

JANET NAPOLITANO
Governor



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Executive Director

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REGULAR SESSION MEETING MINUTES September 27, 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
Carol Lopez, Licensing Administrator
Dawn Walton Lee, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

1. Approval of Minutes:

August 23, 2005; Regular Session Meeting

Ms. Fearon introduced the agenda item and Mr. Robbins moved the Board approve the minutes with the corrections discussed on page 3 of the draft (incomplete sentence and incorrect title for Mr. Gossman). Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS AND INVESTIGATIONS

2. Informal Hearing:

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

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen provided a summary of the case for the Board. She noted that on October 22, 2002 the Arizona Board of Physical Therapy conducted an initial review of complaint #02-11; Connie Hardin, P.T. The complaint, filed by the former Director of Nursing at Plaza Healthcare (a skilled nursing facility in Scottsdale, Arizona) alleged that on July 28, 2002 Ms. Hardin kissed resident S.L. on the lips and touched him inappropriately. If true, these allegations may be a violation of:

- A.R.S.§32-2044 (10) “Engaging in sexual misconduct. For the purpose of this paragraph “sexual misconduct” includes: (b) “making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients.”
- A.R.S.§32-2044 (12) “Failing to adhere to the recognized standards of ethics of the physical therapy profession.”
 - *Code of Ethics Principle 1: “Physical therapists respect the rights and dignity of all individuals.”*

- *Guide for Professional Conduct 1.3, Patient Relations: "Physical therapists shall not engage in any sexual relationship or activity, whether consensual or nonconsensual, with any patient while a physical therapist/patient relationship exists."*

Following the Board's action to send the complaint to a formal hearing, the Board's former Assistant Attorney General advised Board staff that she anticipated it would be several months before she would be in a position to attempt to schedule the hearing on the docket of the Office of Administrative Hearings. The Assistant Attorney General then accepted a different position with the Arizona Attorney General's office, and Ms. Walton Lee was assigned to represent the Board. Ms. Walton Lee reviewed the case file in January of 2005, and during its meeting on March 31, 2005 she presented a Motion to Rescind Vote to Formal Hearing, which was granted by the Board. The Board then voted to invite Ms. Hardin to an informal hearing; the delay in scheduling the hearing occurred due to unavailability on the part of the parties involved until it could finally be scheduled for the September 27, 2005 meeting of the Board. Ms. Hardin and Mr. Bickart (Ms. Hardin's attorney) appeared for the informal hearing; introductions were exchanged between the licensee, her counsel, Board members and the staff. Ms. Fearon reviewed the informal hearing procedures and potential outcomes of the complaint, and swore in Ms. Hardin. On behalf of Ms. Hardin, Mr. Bickart stated that he agrees with the Board's decision to send the case to an informal hearing. He stated that his client steadfastly and vehemently disagrees with the alleged events of July 28, 2002. He explained that Ms. Hardin was not employed as a physical therapist that day when she appeared at Plaza Healthcare to return a piece of equipment. Mr. Bickart also noted that several months after the alleged incident, Ms. Hardin was hired back by the facility after no wrong-doing on her part could be determined. He advised the Board that there are no credible witnesses to testify to the alleged events, stated that he believes that the complaint is a vindictive action on the part of someone who is now or was employed by Plaza Healthcare. Mr. Bickart further commented that the patient and alleged victim, S.L., does not possess the cognitive ability to accurately vouch for the events, and declared that Ms. Hardin was not even near the patient S.L. on the day in question. Mr. Bickart also noted that Ms. Hardin has never before had a complaint filed against her in 20 ½ years of practice, and reminded the Board that Ms. Hardin is still employed part-time at Plaza Healthcare. The Board reviewed the investigative record and stated to Ms. Hardin its concerns relative to the perception of her conduct and her purpose for being in the facility and the patient's room on July 28, 2002. In response to the Board's questions, Ms. Hardin recited a conversation with S.L.'s mother during which she learned of his medical history; she then befriended S.L.'s mother and agreed to check on S.L. in his mother's absence. She described the relationship with S.L.'s mother as a friendship. The Board noted that the boundaries become blurry with respect to the friendly relationship and the patient-therapist relationship concerning S.L. The Board questioned the reports of other Plaza Healthcare staff concerning alcohol on Ms. Hardin's breath when she came to visit S.L., as well as the frequency of the visits. Ms. Hardin denied she drank alcohol when she visited S.L., and denied that she kissed or touched him inappropriately behind a curtain. She further stated that she believed the family members of S.L.'s roommate seemed to be attracted to S.L. and they may have questionable motives for providing the false statements that they did. Ms. Hardin reiterated that S.L.'s head injury would have prevented him from making credible statements. Ms. Hardin noted that her visits ceased the day that she was notified that the complaint had been filed with the Board. She also commented that she would visit other patients when she was at the facility, but that these visits were never recorded. Ms. Hardin advised the Board that Adult Protective Services closed the case for lack of substantiation. She stated that she was never interviewed by the Scottsdale Police Department, and that it was her understanding that when a Detective interviewed S.L. he indicated that he did not want to pursue

