisive posture concerning resolution of the complaint; the Board also noted that the case was requiring several months to resolve in spite of the fact that the violations were clearly established. Ms. Fearon moved Ms. Macia be offered a final opportunity to sign the original Consent Agreement within 10 days of receiving it; failure to do so would result in the informal hearing being rescheduled for June 28, 2005. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

4. Initial Review of Complaint:

#04-20; Christine Shaft, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint as filed by J.C., a former patient who was treated at Spooner Physical Therapy by Ms. Shaft from March 31, 2004—May 19, 2004. The complainant alleges that she endured pain from Ms. Shaft’s treatment throughout her course of therapy and that Ms. Shaft performed painful and twisting manipulations on her knee at every treatment that resulted in additional knee problems and ultimately in the need for surgery on her knee. In her complaint J.C. stated that she mentioned to Ms. Shaft the pain she was experiencing. She stated that after her treatment session of May 19, 2004 that she was experiencing such burning pain that she could hardly walk. J.C. saw her physician following this treatment session and was advised not to return for further treatment with Ms. Shaft. The complainant reported that it remains difficult for her to walk and she has to have surgery on her knee; she further claims that before her treatments she did not have any trouble with her knee. If true, these allegations may be a violation of A.R.S. § 32-2044(1) “Violating this chapter, board rules or a written board order” or 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.” In her written response to this complaint Ms. Shaft confirms that she treated J.C. from March 31—May 19, 2004 for low back pain and left groin strain resulting in significant pain, functional limitations and walking with a limp. Treatment included gentle soft tissue mobilization of the gluts, adductors, and quads followed with gentle active and passive stretching. Additionally the complainant was instructed and guided through limited exercises to improve her walking, squatting and getting up out of a chair. However, Ms. Shaft disputes J.C.’s claim that she never had knee problems prior to her therapy treatments. Ms. Shaft submitted records from physical therapy treatments that J.C. received in January 2004 at Spooner’s Scottsdale office that documented diffuse leg pain, tenderness, and pain with movement of the left knee. Ms. Shaft denies that she manipulated Ms. J.C.’s knee during her treatment sessions. She describes a technique utilized at J.C.’s final two treatment sessions that involved having the patient lay on her right side while Ms. Shaft used her hip and knee at 90 degrees for low back stretch and mobilization. She says that J.C. reported improvement from this treatment and she

requested the same treatment at the next and final visit and that she offered no new complaints when she left the final visit. Her records indicate that J.C. cancelled her treatment after May 19, 2004 "...stating everything was fine but she had things to do and had to cancel." When she called J.C. to follow up she learned that J.C. would not be returning for further treatment. Ms. Shaft affirms her treatment techniques were valid and that J.C. showed improvements in function and less pain overall than at her initial treatment. She attributes J.C.'s complaints of suffering during her therapy sessions to her very low pain tolerance. Ms. Shaft affirms that even though J.C. complained of significant pain she did continuously show functional improvement. Ms. Hiller called to the Board's attention the treatment note dated May 17, 2004 which is the first entry specifically mentioning complaints of knee pain in the subjective portion of the documentation. Ms. Hiller also noted that the discharge summary by Ms. Shaft dated June 2, 2004 following 22 treatments describes improvements in pain reduction, increased hip flexibility, improved strength as evidence by J.C.'s ability to transfer more easily, walk with less pain and perform repeated squats. Complaints of knee pain are noted with Ms. Shaft's assessment that this was caused by weakness and poor patellar tracking. The physical therapy treatment record does not describe a significant incident or injury to J.C.'s knee at the final treatment session on May 19, 2004, although there is mention of J.C.'s complaints of knee pain at the treatment visit on May 17, 2004. J.C.'s physician, Dr. Brennan, does not mention patient complaints of a knee injury experienced during therapy treatment at J.C.'s visit with him on May 24, 2004.

