

REGULAR SESSION MEETING MINUTES

April 25, 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 9:00 a.m. Mr. Gossman was connected to the meeting via teleconference.

1. Review and Approval of Draft Minutes:

March 28, 2006; Regular Session Meeting

Ms. Fearon introduced the agenda item and Ms. Fearon moved the minutes be approved as drafted. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS AND INVESTIGATIONS

2. Informal Hearing:

#05-18; Dawn Mortellaro, P.T.

Ms. Fearon introduced the agenda item and invited Ms. Mortellaro to appear before the Board. The Board members and staff introduced themselves to the licensee. Ms. Fearon reviewed the Board's informal hearing procedures. Ms. Mortellaro introduced herself to the Board. Ms. Hiller summarized the complaint filed by Ms. Elizabeth Fortine, OTR/L who provided contract services at Sun Valley Lodge. The complaint alleged that the plan of care for V.M., a patient at Sun Valley Lodge where Ms. Mortellaro worked as a physical therapist, was written by an unlicensed person, and that two unlicensed persons provided all daily treatments for V.M. while Ms. Mortellaro only signed off on the flow sheet. The complaint further alleged that Ms. Josephine Ruffennach, a physical therapy aide, presented herself as a physical therapist to patients and staff at Sun Valley Lodge and that Ms. Mortellaro did not contest this claim. The investigation yielded additional allegations that Ms. Mortellaro was not present at Sun Valley Lodge when Ms. Ruffennach initiated treatment of patient V.M. Ms. Mortellaro was unable to

identify how many patients and on how many occasions Ms. Ruffennach may have treated patients at Sun Valley Lodge without on-site supervision. Also, Ms. Mortellaro was uncertain of the education or certification of Ms. Ruffennach and Ms. Lu Richards, assistive personnel working under her supervision. In her response to the complaint allegations, Ms. Mortellaro explained her involvement in providing evaluations and treatment plans for residents at Sun Valley Lodge, under a verbal agreement with Ms. Ruffennach that patient treatments were to be performed only when Ms. Mortellaro was on-site at the facility. She further acknowledged that there was a period of time in 2005 when Ms. Ruffennach was discovered to have provided treatment to patients when Ms. Mortellaro was not present, following which Ms. Mortellaro took steps to prevent these occurrences by changing the procedures for patient referrals, scheduling and billings. Ms. Mortellaro acknowledged Ms. Ruffennach had provided the initial treatment for V.M. when Ms. Mortellaro was not present at Sun Valley Lodge. Ms. Mortellaro disclosed that she does not precisely know the education and training of either Ms. Ruffennach or Ms. Richards. A review of the treatment records for V.M. by Ms. Hiller identified at least two dates when Josie or Lu might have provided V.M.'s treatments without on-site supervision, and the plan of care dated 4/14/05 was written by Josie Ruffennach. If true, the allegations could constitute 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.”

In response to the Board’s request for additional information and clarification concerning operations of Sun Valley Physical Therapy and of Youngtown Physical Therapy (the business owned by Ms. Mortellaro), the licensee provided the Board with additional information as requested following the initial review of the complaint on March 28, 2006. Additionally, Ms. Hiller interviewed Ms. Ruffennach and made a site visit to Sun Valley Lodge/Youngtown PT to review additional patient records for inclusion in the Board’s report; these records happened to be for Medicare patients which comprise about half of the patients in the two practices. Ms. Lorena Elder, Court Reporter, swore in Ms. Mortellaro who appeared without counsel. The licensee declined to make an opening statement and elected to answer the Board’s questions. The Board confirmed that the two practices – Youngtown Physical Therapy and Sun Valley Physical Therapy – occupied the same physical space. Ms. Mortellaro stated that nothing occurs