the allegations. Ms. Hardin insisted that she would never engage in sexual misconduct at the risk of her physical therapist license. Mr. Bickart informed the Board that he advised Ms. Hardin to refuse to answer to the allegations filed by the former Director of Nursing without legal representation. In closing, Mr. Bickart reiterated his client's innocence and asked that the Board dismiss the complaint and only issue an Advisory Letter if the Board deems necessary. The Board concluded the interview and discussed the case. The Board discussed the fact that the criminal investigation into this matter conducted by the Scottsdale Police Department appeared to have concluded with no charges were filed against Ms. Hardin. Additionally, the Board discussed the fact that Ms. Hardin was rehired by Plaza Healthcare several months after the alleged events. Additionally, communication and appropriate patient-therapist boundaries were explored by the Board. The Board discussed whether enough evidence exists to find a violation of law. Ms. Fearon moved the Board meet in Executive Session to obtain legal advice from counsel. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board resumed the meeting in Public Session and continued the deliberation. Ms. Fearon moved to issue an Advisory Letter to Ms. Hardin relative to its concerns in that Ms. Hardin did not clearly define appropriate patient and relationship boundaries with S.L., his mother and Plaza Healthcare staff. Dr. Cornwall seconded the motion. The motion carried by a vote of 4 to 1.

3. Informal Hearing:

#05-03-UPI; Penny Halling, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen summarized the unlawful practice investigation concerning Ms. Halling, a physical therapist whose license had lapsed on September 1, 2004 as she had not filed an application for renewal for the 2004-2006 licensure period. On July 1, 2005 Ms. Herbst Paakkonen had 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. Upon encountering Ms. Halling treating a patient at that clinic, Ms. Herbst Paakkonen informed her that she had failed to renew her license on or before August 31, 2004 and was therefore practicing unlawfully. Ms. Halling submitted the licensure renewal 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 has not provided any written response as of September 13, 2005. The Board initially reviewed this case during a public session meeting on July 26, 2005; Ms. Halling did not attend this meeting. During the initial review the Board voted to offer Ms. Halling a Consent Agreement containing findings of fact, conclusions of law and disciplinary terms. The Consent Agreement established as its findings that Ms. Halling practiced physical therapy without a license in violation of A.R.S. §32-2044(1), Grounds for disciplinary action: “violating this chapter, Board rules, or a written order of the Board,” and A.R.S. §32-2048(A), “it is unlawful for any person to practice or in any manner claim to practice physical therapy or for a person to claim the designation of a physical therapist unless that person is licensed pursuant to this chapter. 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.” Ms. Halling was granted 15 days from receipt of the agreement to agree to its terms; failure to sign the Agreement automatically remanded the Unlawful Practice Investigation case to an informal hearing. According to the return receipt attached to the envelope in which the Consent Agreement was sent certified to Ms. Halling, she claimed the document on August 2, 2005, but

she failed to sign and return it within 15 days. On September 2, 2005 Ms. Halling was sent a Request to Attend Informal Hearing notice via regular and certified U.S. Mail, to which she has issued no verbal or written response. Ms. Herbst Paakkonen noted that Ms. Halling was not present for the informal hearing. The Board discussed the option of Ms. Walton Lee offering Ms. Halling 30 days to agree to the Board's original disciplinary terms; failure to do so would result in the case going to formal hearing. The Board discussed the two options for conducting a formal hearing – the Office of Administrative Hearings (OAH), and before the Board itself. Ms. Herbst Paakkonen asked the Board consider conducting the hearing rather than referring it to the OAH due to budget considerations. The Board reviewed the original consent agreement and concurred that the terms included were appropriate and that no revisions to the document were necessary. The Board stated there was no explanation for Ms. Halling's failure to communicate with the Board concerning the investigation. Ms. Fearon moved Ms. Walton Lee contact Ms. Halling by telephone to discuss the Board's original consent agreement; failure on the part of Ms. Halling to sign the document within 30 days will result in the unlawful practice investigation scheduled for a formal hearing including the charge that Ms. Halling must pay for all costs associated with the formal hearing. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

4. Initial Review of Complaint - CONTINUATION:

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

Ms. Fearon introduced the complaint and reminded the Board that the initial review of the case began on July 26, 2005 and was continued to the September 27, 2005 agenda in order to allow for additional investigation. Ms. Kalis recused herself from the discussion and consideration of the complaint. Ms. Herbst Paakkonen summarized the complaint opened in response to a letter received from Mr. Borden on May 10, 2005 in which he disclosed he was addicted to prescription pain medications, and notified the Board that on April 4, 2005 he had been accused of theft of some medications by a former patient (the charges were subsequently dismissed by the Tucson City Court based on a civil compromise.). 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.”
- **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.”
- **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.”
- **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.”