The Board reviewed the investigative report and discussed its findings. Noted was the fact that there was no documentation in the treatment record to indicate that any treatment could have caused the injury that the complainant claims to have experienced. The Board commented that the complainant has also provided documentation indicating that she has sought care from several physical therapists in the past for relatively short episodes of time. Ms. Kalis moved to dismiss the complaint. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

5. Initial Review of Complaint:

#04-23; Jenelle Lauchmann, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint filed against Ms. Lauchman as filed by N.G., a former patient treated at NovaCare by Ms. Lauchman in July and August of 2004. The complaint alleges that Ms. Lauchman refused to provide treatment at the frequency prescribed by N.G.'s referring physician, scheduling only one treatment per week rather than the prescribed three treatments per week. In the complaint N.G. described his first series of treatments at NovaCare with "Dan", following which he was given another prescription for more physical therapy. Although his referring orthopedist prescribed an additional 6 weeks of therapy at a frequency of 3 times weekly, Ms. Lauchman would only see N.G. once a week. Ms. Lauchman told him that she couldn't do anything for him and he had used up too much time with "Dan" for treatment of his hand. In addition to reducing the frequency of treatment from 18 to five (5) visits in six weeks, the complainant objected to the fact that Ms. Lauchman spent no longer than 10 minutes with him at any of his treatment visits. When he returned with another prescription for an additional month of twice weekly therapy, Ms. Lauchman once again tried to reduce the frequency of his visits. Finally, on September 13, 2004 Ms. Lauchman told N.G. that she could not help him and attempted to discourage him from coming for treatment. The complainant believes that Ms. Lauchman's actions may have been motivated by PacifiCare's capitated contract with NovaCare. The complaint further alleges that Ms. Lauchman spent minimal time with N.G. during his treatment visits, spending the majority of her time on the telephone. Finally, the complaint alleges that Ms. Lauchman's discouraging attitude created a

negative environment during N.G.'s treatments at NovaCare. If true, these allegations may be a violation of:

- 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."
- A.R.S. § 32-2044 (12) Failing to adhere to the recognized standards 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."
- **Code of Ethics Principle 3** "Physical therapists accept responsibility for the exercise of sound judgment."
 - **Guide for Professional Conduct 3.3 E.** "Physical therapists shall recognize that third-party contracts may limit, in one form or another, provision of physical therapy services. Physical therapists shall inform patients of any known limitations. Third-party limitations do not absolve the physical therapist from adherence to ethical principles. Physical therapists shall avoid under-utilization of their services."

In her written response Ms. Lauchman described her care of N.G. while she was on temporary assignment with NovaCare. She noted that the complainant had suffered a serious injury from a hang gliding accident and he had already completed a course of Occupational Therapy treatments at NovaCare. He had undergone fasciotomies and grafting for compartment syndrome in his left arm following his injury, and he had also suffered traction injuries to nerves in his neck. An EMG study performed in July 2004 confirmed nerve damage to the muscles of his shoulder girdle and upper arm. Ms. Lauchman's initial evaluation revealed mild deficits in passive range of motion, poor to trace muscle strength in his shoulder girdle and a grade 2-3 sulcus sign of the humerus. At that time N.G. was doing well with exercises in the clinic and at home. She stated that "these findings and the EMG-confirmed nerve damage suggested that his nerve damage was most likely permanent." Ms. Lauchman called N.G.'s physician and recommended once-weekly treatment visits augmented with 2-3 independent exercise sessions in the clinic. She informed N.G. of her recommendations and provided him with educational materials for independent exercise. "They" would provide guidance, correction and instruction as needed during his clinic exercise program while N.G. continued his activities at his gym and pursued a walking program at the mall. Once N.G.'s passive ROM was normal and he was independent in his exercise program, Ms. Lauchman informed N.G. and his physician that continued skilled services were unwarranted; her understanding was that his insurance would not cover maintenance therapy. N.G.'s physician concurred with her recommendation but the complainant did not accept this assessment. Ms. Lauchman affirms that her obligations to N.G., his physician, his insurer and NovaCare was "...to insure that his therapy was beneficial, complied with his physician's advice, was acceptable for payment by his insurance carrier, and effectively utilized my employer's resources." Ms. Lauchman disputes that she was inattentive to N.G.'s care in the clinic and stated that her use of the telephone was for dictation of time-sensitive evaluations, re-evaluations, notes and discharges. She noted that she was able to watch patients in the gym from her desk and N.G. was always well-supervised during his visits. In conclusion, Ms. Lauchman states "I empathize with [N.G.] and can understand his subjective displeasure. However, the objective fact is that [N.G.] suffered a

