

REGULAR SESSION MEETING MINUTES
November 22, 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
Dawn Walton Lee, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

Ms. Fearon called the meeting to order at 8:30 a.m.

1. Approval of Minutes:

September 27, 2005; Regular Session Meeting

The Board reviewed the revised document, and Ms. Kalis moved the minutes be approved as drafted. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

October 25, 2005; Regular Session Meeting

The Board reviewed the minutes and directed staff to make an edit to page 11 of the draft to clarify that the applicant Mr. Rozanski had previous work experience as a physical therapist. Ms. Fearon moved the minutes be approved with the change. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

November 2, 2005; Special Session Meeting

Ms. Fearon moved the minutes be approved as drafted. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS AND INVESTIGATIONS

2. Informal Hearing:

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

Ms. Fearon introduced the agenda item, and Ms. Charvat and her attorney, Mr. Michael Golder, appeared before the Board for the hearing. The Board members and staff exchanged introductions with Ms. Charvat and her counsel. Ms. Fearon reviewed the informal hearing procedures and purpose, and advised the licensees as to the potential outcomes of the hearing. Ms. Nicola Bauman Delgado, Court Reporter, swore in Ms. Charvat. Ms. Hiller summarized the complaint filed against

Ms. Charvat which was opened in response to an investigative report sent to the Board by the Legal Support Unit of the Arizona Department of Health Services (DHS). 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. The report indicated that on April 27, 2004 A.T. developed respiratory distress and became unresponsive during the day. Later that afternoon A.T.'s family members became concerned and sought nursing assistance, following which A.T. was transported to the hospital where she expired. The DHS report indicated that A.T. was seen by physical therapist Jane Charvat at some point during the afternoon of April 27, 2004 and that Ms. Charvat's entry in the patient's record documented that the patient was "unarousable in p.m.", but there was no specific time noted. There was no documentation in the patient's record 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 (20)** "Failing to maintain adequate patient records."
- **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) to the referring practitioner and any other appropriate individuals involved in the patient's care, while maintaining standards of confidentiality."

Ms. Hiller also advised the Board that her efforts to contact the nursing staff who cared for A.T. on April 27, 2004 resulted in a conversation with Ms. Erica Hill, LPN, who had only a vague memory of the patient. Ms. Hill stated to Ms. Hiller that she does not recall discussing with physical therapy staff the patient's condition on that date. In his opening statement offered on behalf of Ms. Charvat, Mr. Golder stated that there is nothing in the record to indicate that Ms. Charvat did not attempt to notify the nursing staff of A.T.'s condition, but that the real issue is that the patient's condition at the time she visited A.T. did not warrant any action on her part. Ms. Charvat advised the Board that she was not surprised to see that the initial evaluation for A.T. (which was prepared by another physical therapist) indicated that she had a "good" rehabilitation potential because Medicare (A.T.'s payer) prefers to see that indication as opposed to "poor" or "fair". Ms. Charvat stated that she agreed with that assessment, and commented that she was not concerned when she observed A.T. as "unarousable" because she may have had a bad night. In response to the Board's questions, Ms. Charvat affirmed that she records all of her treatment notes at the end of each day. She also stated that she does not remember the patient. However, she may have attempted to wake A.T. on April 27, 2004, but she does not recall specifically. Ms. Charvat also noted that she does not remember A.T.'s sister being present in the room when she was there. The Board questioned the times that the DHS investigative report listed Ms. Charvat as being in the room at 3:45 p.m. Ms. Charvat noted that her personnel records actually show that she actually clocked out at 3:15, and that means that she would have had to begin her paperwork at about 2:00 p.m., indicating that she would have seen A.T. prior to then. The Board noted that A.T.'s sister-in-law would have notified the nursing staff at about 3:45 p.m. that A.T. was unresponsive. Ms. Charvat surmised that she saw the patient in the morning, and early afternoon – perhaps in the 1:00 hour – and was not concerned about the patient when she observed her. The Board again questioned whether Ms. Charvat thought it unusual that A.T. would have been "unarousable" when her rehabilitation potential was "good" in terms of being able to

