

REGULAR SESSION MEETING MINUTES
July 26, 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)
Dawn Walton Lee, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

1. Approval of Minutes:

June 28, 2005: Regular Session Meeting

Ms. Fearon introduced the agenda item and the Board noted two corrections – the last sentence under agenda item #8 should be corrected to read “Ms. Engler” rather than “Mr. Hakes” and under agenda item #9 a correction should be made to read “certification” rather than “licensure”. Ms. Fearon moved the minutes be approved with these changes. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

Note: the Board agenda was reordered as follows

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

Lauren M. Allen	Anne E. Anthony	Tera D. Bahl
Jared P. Barnum	Daniel W. Daliman	Kelly L. Del Signore
Kylie S. Eilders	Kim R. Friend	Mark R. Gannon
Jamie W. Geiken-Joyner	Jennifer M. Gettler	Sara Giulietti
Lora A. Gresham	Michelle L. Hansen	Sarah N. Harwell
Kristin M. Hix	Duane A. Hjelt	Bree J. Hoomans
Benjamin B. Just	Gregory A. Koberstein	Mark A. Kyger
Evan J. Michelson	Victoria L. Monti	Wendy M. Mosher
Ann S. Olsen	Alicia Olson	Joncie L. Patterson

Steven M. Peery	Connie M. Phernetton	Rena M. Popken
Rachel K. Rackers	Jodi M. Rhoderick	Wesley M. Riggs
Erica A. Sabel	Madilyn S. Slade	Josh M. Sponder
Melissa A. Strohmeier	Robin A. Swanigen	Judith E. Swift
Roberta H. Tantimonaco	Jodi L. Young	Amanda B. Zapko

Ms. Fearon introduced the agenda item and read the names of the applicants for the record. The Board discussed the fact that Ms. Olsen had two gaps in her recorded work history. Ms. Herbst Paakkonen advised the Board that Mr. Koberstein had initially applied for licensure in Utah, but then decided to apply for licensure in Arizona. Because he is not eligible to apply for licensure by endorsement because he was not granted licensure in Utah, he must apply for licensure by examination. In order to be considered for licensure by examination, he must provide evidence that he does not have an application for licensure by examination pending in another jurisdiction. The Utah Board licensing administrator submitted a written explanation noting that the law in that state does not provide applicants with the opportunity to withdraw applications, but further explained that Mr. Koberstein will not be eligible for his Utah license until August. Given these facts, Ms. Herbst Paakkonen recommended that Mr. Koberstein be granted licensure by examination in Arizona. Ms. Fearon moved licensure be granted to the listed applicants with the exception of Ms. Olsen; licensure will be granted to her if she provides a satisfactory and complete work history to Ms. Herbst Paakkonen, otherwise her application must be brought back before the Board. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

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

Marjorie L. Anderson	David J. Barr	Danika J. Bryant
Diane M. Danforth	Holly L. Dwyer	Nicole Falasca
Kathleen D. Mejia	Valerie L. Rice	Elliot S. Rover

Ms. Fearon introduced the agenda item and read the names of the applicants for the record. Ms. Fearon moved certification be granted to the listed applicants. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

11. Review of and Possible Action on the Following Applications for Physical Therapist Licensure (Foreign Educated, Graduate of Program Accredited by CAPTE):

Lisa Alexander

Ms. Fearon introduced the agenda item and read the name of the applicant for the record. The Board discussed the fact that the application was administratively complete, and noted that because Ms. Alexander is a graduate of a CAPTE accredited foreign program, the Board's precedent is to waive the requirement of the credentials evaluation and the supervised clinical practice period pursuant to A.R.S. §32-2022(C). Ms. Kalis moved licensure be granted to Ms. Alexander. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

a. Substantive Review of Application and Review of Request to Find Applicant Has Met Requirement of Supervised Clinical Practice Period:

Raquel Bolanos

Ms. Fearon read the name of the applicant and received assurance from Board staff that the file was administratively complete. The Board discussed the fact that Ms. Bolanos' credential evaluation report indicated that she has a substantially equivalent education to that of a graduate of a U.S. accredited program. Additionally, the Board reviewed the materials that she submitted in support of her request that the Board find she had already met the requirement of the supervised clinical practice period. Ms. Kalis moved the Board find that Ms. Bolanos has a substantially equivalent to that of a U.S. educated physical therapist, that she has completed the requirement of the supervised clinical practice period, and that licensure be granted to the applicant. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