Additionally, the Board previously reviewed and discussed A.R.S. §32-2050, Substance abuse recovery program relative to this complaint. Ms. Herbst Paakkonen noted that Mr. Borden

initiated self-detoxification on April 4, 2005 and on May 5, 2005 he completed a 30-day inpatient drug rehabilitation program at Chandler Valley Hope. In response to notification of complaint opening, Mr. Borden submitted an expanded discussion of his chemical dependency, a letter from Chandler Valley Hope confirming his admission and discharge following completion of a 30 day residential treatment program, and copies of the Tucson Police charging document and Tucson City Court dismissal. Since the continuation of the initial review of the complaint, the Board requested Mr. Borden provide additional information concerning the details of his chemical addiction, clarification of his residential treatment program at Chandler Valley Hope, evidence of his participation and compliance with his after-care program, a description of his support system and submission of a psychological evaluation and results of a drug screening. In response to the Board's request for additional information, Mr. Borden provided a list of documents and responses which have been itemized in the investigative report. Additionally, the Board office received a faxed letter containing additional information pertaining to the complaint. Ms. Fearon moved the Board meet in Executive Session to obtain legal advice from counsel, and Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session, Mr. Herman Zickerman, attorney for Mr. Borden, stated to the Board that Mr. Borden had self-reported his addiction, and voluntarily sought treatment and established his after-care program. He also noted that Mr. Borden has informed the Board about his on-going recovery process. Attorney urged the Board to consider the fact that if self-reporting becomes punitive, the Board cannot effectively protect the public and save a practitioner. In response to the Board's questions, Mr. Borden reported that he is doing well in his recovery and grateful for the opportunity to save himself. He is learning a lot and is on the track of a life-long process. The Board questioned whether Mr. Borden has in the past taken drugs from a patient. Mr. Borden admitted that former patients had given him prescription medications "under false pretenses". He admitted that he did have access to removing medications from former patients, friends and neighbors over the years. In response to the Board's question concerning his psychologist's recommendation that he submit to a psychiatric evaluation, Mr. Borden responded that the psychiatric evaluation has been scheduled, but that he was unable to complete the evaluation prior to the Board's meeting due to the unavailability on the part of the psychiatrist. In response to the question of why he failed to report the theft charges pursuant to A.R.S. §32-3208, Mr. Zickerman indicated that Mr. Borden was completing the in-patient treatment program at Chandler Valley Hope and could not comply with the 10-day reporting requirement as the counselors stress to the patients that they are not to take any actions that might cause undue stress and compromise the success of their treatment. Mr. Borden also commented that following the notification telephone call from the Tucson police of the theft charges, he was in "bad shape" having initiated his self-detoxification, and he was anxious to begin his in-patient treatment. The Board again questioned whether Mr. Borden had ever taken medications from a patient? Mr. Borden again stated that while it is possible that he could be mistaken, his recollections were that he had taken medications only from former patients. Ms. Fearon moved the Board offer Mr. Borden a consent agreement placing him on probation for one year, during which time the licensee must submit to random drug screenings, continue his established aftercare program, maintain Narcotics Anonymous sponsor involvement, report to the Board on a monthly basis on his Valley Hope counseling sessions, provide a copy of the psychiatric evaluation, sign a waiver as required by A.R.S. §32-2050(4), and that he be restricted to treating patients in the clinic only and be precluded from treating patients in their homes. Dr. Cornwall seconded the motion. The roll call vote was unanimous.

5. Initial Review of Complaint

#05-10; Jane Charvat, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen provided a summary of the complaint filed against Ms. Charvat. She noted that the licensee is currently on assignment working as a physical therapist in Oregon and was therefore unable to attend the initial review in this case. The complaint was opened in response to an investigative report sent to the Board by the Legal Support Unit of the Arizona Department of Health Services. The investigative report was prompted by a complaint received by the Office of Long Term Care Licensing against Life Care Center of Scottsdale involving the death of former resident A.T. On April 27, 2004 A.T. developed respiratory distress and became unresponsive during the day. Later in the afternoon A.T. passed away after transfer to the hospital. The patient was seen by Ms. Charvat in the afternoon of April 27, 2004 and her entry in the patient's record (with no time noted) documented that the patient was "unarousable in p.m." There was no documentation that nursing or medical staff were informed by Ms. Charvat of the patient's "unarousable" state. 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 ethics of the physical therapy profession."
 - *Code of Ethics/Guide for Professional Conduct* 3.1.E "When the patient is referred from another practitioner, the physical therapist shall communicate the findings of the examination, the diagnosis, the proposed intervention, and re-examination findings (as indicated) (emphasis added) to the referring practitioner and any other appropriate individuals involved in the patient's care, while maintaining standards of confidentiality."
- A.R.S. § 32-2044 (20) "Failing to maintain adequate patient records."

In her response to the complaint, Ms. Charvat stated that she cannot accurately address any of the details of her care of A.T. since at this time she has no records or access to records concerning this patient's care. Ms. Charvat acknowledged that she has a "...vague, independent memory of this patient but nothing of the detail..." but explained that her customary use of the term "unarousable" would mean that A.T. was not sufficiently active to participate in physical therapy. She further stated that customarily, if she believed the patient's condition required nursing intervention, she would have alerted nursing staff. The Board discussed the fact that A.R.S. §32-3206 allows Ms. Charvat access to the investigative record once the case is voted to an informal or formal hearing, at which time she can refer to the patient notes and more thoroughly address the allegations of the complaint. The Board noted that in light of Ms. Charvat not having the records, the case should appropriately be voted to a hearing. Ms. Fearon moved to send the case to informal hearing. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board directed staff to attempt to conduct additional investigation in the form of interviewing the next nurse who interacted with A.T. following Ms. Charvat's afternoon note in the patient's chart.

