

**REGULAR SESSION MEETING MINUTES**  
**March 28, 2006**

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

**MEMBERS ABSENT:**

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

**CALL TO ORDER – 9:00 a.m.**

Ms. Fearon called the meeting to order at 9:05 a.m.

**1. Review and Approval of Draft Minutes:**

**February 28, 2006; Regular Session Meeting**

Ms. Fearon introduced the agenda item and the Board noted one correction on page 3 clarifying that the complainant for #05-24, Lora Davis, P.T. is the spouse of the patient (the subject of the complaint). Ms. Fearon moved the minutes be approved with the identified correction. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

**COMPLAINTS AND INVESTIGATIONS**

**2. Initial Review of Complaint:**

**#05-19; Dawn Mortellaro, P.T.**

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the investigative report stating that the complaint was filed by Ms. Elizabeth Fortine, an occupational therapist at Sun Valley Lodge, who alleged that the plan of care for patient V.M. was written by an unlicensed staff member. The complaint further alleges that two unlicensed persons provided all daily treatments and that Ms. Mortellaro only signed off on the flow sheet and that Ms. Josephine Ruffennach, a physical therapy aide, presents herself as a physical therapist to patients and staff at Sun Valley Lodge while Ms. Mortellaro does not contest this claim. Ms. Hiller reported that throughout the course of her investigation Ms. Mortellaro acknowledged that Ms. Ruffennach had provided the initial treatment for V.M. when Ms. Mortellaro was not present in the facility. Ms. Mortellaro disclosed that she had no knowledge of Ms. Ruffennach's education or training although she is familiar with her abilities through observations and instructions over the past 15

years. Ms. Mortellaro was also unclear as to the educational preparation and certification of Ms. Lu Richards, her current physical therapy aide. 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 (6)** “Failing to supervise assistive personnel...in accordance with this chapter and rules adopted pursuant to this chapter.”
- **A.R.S. § 32-2043 (A)** “A physical therapist is responsible for patient care given by assistive personnel under the physical therapist’s supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks or procedures that fall within the scope of physical therapy practice but that do not exceed the education or training of the assistive personnel.”
- **A.R.S. § 32-2043 (C)** “A physical therapy aide and other assistive personnel shall perform designated routine tasks only under the on-site supervision of a licensed physical therapist who is present in the facility.”
- **A.R.S. § 32-2043 (F)** “A physical therapist is responsible for managing all aspects of the physical therapy care of each patient. A physical therapist must provide: 1. The initial evaluation and documentation for a patient.”
- **A.R.S. § 32-2043 (G)** “A physical therapist must verify the qualifications of physical therapist assistants and other assistive personnel under the physical therapist’s direction and supervision.”
- **A.R.S. § 32-2043 (J)** “A physical therapist’s responsibility for patient care management includes accurate documentation and billing of the services provided.”
- **A.R.S. § 32-2044 (16)** “Aiding or abetting a person who is not licensed or certified in this state and who directly or indirectly performs activities requiring a license or certificate.”

Ms. Hiller summarized Ms. Mortellaro’s response in which she described her practice at Sun Valley Lodge and her business relationship with Ms. Ruffennach and Sun Valley Physical Therapy (formerly owned and operated by Fern Dabill, P.T.). For approximately 30 years Ms. Dabill and Ms. Ruffennach, a physical therapy aide, provided services to residents at Sun Valley Lodge. Prior to her death, Ms. Dabill told Ms. Mortellaro that she was going to give her business – Sun Valley PT – to Ms. Ruffennach providing that Ms. Mortellaro would continue helping in the business. Ms. Mortellaro agreed, and subsequently moved her Youngtown PT office to the facility at Sun Valley Lodge. For the past 13 years Ms. Mortellaro assisted Ms. Ruffennach in providing physical therapy to residents of Sun Valley Lodge for which she has never received financial compensation. The verbal agreement Ms. Mortellaro made with Ms. Ruffennach was that Ms. Mortellaro would provide all of the patient evaluations and develop the plans of care and that all patient treatments provided by Ms. Ruffennach would occur only when Ms. Mortellaro was in the facility. To the best of her knowledge Ms. Ruffennach adhered to these arrangements up until the middle of 2005 when Ms. Ruffennach’s health rapidly declined and she became unable to work. Ms. Mortellaro and Ms. Richards became aware that Ms. Ruffennach was coming into the Sun Valley PT office and treating patient while they were not at the facility – including V.M. on April 14, 2005. Ms. Mortellaro spoke to Ms. Ruffennach about not working at Sun Valley Lodge unless she was present, and attempted to bar her access to the patient schedules and charts. Any time that Ms. Mortellaro discovered a charge for treatment provided by Ms. Ruffennach when she was not at the facility, she removed the charge. Eventually Ms. Mortellaro took over the billing activities for Sun Valley PT, patient referrals for physical therapy started coming directly to Youngtown PT, and Ms. Ruffennach stopped working at Sun Valley Lodge in August 2005. Ms. Mortellaro stated that except for a few isolated occasions in 2005 all physical therapy treatments at Sun Valley Lodge provided by Ms. Ruffennach and Ms. Richards were and continue to be performed in the physical therapy room under Ms. Mortellaro’s on-site supervision. Ms. Mortellaro did (and continues to) perform all