in that space when she is absent and that the doors are locked. She explained that Ms. Ruffenach had come into the office for brief periods of time when she felt able to while she was suffering from her lengthy illness. For some reason unknown to Ms. Mortellaro, Ms. Ruffenach elected to come in to evaluate V.M. Ms. Mortellaro caught this when reviewing the patient charts, and attempted to “correct” this problem by removing the billing charges. She advise the Board that Ms. Ruffenach did not feel well enough to have much patient interaction. Ms. Mortellaro stated that all of the physical therapy staff treated the patients, and the aides would complete flow sheets and make notes in the patients’ charts in order to assist her. She indicated that she was present during all of these treatment activities, and she would review the notes, make additions or corrections, and then sign off on them. Ms. Mortellaro advised the Board that there was no discharge summary for this patient because the patient was subsequently admitted to the hospital and treatment resumed. Ms. Hiller advised the Board that she was not provided with any documented indicating this. The Board asked why Ms. Richards would have signed off on a discharge in V.M.’s progress notes. Ms. Mortellaro explained that she was under the mistaken impression that Ms. Richards was a PTA because she had completed some technical education diploma program and had completed an internship. The Board asked Ms. Mortellaro to confirm that the patient V.M. also lacked a discharge summary. The Board identified a date of service where Ms. Ruffenach apparently came into the facility while she was not present and treated the patient. Ms. Mortellaro stated that typically Ms. Richards and Ms. Ruffenach were not in the physical therapy treatment area when Ms. Mortellaro was not at work. However, Ms. Hiller’s interview with Ms. Ruffenach indicated that she might be making phone calls, creating records for Ms. Mortellaro, organizing the office and assisting the other staff. Ms. Mortellaro noted that this would not have occurred within the last two years as Ms. Ruffenach had become very ill. Ms. Mortellaro reiterated that the assignments were not made such that specific staff treated specific patients; they all “worked together”. She would establish the plan of care, and she and the aides would all be in the same room treating multiple patients. In response to the Board’s questions, Ms. Mortellaro stated that a typical patient would be there for about an hour, on staggered schedules. She would spend about 30 minutes with each patient. The Board asked what the patients understood concerning their treatment. Ms. Mortellaro responded that the patients probably understood that they “were going to physical therapy” but could not necessarily identify the appropriate role of each staff member. She also explained that the patients – due to their advanced ages – may not recall the names of the members of the physical therapy department, much less draw a distinction between their physical therapist and the assistive personnel. The Board questioned a statement Ms. Ruffenach made during her interview with Ms. Hiller that revealed Ms. Mortellaro would generally establish the plan of care for patients, but on occasion she (Ms. Ruffenach) would modify it. Ms. Mortellaro stated that may have been possible before she was working there, but to her knowledge it had not happened while she was working there. Ms. Mortellaro advised the Board that she had offered to Ms. Ruffenach the assistance of her staff member responsible for billing in order to help Ms. Ruffenach with her own billing When she realized that Ms. Ruffenach had fallen behind. Ms. Mortellaro also surmised that Ms. Ruffenach had likely failed to actually bill patients for several months in 2005 due to her illness. She stated that she had no oversight of how Ms. Ruffenach was preparing her billing, nor how Ms. Ruffenach was representing her involvement in the patients’ care to the payers. The billing sheets for the patients were “a joint effort” between Ms. Mortellaro and Ms. Ruffenach, however. Ms. Mortellaro explained that she never wrote policies and procedures for Sun Valley Physical Therapy; those were prepared by the late Ms. Fern Dabill, P.T. (the former owner of the practice). She indicated that she merely tried to follow the law when she took over the responsibilities to which she agreed when Ms. Dabill handed the practice over to Ms. Ruffenach. Ms. Mortellaro stated that her staff did not perform functions that were not allowed to do by law. She believes that the staff possessed the necessary skills and

knowledge to provide the treatments that they did, but perhaps they should not have assumed the level of responsibility that they did for the documentation. Ms. Mortellaro commented that they all knew the patients very well, and that she was comfortable with the level of responsibility that they had with the patients' treatments. In response to the Board's questions, Ms. Mortellaro stated that she did not sign the Medicare enrollment ("700") form for the patient V.M.; apparently Ms. Ruffenach signed her initials to the form and it was not caught by Ms. Mortellaro. Ms. Mortellaro explained that the flow sheets were filled out daily, reviewed by her daily, and signed off on by her typically at the end of the week. She admitted to often completing paperwork in the evenings at home. The Board questioned how she is using her assistive personnel. Ms. Mortellaro explained that Ms. Ruffenach is no longer working at all, and that Ms. Richards (her only staff member) currently is responsible for taking the patients back to the treatment area and set them up for treatment, and asking Ms. Mortellaro for direction with their treatment for the day. Ms. Mortellaro stated that she is still allowing Ms. Richards to enter notes in the charts, but has considered disallowing that practice. Ms. Mortellaro confirmed that she did review all progress notes made by the aides. In closing, Ms. Mortellaro stated that she never intentionally did anything wrong – she thought that she was practicing according to the law. She attempted to correct any problems with respect to Ms. Ruffenach doing things that she should not have done. She suspects that due to her illness Ms. Ruffenach must not have been aware that she was doing anything unlawfully when she came to the facility to treat patients while Ms. Mortellaro was not present. Ms. Mortellaro also stated that it is her intention to assume all of the responsibility for writing the patient treatment notes.