serious injury that cannot be remedied by physical therapy, no matter how much we might try.” Ms. Hiller called to the Board’s attention her findings from the review of N.G.’s physical therapy treatment records. Of note, Ms. Lauchman did not have the EMG results at N.G.’s initial visit nor during the first month of treatment; the Evaluation/Plan of Care documents a frequency and duration of (2) visits per week for (6) weeks but there is no distinction whether these visits would be for “skilled” treatment or independent exercise; on July 28, 2004 Ms. Lauchman requested a reduction in the frequency of treatments in order to “...to maximize the patients [sic] PT benefits, while allowing him to increase ROM, strength and endurance of the left shoulder” (there is a notation that N.G. was in agreement with this plan; there is a notation at the bottom of the one of the daily flow sheets stating “Authorized # Visits: Cap”, indicating Ms. Lauchman’s awareness of N.G.’s insurance coverage under Pacificare’s capitated contract; the Patient Discharge dated August 31, 2004 documents the number of visits as 6/6 with a notation “+6 I” [plus 6 independent visits?] but there is no record of the “independent exercise sessions” Ms. Lauchman described; the majority of exercises listed on the flow sheets appear to be active exercises without indication of any assistance he may have received performing the exercises; and the final document in N.G.’s physical therapy record is entitled “Supplemental Benefits Member Notification of Appeal Rights” which reflects Ms. Lauchman’s efforts to have Pacificare terminate coverage for N.G.’s therapy. Finally, Ms. Hiller advised the Board that N.G. was seen for 16 treatment visits from October 20, 2004 through December 6, 2004 at Chandler Physical Therapy & Hand Centers, Inc. during which he was treated by Ms. Tamara Chastain, P.T. (license #6524). The treatment record reflects improvement over the course of treatment, described objectively in the November 17, 2004 Daily Chart Note (following 10 visits), the December 8, 2004 Daily Chart Note (following 16 treatments) and in the Discharge Summary dated December 10, 2004.

The Board discussed the investigative report and noted that several questions were raised by its contents, including whether Ms. Lauchman actually supervised the care of N.G. and why she had determined that he had no chance of improvement with physical therapy. The Board also questioned whether Ms. Lauchman’s notes indicate that he was coming into the clinic for treatment more than 1 time per week. The Board also questioned the home exercise program in terms of whether she provided N.G. with one and whether he agreed to it. Ms. Fearon moved Ms. Lauchman be invited to an informal hearing before the Board. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

6. Consideration of and Possible Action Concerning Probation Compliance and Request for Early Termination of Probation:

#04-10; Timothy Blecke, P.T.

Ms. Fearon introduced the agenda item, and Ms. Hiller reported to the Board that pursuant to the Board’s Order she had completed the required chart reviews selected at random from patients treated by Mr. Blecke at Phoenix Memorial Hospital where he currently serves as the Director of Rehabilitation. She reminded the Board that the Order stipulated if Mr. Blecke’s documentation complies with Board statutes and rules, he would not be required to complete a patient care documentation course. Mr. Blecke submitted a letter to the Board requesting early termination of his probation, in part because of his plans to relocate out of state. The Board reviewed the report prepared by Ms. Hiller and noted that Mr. Blecke’s documentation was complete and appropriate. Ms. Kalis moved termination of probation be granted to Mr. Blecke. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

7. Request to Negotiate Terms of Consent Agreement:

Jay McLaughlin, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen summarized the status of the case. She stated that during the February 22, 2005 meeting of the Arizona Board of Physical Therapy, the Board reviewed information concerning the fact that Jay McLaughlin, P.T. had renewed and reinstated his physical therapist license in October of 2004, and therefore was automatically audited for evidence of having completed his continuing competence requirement. The Board was advised that Ms. McLaughlin had failed to respond to his notice of audit within 30 days; he received his second notice on November 29, 2004 at his place of practice (the first notice sent to his home address was unclaimed) which resulted in a submission deadline of December 29, 2004. Mr. McLaughlin's materials were eventually submitted to the Board office on February 17, 2005 – well past the 30 day submission deadline required by Board rule. The Board voted unanimously on February 22, 2005 to find Mr. McLaughlin out of compliance pursuant to A.A.C. R4-24-401 through R4-24-403, grant him six months with which to come into compliance, but also to offer a Consent Agreement containing the following disciplinary terms: a term of probation during which the licensee must pay a civil penalty of \$250, read A.R.S. §32-2001 through 2052 and A.A.C. Title 4, Chapter 24, Articles 1 through 4 and write an interpretive essay of not less than 500 words of these sections, and complete 20 hours of community services pre-approved by Board staff. Mr. McLaughlin contacted Ms. Herbst Paakkonen on April 21, 2005 after receiving the Consent Agreement, and voiced his concern relative to the community service requirement. He was advised that he could attempt to negotiate the terms of the Agreement with the Board, and that he should do so in writing. On April 26, 2005 the Board office received a letter from Mr. McLaughlin in which he indicated that he objected to the requirement that he complete community service, but that he was willing to volunteer his time to teach fitness classes at a local Senior Citizens Center. He also requested that the Board refrain from making this matter public record. Mr. McLaughlin also included a certificate of completion for a 35-contact hour course in an effort to demonstrate that he is committed to professional development. Ms. Herbst Paakkonen advised the Board that its options include accepting Mr. McLaughlin's proposed alternative Consent Agreement terms, and declining Mr. McLaughlin's proposed terms and establishing a new due date for the original Consent Agreement, after which time if no agreement is reached the case will be sent to an informal hearing. After discussion, Ms. Fearon moved the Board send the original Consent Agreement to Mr. McLaughlin along with a letter of clarification that states all actions taken by the Board during its public session meetings are recorded in the public record; the letter will also allow the licensee 15 days to sign the agreement and failure to do so will result in the case being scheduled for an informal hearing. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