initial evaluations, establishes all of the treatment plans, and actively monitors the daily treatments provided by assistive personnel. Ms. Mortellaro also maintains that to the best of her knowledge Ms. Ruffennach represented herself as the owner of Sun Valley PT and director of physical therapy but not as a physical therapist. She stated that in the past 15 years she has never introduced Ms. Ruffennach as a physical therapist nor has she heard Ms. Ruffennach refer to herself as a PT. Ms. Mortellaro informed Ms. Hiller that Sun Valley PT had no written policies or procedures to address any clinic operations or patient related activities. Ms. Mortellaro subsequently submitted policies and procedures that indicate the same policies and procedures that were followed for the past 15 years at Sun Valley PT and Sun Valley Lodge. Ms. Mortellaro also submitted copies of the billing procedures utilized by Youngtown PT for physical therapy treatment billings, which are now in effect at Sun Valley PT. The Board discussed the law as it relates to the tasks that a physical therapy aide may do, and noted that the statutes leave it up to the discretion of the supervising PT to determine whether an aide may perform certain treatment tasks. Ms. Hiller reiterated that Ms. Ruffennach has not treated any patients since August of 2005 as she is very ill. Ms. Hiller also noted that Ms. Mortellaro incorrectly believed that her physical therapy aide, Ms. Richards, is a PTA when she is not certified as such. Ms. Kalis moved the Board remand the case to an informal hearing. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The Board directed staff to attempt to obtain information concerning the patient and billing records that are in the possession of Ms. Ruffennach. The Board also discussed the fact that it has no authority over physical therapy aides.