The Board discussed the possible jurisdiction for the complaint to include A.R.S. §32-2044(1), (violating the Board's statutes) and §32-2044(6), failing to supervise assistive personnel. The Board concurred that Ms. Mortellaro demonstrated a lack of understanding of the law as it relates to supervision of assistive personnel. The Board noted that Ms. Mortellaro failed to distinguish that there were certain types of treatment activities and certain types of treatments where it was likely not appropriate to delegate care, rather than to simply treat all patients as a joint effort. There was no clear demonstration that Ms. Mortellaro had assumed the responsibility of care for the patient and that she had made conscious and deliberate delegation of appropriate tasks to the aides, in violation of §32-2043(A). The Board discussed the fact that the record establishes a violation of §32-2043(C) as Ms. Ruffenach treated at least one patient, V.M., in the facility on at least one occasion when Ms. Mortellaro was not on site and present in the facility. With respect to a possible violation of §32-2043(F), the Board noted that the aides were managing the care of certain patients as it would have been impossible for Ms. Mortellaro to be aware of all of the treatment tasks that the aides were performing. Additionally, the record established that the statute was violated relative to the fact that the initial evaluations for V.M. and E.P. were performed by Ms. Ruffenach. The Board members concurred that Ms. Mortellaro violated §32-2043(G) as she admitted she was not certain of the qualifications of Ms. Richards and Ms. Ruffenach. Finally, the Board determined that Ms. Mortellaro violated §32-2043(J); although the documentation for patient treatments was recorded, the accuracy of the billing cannot be verified. The Board discussed 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. The Board concurred that there was no willful intent on the part of Ms. Mortellaro to aid or abet an unlicensed person, even though she was ignorant about the law. The Board discussed whether to provide Ms. Mortellaro of notice concerning a possible violation of §32-2044(20) given the fact that the initial evaluation did not include any notations of functional goals and objective measurements, and some of the records lacked a discharge summary. While the required 700 intake form was completed for the Medicare patients, the documentation does not represent an adequate evaluation. Additionally, the progress notes lacked rationale for

continuation of treatment or for discharge. Ms. Cornelius advised the Board that written notice must be given to Ms. Mortellaro concerning a possible violation of §32-2044(20) unless Ms. Mortellaro waives her right to receive that notice. Ms. Mortellaro reviewed the statute and agreed to waive that notice. The Board discussed the fact that while the documentation requirements are also established under A.R.S. §32-2043(F), the violation of §32-2044(20) constitutes a significant portion of the case. Ms. Fearon moved to find Ms. Mortellaro in violation of A.R.S. §32-2044(1), §32-2044(6), §32-2043 (subsections A, C, F, G, and J) and §32-2044(20) on the condition of the waiver by Ms. Mortellaro. Ms. Kalis seconded the motion. The motion carried by a unanimous roll call vote. The Board discussed disciplinary terms and concurred that Ms. Mortellaro would benefit from working with a documentation and practice management mentor; the practice management component would encompass billing preparation and review, and revision of operational policies and procedures. The Board members agreed that the mentoring plan could be approved by Board staff and that the developed plan will address the frequency of the reports that Ms. Mortellaro must submit. The Board also discussed that Ms. Mortellaro must develop clinic operating policies and procedures that comply with the law as it relates to all areas of supervision of assistive personnel, and that these policies and procedures should be reviewed by Ms. Mortellaro's mentor. Additional probation terms deliberated by the Board include a written review of the statutes and rules relating to the practice of physical therapy due within 90 days of the effective date of the order, and requiring Ms. Mortellaro to take and achieve a passing score on the Board's jurisprudence examination within 45 days of the order's effective date. Additionally, Board staff should conduct a chart review (randomly selected from Ms. Mortellaro's patients) to include 3 randomly selected Medicare patients at the end of the mentorship period. The Board concurred that a probation term of one year would be necessary for Ms. Mortellaro to accomplish all of the requirements. Ms. Fearon moved the Board adopt the discussed findings of fact, conclusions of law and disciplinary terms. Dr. Cornwall seconded the motion. The motion carried by a unanimous roll call vote. The Board directed staff to refer the case to Medicare for investigation as federal regulations prohibit an unlicensed person providing treatment to a Medicare patient; however, Ms. Mortellaro has the ability to self-report as Medicare is required to cooperate with anyone who self-reports.