CALL TO THE PUBLIC

Ms. Cynthia Driskell, P.T. requested and was granted permission to address the Board. She introduced herself as the Chairperson of a task force created by the Arizona Physical Therapy Association for the purpose of reviewing the draft service delivery model proposed by the Arizona Early Intervention Program (AzEIP) administrators. She explained that several physical therapists who have provided treatment to AzEIP qualified children had expressed concerns that several elements of the proposed model could require physical therapists to violate the Board's statutes and rules if they continued to treat the children under that system. Specifically, the members of the task force identified scope of practice, supervision, and documentation as key areas where the proposed AzEIP system requirements are inconsistent with the law. Ms. Driskell also explained that the proposed AzEIP service delivery model is education-based as opposed to being medically based, which is inconsistent with how physical therapy services must be delivered to patients. She compared the proposed AzEIP plan to efforts in the 1970s and 1980s on the part of hospital administrations to "cross-train" medical

personnel to perform treatment tasks regardless of how they were educated and under what professional guide they held a license to practice. Ms. Driskell briefly reviewed with the Board a position paper developed by the task force that will be shared with AzEIP administrators. The Board thanked Ms. Driskell for her work and for sharing her information with the Board. She was asked to provide updates to Board staff in the event that this matter may appear on a future agenda.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

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

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| Cal J.Z. Aranmor | Matthew V. Beddes | Jeffrey L. DeVries |
| Timothy A. Fox | Robert J. Freschauf | Belinda M. Jaramillo |
| Andrew T. Marchesi | Jason B. Paladino | Ryann P. Roberts |
| Teri S. Roberts | Bernard O. Yeboah | |

Ms. Fearon read the names of the applicants for the record, and the Board posed questions concerning two applicants. Mr. Paladino had failed to answer one of the Personal Information questions listed on the application, and questioned whether Mr. Beddes currently holds, or previously held, a physical therapist license in Washington state as indicated on his examination score report issued by the Federation of State Boards of Physical Therapy. Ms. Fearon moved licensure be granted to the listed applicants with the exception of Mr. Paladino and Mr. Beddes; licensure will be granted to these applicants upon receipt of the additional information required unless the information indicates Board review is necessary. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

9. Substantive Review and Possible Action on the Following Applications for Physical Therapist Assistant Certification:

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| Mary L. Bower | Sheri L. Fox | Karen W. Russell |
| Robert T. Sheridan | | |

Ms. Fearon read the names of the applicants, and the Board discussed the files. The Board questioned whether Ms. Fox had previously held certification in Arizona as indicated on her examination score report issued by the Federation of State Boards of Physical Therapy. After confirmation that Ms. Fox had previously held certification in Arizona (expired August 31, 2000 with no disciplinary action), Ms. Fearon moved certification be granted to the listed applicants. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

10. Review of and Possible Action on the Following Applications for Physical Therapist Licensure (Foreign Educated, Graduates of Program Not Accredited by CAPTE):

a. Substantive Review and Approval to Take the National Physical Therapy Examination