### 3. Initial Review of Complaint:

#### #05-27; Brek Peterson, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the investigative report for the complaint filed by S.S., a former patient who was seen by Mr. Peterson on two occasions in September 2005 for treatment of her right hip. The complainant alleges that at her second treatment visit on September 7, 2005 Mr. Peterson came into the treatment room, closed the door and asked her to lie on her left side so he could rub some Icy Hot cream on her right hip. Without asking her permission, Mr. Peterson put his hand into her panties, pulled them between her buttocks and massaged her hip and butt while asking her questions about her boyfriend. When he was done Mr. Peterson put his hand back into her panties and repositioned them himself. S.S. stated that she believes Mr. Peterson's behavior was inappropriate. Ms. Hiller also noted that during her review of the patient records for S.S. she noted that they do not contain a discharge summary as required by A.R.S. § 32-2044(20). 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(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 1.1.A.*** "Physical therapists shall recognize that each individual is different from all other individuals and shall respect and be responsive to those differences."
  - ***Guide for Professional Conduct 1.1.B.*** "Physical therapists are to be guided at all times by concern for the physical, psychological, and socioeconomic welfare of those individuals entrusted to their care."
- **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. Peterson requested and was granted approval to address the Board. The licensee expressed shock that S.S. would have perceived his conduct to be inappropriate. He affirms that he followed established clinic protocol with respect to repositioning the patient's undergarment, and that he only made light conversation with S.S. concerning her boyfriend only after S.S. mentioned him. Ms. Hiller confirmed that during a telephone call placed to the licensee during her investigation, Mr. Peterson advised her that he had submitted the patient's complete records and stated that there was no discharge summary. Mr. Peterson stated that in no way was he inappropriate, S.S. made no statement that she was uncomfortable, and there were no body language cues from her to suggest she felt he was inappropriate. He noted that their perceptions of the events are very different, and perhaps there was a language barrier involved. Mr. Peterson advised the Board that he performed his manual therapy techniques appropriately which did involve pulling her undergarment aside and replacing it when finished. He indicated that he followed up with a phone call to the patient after learning that her appointments were cancelled; S.S. abruptly concluded the call and indicated she would call him back but never did. Mr. Peterson stated to the Board that he was waiting to prepare the discharge summary for S.S. as he wanted to first speak with her. The Board noted that S.S. recalls this phone call, but could not locate any mention of the call documented in the treatment record. Mr. Peterson commented that he does not specifically recall that the door to the treatment room was closed while he was providing manual therapy to S.S., but stated that it was possible that the physical therapy aide may have closed the door upon exiting the room. The licensee noted that he typically leaves the door cracked slightly open while he is the sole person in the room treating a patient, but not enough that anyone passing by would have viewed an undraped body part. In response to the Board's question, Mr. Peterson indicated that he has not yet followed up with S.S.'s referring physician as he is waiting the outcome of the Board's review of this case. The Board discussed the investigative report and the Investigator's findings and concurred that the treatment was appropriate and there is no evidence of a violation of the statutes. The Board discussed concerns that Mr. Peterson failed to prepare a discharge summary of the patient, and that he failed to discuss with the patient the repositioning of her undergarment. Ms. Kalis moved to issue an advisory letter on the basis of the lack of the discharge summary. Ms. Fearon seconded the motion. The Board discussed whether the letter should also address insufficient communication with respect to advising the patient that in order to address the area requiring treatment, Mr. Peterson should have stated he was about to reposition her clothing or else given her the option to do so herself. The Board noted that if he had done so, the complaint may not have been filed. The Board members agreed that it is apparent the licensee had no harmful intent, but the patient's marked discomfort is an indicator that there was a problem with the communication. The motion was amended to include the mention of communication with the patient in the advisory letter. The motion carried by a unanimous vote.

4. Review and Possible Action on Proposed Interim Agreement for Practice Agreement:

**Elliot Wernick, P.T.**

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen reported that Mr. Elliot Wernick, P.T. is currently serving a 1-year term of probation (September 11, 2005 through September 10, 2006) during which time he is to be monitored by the Board for his admitted substance abuse problems that resulted in two criminal convictions related to possession and solicitation of a narcotic drug. These convictions were later vacated after Mr. Wernick successfully completed all requirements of the Drug Court Program administered by the City of Tucson. While Mr. Wernick was completing the terms of the Drug Court Program, Mr. Wernick's physical therapist license was suspended through a consent agreement and he submitted to an evaluation by a licensed psychologist and substance abuse counselor. The Board established Mr. Wernick's monitoring program in July of 2005 and reinstated his physical

therapist license contingent upon him signing a consent agreement that established his monitoring program; he signed this agreement on September 11, 2005. Mr. Wernick had maintained compliance with the terms of his monitoring program until early March of 2006 at which time he reported a relapse to the Board office. Ms. Cornelius, drafted a proposed Interim Agreement for Practice Restriction, the terms of which restrict Mr. Wernick's physical therapist license such that he is prohibited from practicing physical therapy until this case is resolved. The agreement also requires Mr. Wernick to submit to a chemical dependency evaluation with a Board-approved physician who specializes in addiction medicine. Mr. Wernick faxed a signed copy of the agreement to the office and dated the agreement on March 22, 2006. Mr. Wernick scheduled an evaluation with Dr. Sucher at 1:00 p.m. on March 27, 2006; Dr. Sucher has several years of experience working with Arizona licensed health care professionals who are participating in substance abuse recovery programs established by their respective licensing boards. Ms. Herbst Paakkonen noted that the Board had been given copies of Mr. Wernick's two most recent urinalysis screening results, as well as letters of support from his co-workers and supervisor. She advised that the Board's determination is whether to accept the Interim Agreement for Practice Restriction In the Matter of Elliot Wernick, P.T. Mr. Wernick was present and addressed the Board stating that his evaluation with Dr. Sucher went very well, and that Dr. Sucher had recommended some changes in his substance abuse recovery program to include two urinalysis tests per month, 90 Narcotics Anonymous meetings in 90 days, and more intensive relapse prevention counseling. He indicated it was his understanding that Dr. Sucher could prepare the report within approximately one week. During Board discussion, the members concurred that it would not be appropriate to allow Mr. Wernick to return to practice while the details of his future recovery program were not finalized. The Board noted that Mr. Wernick begin the process of following Dr. Sucher's recommendations and send those reports to the office between now and the next Board meeting. Mr. Wernick advised the Board that by April 1 he intends to begin following the recommendations. Ms. Kalis moved to accept the interim practice agreement and Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