3. Initial Review of Complaint:

#05-20; Richard Sedillo, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint filed against Mr. Sedillo by his former employer, Stephen Glacy, M.D., owner of the Arizona Pain Clinic. Dr. Glacy alleged in his complaint that while employed at the clinic, Mr. Sedillo failed to maintain adequate patient records for hundreds of patient referred by Dr. Glacy to Mr. Sedillo from January 2003 to May 2005. Dr. Glacy alleged an audit conducted by Arizona Pain Clinic personnel identified 504 missing patient notes including 34 missing initial evaluations, 237 missing daily progress notes, and 233 missing discharge summaries. 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 (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.”
- **A.R.S. § 32-2044(12)** “Failing to adhere to the recognized standards of ethics of the physical therapy profession.”
 - ***Code of Ethics Principle 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.”

Ms. Hiller advised the Board that Dr. Glacy asserted that during Mr. Sedillo’s employment there were numerous deficiencies in patient documentation and Mr. Sedillo was counseled dozens of times about inadequate and missing patient records. Dr. Glacy stated in his complaint that Mr. Sedillo had refused all requests, over the course of several years, to complete the documentation in an accurate and timely manner, and that Mr. Sedillo was eventually terminated for not maintaining patient records and “multiple other instances of incompetent professional behavior.” In his original letter of complaint Dr. Glacy submitted a 19-page spreadsheet of audited records that did not distinguish which patient visits were documented and which reflected missing records. In his response to the complaint, Mr. Sedillo stated he believes that Dr. Glacy filed the complaint in order to create a defense to Mr. Sedillo’s claims for unpaid compensation owed him based on the terms of his employment contract. Mr. Sedillo asserted that deficiencies in the clinic’s medical records originate from decisions and practices controlled by Dr. Glacy relating to clinic operations and records management. Mr. Sedillo indicated that he made every effort to complete daily treatment records but he was thwarted in these efforts by clinic transcription and record maintenance procedures. In fact, Mr. Sedillo constantly complained to Dr. Glacy about his dictated records being lost or misfiled and he frequently had to re-dictate his treatment notes when they could not be found. Mr. Sedillo refuted the statement that he was fired and insisted that he quit because of Dr. Glacy’s “intolerable” practices and his refusal to pay Mr. Sedillo the bonuses owed to him. Mr. Sedillo claimed that he had offered to return to the clinic after he terminated his employment in order to re-dictate the missing treatment notes, but Dr. Glacy locked him out of the office. Mr. Sedillo reported inadequacies in transcription staff, delays in obtaining physical therapy dictation, the loss of a number of transcription tapes, misfiling of transcribed records, and a six to eight month delay in the filing of transcribed dictation. Mr. Sedillo and the other therapists were forced to re-dictate many of their treatment records. Additionally, problems with the clinic’s computer software resulted in the computer frequently “freezing up” and the loss of Mr. Sedillo’s typed daily evaluations, progress notes and discharge summaries. When he would re-input the information the software system would reflect that the care was provided on the day the information was inputted into the system, not the day of service. Mr. Sedillo stated that many of the missing treatment records may in fact be misdated in the patient records. Many of the patients identified in the clinic audit were not Mr. Sedillo’s patients but were treated by one of the other physical therapists employed at Arizona Pain Clinic. Ms. Hiller explained to the Board the methodology she used to conduct a review of the patient charts in the office of Arizona Pain Clinic. She advised the Board that this review revealed that an equal proportion of documents were missing from the charts of patients treated by the other physical therapists currently employed at the clinic – Mark Rhodey, P.T. and Eric Blasin, P.T. In response to the Board’s questions, Ms. Hiller affirmed that the spreadsheet submitted by the complainant represented the results of the audit performed by the Arizona Pain Clinic. Mr. Sedillo and Mr. Jerry Gaffanay, his attorney, were granted approval to address the Board. Mr. Gaffanay advised the Board that Mr. Sedillo does not dispute that there are deficiencies in the records, but he asserts that the complaint was filed as retaliation for Mr. Sedillo demanding certain terms of the employment contract be met that Dr. Glacy had failed to meet. Mr. Sedillo’s personnel file establishes that Mr. Sedillo terminated his employment out of frustration with the mis-management of the clinic’s electronic records by Dr. Glacy and by the people he employed to transcribe and maintain them. Mr. Gaffanay noted that he had submitted to the Board copies