Venerando Umali

Ms. Fearon read the name of the applicant and received assurance from Board staff that the file was administratively complete. The Board discussed the fact that Mr. Umali's credential evaluation report indicated that he has a substantially equivalent education to that of a graduate of a U.S. accredited program. Additionally, the Board reviewed the materials that he submitted in support of his request that the Board find he had already met the requirement of the supervised clinical practice period. The Board discussed the fact that Mr. Umali's resume indicates several professional accomplishments, including that he is a Clinical Education Instructor for the American Physical Therapy Association. The Board complimented the format of the letters submitted in conjunction with the supervised clinical practice period waiver request and noted that it would serve as a good template for future requests. Ms. Kalis moved licensure be granted to Mr. Umali. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

Anna C. Welman

Ms. Fearon read the name of the applicant and received assurance from Board staff that the file was administratively complete. Ms. Herbst Paakkonen advised the Board that the applicant's credential evaluation report was recently revised by International Consultants of Delaware (ICD) to reflect that Ms. Welman had earned 42 semester credit hours of general education in addition to her 87.5 semester credit hours of professional education. Additionally, Ms. Welman had completed 6 semester credit hours through Arkansas State University, and during its August 2004 regular session meeting the Board had reviewed Ms. Welman's credential evaluation report and had voted to transfer 12 hours of her professional education semester credit hours to the general education category. In total, Ms. Welman now possesses 60 semester credit hours of general education – more than the 58 required. Additionally, the Board reviewed the materials that she submitted in support of her request that the Board find she had already met the requirement of the supervised clinical practice period. Ms. Kalis moved licensure be granted to Ms. Welman. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

b. Review of Request for Approval for Supervised Clinical Practice Period (SCCP)

Amado Ariola

Ms. Fearon read the name of the applicant and the Board reviewed the proposal submitted by Mr. Ariola and Boswell Memorial Hospital where the applicant intends to complete his 90-day supervised clinical practice period requirement. The Board discussed the fact that the proposal was very detailed and complete, and that the identified physical therapists are appropriate to supervise Mr. Amado. Ms. Kalis moved to grant Mr. Ariola a Interim Permit for purposes of completing his SCCP at Boswell Hospital in accordance with the proposal submitted. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

2. Informal Hearing:

#04-23: Jenelle Lauchman, P.T.

Ms. Fearon introduced the agenda item, and Ms. Lauchman and her attorney, Mr. Cal Raup 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. Lauchman was sworn in by Ms. Lorena Elder, court reporter. Ms. Hiller summarized the complaint 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. The complainant believes that this 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 opening statement Ms. Lauchman explained that she was previously a PTA but in 2003 she graduated from PT school and was became a licensed physical therapist shortly thereafter. She noted that she is a member of the American Physical Therapy Association (APTA) and attends many of their meetings and training programs, and she is also a member of the APTA Orthopedic section. In response to the Board's questions concerning the complainant's statement that she was "too busy" to provide the appropriate level of attention to N.G.'s care, she replied that this patient was accustomed to more one-on-one time based on his experience with hand therapy obtained from his occupational therapist while previously a patient at this particular NovaCare clinic. Ms. Lauchman stated that based on N.G.'s condition, he did not require as much one-on-one time with his physical therapy care as he had expected. The Board requested Ms. Lauchman review the physician's diagnosis and asked why she believed that N.G. was not a