return home; the licensee responded that A.T. had only been in the facility for three days, so she was not concerned. Ms. Charvat stated that it was her standard practice to notify nursing staff when a patient exhibits certain symptoms. She did not feel that a patient being too sleepy rose to the level of requiring documentation. Ms. Charvat stated that did not observe anything to suggest that the patient was experiencing respiratory distress. She stressed that her standard of practice would have been to notify the nursing staff that she was unable to do physical therapy with the patient because she was too sleepy. Ms. Charvat explained that she believed that the patient was primarily under nursing care. In response to the Board's questions, Ms. Charvat indicated that her typical patient care load for the day would have been 10-15 patients. In his closing statement to the Board, Mr. Golder stated that the record is scant – there is no witness to what occurred, and that the lack of memory that Ms. Charvat has concerning the patient indicates that the circumstances were uneventful. He also noted that the record establishes that the nursing staff administered A.T.'s medication incorrectly. Mr. Golder noted that the timeline of events indicates that the sister was with A.T. at 3:30 p.m., notified the nurse at 4:00 p.m. of her concerns regarding A.T.'s condition, the nurse finally contacted the physician at 5:00 p.m. of A.T.'s condition, and the Emergency Medical Technician (EMT) was not summoned for several minutes and finally arrived approximately 6:00 p.m. Ms. Charvat also stated that she believes she was not the last person to see the patient; it is likely that other personnel such as a Certified Nursing Assistant would have been in and out of A.T.'s room. The Board concluded the interview and discussed the case. The Board commented that while the nursing documentation is not under the Board's jurisdiction, the incomplete notes do not provide any clarity to what occurred. The Board questioned the assessment of "good" in terms of the patient's rehab potential, but noted that Ms. Charvat was treating the patient under an evaluation prepared by another physical therapist. The Board questioned the use of the term "unarousable" as an appropriate description of the patient's condition. The Board also discussed the concern that there was no documented effort on the part of Ms. Charvat to assess whether A.T. was sleepy, or experiencing respiratory stress. The Board reviewed the potential violations of law and concurred that there was no violation of ethics or of substandard care, or of failing to maintain adequate patient records. Ms. Fearon moved the Board issue an Advisory Letter concerning the lack of documentation to support Ms. Charvat's clinical assessment of the patient. Dr. Cornwall seconded the motion. The Board directed staff to include in the letter section 3.1 of the American Physical Therapy Association Code of Ethics entitled "Acceptance of Responsibility". The roll call vote was unanimous.

3. Informal Hearing:

#05-11; Bryan Hannley, P.T.

Ms. Fearon introduced the agenda item, and Ms. Kalis recused herself from the proceeding. Mr. Hannley appeared for the hearing and introduced himself to the Board. Ms. Bauman Delgado swore in the licensee, and Ms. Fearon reviewed the informal hearing procedures and possible outcomes of the complaint. Ms. Hiller summarized the status of the complaint against Mr. Hannley. She reminded that Board that it had held its initial review and discussion of the case during its regular session meeting on October 25, 2005. She reported that the complaint was filed by the daughter of a former patient of Mr. Hannley, R.B., who was treated at NovaCare Rehabilitation on four occasions between February 16 and March 3 of 2005 for left leg pain. Ms. Hiller advised the Board that R.B. fell and experienced a decline in function prior to the 2nd treatment visit on February 22, 2005. The complaint alleges that despite R.B.'s description of his fall and decline in function he was treated by assistive personnel and not observed or treated by Mr. Hannley during his second and third treatment visits on February 22 and 25 of 2005. While reviewing the physical therapy treatment records for R.B., Ms. Hiller reported that she found that the initial evaluation performed by Mr. Hannley on February 16, 2005 lacked a subjective history, lacked any objective tests or measurements, and

lacked any postural, gait, or functional assessments; additionally, no neurologic or special tests were performed by Mr. Hannley on R.B. Ms. Hiller also noted in her report that during the initial review of this complaint, the Board questioned Mr. Hannley about NovaCare scheduling policies and questioned why Mr. Hannley did not transfer Mr. Bianco onto his schedule when he was informed about the patient's decline and worsening symptoms, but Mr. Hannley did not have a response. Ms. Hiller also summarized an interview she conducted with Mr. Linden, ATC, the assistive personnel who observed the treatment activities for R.B. on February 22 and 25, and who reported to Mr. Hannley R.B.'s fall and resultant regression. Mr. Linden did not recall the specific patient, but explained typical protocols when a patient was assigned to the "extremity gym" treatment area where treatments were directed by physical therapy assistive personnel. Mr. Hannley was noticed of the possible jurisdiction for the complaint to include:

- 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(6) "Failing to supervise assistive personnel, physical therapy students or interim permit holders in accordance with this chapter and rules adopted pursuant to this chapter."
- A.R.S. § 32-2044(12) "Failing to adhere to the recognized standards of ethics of the physical therapy profession."
 - *Code of Ethics* Principal 3 "Physical therapists accept responsibility for the exercise of sound judgment."
 - *Guide for Professional Conduct 3.1 Acceptance of Responsibility A.* "Upon accepting a patient/client for provision of physical therapy services, physical therapists shall assume the responsibility for examining, evaluating, and diagnosing that individual; prognosis and intervention; re-examination and modification of the plan of care; and maintaining adequate records of the case including progress reports. (*Emphasis added*)
 - *Guide for Professional Conduct 3.2 Delegation of Responsibility A.* Physical therapists shall not delegate to a less qualified person any activity that requires the unique skill, knowledge, and judgment of the physical therapist."
- A.R.S. § 32-2044(20) "Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that comply with board rules and that contain at a minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient."