of correspondence indicating that Mr. Sedillo was denied his request to return to the clinic to restore the records. Mr. Gaffaney also submitted a letter from Ms. Judith Joseph, an attorney and operations manager for a Scottsdale based medical practice, in which she states that she had offered to monitor Mr. Sedillo's restoration of the records, but Dr. Glacy's alleged response to Ms. Joseph's offer was that he wanted instead for Mr. Sedillo's license to be disciplined. Mr. Gaffaney requested the complaint be dismissed. Dr. Glacy requested and was granted approval to address the Board. He offered copies of minutes of their clinic's management meetings indicating that Mr. Sedillo was counseled numerous times to complete his documentation. He stated that Mr. Sedillo had many avenues and opportunities to complete the records, and that he has had no problems with his other staff in this respect. He questioned how Mr. Sedillo could come into his office following his termination and complete records for treatments that were provided two years prior. Dr. Glacy stated that he determined that it was inappropriate for Ms. Joseph to offer to supervise the completion of the records. In response to the Board's questions, Dr. Glacy stated that at the time Mr. Sedillo's employment ended, the extent of the incomplete records was not known. Dr. Glacy noted that he could not provide an answer relative to why Ms. Hiller's review revealed that the two physical therapists who are currently employed there have records missing from their patients' charts. Dr. Glacy stated that the reason he launched the audit was because his administrative and records staff came to him with concerns that there were missing records; he commented that Mr. Sedillo at times refused to complete documentation when asked to do so by Dr. Glacy's administrative staff whereby intimidating them. Dr. Glacy stated that he and Mr. Sedillo agreed that Mr. Sedillo would not receive the bonus as outlined in his contract because the physical therapy portion of the practice was "in the red" – possibly due to incomplete documentation and billing. In response to the Board's questions, Mr. Sedillo stated that the problem was that the transcriptionist hired was not allowed to come back to the physical therapy area to receive all of the tapes that needed to be prepared. He described the several steps that an electronic file would take before it would eventually make it into the patients' charts. He described an event where he learned that a transcriptionist had been fired, but he had not been informed of that fact and he continued to place the tapes in the designated area which were never picked up. On another occasion, one transcriptionist gave some tapes to another transcriptionist who lost the tapes. He described an audit process the practice employed which revealed that documents were often misfiled. After one session of audit reviews, some of the administrative staff members were fired for incorrect and incomplete filing, and for missing charts. The Board questioned Mr. Sedillo as to why he did not decide to manually complete the records when he realized that there were problems; he replied that he was trying to comply with Dr. Glacy's directive that the records be prepared electronically. At one point Mr. Sedillo advised Dr. Glacy that he felt the computer program was inappropriate for capturing information concerning physical therapy treatment notes. The Board discussed the need to review the additional documentation that alleges that Dr. Glacy had attempted to inform Mr. Sedillo of his documentation deficiencies. The Board also discussed the need to review three examples of the charts reviewed by Ms. Hiller and Ms. Borden for all of the physical therapists identified in the investigative report. The Board concurred it would be helpful to review the statements of the witness to the discussions between Dr. Glacy and Mr. Sedillo concerning the deficient records. The Board also discussed the need to interview the other physical therapists employed by the Arizona Pain Clinic concerning their experiences with maintenance of patient records. Mr. Gaffaney reminded the Board that there was a problem with the software utilized by the Arizona Pain Management clinic in that the date of entry is represented as the date of service. Mr. Gaffaney asked that the Board consider reviewing examples of patient records he has prepared since leaving the employment of the Arizona Pain Clinic. The Board advised Mr. Gaffaney that the focus of the investigation is on Mr. Sedillo's conduct while he was employed at the Arizona Pain Clinic, but that Mr. Sedillo is not barred from submitting evidence that he is currently in

compliance with the law as it relates to documentation standards and requirements. Ms. Fearon moved to move the case to an informal hearing. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. The Board directed staff to also invite current and former administrative office staff members, as well as Mr. Rhodey and Mr. Blasing. Asked Mr. Gaffaney to submit a list of individuals who may serve as witnesses for Mr. Sedillo. Agreed that the other PTs will be invited as witnesses, and that any decision on whether to investigate their conduct will be delayed until the complaint against Mr. Sedillo is resolved.