good candidate for physical therapy; also asked to explain how she established the standard of care. The Board requested the licensee explain how she diagnosed the patient. Ms. Lauchman explained that N.G. had mottled skin, a large subluxation of the humerus, and atrophy of his deltoid and pectoral muscles; these signs do not present to her a simple rotator cuff injury. Also, given his limited range of motion and the nature of his injury, she concluded there was significant nerve damage. She reviewed the letter dated October 20, 2004 addressed to Dr. Seipel which stated that she could not progress the patient due to his neurological condition. She said she would treat the patient again if the physician accepted her recommendation. The Board noted her conclusions were not clearly established in her documentation. In response to the Board's questions, Ms. Lauchman affirmed that she recorded all of the patient notes. The Board reviewed the treatment note for August 10, 2004; Ms. Lauchman explained N.G. performed the skilled program on that particular day. During that hour, the physical therapy technician was there to observe N.G. performing the exercises while she was in the gym area performing manual therapy on another patient. The Board questioned how this arrangement can this be construed as skilled exercise. Ms. Lauchman said she determined it is skilled exercise as she is in the general area, but she admitted that the technician is actually supervising the exercises although she is still directing the technician and the exercises. The Board advised Ms. Lauchman that her documentation should have reflected that skilled therapy was warranted and that it should have been provided by her and not assistive personnel. In response to the Board's questions, she stated that she explained to the patient the plan of care and her communication of that plan to his physician. In response to the Board's question whether she felt pressure to discharge the patient, she stated that she did not – she justified it on the basis of N.G.'s range of motion improving and stabilizing, and because N.G.'s doctor did not want him progressing past that point. Ms. Lauchman informed the Board that her supervisor reviewed her notes and concurred that N.G. would not have benefited from treatment by another therapist in the clinic. She also noted that N.G. had filed a complaint with NovaCare, and the outcome of the review was that the complaint had no merit. Ms. Lauchman stated that she had justified her rationale for the independent program for N.G. to perform at home. She explained that Dr. Seipel supported her conclusions concerning N.G.'s prognosis for improvement. The Board noted that while the physician may have referred N.G. to her for physical therapy care as a physical therapist she needed to make her own determinations and clinical decisions regarding his diagnosis and the plan of care. The Board sought clarification on the EMG study that she used to determine that he would no longer benefit from physical therapy care. Ms. Lauchman explained the EMG study indicated neuropraxia; the Board questioned this assessment. She explained again she determined muscle atrophy and nerve damage; her strength and reflex tests supported this. Ms. Lauchman admitted that there were tests she performed that she did not document to support her conclusions. She also admitted that she should have been more thorough in her documentation. Ms. Lauchman stated that she also relied on information obtained from N.G.'s occupational therapy chart that she did not transfer to his physical therapy chart. The Board questioned why Ms. Lauchman initially determine N.G.'s rehabilitation potential was "good", but then downgraded it to "fair" when she communicated with his physician? Ms. Lauchman responded that after reviewing his progress with her supervisor, she determined that "fair" was more accurate. The Board questioned why did she not correct this in her notes? Ms. Lauchman explained that she felt if the patient was pushed too hard, RSD was a possibility. The Board noted that the licensee's plan of care did not allow him an opportunity to improve, so she seems to have come to the conclusion that he simply would not improve. The Board also commented that there appeared to be a

disconnect between Ms. Lauchman's initial evaluation of N.G. and the plan of care established for him. When asked to explain the difference between skilled care and the independent program N.G. was allowed to do in the NovaCare facility, the licensee explained she is billing for her supervision and for the manual therapy she provides. The Board noted that the patient's concerns that Ms. Lauchman barely spent time with him appears to be supported by her documentation. The Board questioned whether skilled services are routinely billed in the clinic when services are provided by assistive personnel Ms. Lauchman said that it is. The Board asked Ms. Lauchman to provide her assessment of N.G.'s subsequent physical therapy care? The licensee responded that the range of motion other exercises established in the plan of care don't differ much from those in the plan she established, and the measurements were also consistent with hers. When asked to explain the difference N.G.'s function and strength improvements, Ms. Lauchman responded that she can't compare them because not all functions have measurements. Ms. Lauchman admitted to the Board that she does not practice in clinics with as heavy a patient care load as was the case with this NovaCare clinic, and she also admitted that because N.G. was so well-known in the clinic, there was a lot of verbal communication about the patient that are not documented.

The Board discussed the fact that the informal hearing had revealed some possible violations of A.R.S. §32-2044(13), charging unreasonable or fraudulent fees for serviced performed or not performed (for billing for skilled services when skilled services were not delivered), and of A.R.S. §32-2044(20), failing to maintain adequate patient records (for failing to document results of tests and measurements, and clinical findings). Ms. Walton Lee advised the Board that Ms. Lauchman must be noticed of the additional possible violations and be given an opportunity to respond to them. Ms. Fearon moved to continue the complaint until August 23, 2005 while Board staff issues the appropriate notice of the possible new violations to Ms. Lauchman; Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

3. Initial Review:

#05-04; Lavrenti Litvinoff, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint allegations filed against Mr. Litvinoff by the Board. She advised the Board that on August 9, 2004 the licensee had mailed his application for renewal of his physical therapist license for 2004–2006; additionally he signed the affirmation of completion of continuing competence requirements on that form. His renewal application was received on August 12, 2004 but the information was incomplete and the application was returned to Mr. Litvinoff for completion of current business address and telephone. His resubmitted renewal application was received on September 1, 2004; because this was past the deadline for timely submission, Mr. Litvinoff was audited for continuing competence compliance. On October 29, 2004 Mr. Litvinoff was mailed (by certified mail with return receipt) a notice of audit for continuing competence compliance which was delivered on November 4, 2004. On November 14, 2004 Mr. Litvinoff contacted Ms. Herbst Paakkonen via e-mail and confirmed that he had been informed of the audit and explained that he has been under private employment and living in Mexico for the past five years and "There is no continuing education available down here." Mr. Litvinoff requested that the Board place his license on inactive status and if, in the future, he decides to live and work in Arizona he will complete all requirements. On December 21, 2004 during its Regular Session Meeting, the Board found Mr. Litvinoff out of compliance with the continuing competence requirements for renewal of licensure at A.A.C. R4-24-401(A) and opened a complaint against him for possible violation