Mr. Hannley was present for the hearing and indicated to the Board that he did not wish to make an opening statement. The Board questioned the accuracy of the NovaCare clinic policies that suggest that a PTA may delegate treatment activities to a physical therapy technician, and Mr. Hannley responded that only a PT supervises a PTA, but that he cannot deny that a technician may be asked by a PTA to assist in doing "housekeeping duties" such as fetching a hot-pack or cleaning a treatment area. He explained that a patient would have been placed on the extremity gym schedule if their plan of care was heavily modality based. If the patient's situation was more involved, the patient would have been on his schedule, or on that of another physical therapist. Mr. Hannley explained to the Board that certain modality activities for certain patients on his schedule may have been delegated to physical therapy technicians. He noted that the plan of care for R.B. was very modality based with several mat exercises; he stated that he felt comfortable with those activities being observed by the technician. Mr. Hannley advised the Board that proactively he determined that the scheduling procedure using the extremity gym was not in the best interests of NovaCare's patients, and that he has recently elected to modify the clinic's scheduling procedures to ensure that all patients are placed

on the schedule of a physical therapist. The Board questioned Mr. Linden's statement that he and Mr. Hannley did not have concurrent schedules which resulted in less communication concerning patients. Mr. Hannley responded that his best recollection is that he and Mr. Linden did not have significantly overlapping schedules, although he does not specifically recall the extent to which this statement is true. The Board questioned whether the records for R.B. are typical in terms of Mr. Hannley's completeness. Mr. Hannley stated that in his assessment that this is somewhat of an anomaly, but that the records he is currently making do not emulate those for R.B. He also noted that NovaCare clinics statewide are in the process of implementing some reforms to how patient evaluations are documented and how the care plans are established. Mr. Hannley described to the Board how he now prepares a typical evaluation and plan of care which are more complete as compared to the one he prepared for R.B. In his closing statement, Mr. Hannley thanked the Board for the opportunity to present his perspective on the case, and stated that he is approaching this process in the spirit of looking for ways to improve himself and to mentor new physical therapists. Mr. Hannley commented that he has proactively modified the scheduling system at the NovaCare clinic which has resulted in improved care and attention to the patients on the part of the physical therapist. Additionally, he has researched the availability of documentation courses and intends to take one in an effort to improve upon his skills. Mr. Hannley admitted that while the documentation for R.B. is scant, he asserted that he provided the best possible care to the patient in the best interest of the patient. He is prepared to approach this situation as an opportunity to learn and improve upon his skills, and to teach other therapists to do the same. The Board concluded the interview and reviewed the possible jurisdiction. The Board concurred that Mr. Hannley's documentation failed to meet the standards of A.R.S. §32-2044(20). The Board members deliberated whether Mr. Hannley violated A.R.S. §32-2044(4), substandard care and 32-2044(6), failing to supervise assistive personnel; they concurred that the record does not support a violation of (6) but does support a finding for a violation of (4). The Board also discussed A.R.S. §32-2044(12) in the context of sections 3.1 and 3.2 of the Guide to Professional Conduct. Ms. Fearon moved to find Mr. Hannley in violation of A.R.S. §32-2044(4), A.R.S. §32-2044(12) and of A.R.S. §32-2044(20). Mr. Robbins seconded the motion. The roll call vote was unanimous. The Board discussed imposing a 12-month period of probation during which time Mr. Hannley must provide a copy of NovaCare's current revised policies and procedures addressing patient documentation standards, scheduling, delegation to assistive personnel (due within the initial 3 months of the term of probation); completion of a documentation course (due within the initial 3 months of the term of probation); patient chart reviews at 6 months, 9 and 12 months (3 charts at each review with at least one for a Medicare patient); submission of a literature review of ethical principles relating to supervision and delegation of assistive; and development of a presentation of those ethical principles to his staff (due within the initial 3 months of the term of probation). Ms. Fearon moved to issue an Order with the discussed terms and to allow Mr. Hannley to petition for termination of probation after the 9 month chart review if he is in compliance with all of the requirements of the Order. Mr. Gossman seconded the motion. The roll call vote was unanimous.