4. Review and Possible Action on Proposed Consent Agreement for Substance Abuse Recovery and Monitoring Program:

Elliot Wernick, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen updated the Board on the status of Mr. Wernick's recovery and monitoring program. Mr. Wernick had appeared before the Board on March 28, 2006 to address his recent relapse from his substance abuse recovery and monitoring program initiated on September 11, 2005. On March 13, 2006 Mr. Wernick had telephoned the Board office to report that he had used cocaine on March 6 and 7, 2006. He was called for his monthly drug screening on March 9, 2006, and the report indicated Mr. Wernick tested positive for cocaine. On March 22, 2006 Mr. Wernick signed an interim practice agreement with the Board, the terms of which restricted him from the practice of physical therapy and required that he undergo an evaluation by a medical doctor practicing addiction medicine. Mr. Wernick participated in this evaluation with Michel Sucher, MD on March 27, 2006. Mr. Wernick provided the Board with a preliminary report from that evaluation during its March 28 review and discussion, and on March 31, 2006 the Board office received Dr. Sucher's final evaluation. Ms. Herbst Paakkonen noted that the Board members had been provided a copy of that report, and that, of note, Dr. Sucher's finding is that the March 6-7 episode was a brief relapse to which Mr. Wernick promptly admitted and that he appropriately re-engaged in his recovery process. Ms. Herbst Paakkonen explained that she and Ms. Cornelius drafted a consent agreement that incorporates the requirements from Mr. Wernick's previous substance abuse recovery and monitoring program, and it includes the recommendations of Dr. Sucher. Additionally, Mr. Wernick had submitted documentation describing activities in which he has voluntarily engaged since he met with the Board on March 28, 2006 in an attempt to demonstrate to the Board that he intends to comply with Dr. Sucher's recommendations and in anticipation of the Board approving a revised substance abuse recovery and monitoring program. Mr. Wernick requested and was granted approval to appear before the Board for purposes of discussing the draft agreement. The Board agreed to some changes to the agreement consisting mostly of small extensions to a few of the reporting deadlines. Ms. Fearon moved to approve the revised consent agreement and to reinstate Mr. Wernick's physical therapist license. Ms. Kalis seconded the motion. The motion carried by a unanimous roll call vote.

5. Request for Acceptance of Voluntary Surrender of Licensure for Failure to Comply with Continuing Competence Requirements

#04-04-CC; Lemuel McEachin, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen summarized the status of the case. Mr. McEachin had previously declined opportunities to enter into consent agreements offered to him for purposes of resolving this case when the Board had determined that he had failed to establish that he had met the continuing competence requirement for licensure renewal. The Board voted the case to a formal hearing before the Arizona Office of Administrative Hearings (OAH), and the hearing was scheduled for April 12, 2006. On April 6, 2006 Mr. McEachin e-mailed the Board a letter stating, in part, that he could not attend the formal hearing and he would like the Board to accept his voluntary surrender of licensure. On April 10, 2006

Ms. Herbst Paakkonen faxed to him a consent agreement containing terms that had been previously accepted by the Board for purposes of voluntary surrender of licensure when the licensee failed to comply with the Board's continuing competence requirements. Mr. McEachin signed that agreement and faxed it to the Board office on April 11, 2006. Also on this date, Ms. Cornelius filed a motion with OAH to vacate the hearing; this motion was granted. Because this action was not previously approved by the Board, and because a voluntary surrender of licensure requires Board approval pursuant to A.R.S. §32-2047(7), the consent agreement is presented to the Board for final action. Ms. Kalis moved to accept the consent agreement. Mr. Robbins seconded the motion. The motion carried by a unanimous roll call vote. In response to the Board's questions, Ms. Herbst Paakkonen advised that a voluntary surrender of license is a reportable action to the Health Integrity and Protection Data-Base (HIPDB), and that the report will indicate the Board's findings of fact and conclusions of law as adopted in the consent agreement.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