**5. Review and Possible Action to Close Complaint:**

**#06-01; Connie Hardin, P.T.**

Ms. Herbst Paakkonen reported that upon learning of the rumored death of Ms. Hardin, the Board staff had attempted to obtain some official documentation substantiating this fact. Ms. Cornelius filed a motion with the Arizona Office of Administrative Hearings (OAH) requesting that the hearing be vacated; the motion was approved by OAH on March 23, 2006. The only documentation Board staff was able to obtain concerning Ms. Hardin's death was a copy of a police report dated March 5, 2006 which the City of Scottsdale released on March 27, 2006. Ms. Hiller reported that the police report indicated that the licensee has passed away several days prior to March 5, 2006 and therefore she was likely unaware of the Board's previous action on the case (i.e. the February 28, 2006 summary suspension action). Board staff recommended the Board vote to close the case for purposes of the public record reflecting the final disposition of the complaint. Ms. Fearon moved to close the case. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

**SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION**

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

<b>Peter Alfano</b>	<b>Thomas J. Baldwin</b>	<b>Ronald J. Capozzoli</b>
<b>Henry J. Castro</b>	<b>Ravi K. Chundi</b>	<b>Katherine E. Dow</b>
<b>Meghann E. Fleming</b>	<b>Shannon L. Jackson</b>	<b>Hans Jurgen Jakobs</b>

<b>Kenneth A. Kosior</b>	<b>Susan K. Kurtz</b>	<b>Kealoha A. Miller</b>
<b>Pramadashr Nimmagadda</b>	<b>Amy E. Ross</b>	<b>Barry A. Wood</b>
<b>Fabricio R. Zapata</b>		

Ms. Fearon introduced the agenda item and noted that the Board would review the files of the listed applicants. Dr. Cornwall stated that he previously taught Ms. Kurtz and Mr. Zapata, and while no teacher-student relationship exists, he wished to recuse himself from the vote. Ms. Kalis moved licensure be granted to the listed applicants; Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

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

<b>Troy E. McGuire</b>	<b>Dawn R. Means</b>	<b>Susan C. Moyle-Schroeder</b>
<b>Lawrence J. Rivero</b>		

Ms. Fearon introduced the agenda item and noted that the Board would review the files of the listed applicants. The Board discussed the fact that Ms. Means indicated on her application that she earned her degree in physical therapy when she should have noted that the degree was in physical therapist assisting. Ms. Means appropriately listed her previous work experience as a physical therapist assistant. Ms. Fearon moved to grant certification to the listed applications. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

**Nicole Gagnaire**

Ms. Fearon introduced the agenda item and noted that the applicant’s accommodation request was for additional time as well as a separate testing room. Ms. Gagnaire requested and was granted approval to address the Board. She clarified for the dates of her psychological evaluations – the complete one was conducted in 1999 with a follow-up evaluation prepared in 2003. Ms. Gagnaire advised the Board that the complete evaluation was done prior to her admission to the physical therapy program and while an undergraduate student at the University of Hartford. She stated that the University allowed her additional time and a separate testing area for all of her college examinations. In response to the Board’s questions Ms. Gagnaire responded that her has benefited significantly from her counseling. Ms. Kalis moved to approve Ms. Gagnaire’s request of time-and-a-half with which to take the National Physical Therapy Examination, as well as a separate testing room, and that she be granted licensure upon receipt of a passing score.