of A.R.S. § 32-2044 (3) “Obtaining or attempting to obtain a license or certificate by fraud or misrepresentation.” Mr. Litvinoff received a Notification of Complaint and Request for Response on March 3, 2005 (as evidenced by the return receipt) but no response from Mr. Litvinoff was received. On July 13, 2005 Ms. Hiller sent an e-mail to Mr. Litvinoff providing a final opportunity to respond to the complaint allegations, to which he did not respond. The Board discussed the investigative report and Mr. Litvinoff’s admission that he failed to complete the continuing competence requirements in contradiction to his affirmation statement on his licensure application renewal form. Ms. Fearon moved Mr. Litvinoff be found in violation of A.R.S. §32-2044(1) for violation of A.A.C. R4-24-401(G)(2), and that the Board send the complaint to an informal hearing, but allow Ms. Lee to attempt to negotiate a Consent Agreement the terms of which would require the licensee to come into compliance with the continuing competence requirements, pay a civil penalty of \$300, perform 20 hours of community service, and submit a written essay evaluating his conduct and relating it to the Board’s statutes and rules and the APTA Code of Ethics. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. If Mr. Litvinoff fails to sign the Consent Agreement, he will be notified of the scheduling of the informal hearing.

**13. Request for Approval to Take National Physical Therapy Examination; Review of Disclosure on “Personal Information” Section of Application:
Anar Shah**

Ms. Fearon announced the agenda item and read the name of the applicant for the record. Ms. Herbst Paakkonen advised the Board that any applicant for licensure by examination who answers “yes” to any question on in the “Personal Information” section on the application is reviewed by the Board for compliance with the requirements of “good moral character” pursuant to A.R.S. §§32-2022(A)(1), 32-2022(B)(1) and 32-2022(D)(1) as a condition for approval to take the National Physical Therapy Examination. Ms. Shah was present for the Board’s discussion and indicated her willingness to address the Board’s questions. The Board discussed the documentation she submitted in conjunction with her disclosure that in 1999 she pled guilty to a misdemeanor charge of driving under the influence of alcohol. The Board noted that the court records indicated that she had completed all of the terms of her sentence for the charge, and her letter to the Board indicated that she has modified her behavior as a result of the experience and she is confident that she can work as a physical therapist assistant without presenting a danger to the public. Ms. Fearon moved Ms. Shar be granted permission to take the National Physical Therapy Examination (NPTE) with certification granted to her upon the Board office receipt of a passing score. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

**7. Request for Modification to Consent Agreements:
#03-19; Anthony Granger, P.T.**

Ms. Fearon introduced the agenda item and Dr. Cornwall stated for the record that he was involved in discussions with Ms. Hiller concerning Northern Arizona University’s involvement in offering a patient care documentation course in which both Mr. Granger and Mr. Carl were enrolled prior to the cancellation of the course. Ms. Fearon also disclosed that she was slated to teach the course, but was not involved in any arrangements concerning Mr. Granger and Mr. Carl’s enrollment in the course. Both Dr. Cornwall and Ms. Fearon stated that they could make a decision on these requests without bias. Ms. Hiller advised the Board that Mr. Granger is currently on probation under Order of Probation #03-19 for violations of A.R.S. §32-2044(4) substandard care and A.R.S. §32-2044(20), failing to maintain adequate patient records. The