6. Request for Board Determination of Licensure Exemption Pursuant to A.R.S. §32-2021

Ellen Haverstick

Ms. Herbst Paakkonen summarized the request submitted by Ms. Ellen Haverstick, a physical therapist licensed in the state of Arkansas. Ms. Haverstick had contacted the Board office to request whether she might be granted a temporary license by the Arizona Board of Physical Therapy as she is a student of the Ola Grimsby Institute Orthopaedic Manual Therapy Program--an "independent study" program that requires completion of a supervised clinical internship which Ms. Haverstick hopes to at least partially complete in Arizona. Ms. Haverstick was advised that the Board has no authority in law to grant a temporary license to anyone, but that she could apply for and be granted a license, or request the Board determine that this clinical internship would fall under one of the exemptions to licensure identified in A.R.S. §32-2021; Persons and activities not required to be licensed. Subsection (C)(1) establishes an exemption for a person in a professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist or physical therapist assistant education while under the on-site supervision of a physical therapist, while subsection (C)(3) establishes an exemption for a physical therapist who is licensed in another jurisdiction of the United States or a foreign educated physical therapist credentialed in another country if that person is performing physical therapy in connection with teaching or participating in an educational seminar for not more than sixty days in any twelve month period. Ms. Haverstick submitted a letter of request to the Board requesting she be granted a licensure exemption under one or both of these subsections. She enclosed with her request some information describing the Ola Grimsby DPT Program and the clinical mentoring requirements of the Program; A page from the American Physical Therapy Association (APTA) indicating that organization has credentialed the Ola Grimsby Institute Manual Therapy Fellowship; the professional biography of Ms. Laura Markey, P.T., an Arizona licensed physical therapist, as listed on the faculty member section of the web-site of the Ola Grimsby Institute and Ms. Haverstick's proposed clinical supervisor; and a copy of a page of the Arkansas Board of Physical Therapy web-site indicating that Ms. Haverstick holds a physical therapist license in that state in good standing as of April 6, 2006. Ms. Herbst Paakkonen advised the Board that Ms. Haverstick has indicated that she was not able to appear before the Board to address questions concerning her request. Ms. Herbst Paakkonen further advised the Board that she had conducted some additional research which confirmed that the Ola Grimsby Institute DPT program is *not* accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE). Mary Jane Harris, P.T. and Director of CAPTE had informed her that the Institute is able to state that it grants the Doctor of Physical Therapy degree as it has been granted approval

by the appropriate authorities in the states of Utah and California to confer the degree of Doctor of Physical Therapy. Ms. Herbst Paakkonen noted that the Board's task is to determine whether Ms. Haverstick qualifies for one of the exemptions identified in A.R.S. §32-2021(C). The Board discussed the documentation submitted by Ms. Haverstick and discussed the intent of §32-2021(C)(1) as it relates to students completing the entry level degree in physical therapy, and the Board discussed the intent of §32-2021(C)(3) which describes a seminar as a more passive event than the Ola Grimsby Institute clinical internship that requires significant patient contact and treatment. The Board members concurred that Ms. Haverstick failed to establish that her request meets any of the exemptions of the statute. Ms. Kalis moved to deny the request. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

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

Caryn D. Barman	Jonathan Black-Bowen	Tricia Carroll
Janice V. Comstock	Brian A. Crisci	Deborah A. Fairbank
James E. Glinn	Kristinn I. Heinrichs	Douglas J. Lehman
Karen R. Miller	James R. Miller	Jayme L. Nagle
Kristin R. Orwig	Katalin M. Potter	Heather J. Schold
Adrienne E. Scott	William T. Sellers	

Ms. Fearon introduced the agenda item and the Board stated that the application files for Mr. Black-Bowen, Mr. Crisci, Ms. Schold and Mr. Sellers required additional discussion. Ms. Fearon was assured by Board staff that the remaining files were administratively complete, and she moved to grant licensure to those applicants. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board noted that Mr. Black-Bowen is currently on unsupervised probation in the state of Illinois for a misdemeanor DUI conviction. The Board discussed whether requiring the applicant to provide evidence of completing his term of probation was warranted for purposes of public protection and whether it constitutes a substantive request for additional information. Ms. Cornelius advised the Board that the court records submitted by the applicant indicate that Mr. Black-Bowen is currently in a diversion program and the misdemeanor charge may be vacated if the court determines that he has met all requirements of his probation. The Board deliberated whether Mr. Black-Bowen has demonstrated that he is otherwise qualified to practice physical therapy, and discussed whether he has given the Board any evidence to suggest that he is not safe to practice physical therapy in Arizona. The Board discussed the application of Mr. Crisci and noted that he was charged with disorderly conduct, and that while the charge was ultimately dismissed, he did not provide a great deal of elaboration concerning the facts and circumstances of that charge. The Board noted that Ms. Schold had no professional work history listed on her application, but Ms. Lopez reviewed with the Board her application time line and advised the Board that due to the length of time involved with the application process, Ms. Schold was unable to practice as a physical therapist in the interim. The Board then discussed the application of Mr. Sellers and noted that his written explanation of his DUI offense was brief and lacked persuasion, but that he had provided evidence of having complied with his court ordered requirements and he has not been disciplined by the Texas Board of Physical Therapy. Ms. Fearon moved to grant licensure to Mr. Black-Bowen, Mr. Crisci, Ms. Schold and Mr. Sellers. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

