

REGULAR SESSION MEETING MINUTES
August 23, 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.

1. Approval of Minutes

July 26, 2005; Regular Session Minutes

Ms. Fearon introduced the agenda item and the Board noted at the bottom of page five, “RSV” should be “RSD” and “humorus” is misspelled. Ms. Fearon moved the minutes be approved with the noted corrections; Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

August 5, 2005; Special Session Minutes

Ms. Fearon moved the minutes be approved as drafted; Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

2. Informal Hearing – CONTINUATION:

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

Ms. Fearon introduced the agenda item and announced that the Board would be continuing the informal hearing of Ms. Lauchman from the July 26, 2005 regular session meeting. The Board determined to continue the informal hearing as a result of information learned during the July 26, 2005 informal hearing that required additional notice of allegations and possible jurisdiction to be sent to Ms. Lauchman. Mr. Michael Golder introduced himself as the attorney representing the licensee. Ms. Fearon reviewed the purpose and procedures relating to the Board’s informal hearing process, as well as the possible outcomes of the informal hearing. Ms. Lorena Elder, Court Reporter, swore in Ms. Lauchman. Ms. Hiller, Investigator for the Board, provided a brief summary of the complaint filed by N.G., a former patient: the complainant stated that the

frequency of treatment he received from Ms. Lauchman was insufficient, that she did not spend enough time with him during treatment, and that she was indifferent to his care. Ms. Lauchman in her response stated that the care N.G. received was appropriate. In his opening statement, Mr. Golder advised the Board that a secretary with the NovaCare clinic at which Ms. Lauchman practiced, Ms. Linda Barrett, was interviewed by Ms. Hiller during the course of the investigation, but that she provided Ms. Hiller with incorrect information, and she was not authorized to report the information that she did. He indicated that Ms. Kim Clifton representing NovaCare was present and available to the Board today to clarify and correct the information that was provided to Ms. Hiller during the interview. The Board asked Ms. Lauchman to explain how she justified billing for her time during the entire treatment when assistive personnel actually provided much of the services. She replied that she was of the understanding that it was acceptable to do so under the law. The Board explained that her notes do not reflect that she was providing skilled services throughout the entire treatment session, and noted that her documentation does not support what was billed and what Ms. Lauchman is describing as a “skilled service”. Finally, the Board indicated that the licensee’s documentation does not explain on what basis treatment was delegated to assistive personnel. Ms. Lauchman clarified to the Board that what she meant by her statement that “the patient was known” to the NovaCare staff only relates to the fact that it is a small clinic with only two physical therapists and one occupational therapist, therefore she was aware of his treatment history. The Board further noted that Ms. Lauchman did not document how N.G. was evaluated, as was later explained by the licensee during the July 26 information hearing. Ms. Clifton was granted approval to appear before the Board to read a written statement concerning the billing preparation by NovaCare for PacifiCare patients. She stated that NovaCare only bills for services documented by the physical therapists. Mr. Golder commented that PacifiCare has not contacted NovaCare concerning billing inaccuracies for N.G.’s care. The Board noted that in the treatment record dated August 17, 2004, the documentation does not support billing for skilled services; even on the flow sheet there is nothing to show what she did with the patient for that treatment session. The Board discussed §32-2044(4), engaging in the performance of substandard care by a physical therapist, relative to the limited program on which N.G. was placed, as well as the lack of the neurological exam that was performed on N.G. The Board deliberated whether the clinical care provided by Ms. Lauchman was actually “substandard”. The Board disagreed with Ms. Lauchman’s determination that N.G. would not improve, and discussed whether this decision was made on the basis of the clinical information, or on other factors such as lack of time spent with the patient. Specifically the Board questioned why the licensee failed to do a very thorough evaluation of when it was suspected that there was significant nerve damage. Ms. Fearon moved the Board find a violation of A.R.S. §32-2044(4); Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board then reviewed and discussed A.R.S. §32-2044(12), failure to adhere to the recognized standards of ethics. After discussion, Ms. Fearon moved Ms. Lauchman be found in violation of this statute, and Mr. Gossman seconded the motion. Following further discussion, the motion and second were withdrawn. Dr. Cornwall then moved the Board find a violation of A.R.S. §32-2044(12), specifically Principle 3 at 3.1A, 3.2A and 3.2B. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. The Board then reviewed and discussed A.R.S. §32-2044(13), charging unreasonable or fraudulent fees for services performed or not performed relative to whether Ms. Lauchman actually committed fraud when she documented services (i.e. skilled services) that were incorrectly billed because they were actually provided by assistive personnel. Ms. Kalis moved for a violation of A.R.S. §32-2044(13). Ms.