**9. 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)**

**Edgin Tan**

Ms. Fearon read the name of the applicant and the Board reviewed the application file. It was noted that the applicant had met the semester credit hour requirements for both general and professional education. The Board also noted that Mr. Tan has provided documentation to establish that he had practiced physical therapy in Illinois for a number of months. Ms. Kalis moved to find Mr. Tan’s file administratively complete, that his education be found substantially equivalent to that of a graduate of a CAPTE accredited program and that he be found by the

Board to have met the requirements of the SCPP. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. The Board re-reviewed the Interim Period Evaluation Form submitted by Mr. Tan and questioned whether it was appropriately completed and signed by a physical therapist as required by Board rules. Ms. Kalis withdrew her motion for consideration of an amendment. Ms. Fearon proposed to amend the motion to request a letter of clarification concerning the credentials of Cynthia Mason whose name appears on the Evaluation Form; if she is a physical therapist, licensure is granted. If Ms. Mason is not a physical therapist, the Board would require additional evidence confirming Ms. Linda Moll's supervisory role over Mr. Tan as she is a physical therapist as her name also appeared on the evaluation form. Mr. Robbins 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  
Armando Adano Jr.**

Ms. Fearon read the name of the applicant and the Board discussed the fact that the Mr. Adano's credential evaluation report indicates that the applicant had earned the required number of semester credit hours in both general and professional education. Ms. Kalis moved Mr. Adano's education be found substantially equivalent to that of a graduate of a U.S. accredited program and that he be allowed to sit for the NPTE. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

**Sheenam Arora**

Ms. Fearon read the name of the applicant and the Board noted that the applicant possesses only 14 semester credit hours in general education according to her credential evaluation report. Ms. Lopez provided the Board with recently submitted copies of academic transcripts indicating Ms. Arora has completed 26 semester credit hours of general education. Ms. Lopez also reported that the applicant has 4 semester credit hours pending at Scottsdale Community College (SCC). Ms. Arora is still short 14 hours (10 if she completes the 4 hours at SCC). The Board discussed the fact that the applicant's credential evaluation report is 14 months old and Board rule requires that the report be issued within the past 12 months. Ms. Kalis moved to find Ms. Arora's education not substantially equivalent to that of a graduate of a U.S. accredited program, but to allow her to take the remaining 10 semester credit hours of general education by CLEP; additionally Ms. Arora must submit a current credential evaluation report. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

## **BOARD BUSINESS AND REPORTS**

### **10. Executive Director's Report:**

- a. Financial Report:** no additional information to report.
- b. Board Staff Activities:** The Board directed staff to place on next month's agenda review and discussion of a draft Substantive Policy Statement addressing ADA Accommodation request requirements.
- c. FSBPT Initiatives and News:** no additional information to report.
- d. Rules Revision Update:** no additional information to report.
- e. Legislative Update:** Ms. Herbst Paakkonen reported that HB 2643; Physical therapist assistants had not yet been heard by the Senate Rules Committee. The Board discussed the fact that the Senate Health Committee had amended the bill to replace the term "direct" with "on-site". The Board further discussed a possible time-line for the rule-writing process and discussed inviting Chris Larson, P.T. Director of Professional Standards for FSBPT, to participate in the process. Ms. Herbst Paakkonen advised the Board that if the agency's requested appropriation is to be increased, it would be in the form of a footnote to the Omnibus Reconciliation Bill (ORB) which has yet to be filed. She is monitoring this situation, but has been advised by the bill's

sponsor, Representative Rick Murphy, that the \$89,000 appropriation increase has been requested.

**11. Credentialing of Delegate and Alternate Delegate to the Federation of State Boards of Physical Therapy Annual Meeting and Delegate Assembly (September 8-11, 2006; Portland, OR)**

Ms. Fearon introduced the agenda item and the Board discussed the responsibilities of the Delegate and the Alternate Delegates to the Annual Meeting and Delegate Assembly of the FSBPT. Ms. Herbst Paakkonen advised the Board that both the Delegate and Alternate Delegates will be funded by FSBPT this year, she is funded by FSBPT to attend as the Administrator to the Board, and Ms. Hiller is also funded by virtue of the fact that the Committee she chairs is conducting a pre-conference workshop on the Model Practice Act. The Board's budget will allow two additional participants to attend which could include additional Board members, staff, and the Board's attorney. Ms. Fearon moved to credential Dr. Cornwall to serve as the Delegate and Ms. Kalis as the alternate delegate. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**CALL TO THE PUBLIC**

None

**ADJOURNMENT**

The meeting adjourned at 10:45 a.m.

Prepared by,

Heidi Herbst Paakkonen  
Executive Director

Approved by,

Mark Cornwall, P.T., Ph.D.  
Secretary