effective date of his six month probation was June 25, 2004 with completion scheduled for December 24, 2004. However, Mr. Granger was unable to complete his probationary requirement of completion of a continuing education course on patient care documentation due to the lack of an appropriate documentation course available either on-line, home study or through attendance at a course. At the Regular Session Meeting on December 21, 2004 the Board granted Mr. Granger's request for a six (6) month extension of his probation to allow sufficient time for him to complete the required coursework. The Consent Agreement granting Mr. Granger an extension of his probationary timeframe was signed by Mr. Granger on January 16, 2005 and by Ms. Fearon, Board President, on February 10, 2005, allowing Mr. Granger until August 10, 2005 to complete his probationary requirements. Mr. Granger and Ms. Hiller researched diligently to identify an appropriate patient documentation course but met with little success until Dr. Cornwall agreed to allow Mr. Granger to attend a 2-day reimbursement and documentation course to be held at Northern Arizona University (NAU) in Flagstaff on July 14–15, 2005 as a non-enrolled student. However, low registration forced NAU to cancel this course in early July. Following the cancellation of this course Mr. Granger and Ms. Hiller explored other avenues for fulfilling Mr. Granger's coursework requirement but were unable to find an appropriate documentation course. Kathy Brewer, P.T., an experienced educator in physical therapy documentation, compliance and reimbursement, has recently agreed to offer a semi-private, one-day (6–8 hours) course for Arizona licensees on probation who need documentation remediation. This course would focus on basic and applied documentation skills and be interactive in nature. Ms. Brewer has agreed to develop and offer a course appropriate for a small audience, which she hopes to offer to Mr. Granger sometime in August 2005. In light of the unexpected cancellation of the approved NAU course in July and the timetable for development of Ms. Brewer's documentation seminar, Mr. Granger submitted a letter to the Board office requesting that the Board modify his Order of Probation one last time to allow an additional 60 days for completion of his documentation coursework requirement. The Board discussed the fact that 60 days may not be enough of an extension given the history of difficulty relative to identifying a suitable course for Mr. Granger. Ms. Kalis moved to extend Mr. Granger's probation for a period of 90 days through a Consent Agreement in order to allow him additional time with which to complete the required course. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

#04-01; Robert Carl, P.T.

Robert Carl, P.T. is currently on probation under Order of Probation #04-01 for violation of A.R.S. §32-2044(20), failing to maintain adequate patient records. The effective date of his three month probation was September 9, 2004 with completion scheduled for December 9, 2004. However, Mr. Carl was unable to complete his probationary requirement of completion of a continuing education course on patient care documentation due to the lack of an appropriate documentation course available either on-line, home study or through attendance at a course. During the Regular Session Meeting of December 21, 2004 the Board granted Mr. Carl's request for a six month extension of his probation to allow sufficient time for him to complete the required coursework. The Consent Agreement granting Mr. Carl an extension of his probationary timeframe was signed by Mr. Carl on January 14, 2005 and by Ms. Fearon, Board President, on January 25, 2005, allowing Mr. Carl until July 25, 2005 to complete his probationary requirements. Mr. Carl and Ms. Hiller worked diligently to identify an appropriate patient documentation course but met with little success until Dr. Cornwall agreed to allow Mr. Carl to attend a 2-day reimbursement and documentation course to be held at Northern Arizona University (NAU) in Flagstaff on July 14–15, 2005 as a non-enrolled student. Unfortunately, low

registration forced NAU to cancel this course in early July. Following the cancellation of this course Mr. Carl and Ms. Hiller explored other avenues for fulfilling Mr. Carl's coursework requirement but were unable to find an appropriate documentation course. Kathy Brewer, P.T., an experienced educator in physical therapy documentation, compliance and reimbursement, has recently agreed to offer a semi-private, one-day (6-8 hours) course for Arizona licensees on probation who need documentation remediation. This course would focus on basic and applied documentation skills and be interactive in nature. Ms. Brewer has agreed to develop and offer a course appropriate for a small audience, which she hopes to offer to Mr. Carl sometime in August 2005. In light of the unexpected cancellation of the approved NAU course in July and the timetable for development of Ms. Brewer's documentation seminar, Mr. Carl submitted a letter to the Board office requesting that the Board modify his Order of Probation one last time to allow an additional 60 days for completion of his documentation coursework requirement. The Board discussed the fact that 60 days may not be enough of an extension given the history of difficulty relative to identifying a suitable course for Mr. Carl. Ms. Kalis moved to extend Mr. Carl's probation for a period of 90 days through a Consent Agreement in order to allow him additional time with which to complete the required course. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**8. Review and Possible Action Concerning Request for Reinstatement of Physical Therapist License:
Elliot Wernick**