Fearon seconded the motion. The motion carried by a unanimous vote. Ms. Fearon moved for the violation of A.R.S. §32-2044(20), failing to maintain adequate patient records relative to Ms. Lauchman's admissions and the Board's findings that she failed to document a number of her clinical determinations. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board discussed placing Ms. Lauchman on probation for a period of 12 months during which time she must comply with the following terms and conditions of probation:

- Within the initial 6 months of the 12-month term of probation imposed by this Order, Ms. Lauchman shall submit evidence to the Board of having completed a 6-hour minimum patient care documentation and billing/coding course that is pre-approved by the Board.
- Within the initial 9 months of the 12-month term of probation imposed by this Order, Ms. Lauchman shall submit evidence to the Board of having completed a continuing education course for physical therapists that addresses neuro-evaluations with an orthopedic application, and that addresses patient assessment, differential diagnoses, appropriate delegation to assistive personnel, and skilled vs. unskilled services that is pre-approved by the Board.
- Within the initial 6-months of the 12-month term of probation, Ms. Lauchman shall provide evidence to the Board of having completed a 6-hour minimum physical therapy or health care provider ethics course that is pre-approved by the Board.
- Subsequent to completing the ethics course, and prior to the conclusion of the 12-month term of probation, Ms. Lauchman shall submit to the Board a written reflective essay that analyzes her decisions and conduct concerning the care provided to N.G., applying principles addressed in the ethics course.
- During the initial 3 months of the 12-month term of probation imposed by this Order, Ms. Lauchman will submit 3 patient charts selected at random from her patient case load to the Board. During the subsequent 6 months of the 12-month term of probation imposed by this Order, Ms. Lauchman will submit 3 additional patient charts selected at random from her patient case load to the Board, redacting all patient identifying information in the submitted records. These records will be reviewed for compliance with the Board's statutes and rules and to ascertain improvement in the areas of deficiency noted in this Order.
- Within the initial 6 months of the 12-month term of probation imposed by this Order, Ms. Lauchman shall provide evidence to the Board of having notified N.G.'s insurer, PacifiCare, of the Board's findings and conclusions relative to this complaint.

Ms. Fearon moved the Board impose the discussed disciplinary terms and Ms. Kalis seconded the motion. The roll call vote was unanimous. Mr. Golder expressed concerns with the Board's jurisdiction and confidentiality of patient records under the Health Insurance Portability and Accountability Act (HIPAA) given that Ms. Lauchman will be leaving Arizona to practice physical therapy in California and possibly two other states within the next year. Mr. Golder and Harris agreed to further research these potential issues and to discuss them via telephone once the Consent Agreement is drafted. Any identified changes will result in the document coming back before the Board for possible modification during a future meeting.

3. Initial Review:

#05-08; Virginia Morgan, P.T.

Ms. Fearon introduced the agenda item, and Ms. Hiller summarized the complaint as filed by M.W., husband of the patient P.W. who was treated by Ms. Morgan on six occasions in

September and October of 2004. The complaint alleged that Ms. Morgan was not thorough enough with her plan of care for P.W. and that she was indifferent to the patient's care and needs. Specifically, the complainant stated that Ms. Morgan unnecessarily delayed obtaining a TENS unit for his wife, and she dismissed without adequate consideration or explanation assessing whether P.W. would benefit from a collar. Additionally, P.W. reported an incident that allegedly took place on October 1, 2004 that consisted of P.W. experiencing sharp pain, extreme dizziness and temporary loss of consciousness from a treatment maneuver that Ms. Morgan performed while distracted. Ms. Hiller identified the possible jurisdiction as including 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 PT due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established"; and 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 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"). The response to the complaint submitted by Ms. Morgan cited that she had no recollection of conversation of a collar for P.W., and she attributed the allegation relative to the TENS unit as a breakdown of communication. Neither the licensee, nor her attorney, was available to attend the initial review of the complaint. The complainant (the patient's husband) also could not attend and faxed a letter to the Board indicating that nearly one year later, his wife – while mostly healed – is still suffering from some vertigo associated with the treatment provided by Ms. Morgan. The Board discussed the need to pose several questions to the licensee, in addition to obtaining evidence of continuing care for the patient's vertigo or any follow up neurological evaluations. Mr. Gossman moved the Board remand the case to an informal hearing and to add the allegation that Ms. Morgan violated A.R.S. §32-2044(20), failing to maintain adequate patient records. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to add the violation of A.R.S. §32-2044(13) based on the treatment record of September 15, 2004 where an evaluation and 4 units of manual therapy were billed, but the patient was only present in the clinic for 1.25 hours. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