6. Initial Review of Complaint

#05-12; Greg Hritz, P.T.

Ms. Fearon introduced and the agenda item and Ms. Herbst Paakkonen summarized the complaint opened against Greg Hritz, P.T. and filed by E.G., a former patient who was treated

by Mr. Hritzo at Mesa-Gilbert Physical Therapy & Hand Center in September and October of 2004 following a joint replacement and referral by her physician. The complaint alleges that E.G. was charged for five treatment visits but she was only seen three times. 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 (13) “Charging unreasonable or fraudulent fees for services performed or not performed.”
- 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.”

E.G. started physical therapy with Mr. Hritzo about two weeks following her surgery and went for therapy every two weeks with her last visit occurring “2 days before the Tempe Presidential Debate, which was on October 13, 2004”, although the records from the clinic indicate her final treatment visit was October 15, 2004. E.G. received a bill from Mesa-Gilbert PT in January; she disagreed with the bill as it was for five visits when she believed she only attended physical therapy three times. She contacted Mr. Hritzo to discuss her concerns and he told her that the treatment logs reflected five treatment visits. E.G. alleged that she was falsely billed for two treatment visits that she did not attend, and she believes that the treatment logs may have been falsified to reflect five treatment visits. In his response to the complaint, Mr. Hritzo affirmed that Ms. Garcia attended five physical therapy treatment visits and that all of the patient billing and treatment records confirm her attendance on five occasions. He recalls that when he called Ms. Garcia after she disputed the charges for five visits he offered to send her the patient sign-in sheets bearing her signature but she refused his offer. The records were sent to E.G., nevertheless she elected to file a complaint with the Board. In response to the Board’s notification of complaint, Mr. Hritzo enclosed multiple documents that reflected E.G.’s attendance at five physical therapy treatment sessions, including copies of pages from the patient schedules for five dates in September/October 2004, patient sign-in sheets for five dates in September and October 2004; and a copy of the co-pay log reflecting five visits. The Board discussed that the records appear to refute the allegations, however there was some question relative to the different signatures comparing the sign-in sheets to the complaint form to the Patient Information form. Mr. Hritzo requested and was granted approval to appear before the Board to make a statement, and he indicated he was willing to answer the Board’s questions. Mr. Hritzo stated that he did not observe E.G. signing in, but that because the patient is visually impaired and was accompanied by her husband to her appointments, he likely signed in E.G. Following discussion, Ms. Fearon moved the complaint be dismissed. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Mr. Hritzo addressed the Board concerning the credentialing process for physical therapists, including the application question concerning whether a licensee has ever had a complaint filed against him. He stated that this now dismissed complaint is a “nuisance” complaint filed by a confused and eventually combative person with whom he could not have a rationale argument concerning her attendance for physical therapy care. His concern relates to frustration that he must now disclose his complaints and letters of explanation relative to the outcome of his two dismissed complaints. Mr. Hritzo asked the Board to consider pursuing a course of action whereby dismissed complaints shall be expunged after a certain period of time. Ms. Walton Lee explained that it would require a Legislative change in order to grant a public body the authority to expunge an action or a portion of the public record. She explained that he could contact his Legislators as a constituent and request a bill that would impart a change to the public records statutes such as the one that he is requesting. Ms. Walton

Lee also noted that even criminal cases that are expunged must be disclosed in many instances because the event did occur, even though the record was ultimately expunged. Mr. Hritz thanked the Board for its action and information.

**7. Review and Possible Action Concerning Compliance with Board Order:
#04-11; Lorri Bentley, P.T.**

Ms. Fearon introduced the agenda item and the Board discussed the investigative report and the concerns identified by Ms. Hiller with respect to Ms. Bentley's compliance with the Board's Order. Specifically, the Board discussed the fact that Ms. Bentley thus far had submitted the requirements on time, but that the materials submitted demonstrated that she was out of compliance in terms of their content. Noted was the fact that Ms. Bentley had not yet completed the required documentation course, but that her documentation continues to reflect the violations of law that she had committed that resulted in the disciplinary action – specifically the use of triple billing codes. Also discussed was the lack of clarity concerning Ms. Bentley's billing methodology; the Board could not ascertain how the billing amounts were established and could not identify justification for the amounts. After review of the records reviewed by Ms. Hiller, the Board discussed opening a new complaint alleging substandard care [A.R.S. §32-2044(4)] and A.R.S. §32-2044(16), aiding and abetting a person who is not licensed as the records show that the physical therapy aide for Ms. Bentley documented all treatment sessions while Ms. Bentley only co-signed the treatment notes. The substandard care allegation stems from concerns that the patient records reviewed indicate that Ms. Bentley only documented a brief history of the patients, but failed to do an evaluation. Also, Ms. Bentley's records indicate that she had failed to establish a plan of care for the patients. Additionally, the Board discussed inviting Ms. Bentley to appear before the Board for purposes of negotiating a Consent Agreement that would modify the current Order. With respect to the current complaint, the Board discussed placing this matter on the October 25, 2005 agenda in the same fashion and subpoenaing her to attend the review, versus noticing her of an informal hearing. The Board elected to direct the staff to place the same review and possible action concerning this case on the October 25, 2005 agenda for purposes of negotiating a Consent Agreement that would modify the current Order by adding or revising the terms in order to better ensure that Ms. Bentley can come into compliance before her scheduled probation termination date. Dr. Cornwall moved to open a new complaint against Ms. Bentley alleging violations of A.R.S. §32-2044(4), substandard care, and of A.R.S. §32-2044(16), aiding and abetting an unlicensed person. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

