

JANET NAPOLITANO
Governor



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REGULAR SESSION MEETING MINUTES
December 18, 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 Loroña, Licensing Administrator
Melissa Cornelius, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

The meeting was called to order at 8:30 a.m.

1. Review and Approval of Draft Minutes:

November 21, 2006; Regular Session Meeting

Ms. Fearon introduced the agenda item and the Board identified some typographical errors in the draft for correction. Ms. Fearon moved the draft be approved as corrected. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

Note: the agenda was reordered as follows

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

b. Review of Completion of Supervised Clinical Practice Period and Determination to Grant or Deny Licensure

Christine Verceles – interview scheduled

Ms. Fearon introduced the agenda item and invited Ms. Barbara Feth to address the Board's questions concerning Ms. Verceles' request for an extension of her supervised clinical practice period (SCPP). Ms. Feth introduced herself as the rehab director of the HealthSouth facility in Scottsdale and the prospective back up supervisor to Ms. Verceles. She informed the Board that she spends 25% of her time treating patients but when Valerie Burr, P.T. (proposed primary supervisor) is absent, she would provide 100% of patient care. The Board noted that the Interim Period Evaluation Form for Ms. Verceles completed by Alyssa Bauersmith, P.T., Ms. Verceles' supervisor for her recently completed SCPP, indicates many areas where her skills were "not approved" and the Board expressed concerns about how much supervision Ms. Verceles will require. Ms. Feth said that she became involved in Ms. Verceles' SCPP in the Yuma

HealthSouth facility at the half-way point of the period and felt that thereafter there was significant improvement. The Board asked Ms. Feth to address the fact that the evaluation indicates that Ms. Verceles is not able to treat complex patients. Ms. Feth advised the Board that she and Ms. Burr have observed that Ms. Verceles is functioning well in their facility currently, explaining that she has been performing as a physical therapy “tech” observing treatment, learning the modalities, observing assessments and doing side-by-side mock assessments. Ms. Feth asserted that Ms. Verceles is demonstrating an understanding of what they do in their facility. She noted that the perception of physical therapy is very different in the Philippines as compared to the U.S. Ms. Feth commented that she has discussed those differences with Ms. Verceles and has trained to that which has created a radical change in her performance once these issues were identified. Ms. Feth stated that cultural distinctions and the differences in the speed at which services are provided have played a role in Ms. Verceles being slow to come up to speed. Ms. Feth assured the Board that she is confident that Ms. Verceles can come up to speed within the next 30 days. In response to the Board’s questions, Ms. Feth noted that there is a lot of mentoring available to Ms. Verceles in their building. Ms. Feth acknowledged that Ms. Verceles had a slow start due to being culturally isolated in Yuma and the fact that she was overwhelmed and therefore did not progress as they hoped. The Board invited Ms. Verceles to be interviewed and questioned the applicant relative to whether she was ready to move forward. Ms. Verceles responded that because everything was so new to her in the beginning she was overwhelmed, but that she feels the Scottsdale environment has allowed her to improve her speed and understanding. She explained that the things that she learned in Yuma can be applied to the new facility. She commented that she is comfortable asking questions now, and that an additional 90 SCPP will definitely help her meet her competency areas. Ms. Verceles also commented that she has a more balanced life here which has helped her confidence in the clinic. In response to the Board’s questions concerning in which areas she will need to focus, she replied “neuro cases”, nothing that she has been able to work with these types of cases in the Scottsdale clinic. The Board again questioned the information on her Interim Period Evaluation relative to the areas where it was indicated that she lacked the necessary skills, questioning whether she is able to problem-solve. The Board invited Ms. Bauersmith to address questions who acknowledged that Ms. Verceles had a more limited practice experience in Yuma, but that she felt comfortable with Ms. Verceles treating 85% of the patients. Ms. Bauersmith stated that Ms. Verceles made significant progress during her final weeks in Yuma, but that she had concerns in the early days of the SCPP. She explained that Ms. Verceles was having difficulty taking what she learned in the clinic and focusing her free time on how to improve her knowledge and skills. The Board discussed the fact that the purpose of the SCPP is to ascertain whether the Interim Permit holder can demonstrate that she is able to work at the entry level. The Board reviewed R4-24-203(M) – the rule under which Ms. Verceles’ SCPP was approved – and noted that the rule requires an additional 90 day SCPP. The Board questioned whether the SCPP is being used as a training session instead of its purpose which is to allow a foreign educated physical therapist the opportunity to further develop their knowledge and skills in a U.S. clinical setting. Both Ms. Feth and Ms. Bauersmith stated that Ms. Verceles demonstrated that she has excellent knowledge, but has needed some time getting used to the differences in terms of how physical therapy is approached in the U.S. versus the Philippines and the speed at which things happen in U.S. clinical settings. The Board discussed the fact that the Clinical Performance Instrument (CPI) would be the evaluative tool if an additional SCPP is granted. The Board tabled the discussion and vote pending the arrival of legal counsel. Upon her arrival Ms. Cornelius advised the Board that because the 6-month Interim Permit period was very close to concluding, the Board could vote to either grant or deny the license, or could offer a consent agreement be that would grant Ms. Verceles her license but stipulate that she would be placed on probation and that her practice would be monitored for a period of time. Ms. Loroña informed