Jacey P. Cobb	Andrea K. Griswold	Jaime L. McAlister
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Ms. Fearon introduced the agenda item and noted that the files were administratively complete. Ms. Kalis moved certification be granted to the listed applicants. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

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

Pamela Guevarra

Ms. Fearon introduced the agenda item, and the Board reviewed the SCPP proposal submitted by Ms. Guevarra for her supervised clinical practice period. Ms. Guevarra's request identified her supervisors as Ms. Lisa Haarer, P.T. and Mr. Miguel LeFort (a graduate of a CAPTE accredited program in Canada). Ms. Chandrika Lotwala is the owner and director of both facilities. The Board discussed the fact that although the facility identified in the proposal is primarily an outpatient orthopedic clinic, the description of the facilities – one located in Peoria and another in Buckeye – indicates that many types of patients are treated there. Ms. Lopez advised the Board that Ms. Haarer will supervise Ms. Guevarra at one facility 20 hours per week and Mr. LeFort will supervise her at the other facility during the other 20 hours. The Board discussed the fact that if Ms. Guevarra's supervisors are unable to check off any of the skills on the Interim Period Evaluation Form as a result of an unavailability of patients exhibiting certain diagnoses, Ms. Guevarra will likely need to complete an additional 90 day SCPP. Ms. Fearon moved to grant Ms. Guevarra an Interim Permit and to approve the proposed SCPP. Dr. Cornwall seconded the motion. The motion carried by a vote of 3-1.

BOARD BUSINESS AND REPORTS

10. Executive Director's Report

- a. Financial Report:** No additional information to report.
- b. Board Staff Activities:** No additional information to report.
- c. FSBPT Initiatives and News:** No additional information to report.

d. Rules Revision Update: The Board reviewed a proposed list of constituencies/stakeholders who might be included on a rule writing task force associated with the statutory changes to the supervision requirements of PTAs. The Board members concurred that only PTs and PTAs should participate as task force members as they will be the individuals affected by the changes. The Board directed staff to request the Arizona Physical Therapy Association (AzPTA) to submit nominees for the rule writing task force. The Board also directed staff to contact Chris Larson, P.T., Director of Professional Standards for the FSBPT, and schedule a date in June during which she would meet with the Board to review examples of proposed rule language for presentation to the task force. The Board discussed possible time frames for the drafting of proposed rule language, and commented that the task force will likely wish to address documentation requirements in a separate proposed rule.

e. Legislative Update: The Board and staff discussed issuing a mailing to all licensees and certificate holders informing them of the changes to the Board's statutes imposed by HB 2643; Physical therapist assistants, as Governor Napolitano signed the bill on April 24, 2006. The staff advised the Board that a postcard would be a cost-effective option, and the mailing could be accomplished by mid-May.

11. Review and Possible Adoption of Draft Substantive Policy Statement – Requests for Accommodations Under the Americans with Disabilities Act (ADA) to the National Physical Therapy Examination (NPTE)

The Board reviewed the draft SPS and concurred that the document adequately described the requirements for an applicant to demonstrate when filing a request for an accommodation to the NPTE when the applicant has a qualifying disability pursuant to the Americans with Disabilities Act. Dr. Cornwall moved the draft be approved as presented. Ms. Fearon seconded the motion. The motion passed by a unanimous vote. Ms. Herbst Paakkonen advised the Board that she would file the SPS with the Secretary of State's Office within the next three weeks.

CALL TO THE PUBLIC

None

ADJOURNMENT

The meeting adjourned at 1:15 p.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

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