**8. Consideration of and Possible Action Concerning Probation Compliance and Request
for Termination of Probation:
#04-01; Robert Carl, P.T.**

Ms. Herbst Paakkonen summarized the status of Mr. Carl's probation and noted that he was required to complete a patient care documentation course pursuant to the Order issued by the Board. Mr. Carl twice requested, and was granted, probation extensions in order to complete the course as he experienced difficulty in finding an appropriate course. Finally on September 10, 2005 Mr. Carl completed a course prepared and delivered by Kathy Brewer, P.T. Ms. Brewer submitted documentation to show that Mr. Carl successfully completed the course, and she notified the Board that Mr. Carl actively participated in the discussions and course activities. Ms. Kalis moved Mr. Carl's probation be terminated; Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Janice I. Andersen	Jillian M. Andersen	Susan K. Berard
Heather M. Bily	Simina Bono	Clinton R. Bunker
Eric S. Burness	Shawn D. Butler	Eric J. Cameron
Louise M. Ciarleglio	Daniel N. Cokash	Eric W. Coleman
James P. Coleman	Colleen T. Cook	Scott M. Cook
Bridget O. Dechant	Scott H. Decker	Laila E. Delviks
Kimberly Dockery	Lori Dube	David M. Fairbourn
Anna M. Fern-Bueno	Erin F. Guinan	Kristy L. Gustafson
Jennifer M. Guy	Regina Hagstrand	Breanna L. Henderson
Kristen L. Hetzel	Sara J. Hill	Stephen C. Hinkle
Jasmine C. Hogan	Jennifer M. Lee	Lindsey R. Mescher
Jennifer C. Miller	Tara O’Keeffe	Allyson R. Perch
Hollie A. Ptacek	Marissa A. Quijano	Harvey N. Shapira
Andrea L. Sieber	Nathan K. Tenney	Jyotika P. Walker
Steven M. Walker	Christine M. Watson	Sharon R. White
Steve E. Wilson	Kim E. Wright	

Ms. Fearon read the names for the record and Dr. Cornwall disclosed that he had previously taught Ms. Guinan, Ms. Hetzel and Mr. Tenney, but that no professor-student relationship currently exists. Ms. Herbst Paakkonen discussed the application of Mr. Fairbourn. The Board noted that Ms. White’s work history as listed on the application was incomplete in that she did not record any employment from 2002 through 2004. The Board noted that Mr. Coleman disclosed three DUIs convictions with the most recent occurring in 2002; however, he has completed all court ordered requirements and is currently managing his alcohol abuse history through active participation in Alcoholics Anonymous. Ms. Fearon moved the listed individuals be licensed with the exception of Ms. White; Board staff was directed to seek clarification from Ms. White in terms of where she was employed between 2000 and 2004 prior to releasing her license. Mr. Gossman 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:

Ronald F. Alves	Catherine D. Balentine	Dawn D. Beach
Scheryl R. Chinn	Tina L. McCarthy	Audrey E. McKenzie
Karen-Lee McMurrich	Juliee L. Monahan	Regina A. Sullivan
Amy L. Vipond		

Ms. Fearon read the names of the applicants and noted that the files were administratively complete. Ms. Fearon moved certification be granted to the listed applicants; Mr. Robbins 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):
Dawn L. Henry**

Ms. Fearon read the name of the applicant and noted that the file was administratively complete. Mr. Robbins moved the applicant be approved to take the National Physical Therapy Examination (NPTE) and that she be licensed upon receipt of a passing score (with waiver of the

Supervised Clinical Practice Period, or SCCP). Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

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

a. Review of Application for Substantially Equivalent Education and Review of Request to Find Applicant has Met Requirement of Supervised Clinical Practice Period (SCCP)

Sylvia Balazo-Revelo

Ms. Fearon read the name of the applicant for the record. The Board reviewed her credential evaluation report and noted that she had met the requirements for both general and professional education semester credit hours. Additionally, the Board reviewed the information she had submitted in conjunction with her request that the Board waive the requirement of the SCPP. The Board directed staff to follow up with the applicant to contact the individual who completed the Interim Period Evaluation form for purposes of clarifying the information that she had provided. Specifically, the Board requested information affirming the supervisory relationship, a copy of the resume of the applicant, and an explanation of how the supervision was provided.