Marife T. Enriquez

Ms. Fearon introduced the agenda item, and read the names of the applicant for the record. The Board conducted the substantive review of the application and noted that it was administratively complete. The Board discussed the fact that her credential evaluation report indicated that she had met the requirements of a substantially equivalent education to that of a graduate of a U.S. accredited program as she had earned in excess of 58 semester credit hours of general education, and more than 61 semester credit hours of professional education. Ms. Herbst Paakkonen addressed the Board's questions concerned the fact that Ms. Enriquez is unable to produce evidence that she is authorized to work and reside in the United States until she is granted permission to take the National Physical Therapy Examination (NPTE) by a United States jurisdiction; this is a relatively new immigration

requirement imposed by the United States Patriot Act. Ms. Fearon moved the Board find that Ms. Enriquez possesses a substantially equivalent education to that of a U.S. educated graduate, and that she be approved to sit for the NPTE. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

Ilana K. Levin

Ms. Fearon introduced the agenda item, and read the names of the applicant for the record. The Board then discussed the application of Ms. Levin, noting that her credential evaluation report indicated that she was 45 credit hours deficient in general education. Since receiving the credential evaluation report, Ms. Levin had completed 6 credit hours of general education from Rio Salado College and 33 from Arizona State University. However, she was still deficient a total of 6 semester credit hours, and had filed a request that the Board transfer 6 “superfluous” professional credit hours from to the general education category in order to find that she possesses a substantially equivalent education to that of a graduate of a U.S. accredited program. The Board discussed Ms. Levin’s professional education credits and concurred that none of the credits earned were appropriate to transfer as they were all clearly professional in nature. Ms. Kalis moved the Board deny Ms. Levin’s request, but notify her that she has the option to either complete the remaining 6 semester credit hours by completing college level coursework, or by passing College Level Examination Program tests. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

b. Substantive Review and Review of Request to Find Applicant has Met Requirement of Supervised Clinical Practice Period (SCCP)

Amado Ariola

Ms. Fearon read the names of the applicant for the record and the Board received assurance from staff that the file was administratively complete. Ms. Kalis moved the Board find that Mr. Ariola’s education be found substantially equivalent to that of a graduate from a U.S. accredited program. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board then reviewed the Interim Period Evaluation Form submitted by Mr. Ariola as completed by a former supervisor while he was working at Great Lakes Rehabilitation Hospital in Michigan. The Board noted that the documentation submitted did not address whether the physical therapist completing the form was Mr. Ariola’s direct supervisor, nor was there any description of the facility or the patient care services provided at the facility. The Board also noted that additional information concerning Mr. Ariola’s competency in the identified skill areas would be helpful in making a determination whether the applicant must complete a SCCP. Ms. Kalis moved the Board table action on the request and that Board staff request Mr. Ariola provide the additional information identified in the Board’s discussion. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Elizabeth Soares

Ms. Fearon read the name of the applicant for the record, and Board staff noted that Ms. Soares was lacking one original document for her application file – verification of her expired physical therapist license in Indiana; the Board was in possession of a faxed copy of the document with the original due to arrive via U.S. mail soon. The Board discussed Interim Period Evaluation Form submitted by Ms. Soares as completed by her former supervisor while she was working for a home health care organization in Georgia. The Board noted that the documentation submitted was lacking information concerning whether the physical therapist completing the form was Ms. Soares’ direct supervisor, nor was there any description of the facility or the patient care services provided at the facility. The Board also noted that additional information concerning Ms. Soares’ competency in the identified skill areas would be helpful in making a determination whether the applicant must complete a SCCP. Ms. Kalis moved the Board table action on the request and that Board staff request Ms. Soares provide the

additional information identified in the Board's discussion. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

c. Review of Request to Find Applicant has Met Requirement of Supervised Clinical Practice Period (SCCP)

Maria Ariola (Graduate of Program Not Accredited by CAPTE)

Ms. Fearon read the name of the applicant for the record, and the Board reviewed the Interim Period Evaluation Form submitted by Ms. Ariola as completed by a former supervisor while Ms. Ariola was working at Great Lakes Rehabilitation Hospital in Michigan. The Board noted that the documentation submitted did not address whether the physical therapist completing the form was Ms. Ariola's direct supervisor, nor was there any description of the facility or the patient care services provided at the facility. The Board also noted that additional information concerning Ms. Ariola's competency in the identified skill areas would be helpful in making a determination whether the applicant must complete a SCCP. Ms. Kalis moved the Board table action on the request and that Board staff request that Ms. Ariola provide the additional information identified in the Board's discussion. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

11. Request for Accommodation to the National Physical Therapy Examination In Accordance with the Americans with Disabilities Act