4. Review, Discussion and Possible Action Concerning Recommendation to Rescind Offer of Consent Agreement and to Issue Board Order:

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

Ms. Hiller introduced the agenda item and Ms. Herbst Paakkonen provided a summary of the status of the case. During its regular session meetings of July 26 and August 23, 2005, the Board had conducted an informal hearing in connection with Complaint #04-23; Jenelle Lauchman. The complaint, filed by former patient N.G. alleged that Ms. Lauchman refused to provide treatment at the frequency prescribed by N.G.'s referring physician, which the complainant believes may have

been motivated by PacifiCare's capitated contract with NovaCare. The complaint further alleged that Ms. Lauchman spent minimal time with N.G. during his treatment visits. During the course of the hearing, the Board added the additional allegations that Ms. Lauchman misrepresented treatment services provided to N.G. by assistive personnel as skilled services, and that the licensee failed to document evaluations, failed to document communications between herself and the patient's referring physician, and failed to document the basis for the clinical determination that the patient's condition would not improve with physical therapy care. The conclusion of the Board was that Ms. Lauchman was found in violation of A.R.S. §32-2044(4), engaging in the performance of substandard care by a physical therapist; of A.R.S. §32-2044(12), failing to adhere to the recognized standards of ethics; of A.R.S. §32-2044(13), charging unreasonable or fraudulent fees for services performed or not performed; and of A.R.S. §32-2044(20), failing to maintain adequate patient records. Ms. Herbst Paakkonen reminded the Board that it had voted to offer a Consent Agreement to Ms. Lauchman that contained disciplinary terms consisting of a 12-month term of probation, completion of a billing and coding continuing education course, completion of a physical therapy continuing education course addressing performing neuro-evaluations, completion of an ethics course, notification to N.G.'s insurance payer of the Board's findings and conclusions relative to the complaint, and a course of quarterly patient records reviews. The Agreement was mailed to Ms. Lauchman and to her attorney on August 25, 2005. Ms. Lauchman's attorney, Michael Golder, contacted Ms. Walton Lee by telephone within the initial two weeks of receiving the Agreement and requested a meeting to discuss some concerns with the document (these concerns were also recorded in a letter dated September 21, 2005). A settlement conference was held on October 5, 2005 in an attempt to resolve the concerns and possibly renegotiate the terms of the agreement. The outcome of the discussion was a revised Consent Agreement offered to the licensee; the differences between the two documents consisted of clarifying that Board staff may pre-approve the required continuing education courses, stipulating that the records reviews will be conducted in the final 6 months of the Agreement after Ms. Lauchman has completed her courses, and substituting A.R.S. §32-2044(14), making misleading representations in the practice of physical therapy, for A.R.S. §32-2044(13), charging unreasonable or fraudulent fees for services performed or not performed. Ms. Herbst Paakkonen stated that despite the negotiations, Ms. Lauchman ultimately elected to decline to accept the revised Consent Agreement; the Board office was notified of this decision by letter, written by Mr. Golder, and received on October 28, 2005 in which Ms. Lauchman's objections were stated. Because the negotiations intended to arrive at a Consent Agreement containing terms that both parties find acceptable were unsuccessful, Ms. Walton Lee recommended that the appropriate course of action for the Board is to rescind its action issuing a Consent Agreement relative to this complaint, and to issue an Order to Ms. Lauchman with identical Findings of Fact, Conclusions of Law and disciplinary terms to that of the initial Consent Agreement. Ms. Walton Lee clarified that the attempt to substitute subsection (14) for (13) was done in an effort to address the Board's documentation concerns with respect to how Ms. Lauchman represented the care provided to N.G. She also noted that once the Order is issued, Ms. Lauchman will have an opportunity to file a request for a rehearing of the case. Mr. Golder was granted approval to address the Board and questioned whether Ms. Lauchman would be afforded due process in the form of a formal hearing. He stated that it was on that basis that he advised his client that she should decline the offer of the consent agreement. Ms. Walton Lee advised the Board that Ms. Lauchman's attorney can bring whatever objections he has to the Board in his request for a rehearing. Ms. Fearon moved the Board meet in Executive Session for purposes of obtaining legal advice from Board counsel; Ms. Kalis seconded the motion. Upon resuming the meeting in public session, Ms. Fearon moved to rescind the offer of the Consent Agreement to Ms. Lauchman. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The licensee had the opportunity to question the facts and the record at the time of the informal hearing. Ms.

Fearon moved to issue a Board Order to Ms. Lauchman containing the same Findings of Fact, Conclusions of Law and disciplinary terms as described in the original Consent Agreement. Mr. Robbins seconded the motion. The roll call vote was unanimous.