Sean Raymond Chua

Ms. Fearon read the name of the applicant for the record. The Board reviewed his credential evaluation report and noted that he had met the requirements for both general and professional education semester credit hours. The Board also reviewed the information he submitted in conjunction with his request that the Board waive the requirement of the SCPP. The Board discussed the fact that Mr. Chua had submitted evidence that he had completed a SCPP for purposes of his initial licensure in Virginia. Ms. Kalis moved Mr. Chua's education be found substantially equivalent to that of a graduate of a U.S. accredited program, that the requirement of the SCPP be found complete, and that licensure be granted to Mr. Chua. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Shiela C. Chuakaw-Chua

Ms. Fearon read the name of the applicant for the record. The Board reviewed her credential evaluation report and noted that she had met the requirements for both general and professional education semester credit hours. The Board also reviewed the information she submitted in conjunction with her request that the Board waive the requirement of the SCPP. The Board discussed the fact that Ms. Chuakaw-Chua had submitted evidence that she had completed a SCPP for purposes of her initial licensure in Virginia. Ms. Kalis moved Ms. Chuakaw-Chua's education be found substantially equivalent to that of a graduate of a U.S. accredited program, that the requirement of the SCPP be found complete, and that licensure be granted to Ms. Chuakaw-Chua; Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Sally A. Gilbert

Ms. Fearon read the name of the applicant and the Board noted that her file was administratively complete. The Board discussed the fact that her credential evaluation report indicates that she is 8 semester credit hours deficient in general education; she previously took several CLEP examinations to earn college level credit. Ms. Kalis moved to find that her education is not substantially equivalent and that she be required to complete 8 semester credit hours of general education (non-CLEP). Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Mitas Moina Medrano

The Board reviewed the application file and Board staff noted that the applicant had previously held an Arizona physical therapist license, but that she allowed that license to lapse for more than 3 years, therefore requiring her to re-apply for licensure. Ms. Medrano's education was found to be substantial equivalent and the supervised clinical practice period requirement to be complete. Ms. Kalis moved to grant Ms. Medrano a license and Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Lynette Montgomery

Ms. Fearon read the name of the applicant and the Board noted that her file was administratively complete. The Board reviewed the proposal submitted by Ms. Montgomery in which she requested approval to complete a 90-day SCCP with t. Joseph's Hospital and Medical Center in Phoenix with Marsha Bennett, P.T. (#3061), as her supervisor. Ms. Kalis moved the proposal be approved and that Ms. Montgomery be granted an interim permit for purposes of completing the SCCP. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

Drazen Jan Revelo

Ms. Fearon read the name of the applicant for the record. The Board reviewed his credential evaluation report and noted that he had met the requirements for both general and professional education semester credit hours. The Board also reviewed the information he had submitted in conjunction with his request that the Board find that he has met the requirement of the SCCP. The Board discussed Mr. Drazen's previous clinical experience and identified the need for additional information. The Board directed staff to follow up with the applicant to clarify the information that supervisor had provided in the form of a letter affirming the supervisory status and an explanation of how supervision was provided. The Board also requested a copy of Mr. Revelo's resume. Additionally, the Board also reviewed Mr. Revelo's TOEFL and TWE scores and noted that both scores are below the passing thresholds established by Board rule. Board staff indicated that Mr. Revelo will need to take both examinations again until he has achieved the required passing scores.

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

Jerome Singzon

Ms. Fearon read the name of the applicant and the Board reviewed the documentation submitted by Mr. Singzon relative to his request that the Board find he has meet the requirement of the SCPP. The Board reviewed the evaluation form and found the requirement to be complete. Ms. Fearon moved to grant licensure; Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

c. Review of Request for Approval for Supervised Clinical Practice Period (SCCP) and Granting of Interim Permit

Mary Strike

Ms. Fearon read the name of the applicant and the Board reviewed the proposal and discussed the nature of the physical therapy services offered at Oasis Rehabilitation Center, the proposed site of Ms. Strike's SCCP. In the proposal Ms. Strike requested approval to practice under the supervision of Paul Ward, P.T., (#6153). Dr. Cornwall disclosed for the record that Mr. Ward was a graduate from the physical therapy program at Northern Arizona University where he is a member of the faculty and currently serves as program chair. Ms. Kalis moved the Board grant Ms. Strike an interim permit and approval the SCPP proposal. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

d. Review of Substantially Equivalent Education and Possible Action on Approval to Take National Physical Therapist Examination for Foreign Educated Physical Therapist

Pamela Gonzales

Ms. Fearon read the name of the applicant and the Board reviewed the application file and the credential evaluation report which indicated that Ms. Gonzales had met the 58 general education hours and the 61 professional education hours requirements for a substantially equivalent education. Ms. Fearon moved the applicant be granted approval to take the NPTE. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

Seongok Chang

Ms. Fearon introduced the agenda item and the Board reviewed the request submitted by Ms. Chang and discussed the fact that her request is similar to the previous one, with the addition of allowing the candidate to bring a hot pack or pad into the testing center in order to alleviate the back pain and spasms that she experiences when seated for long periods of time. Ms. Kalis moved to grant the applicant time-and-a-half with which to take the examination, and to allow her to bring the TENS unit and the hot pack into the testing site. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

Theresa M. Martin Johnson

Ms. Fearon introduced the agenda item and Dr. Cornwall noted for the record that he formerly held a teacher-student relationship with the applicant, but that the relationship no longer exists. The Board reviewed the letter dated August 15, 2005 from Ms. Martin Johnson's physician which indicated that she was under treatment for attention deficit disorder. The applicant's accommodation request is for time-and-a-half with which to take the NPTE. Dr. Cornwall indicated that she did not receive any accommodations while a student at Northern Arizona University as the testing circumstances did not warrant accommodations. Ms. Kalis moved the applicant be granted time-and-a-half with which to take the NPTE. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board agreed by consensus that the applicant would need to provide additional information from her physician concerning the request for the separate room in order for that accommodation to be considered.