Note: The agenda was reordered as follows

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

Sheri L. Adair	John M. Andraka	Stephanie J. Antony
Kristin M. Ash	Teresa H. Barrow	Charles C. Boeyink
Aaron M. Breese	Mark D'Aloisio	Andrea L. Dunn
Angela L. English	Keith E. Fischer	Heather L. Guilbert
David O. Hardy	Cathy J. Hemmerich	Julie A. Jager
Nikki L. Jagusch	Ann Kehm	Ryan L. Kiedrowski
Jessica B. Klein	Steven R. Kleinman	Trey J. Kubizna
David A. Lopez	David J. Lorello	Marie F. Lyon
M. Debra Maiella	Christie R. Monteith	Elissa L. McLean
Kathryn A. Pender	Julie Pharney	Jason G. Rahenkamp
Sheila F. Rogan	Aimee E. Roseborough	Geraldo S. Salcedo
Stuardo E. Samayoa	Nathan A. Sprenger	Erin M. Wadleigh
Michelle M. Walton	Jodi M. Weikel	

Ms. Fearon introduced the agenda item and read the names of the applicants for the record. Dr. Cornwall noted that he taught the following students, but that the professor-student relationship no longer existed and he could vote on consideration of their licensure without bias: Ms. Jagusch, Ms. Rogan, Ms. Roseborough, Mr. Sprenger and Ms. Wadleigh. Board staff provided assurance that the files were administratively complete. Ms. Barrow was granted approval to appear before the Board to explain the circumstances of her disciplinary action in the State of Louisiana for practicing without a license for 5 days. She explained to the Board that she mistakenly assumed that the law in Louisiana allowed her to postmark her application for licensure renewal on the expiration date, but she learned that the law actually requires that the application be received by the Board office by that date. Accordingly, she practiced unlawfully for 5 days, and received notification from the Board of the violation. Ms. Barrow summarized the disciplinary action issued by the Louisiana Board, and noted that she completed her disciplinary action terms and her license today is in good standing in Louisiana. She assured the Board that her physical therapist license is very important to her, and that she will not make the same mistake again. The Board thanked Ms. Barrow for her statements and for appearing personally. The Board discussed the application of Ms. Lyon and noted that she has no work history since May of 2003. Ms. Fearon moved licensure be granted to the listed applications with the exception of Ms. Lyon who must provide an explanation of the gap in her work history; Ms. Lopez may release her license upon receipt of the requested information that does not require the application to go back before the Board for review; Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

4. Initial Review:

#05-09; Mitchell Bruning

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint as opened by the Board under the jurisdiction of A.R.S. §32-2044(9), having had a license or certificate revoked or suspended or other disciplinary action taken . . . by the proper authorities of another state. Ms. Hiller explained that the complaint against Mitchell Bruning, P.T. was opened by Board staff in response to receipt of an Adverse Action Report from the Federation of State Boards of Physical Therapy (FSBPT). The Adverse Action Report identified that Mr. Bruning had his Missouri physical therapist license (#105006) revoked on July 21, 2004 for delinquency or failure to pay state income tax. Ms. Hiller's investigation revealed that a new law in Missouri implemented in January of 2004 requires the State Department of Revenue to take steps to collect income taxes owed by state employees and licensed professionals including physical therapists. Mr. Bruning was among the 800 licensees who were disciplined under these statutes. In his response to the complaint Mr. Bruning advised the Board that the State of Missouri Department of Revenue incorrectly determined that he owed Missouri income tax for 2000–2002. The Department of Revenue corrected this mistake but not before the Missouri Division of Professional Registration had revoked Mr. Bruning's Missouri license. Mr. Bruning submitted a copy of a letter dated August 3, 2004 from the State of Missouri Department of Revenue acknowledging that Mr. Bruning did not need to file income tax during 2000–2003, and a copy of the July 26, 2005 letter from the Missouri Division of Professional Registration affirming his compliance with the new law and expunging the revocation of his license from their records. Ms. Hiller further noted that the FSBPT Adverse Action web site now reflects that Mr. Bruning's Missouri physical therapist license has never been disciplined. Ms. Fearon moved to dismiss the complaint; Mr. Robbins seconded the motion. The motion carried by a unanimous vote. In response to the Board's question whether a complaint opened on the basis of clearly erroneous

information can be “expunged” from Mr. Bruning’s record, Mr. Harris explained that the Board does not have the authority to expunge any matter that is public record. He stated that any Arizona Board cannot go back in time and determine that a complaint never should have been opened, and advised the Board that its responsibility to the public of Arizona is to demonstrate in the public record that the Board did the right thing. Board staff also noted that the agency’s records will reflect that the information upon which the Board opened the complaint never should have warranted the complaint after thorough investigation and careful deliberation on the part of the Board.