5. Review of Recommendation to Remand Complaint to Formal Hearing:

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

Ms. Fearon introduced the agenda item, and Ms. Herbst Paakkonen reported that Mr. Litvinoff was selected at random for audit of his continuing competence activities for the 2002-2004 licensure period; he was noticed of that audit in October of 2004. In response to the notice Mr. Litvinoff had provided a written statement to the Board (received in an e-mail message dated November 14, 2004) that he was not practicing as a physical therapist, and was living and working in Mexico. Mr. Litvinoff had further stated that as a resident of Mexico, continuing education courses are not available to him. Because this statement appears to contradict his affirmation statement on his 2004-2006 licensure renewal application on which he signed his name confirming that he had completed the required continuing competence activities for the 2002-2004 licensure period, the Board directed staff to open a complaint against Mr. Litvinoff under the jurisdiction of A.R.S. §32-2044(3), "obtaining or attempting to obtain a license or certificate by fraud or misrepresentation". Complaint #05-04; Lavrenti Litvinoff, P.T. was opened on March 1, 2005, and he was sent a letter by Peg Hiller, P.T. on March 3, 2005 notifying him of the complaint, in which she also requested a written response to the allegation that he had failed to complete his continuing competence requirements for the 2002-2004 licensure period, and that he had provided false statements to the Board to that effect. No response was received, and the complaint was scheduled for an initial review by the Board on July 26, 2005. The Board's action was to remand the complaint to an informal hearing, but to offer the licensee the option to either sign a Consent Agreement imposing disciplinary action and imposing disciplinary terms (negotiated by Ms. Walton Lee), or to sign a Consent Agreement resulting in the voluntary surrender of Mr. Litvinoff's physical therapist license. Ms. Herbst Paakkonen further reported that Ms. Walton Lee spoke by telephone with Mr. Litvinoff on July 29, 2005; during the conversation, Mr. Litvinoff indicated that his preference was to voluntarily surrender his license as he has no plans to relocate back to Arizona, nor does he intend to practice physical therapy again. He advised Ms. Walton Lee that he has only maintained his license as a "badge of honor". He further informed Ms. Walton Lee that he would be visiting his mother in Laguna Niguel, California during the first week of September where he maintains his address of public record, and that the Consent Agreement could be sent there so that he could receive and sign it. The document was mailed on August 25, 2005 and provided Mr. Litvinoff a generous deadline to sign and return the Agreement – September 30, 2005. The packet containing the Consent Agreement was signed for by a "L.R. Gibney" on August 30, 2005, but Mr. Litvinoff failed to sign and return the Agreement by the established deadline. Ms. Herbst Paakkonen and Ms. Walton Lee recommended the Board vote to send this case to a formal hearing to be conducted either before the Board, or before an Administrative Law Judge with the Arizona Office of Administrative Hearings (OAH). Ms. Fearon moved to send the case to a formal hearing before the Board. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

6. Request for Approval of Documentation Mentor:

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

Ms. Fearon introduced the agenda item and the Board reviewed Ms. Bentley's request. Mr. Gossman moved the Board approve Ms. Kathy Brewer, P.T. as Ms. Bentley's mentor for purposes of complying with the Consent Agreement. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**7. Probation Status Report:
Elliot Wernick, P.T.**

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen reported that Elliot Wernick, P.T., is currently licensed under the terms of a Consent Agreement with the Board that has placed him on probation for one year. Mr. Wernick had disclosed on his licensure renewal application, filed on August 30, 2004, that he had a number of criminal charges related to possession of controlled substances. After Mr. Wernick completed his sentencing terms for those offenses, Mr. Wernick was interviewed by the Board and provided evidence to show that he had maintained his sobriety and was actively participating in Narcotics Anonymous. The Board then voted to reinstate Mr. Wernick's physical therapist license provided he meet certain on-going requirements, and that his compliance with those requirements be reported to the Board on a monthly basis. Mr. Wernick signed the Agreement on September 11, 2005. Ms. Herbst Paakkonen summarized the Consent Agreement Tracking form listing Mr. Wernick's compliance terms along with their respective due dates and noted that Mr. Wernick is in compliance with the Agreement as of October 31, 2005. She also reported that Mr. Wernick has maintained active communication with her since the Agreement was signed, and that he has demonstrated commitment to meeting all requirements by the established deadlines.