BOARD BUSINESS AND REPORTS

14. Executive Director's Report:

a. Financial Report: No additional information to report.

b. Board Staff Activities: The Board discussed future plans to incorporate a historical list of disciplined licensees on the agency web-site. The list would be available as a PDF download, and will eventually link to the final disposition document. Ms. Herbst Paakkonen can develop this feature of the site as opposed to contracting with an IT consultant, and she hopes to initiate the project in October.

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

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

e. Legislative Update: No additional information to report.

**15. Review of and Possible Action Concerning Physical Therapist Assistant Sunrise
Application Filed by the Arizona Association for Home Care**

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen provided a brief history of the issue. In late December of 2004, the Board had learned that the Arizona Association for Home Care (AAHC) and the Arizona Physical Therapy Association (AzPTA) had met to discuss the AAHC's intentions to request a bill in the 46th Arizona State Legislature (first regular session) that would remove from the Board's statutes the requirement of on-site supervision of physical therapist assistants (PTAs) by physical therapists (PTs) in home health care settings. The Board had not been included in that stakeholder meeting. The Board then scheduled a discussion of the issue on its January 25, 2005 agenda, and invited representatives of AAHC to explain their concerns and their proposal. During the discussion, the Board asked the AAHC to provide survey results and quantitative findings to support that organization's position that physical therapy patients were being turned away by home health care organizations due to lack of PT staff necessitating the change in the Board's statutes. Ms. Herbst Paakkonen further noted that in recent months, AAHC representatives and AzPTA representatives had met and planned several non-legislative strategies intended to assess the shortage of PTs working in home health care settings, and to potentially attract PTs to home health care practice. However, prior to completing and implementing those efforts, all plans were aborted by the AAHC as the organization elected instead to file the Sunrise application to increase the scope of practice of PTAs to allow them to work under "general supervision" in home health settings rather than on-site supervision. The Board reviewed and discussed the application and noted that it contained mostly anecdotal information as opposed to solid research findings. The Board questioned the survey findings in February of 2005 that indicated 273 patients were denied physical therapy care by a home health agency due to a lack of physical therapists to provide the care; the Board noted that the numbers only reflected one month of data and didn't indicate any trends. The data also did not indicate anything concerning the types of patients that were refused care (i.e. were the patients able to access care through an outpatient clinic?). The Board discussed the survey results collected on SurveyMonkey.com – a joint effort of the AzPTA and the AAHC – and concluded that the survey does not present any evidence to support the position of the AAHC as it indicated that the prevailing reason that inhibits PTs from working in home health is the paperwork burden. The Board noted that if PTAs were allowed to do home health visits under general supervision of a PT, the paperwork burden would increase significantly. The Board discussed the prevailing concern that to make legislative changes to the assistive personnel supervision law would result in a lower standard of care for patients and would compromise public protection. The Board stated that it must be convinced that changing the law would not only ensure safe and appropriate patient care, but that any changes must result in improved outcomes for the public. The AAHC has not presented a compelling reason to the Board to change the law, and the Board questioned why the AAHC would attempt to expand the scope of practice of PTAs when it had failed to produce any evidence that such a change was necessary, warranted and protects the public. Of primary concern to the Board is the fact that many home health patients are discharged from hospital care sooner than in years past, and with higher acuity. Given their relative medical instability, the patients would be at higher risk for harm if their care was to be primarily provided by a PTA who is not educated or skilled in patient assessment. The Board also noted that changing the supervision law would likely *increase* the attrition rate of PTs willing to work in home health care settings as the PTs are still responsible under the law for the care given by the PTAs; few PTs would likely be willing to assume that risk when they do not have on-site supervision of the PTA and will be compelled to seek employment in a different setting. The Board questioned whether the home health agencies are