5. Initial Review of Licensees Failing to Come Into Compliance with Continuing Competence Requirements After Six Month Allowance [A.A.C. R4-24-401(J)] and Discussion of Possible Disciplinary Action in Accordance with A.A.C. R4-24-401(K):

Eric Hess, P.T.	Sarah Kovach, P.T.	Jo Lied, P.T.
Lemuel McEachin, P.T.	Julie Parish, P.T.	

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen advised the Board that the individuals listed on the agenda had renewed their physical therapist licenses for the 2004-2006 licensure compliance period and as a requirement of their licensure renewal, had signed statements affirming that they had completed the continuing competence requirements of R4-24-401 through R4-24-403. These licensees happened to be among those who were audited for compliance with the requirements, and their submissions have been previously reviewed by the Continuing Competence Audit Committee on at least one occasion. As a result of their review(s), the Committee had recommended the Board find these licensees out of compliance with the continuing competence requirements based on the documentation submitted (or lack thereof); during its January 27, 2005 regular session meeting the Board voted to find them out of compliance and, in accordance with R4-24-401(J), granted the licensees 6 months (from certified mail notice by the Board) with which to come into compliance with the requirement. Ms. Herbst Paakkonen reported that the 6 month period has elapsed for these 5 licensees. She noted that A.A.C. R4-24-401(K) states that “penalties for failure to comply with continued competence requirements may be imposed by the Board under A.R.S. §32-2047 [Disciplinary Actions; Penalties] following a hearing” and that the Board may determine whether the licensees have violated A.R.S. §32-2044(1), violating Board rules A.A.C. R4-24-401 through 403, and may determine whether hearings will be held at a future date to review these licensees’ lack of compliance with the Board’s continuing competence requirements. Alternatively, the Board may opt to offer the licensees the opportunity to enter into a Consent Agreement containing findings. Ms. Fearon moved the Board find the listed licensees in violation of A.R.S. S32-2044(1), violating this chapter, Board rules or a written Board order. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Fearon moved the Board offer the licensees Consent Agreements requiring them to come into compliance with the requirements within 60 days, that they be automatically audited for the 2004-2006 licensure period, that their licenses be suspended for 5 days, and that they be levied a civil penalty of \$500. Ms. Kalis seconded the motion. The roll call vote was unanimous. The Board directed staff to offer the licensees 15 days to sign the Consent Agreement; failure on the part of a licensee to agree to its terms will result in the case being remanded to an informal hearing.

6. Request for Modification to Board Order:

#04-11; Lorri Bentley, P.T.

Ms. Hiller reported that Ms. Bentley has met her time frames for submission of requirements in accordance with the Board Order. Ms. Kalis moved the extension of time be granted to allow Ms. Bentley to complete the course. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Fearon recused herself from the vote as she is teaching the course that Ms. Bentley is contemplating taking in order to comply with the Board Order. The Board noted that Ms. Bentley's policies and procedures manual contains outdated references, does not list all of the codes for which she bills, she misrepresents some of the codes listed, her analysis of the prices assigned to the codes is unclear. Additionally, the review of her charges that she submitted appeared to be in error.

10. Request for Accommodation to the National Physical Therapy Examination in Accordance with the Americans with Disabilities Act:

Nancy Harrison

Ms. Fearon introduced the agenda item and noted that Ms. Harrison was connected to the Board meeting via telephone. Ms. Lopez advised the Board that Ms. Harrison had requested an accommodation of time-and-a-half with which to take the National Physical Therapy Examination (NPTE) as she has been diagnosed with Irritable Bowel Syndrome as well as an overactive bladder. In response to the Board's questions, Ms. Harrison explained that throughout the course of college she did not require any accommodation of additional time because her professors were willing to allow her to leave the classroom in order to take care of personal needs during examinations. She further explained that the only reason she was requesting time-and-a-half for the examination is due to the fact that if she requires frequent breaks, she will have fewer minutes with which to complete the examination. The Board and staff questioned whether a candidate would even be allowed to leave the testing center in accordance with FSBPT and the testing center's policies. Ms. Kalis moved the application be granted time-and-a-half with which to take the examination with licensure granted upon receipt of a passing score. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board directed staff to contact FSBPT Examination administrative staff to ascertain whether Mr. Harrison will be allowed to take additional breaks and whether the breaks will count against her total time allotment for the examination.