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

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

Ms. Fearon introduced the agenda item and Ms. Hiller reported that Ms. Francoeur had filed a request seeking termination of probation as stipulated by the Board Order issued in conjunction with complaint #04-19. Ms. Francoeur was placed on probation by the Board for six months effective May 27, 2005 for violating A.R.S. §32-2044(13), charging unreasonable or fraudulent fees and A.R.S. §32-2044(22), providing treatment intervention unwarranted by the condition of the patient or treatment beyond the point of reasonable benefit. These conclusions of law were based on findings that for patient C.D. Ms. Francoeur billed for electric stimulation using erroneous CPT codes; that she failed to adequately document support for billings for manual therapy; that she failed to justify continuance of treatment through 43 visits, and that she failed to complete timely reevaluations or progress reports. Ms. Hiller advised the Board that Ms. Francoeur had successfully completed the terms of her Order of Probation. The Board reviewed the compliance report prepared by Ms. Hiller. Ms. Fearon moved Ms. Francoeur's probation be terminated, and Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

#05-03; Lauren Kozela, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller reported that Ms. Kozela had requested termination of probation as stipulated by the Consent Agreement and Order relative to complaint #05-03. Ms. Kozela was placed on probation by the Board for six months effective June 29, 2005 for violating A.R.S. §32-2044(1) violating statute or Board rules at A.A.C. R4-24-401 (G)(2) relating to continuing competence requirements for renewal of license, and for violating A.R.S. §32-2044(3) obtaining a license by misrepresentation. These conclusions of law were based on findings that, although Ms. Kozela affirmed on her renewal application for 2004–2006 that she had completed the required contact hours of continuing competence, when she was notified of audit by letter dated November 3, 2004 Ms. Kozela admitted that she had failed to complete the required hours. Ms. Hiller advised the Board that Ms. Kozela had complied with the terms of her Consent Agreement and Order. Ms. Kalis moved to terminate the term of probation for Ms. Kozela; Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

#05-06; Donna Macia, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller reported that Ms. Macia had requested termination of probation as stipulated by the Consent Agreement and Order issued relative to complaint #05-06. Ms. Macia's request for termination of probation was included at the bottom of her interpretive essay on the Board's statutes and rules that was received on September 16, 2005. Ms. Macia was placed on probation by the Board for six months effective June 15, 2005 for violations of A.R.S. §32-2044(1) violating statute or Board rules and for A.A.C. R4-24-401(G)(2) relating to continuing competence requirements for renewal of license. This conclusion of law was based on findings that Ms. Macia received a notice of audit on November 24, 2005 following renewal of her license in 2004, however but she failed to submit any documentation to demonstrate compliance with the continuing competence requirement for renewal. Ms. Hiller advised the Board that Ms. Macia had complied with the terms of her Consent Agreement and Order #05-06. Ms. Fearon moved to terminate the term of probation for Ms. Macia. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

9. Request for Termination of Consent Agreement

Jason Marino, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen advised the Board that Mr. Marino is an Arizona licensed physical therapist who disclosed on his most recent licensure renewal application (filed July 15, 2004) that he had experienced impairment to his cognitive and physical abilities to practice physical therapy with skill and safety as a result of injuries sustained in a head-on motor vehicle accident on June 23, 2003. After review of medical records and having conducted an interview with Mr. Marino on August 24, 2004, the Board offered the licensee a Consent Agreement – the terms of which allowed Mr. Marino licensure renewal with practice restrictions as dictated by his neuropsychologist, Kevin P. O'Brien, Ph.D. Specifically, the Agreement stipulated that Mr. Marino was to limit his hours of practice to 20 hours per week, and that he practice only under the supervision of a licensed physical therapist (Ms. Barbara Feth). Mr. Marino signed this agreement on November 15, 2004. Ms. Herbst Paakkonen noted that on February 9, 2005 Mr. Marino contacted the office of the Board and requested modification to the Consent Agreement as his physician had cleared him to practice physical therapy up to 32 hours per week. He also requested that the requirement he practice under supervision be removed, and Ms. Feth submitted a written statement advising that, in her assessment, it was no longer necessary for Mr. Marino to practice under her supervision as his physical and cognitive capabilities had been restored. On February 22, 2005 Mr. Marino again appeared before the Board for an interview, and the Board's resultant action was to offer a new Consent Agreement to Mr. Marino including the modification that he increase his hours of practice from 20 to 32 for a one-month period, and thereafter he could increase his practice hours to 40 per week. The Agreement also stipulated that Mr. Marino submit a report prepared by Dr. O'Brien that addresses his ongoing abilities to practice physical therapy with skill and safety. On October 21, 2005 the Board office received a facsimile containing a letter from Dr. O'Brien in which he states that in his opinion Mr. Marino is psychologically and neuropsychologically able to continue practicing physical therapy full time and without restriction. On November 14, 2005 Ms. Feth submitted a letter to the Board office via facsimile stating that Mr. Marino has continued to demonstrate "exemplary clinical and interpersonal skills", and she recommends the Board grant approval for Mr. Marino to continue to practice physical therapy without restriction. The Board discussed Mr. Marino's request that the Board terminate the current Consent Agreement and release him from all practice restrictions. Ms. Kalis moved to terminate the Agreement resulting in all restrictions removed from Mr. Marino's license. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Katherine A. Colcord	Susan P. Cooper	Dieu T. Dinh
Joe T. Frazier	Adrienne L. Leblanc	Kathryn A. Luksyzs
Gertrude M. Maes	Edward J. McCormack	Brenda L. Miller
Barbara A. Olson	Marisa L. Ryan	Vanessa A. Scifres
Colleen K. Walsh		