motivated by financial and not patient care concerns, and questioned why the AAHC was not instead pursuing non-legislative strategies to expand PT education programs such as the plethora of efforts utilized to address the shortage of nurses. Additionally, the Board questioned whether the alleged PT shortage issue is merely a distribution issue in that in the current competitive employment market, some PTs do not want to work in certain settings. The MoneySurvey.com survey not only identified some reasons why home health is not attracting PTs, but it also highlighted several incentives that home health care agencies could offer to PTs to entice them into the field. The survey further indicated that there is ample interest among PTs for the home health care industry to educate PTs about working in the field. The Board accepted comments from members of the public including Mr. Kerry Halcomb, P.T. Owner and Director of Therapy on Wheels, a Home Health care staffing organization which employs 40 physical therapists and various other practitioners including occupational therapists (OTs) and certified occupational therapist assistants (COTAs). He explained that by virtue of the fact that his company contracts with many home health care agencies to provide PT services, he has significant insight into the issue. Mr. Halcomb stated to the Board that the motivations of the home health care organizations are purely financial with respect to Medicare. The organizations are aware that that they can compensate PTAs for half of what PTs are paid which would leave more reimbursement dollars left over for administration. He also noted that the February 2005 survey numbers are misleading; he stated that the patients reportedly denied care had to have gone elsewhere for care or else there would be public outrage and the media would have widely covered the issue. Mr. Halcomb further explained to the Board that just because one agency cannot take a patient at a particular time does not mean that another agency did not pick up that patient and provide the care. He described a common scenario where one home health agency will deny services to a patient, but in the meantime another agency indicates that it can serve that same patient. The survey failed to capture that dynamic. Mr. Halcomb expressed concerns to the Board that if one sector of the health care system is successful with respect to weakening the PT supervision statutes, this action could have an unintended ripple effect throughout other health care settings and erode away patients' rights to be treated by a PT and not a PTA. He further stated that COTAs are not used by home health care agencies because OTs are highly reticent to supervise them in that capacity. Mr. Elton Bordenave, M.A., faculty member of A.T. Still University (Arizona School of Health Sciences or ASHS), addressed the Board and stated that ASHS recently attempted to make outreach efforts to Gentiva (a home health care company) for purposes of requesting PT program funding assistance in order to bring more students into the profession in hopes of increasing the supply of PTs working in the field. Mr. Bordenave stated that Gentiva declined that opportunity. He concurred that the home health industry is only economically motivated and has recognized that agencies can pay PTAs half of what PTs can command with respect to salaries. Mr. Bordenave warned the Board to expect the AAHC to place a great deal of pressure on the Legislature. Ms. Suzanne Brown, P.T., M.P.H., addressed the Board and stated her opposition to the Sunrise proposal from the perspective of a PT who has practiced in a state where general supervision exists. She cited instances of abuses when supervision of a PTA by a PT is done telephonically – including instances where the supervising PT was actually on vacation while the PTA was care for patients in the home. Ms. Brown advised the Board that if the AAHC is successful in changing the supervision statutes, the marginally competent and poorly skilled PTs will be attracted to home health so they can be lax in their care and home health patients will suffer as a result. Dr. Jim Roush, P.T., Ph.D. appeared before the Board to present the position of the AzPTA concerning the Sunrise application. He stated that the discussions thus far have indicated that the organization is not in favor of the proposal, and that not enough research into non-legislative remedies has been done. Dr. Roush

further noted that the AzPTA takes issue with the fact that an outside organization would file a Sunrise application that would impact another profession's statutes without the concurrence and support of that profession. The Board directed Ms. Herbst Paakkonen to advise the members of the Senate and House Health Committees of the Board's concerns and to represent those concerns along with sharing key data during the hearing conducted relative to the Sunrise application. Ms. Fearon will also address the Committee during the hearing, and if the public members are available, they are encouraged to represent that perspective as well. Ms. Herbst Paakkonen will keep the Board members informed via e-mail of any position statements that are drafted, as well as announce hearing dates and schedules.

16. Presentation to the Board on Administrative and Substantive Review of Applications for Foreign Educated Physical Therapist Licensure

Ms. Carol Lopez delivered a presentation to the Board addressing the requirements for licensure for foreign educated physical therapists (FEPTs). Ms. Lopez distinguished between the requirements of graduates of foreign programs that are accredited by the Commission on Accreditation for Physical Therapy Education (CAPTE) and those programs that are not accredited (the majority of programs). She explained the requirements for applicants who had already passed the NPTE and were licensed in other U.S. jurisdictions, as well as for those who were requesting approval to take the NPTE for the first time. Ms. Lopez addressed credential evaluation reports, and visa processing. She will develop and deliver another presentation to the Board addressing the rule changes once the current draft changes to Articles 1 and 2 reach the final stages of promulgation.

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

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen recommended the Board approve the Internet Based TOEFL (iBT) scores that were adopted by the Delegate Assembly of the Federation of State Boards of Physical Therapy (FSBPT) on September 12, 2005. She explained that the current English proficiency examinations (the Test of English as a Foreign Language, or TOEFL; the Test of Spoken English, or TSE; and the Test of Written English, or TWE) are currently being phased out and replaced with four new examinations testing reading comprehension, listening comprehension, speaking and writing skills comprising the iBT. The Board agreed by consensus to allow Ms. Herbst Paakkonen to convey to Kathleen Phillips, contract rule writer for the Board, the recommended scores be written into the draft rules. Ms. Herbst Paakkonen volunteered to poll her fellow Board administrators to find out whether any other physical therapy regulatory agencies intend to adopt passing scores other than those adopted by the Federation Delegate Assembly. She also briefed the Board on the issue concerning the questions posed in rule that are asked of applicants for both initial and renewal of licensure and certification – specifically that some of the questions ask for information that is protected by the Americans with Disabilities Act (ADA). This concern was posed by Mr. Bill Hysten, the Board's liaison with the Governor's Regulatory Review Council. Ms. Herbst Paakkonen and Ms. Phillips will schedule a meeting with Mr. Hysten to discuss these concerns and to attempt to reach a compromise. Additionally, Mr. Hysten may have some suggestions for draft rule language that allows the Board to deny an application for failure to demonstrate good moral character for pertinent violations of A.R.S. §32-2044.

Regular Session Meeting
September 27, 2005

CALL TO THE PUBLIC

No additional public comment.

ADJOURNMENT

The meeting adjourned at 2:25 p.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Merle Gossman
Secretary