Ronda L. Moriarty

Ms. Fearon introduced the agenda item and the Board reviewed the letter submitted by Ms. Theresa Dombrowski, Associate Dean of Student at Northwestern University, in support of Ms. Moriarty's request that the Board grant her the accommodation of time-and-a-half with which to take the National Physical Therapy Examination (NPTE) given that she has a hearing impairment. The Board discussed the fact that while the letter stated that Ms. Moriarty received this accommodation throughout her enrollment at Northwestern, the Board required additional information in the form of justification for why extra time is warranted for a hearing impaired applicant given that the NPTE is computer based. Ms. Kalis moved the Board delay action on the request and that Board staff notify Ms. Moriarty in writing that she must request documentation from Northwestern University be submitted to the Board that establishes the basis upon which she received her time-and-a-half accommodation while a student. Ms. Gossman 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:

| | | |
|---------------------------|------------------------|----------------------------|
| Kevin Baker | Judy Baum | Katerina Katsanakis |
| Jeremiah Jorgensen | Valerie Matthew | Debra Miller Osorio |
| Pamela Staszewski | Jim Stewart | |

Ms. Fearon introduced the agenda item and noted that the Board's Continuing Competence Audit Committee had reviewed the submissions of the listed licensees and found them to be in compliance with the requirements described in Board rules at A.A.C. R4-24-401 through R4-24-403. Dr. Cornwall announced that as a member of the Committee who reviewed the audit files of these licensees, he would recuse himself from this vote. Ms. Fearon moved the Board find the licensees in compliance with the Board's continuing competence requirements. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

b. Licensees Recommended by Audit Committee as Out of Compliance with Continuing Competence Requirements for 2002-2004 Licensure Period:

| | | |
|-----------------------|---------------------|--|
| Jay McLaughlin | Peter Philip | |
|-----------------------|---------------------|--|

The Board reviewed the Audit Committee's recommendation that Mr. McLaughlin and Mr. Philip be found out of compliance with the Board's continuing competence requirements for failing to complete 10 of the required 20 contact hours from Category A. The Board discussed the fact that Mr. McLaughlin had already been found out of compliance by virtue of the fact that he did not respond to the notice of audit within 30 days as required by A.A.C. R4-24-401(G)(2). Ms. Kalis moved the listed licensees be found out of compliance and be notified that they have 6 months with which to come into compliance with the requirements pursuant to R4-24-401(J). Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

13. Executive Director's Report:

a. Financial Report: Ms. Herbst Paakkonen summarized the agency revenue and expenditures report as of April 30, 2005 and reported that the Board continues to be in a very strong financial position. She predicted that she will not be able to spend all of the remaining fiscal year 2005 appropriation, but that she is trying to address some fiscal year 2006 expenses in order to establish a "cushion" for next year's budget. Agency revenues continue to exceed projections significantly which helps the Board maintain a healthy fund balance.

b. Board Staff Activities: Ms. Herbst Paakkonen reported that while the applications for licensure and certification were keeping her very busy, Deb Turner, the Board's new part-time administrative assistant (shared with the Veterinary Board) is quickly coming up to speed on her application processing tasks. She also reported that she has somewhat enjoyed immersing herself in the applications processes so that she is able to maintain her skills in this program area. She further noted that Carol Lopez is scheduled to return to work on August 1, 2005.

c. FSBPT Initiatives and News: No additional information to report.

d. Legislative Update: No additional information to report.

e. Rules Revision Update: No additional information to report.

14. Review, Discussion and Possible Approval of Draft Jurisprudence Examination Forms *

**Executive Session planned for this agenda item*

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen advised the Board that the two draft forms presented for review contained the edits that were made during the Board's May 5, 2005 special session meeting. She had verified that the edits were made as requested. The Board also discussed the letter addressed to the Board and prepared by Dr. Cynthia Searcy, Managing Director of Assessment with the Federation of State Boards of Physical Therapy that addressed the varying degrees of difficulty of the examination questions. Fearon moved the Board meet in Executive Session to discuss a questionable item on one of the test forms. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session. Ms. Fearon moved the examination forms be approved as presented with the edit that was discussed in Executive Session. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board Directed Ms. Herbst Paakkonen to notify Dr. Searcy of the one change that will need to be made to the examination.

ADJOURNMENT

The meeting was adjourned at 11:40 a.m.

Approved by,

Merle Gossman,
Secretary

Prepared by,

Heidi Herbst Paakkonen
Executive Director