Ms. Fearon introduced the agenda item and moved the Board meet in Executive Session in order to obtain legal advice from counsel. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Upon resuming the public session meeting, Ms. Herbst Paakkonen summarized the matter before them dating back to November 23, 2004 at which time the Arizona Board of Physical Therapy reviewed the application for renewal of the physical therapist license of Mr. Wernick. On his application Mr. Wernick had disclosed several misdemeanor and felony citations, including two deferred judgments for possession of narcotic controlled substances. Mr. Wernick appeared before the Board to explain his participation in the court-ordered Drug Court Program which requires continued sobriety and counseling. The outcome of the Board's review was to approve a motion to request Board counsel to draft a Consent Agreement that would require Mr. Wernick to undergo a psychological assessment by an addiction specialist. This psychologist would recommend when Mr. Wernick could safely return to the practice of physical therapy, and under what restrictions. The Board approved the Consent Agreement during the December 21, 2004 regular session meeting, and Mr. Wernick signed the agreement on February 4, 2005. On June 28, 2005 the Board received the psychological report from Dr. Jacquelyn St. Germaine concerning Mr. Wernick including her recommendations for the Board's consideration should its determination be to reinstate Mr. Wernick's physical therapist license. Ms. Herbst Paakkonen identified the Board's options as including denial of Mr. Wernick's application for renewal of his license (this decision may be appealed by Mr. Wernick); renewing and reinstating Mr. Wernick's license; or renewing and reinstating Mr. Wernick's license under a Consent Agreement, the terms of which could encapsulate the recommendations of Dr. St. Germaine. Mr. Wernick was granted permission to appear before the Board at which time he affirmed that he completed the Drug Court program and is coming up on one year of being clean and sober. He also noted that he had completed four Pima Community College Courses relating to the subject of substance abuse and stated that he attends weekly Narcotics Anonymous meetings. Mr. Wernick advised the Board that he currently has a Narcotics Anonymous sponsor, he has

spent time reviewing his physical therapy materials and journals in anticipation of returning to the profession, and stated that he has the support of his family in managing his addiction. Mr. Wernick also commented that he hopes to return to practice at the same outpatient clinic where he was employed prior to his arrests as his former employer is willing to rehire him. Dr. St Germaine was connected to the Board via telephone for purposes of answering questions concerning the psychological evaluation of Mr. Wernick she prepared. The Board questioned the implications of her comments concerning "early remission"; Dr. St. Germaine replied that it is a technical term to describe resuming the substance abuse within one year's time. The Board also inquired about Mr. Wernick's potential for relapse. Dr. St. Germaine advised the Board that while participating in the Drug Court Program Mr. Wernick has been under pressure and a structure telling him what to do and when; transitioning to self-direction in his after-care can be a challenge. Mr. Wernick assured the Board that he has been following the structure of his after-care program independently, and obtaining a sponsor is an important step. He stated that his program is mostly established and he is following it diligently. A component of this program involves weekly counseling sessions with a substance abuse counselor. The Board discussed renewing and reinstating Mr. Wernick's physical therapist license under the terms of a Consent Agreement. Ms. Fearon moved the Board offer Mr. Wernick an Agreement that would renew his license contingent upon him agreeing to one year of probation with terms to include monthly submission of documentation of his Narcotics Anonymous meeting participation, monthly submission of documentation of his meetings with his Narcotics Anonymous sponsor, monthly submission of documentation summarizing his weekly individual sessions with a licensed substance abuse counselor, monthly random body fluid screenings for one year, submission of evidence of disclosure of his probation to the employer, and submission of a copy of a signed confidentiality waiver so that Mr. Wernick's counselor and sponsor can disclose information to the Board. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Board staff was directed to provide monthly compliance reports to the Board concerning Mr. Wernick's compliance with the Consent Agreement should he sign it.

4. Initial Review:

#05-13; Timothy Borden, P.T.

Ms. Fearon introduced the agenda item, and Ms. Kalis announced that she would recuse herself from the review of this complaint as she has known the licensee personally for several years, and has performed contract work in his clinic in the past. Ms. Hiller summarized the complaint which was opened by the Board in response to a letter received by the office on May 10, 2005 by Timothy Borden P.T. in which he acknowledged that on April 4, 2005 he was notified by the Tucson Police Department that he had been accused of theft and was going to be charged with that crime, and that he was addicted to prescription pain killers. Mr. Borden initiated self-detoxification on April 4, 2005 and on May 5, 2005 he completed an inpatient drug rehabilitation program at Chandler Valley Hope and has continued to participate in the recommended aftercare program. 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 (7)** "Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission" (relating to Mr. Borden's theft charge by the Tucson Police Department and his delay in reporting this information to the Board).