Ms. Fearon introduced the agenda item and announced the Board would substantively review the files of the listed applicants. Dr. Cornwall noted for the record that Ms. Colcord was formerly a student of his at Northern Arizona University, but that he demonstrates no bias concerning her application. Ms. Fearon moved the listed applicants be granted licensure; Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

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

Richard D. Bellew	Dustin T. Cummings	Celeste K. Interrante
Heather E. Johnson	Stephanie R. Patterson	Melissa A. Ramirez
Michael W. Rich	Keith M. Walton	Donald C. Wilson

Ms. Fearon introduced the agenda item and announced the Board would substantively review the files of the listed applicants. The Board discussed Mr. Walton's application and noted that he was employed while a student; Board staff advised that some PTA education programs are structured to allow students to study part-time while employed. Ms. Fearon moved certification be granted to the listed applicants. Mr. Gossman 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 for Determination of Substantially Equivalent Education and Review of Request to Find Applicant has Met Requirement of Supervised Clinical Practice Period (SCCP)

Jonnah D. Carreon

Ms. Fearon read the name of the applicant and received assurance from Board staff that the file was administratively complete – including documentation to show that the applicant had secured licensure in the Philippines. The Board discussed the fact that while the applicant's credential evaluation report indicated that her education was substantially equivalent to that of a graduate of a U.S. accredited program, she did not provide enough evidence to show that she has met the requirements of the supervised clinical practice. Ms. Kalis moved Ms. Carreon's file be found complete and that her education be found substantially equivalent, but that she must submit a proposal for an SCCP to the Board. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

David R. Pickavance

Ms. Fearon read the name of the applicant for the record and noted that his credential evaluation report indicated that his education is substantially equivalent to that of a graduate of a U.S. accredited program. The Board questioned the statements made by Ms. Holly Logan in connection with the Interim Period Evaluation Form she had prepared on behalf of Mr. Pickavance in an effort to show that he had already met the requirement of the SCCP. Specifically, the Board questioned whether Ms. Logan is a physical therapist and whether she can affirm the information on the Interim Period Evaluation Form. The Board also discussed the need for clarification concerning the type of facility

in which Mr. Pickavance had practiced. Ms. Kalis moved licensure be granted to Mr. Pickavance pending receipt of the requested information; Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

Elizabeth Vasquez

Ms. Fearon read the name of the applicant for the record. The Board reviewed her application and noted that Ms. Vasquez's credential evaluation report indicated that her education is substantially equivalent to that of a graduate of a U.S. accredited program. The Board reviewed the information describing the applicant's work history and deemed it comprehensive with respect to meeting the requirement of the SCCP. Dr. Cornwall moved her file be found administratively complete, that her education be found substantially equivalent to that of a graduate of a U.S. accredited program, that she has already met the requirement of a supervised clinical practice period, and that she be granted licensure. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Janettha H. Vermeulen

Ms. Fearon read the name of the applicant and the Board reviewed Ms. Vermeulen's application. The Board discussed the fact that her credential evaluation report indicates that she is lacking 35.63 hours of general education. The Board discussed whether to transfer any of her professional education hours to general education. Ms. Vermeulen requested and was granted approval to address the Board. She explained that she was hoping the Board either issue her a temporary license, or transfer credits from professional education to general education to address the deficiency. The Board informed Ms. Vermeulen that the Board lacked statutory authority to grant temporary licensure, and stated that it has been the Board's position to refrain from transferring credit hours from professional to general education. The Board discussed with the applicant the option for her to address the deficit of general education credit hours by taking College Level Examination Program (CLEP) tests that award credit hours upon passage. The Board also debated whether the option to take CLEP tests should be limited, and whether applicants with a certain level of general education deficiencies must complete college coursework. Ms. Kalis moved the Board find Ms. Vermeulen's education not substantially equivalent to that of a U.S. graduate. Mr. Gossman seconded the motion. Ms. Fearon offered a friendly amendment to allow the applicant to complete her general education credit deficiency by taking CLEP examinations. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

b. Review for Determination of Substantially Equivalent Education and Possible Action on Approval to Take National Physical Therapist Examination