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

Cindy M. Storch		
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Ms. Fearon read the name of the applicant for the record and noted that the file was administratively complete. Ms. Kalis moved certification be granted to the applicant; Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

**a. Review of Application and Review of Request to Find Applicant has Met Requirement of Supervised Clinical Practice Period (SCCP)
Muriel Brock (education review only)**

Ms. Fearon read the name of the applicant and received assurance from staff that the file was administratively complete. The Board reviewed the credential evaluation report prepared by the Foreign Credentialing Commission on Physical Therapy (FCCPT) and noted that Ms. Brock has more than the required amount of professional education semester credit hours, but lacks 33 semester credit hours of general education. The Board members concurred that there are no professional education semester hours that may be transferred to the general education category. Ms. Kalis moved to find Ms. Brock's education is not substantially equivalent to that of a graduate of a U.S. accredited program. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. Board staff will provide guidance to the applicant relative to completing the courses should she request it.

Jerome Singzon

Ms. Fearon read the name of the applicant and Board staff advised the file was administratively complete. The Board reviewed Mr. Singzon's credential evaluation report which indicated that he had met the required number of general and professional semester credit hours. Ms. Lopez advised the Board that Mr. Singzon had failed to submit any information relative to a request that the Board find he had already met the requirements of the Supervised Clinical Practice Period, therefore that decision must be delayed until he submits it. Ms. Kalis moved the Board find that Mr. Singzon's education is substantially equivalent to that of a graduate of a U.S. accredited program. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

**b. Review of Request for Approval for Supervised Clinical Practice Period (SCCP) and Granting of Interim Permit
Michela Bagnariol**

Ms. Fearon introduced the agenda item and the Board reviewed the proposal for a SCCP submitted by Ms. Bagnariol to be completed at Walter O. Boswell Memorial Hospital in Sun City. The Board discussed the fact that another Interim Permit holder is currently completing his SCCP at that facility, but under different supervisors. The Board concurred that the supervisors possessed the necessary experience to provide supervision to Ms. Bagnariol. Ms. Kalis moved to grant Ms. Bagnariol an Interim Permit and to approve her proposal for the SCCP; Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

c. Review of Substantially Equivalent Education and Possible Action on Approval to Take the National Physical Therapy Examination

Ms. Fearon read the name of the applicant and received assurance from Board staff that the file was administrative complete. The Board reviewed the credential evaluation report prepared by International Consultants of Delaware (ICD) and discussed the fact that while she had earned the equivalent of 66 general education semester hours and 99 professional education semester hours as required by Board rule, she had never completed any credits in biological science. Ms. Fearon moved the applicant be approved to take the National Physical Therapy Examination; Mr. Gossman seconded the motion. The motion carried on a vote of 4 to 1.

**11. Request for Approval to Take National Physical Therapist Examination; Review of Documentation Related to Disclosure on “Personal Information” Section of Application:
Jennifer Toeppe**

Ms. Fearon introduced the agenda item, and the Board reviewed the information submitted in conjunction with Ms. Toeppe’s application disclosure that in 1998 she had pled guilty to committing theft of goods totaling less than \$300 from her former employer. The Board noted that Ms. Toeppe had completed the court-ordered restitution and sentence, and reviewed her written statement concerning her moral character. Ms. Kalis moved Ms. Toeppe be granted approval to take the National Physical Therapy Examination and that licensure be granted to the application upon receipt of a passing score. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

12. 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 discussed the FSBPT Delegate Assembly Motion 4; Dr. Cornwall commented that one potential problem that could occur is that program faculty may be tempted to “teach to the exam”. The Board further discussed the importance of keeping the educational and regulatory spheres distinct. The Board also reviewed and discussed Motions 9 and 10.
- d. **Rules Revision Update:** No additional information to report.

13. Schedule November and December 2005 Regular Session Board Meetings

The Board agreed by consensus to schedule the November regular session Board meeting on November 22, 2005 and to schedule the December regular session Board meeting on December 20, 2005.

CALL TO THE PUBLIC

None

ADJOURNMENT

The meeting adjourned at 11:45 a.m.

Prepared by,

Heidi Herbst Paakkonen

Approved by,

Merle Gossman