- **A.R.S. § 32-3208. A.** “A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or felony after receiving or renewing a license or certificate must notify the health professional’s regulatory board in writing within ten working days after the charge is filed” (also relating to Mr. Borden’s theft charge by the Tucson Police Department and his delay in reporting this information to the Board)
- **A.R.S. § 32-2044 (8)** “Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by disease or trauma, by the use of controlled substances or other habit-forming drugs, chemicals or alcohol or by other causes” (Relating to Mr. Borden’s admission that he was addicted to prescription pain killers).
- **A.R.S. § 32-2044 (12)** “Failing to adhere to the recognized standards of ethics of the physical therapy profession.”
 - ***Code of Ethics/Guide for Professional Conduct 3.1.D*** “The physical therapist shall not provide physical therapy services to a patient while under the influence of a substance that impairs his or her ability to do so safely.”

The Board reviewed and discussed A.R.S. §32-2044(7) and Ms. Walton Lee advised that while a conviction of the felony or misdemeanor involving moral turpitude is conclusive evidence of a violation, the statute language reads “*commission*”. The Board also debated whether Mr. Borden may have violated A.R.S. §32-3208(A). Additionally the Board reviewed and discussed A.R.S. §32-2050, Substance abuse recovery program and its possible application to this case. The Board discussed whether to continue the initial review (if only A.R.S. §32-2050 is only to apply to this case), or whether to invite him to an informal hearing in order to obtain answers to questions concerning his after-care program, whether he was treating patients while impaired, and is he safe to practice physical therapy currently. Ms. Walton Lee advised the Board that Mr. Borden may be notified of the continuation of the initial review of the complaint, and the Board may request that Mr. Borden address the following: when did he become an addict and at what point did he become aware of the addiction, how long has he been substance-free, and is he currently practicing physical therapy (and for how many hours per week). Additionally, the Board may request a summary of his interventions, a copy of his discharge summary from Chandler Valley Hope treatment center, clarification relating to his treatment program at Chandler Valley Hope, a report on the status of all of his after-care programs, a description of his personal support system, and submission of evidence substantiating his status in his treatment and after-care programs. The Board also directed staff to request Mr. Board submit to a psychological evaluation prepared by a specialist in the field of addictions and substance abuse, and arrange to have he results of a drug screening submitted to the Board. The Board agreed by consensus to continue the initial review on August 23, 2005 and to request the discussed items from Mr. Borden.

5. Initial Review:

#05-03-UPI; Penny Halling

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen summarized the unlawful practice investigation beginning with a voice mail message left with her on February 23, 2005 by Ms. Halling, a physical therapist whose license has lapsed on September 1, 2004 as she had not filed an application for renewal for the 2004-2006 licensure period. Ms. Halling’s message consisted of a request for a replacement licensure renewal card; she indicated that she believed

Board staff had failed to send her one after she had filed her renewal application. Her message did not indicate whether she was practicing physical therapy. Board staff searched its cash log records and confirmed that Ms. Halling had not submitted any payments to the Board between July 1, and August 31, 2004. That same day Board staff attempted to return Ms. Halling's call at the number she provided which belonged to a private clinic; a message was left on the answering machine advising that Ms. Halling did not possess a license to practice as a physical therapist as it had lapsed effective September 1, 2004. This message was not returned. On February 25, 2005 Board staff again attempted to contact Ms. Halling at the number, and again had to leave a message on the answering machine. All alternative telephone numbers listed in Ms. Halling's file – a home telephone number and a cellular telephone number – were disconnected and no longer in service. On July 1, 2005 at 8:00 a.m. Ms. Herbst Paakkonen made an unannounced visit to the last known work address for Ms. Halling – a business called Spectrum West Physical Therapy at 3155 N. Nevada, in Chandler. A patient has just arrived at the clinic, and Ms. Halling was directing his exercises. Ms. Halling was shown a copy of her database record indicating that her physical therapist license was lapsed, and she was advised of the staff member's attempts to contact her in February. She expressed dismay upon learning this information, and later that day Ms. Halling contacted Ms. Herbst Paakkonen by telephone and noted that she had requested her bank research whether a check payable to the Arizona Board of Physical Therapy had cleared her account sometime after July 1. However, she indicated that she was prepared to accept the fact that she did not possess an active physical therapist license. She submitted the licensure renewal and reinstatement application and affirmation form on July 6, 2005; the latter indicated that she practiced as a physical therapist from September 1, 2004 through July 1, 2005. On July 11, 2005 Ms. Halling was sent notice of the scheduled review of this case by the Board on July 26, 2005 and was invited to submit a written response to the allegation that she has practiced unlawfully. Ms. Halling did not submit a response. Ms. Herbst Paakkonen advised the Board that it may consider whether Ms. Halling has violated A.R.S. §32-2044(1), Grounds for disciplinary action: "violating this chapter, Board rules, or a written order of the Board." The Board may also consider whether Ms. Halling has violated 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. A person who engages in an activity requiring a license pursuant to this chapter to who uses any word, title or representation in violation of section 32-2042 that implies that the person is licensed to engage in the practice of physical therapy is guilty of a class 1 misdemeanor." The Board discussed the options of finding Ms. Halling in violation of the statutes listed above and referring the case to a hearing, or offering to Ms. Halling a Consent Agreement adopting findings of fact, conclusions of law (violations), and discipline for the violations. The Board discussed concerns that Ms. Halling failed to acknowledge or respond to the voice-mail messages left for her by Board staff in February, and expressed dismay that she continued to practice for approximately four additional months until such time that the Board's Executive Director elected to visit her last known place of employment in order to ascertain whether Ms. Halling was practicing unlawfully. Ms. Herbst Paakkonen advised the Board that Ms. Halling's license was renewed and reinstated in order to bring her again under the jurisdiction of the Board for purposes of reviewing and taking action relative to this case. Dr. Cornwall moved to find Ms. Halling in violation of A.R.S. §32-2044(1) and A.R.S. §32-2048(A), and to offer her a Consent Agreement that would place her on probation for one year with the following terms: a civil penalty of \$5,000; temporary suspension of her physical therapist license until she provides