Amanda D. MacNally

Ms. Fearon read the name of the applicant for the record, and Ms. Lopez advised the Board that Ms. MacNally was previously found by the Board to be 13 hours deficient with respect to her general education credit hours. Ms. MacNally then took and passed CLEP examinations that awarded her 18 semester credit hours of general education. Ms. Fearon moved to find Ms. MacNally's education substantially equivalent to that of a U.S. graduate and to allow her to take the National Physical Therapy Examination. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Rajini R. Munagala

Ms. Fearon read the name of the applicant for the record, and Ms. Lopez explained that since the applicant's credential evaluation report was issued indicating that she has the equivalent of 18 semester credit hours of general education, Ms. Munagala has completed 16 semester credit hours of general education, and an additional 18 semester credit hours will be completed in December at the conclusion of the fall semester. Assuming she completes the 18 hours in December, she will have a total of 52 hours. The Board discussed Ms. Munagala's request that the Board transfer 6 hours from professional education to general education. Ms. Fearon moved to find Ms. Mungala's education deficient by 24 semester credit hours, but to allow the applicant to take CLEP tests to address the

balance of the deficient hours remaining after December. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

**13. Request for Approval to Take National Physical Therapist Examination; Review of Documentation Related to Disclosure on “Personal Information” Section of Application:
Albert J. Munoz**

Ms. Fearon introduced the agenda item, and the Board reviewed the application submitted by Mr. Munoz along with the documentation describing his discipline by the Arizona Board of Athletic Trainers. Board staff noted that Mr. Munoz’s license has been restored and is in good standing. Ms. Kalis moved to grant Mr. Munoz certification as a physical therapist assistant upon receipt of a passing score on the jurisprudence examination. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

14. Executive Director’s Report:

- a. Financial Report:** No additional information to report.
- b. Board Staff Activities:** Ms. Walton Lee informed the Board that Ms. Melissa Cornelius will be replacing her as she is leaving the Attorney General’s Office at the end of November. She noted that Ms. Cornelius has previously represented the Nursing and Medical Boards. Ms. Walton Lee advised the Board she will truly miss working with this particular Board.
- c. FSBPT Initiatives and News:** No additional information to report.
- d. Rules Revision Update:** No additional information to report.
- e. Legislative Update:** The Board discussed the outcome of the Sunrise Hearing with respect to the application filed by the Arizona Association for Home Care that requests statutory changes to allow PTAs to work in home health settings without the on-site supervision of a PT. The Board discussed whether it was appropriate to educate licensees and certificate holders about this potential policy change. The Board expressed some concerns with respect to the cost implications to the Board in the form of regulating the change. Additionally, the Board noted that it can anticipate some challenges with the time involved with adopting rules if statutory changes are made. Also discussed was the concern that any statutory changes proposed in a bill could be extended to other care settings beyond home care. The Board directed Ms. Herbst Paakkonen to continue providing updates on this matter.

15. 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 reviewed with the Board the status of the draft rules, and noted the most recent changes made to the draft by Kathleen Phillips, the Board’s contract rule writer. The Board identified some possible corrections to some of the definitions, as well as the need to make changes to R4-24-208 (renewal of licensure and certification) that emulate the changes to R4-24-201 with respect to the questions that are asked of licensure and certification renewal applicants on the application forms. The Board revisited its discussion of whether to accept the Internet Based Test of English as a Foreign Language (iBT) scores that were adopted by the Federation of State Boards of Physical Therapy during the 2005 delegate assembly which are the same scores required for immigration to the United States by foreign health care workers according to the Federal Regulations. The Board compared the scores against those required by Northern Arizona University for admission to certain academic programs and discussed the fact that if the Business Administration program (and in the future, the physical therapy program) requires a score of 100, the Board should require at least that score as well. The Board agreed by consensus

that categorical scores of 25 with a total score of 100 should be drafted in the rules. The Board also discussed some of the language addressing the requirements for the supervised clinical practice period in R4-24-204. Ms. Herbst Paakkonen was directed to provide Ms. Phillips with the discussed questions and changes for purposes of revision of the draft.

CALL TO THE PUBLIC

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

ADJOURNMENT

The meeting adjourned at 11:50 a.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Merle Gossman
Secretary