evidence of having notified her patients and 3rd party payers that she was unlicensed from September 1, 2004 through July 5, 2005; and submission of a written essay summarizing ten articles addressing ethical issues in the practice of physical therapy within 30 days from the effective date of the Agreement. Ms. Fearon seconded the motion. The motion carried by a unanimous vote. The Board directed staff to allow Ms. Halling 15 days from receipt of the Consent Agreement to agree to its terms; should she elect to not sign it, the case will be scheduled for an informal hearing and Ms. Halling will be noticed accordingly.

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

#03-22; Nicholas "Guy" Welch, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller reported that Mr. Welch was placed on probation by the Board for 12 months effective June 10, 2004 for violations of A.R.S. §32-2044(12), failing to adhere to the recognized standards of ethics of the physical therapy profession., A.R.S. §32-2044(13), charging unreasonable or fraudulent fees for services performed or not performed, and A.R.S. §32-2044(20) failing to maintain adequate patient records. These conclusions of law were based on findings that Mr. Welch established and enforced policies and procedures in his clinic that directed clinicians to provide and document patient care so as to maximize reimbursement regardless of whether the treatments were warranted. Mr. Welch gave instructions to clinical staff to bill the CPT code 97535 for all Worker's Compensation patients, and he instructed staff to bill certain CPT codes for every treatment session for every patient regardless of whether the treatment was necessary. Mr. Welch inaccurately billed numerous patients for treatments that were not supported by the treatment documentation. Ms. Hiller monitored Mr. Welch's compliance with the terms of his probation, and provided a summary indicating that he had met all of the requirements within the stipulated time frames. With respect to the records that she reviewed for compliance with the Order, she noted they reflect significant improvement over the patient records reviewed during the complaint investigation. The records contained more detailed initial evaluations including objective measurements, with treatment goals appropriate for diagnosis and plan of care. Daily treatments varied over time with changes in patient status, and treatment times were consistently noted on the daily charge sheets to support billings for multiple units of timed procedures. A new form for documenting informed consent was included and discharge notes were included for all but one of the patient records collected. The Board discussed Ms. Hiller's report and noted the deficits that were corrected and the progress that was made by Mr. Welch relative to his documentation and billing practices, and commented favorably on his community service. Ms. Kalis moved Mr. Welch's probation be terminated effective June 10, 2005; Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

14. 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:** The Board reviewed and discussed the graph indicating the differences in the distribution of National Physical Therapy Examination (NPTE) scores for physical therapist applicants between the 2004 and 2005 graduates. The chart indicates that for the same six-week period of time, the 2005 NPTE physical therapist candidates are scoring considerably higher on the exam with considerably fewer failing scores. Ms. Herbst Paakkonen also advised the Board that the graduates of the Gateway Community College

physical therapist assistant program had thus far all passed the NPTE with all but one candidate scoring above a 660 and two candidates scoring well above 700. The Board also noted that only 30 of the 53 U.S. jurisdictions are requiring foreign educated physical therapists to have their academic credentials evaluated using the Coursework Evaluation Tool which was developed by FSBPT.

d. Rules Revision Update: no additional information to report.

e. Technology Update: no additional information to report.

CALL TO THE PUBLIC

None

ADJOURNMENT

The meeting adjourned at 11:20 a.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Merle Gossman
Secretary