the Board that Ms. Verceles has yet to submit a copy of her visa and to pass the Board's jurisprudence examination. Ms. Cornelius further advised that if the Board denies Ms. Verceles' license, she is entitled to a hearing. Ms. Fearon offered for consideration a motion that once Ms. Verceles has met all licensing requirements – including completing an additional SCPP at HealthSouth of Scottsdale under Ms. Feth and Ms. Burr within the time frame left on her Interim Permit – she be granted a physical therapist license that is immediately placed on probation for 6 months during which time she must continue to work under Ms. Feth and Ms. Burr and that she complete a continuing education course that addresses evaluations and differential diagnoses for neuro patients. Additionally, Ms. Feth and Ms. Burr would submit monthly written reports addressing Ms. Verceles' progress on evaluations and goal setting for complex neuro patients. Failure to sign the consent agreement within 15 days will result in denial of the license. Gossman seconded. The roll call vote was 4-1.

COMPLAINTS AND INVESTIGATIONS

3. Initial Review of Complaint

#06-09, Dennis Netser, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint which was opened by the Board during the June 27, 2006 regular session meeting following the initial review of Complaints #05-21; Alina McCampbell, P.T.A. due to concerns about Mr. Netser's management of patient care, treatment documentation, and supervision of Ms. McCampbell for six patients treated at Desert Sky Health & Rehabilitation Center. The possible jurisdiction for the complaint includes:

- **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, physical therapy students or interim permit holders 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(H)** “For each patient on each date of service, a physical therapist must provide and document all of the therapeutic intervention that requires the expertise of a physical therapist and must determine the use of physical therapist assistants and other assistive personnel to ensure the delivery of care that is safe, effective and efficient.”
- **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.”

In his response to the complaint Mr. Netser noted that he was working PRN at Desert Sky and also working at Coronado Healthcare Center. He advised the Board that while under his supervision Ms. McCampbell demonstrated competence as a PTA, frequently consulting Mr. Netser on patient treatment plans, goals, and safety issues; her documentation was timely and thorough; with the exception of not initialing one progress note he had signed and dated all of his notes in the records reviewed; and he affirmed that his supervision of Ms. McCampbell reflected his continued involvement in appropriate aspects of the treatment sessions she provided and that Ms. McCampbell worked within the scope of her physical therapist assistant certificate. Ms. Hiller called to the Board's attention Mr. Netser's comments for each of the 6 patients whose records were reviewed during the investigation. The Board discussed the fact that nothing in the investigative record established a possible violation of the Board's statutes. Dr. Cornwall moved

to dismiss the complaint. Ms. Fearon seconded the motion. The Board debated whether Mr. Netser's documentation with respect to communications should have been more complete and determined that it was adequate. The motion carried by a unanimous vote.

4. Initial Review of Complaint

#06-10; Kimberly Wright, P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint opened by the Board during the June 27, 2006 regular session meeting following the initial review of Complaints #05-21; Alina McCampbell, PTA and #05-22; Michelle Haney, PT. During the review of these complaints the Board identified some concerns about Ms. Wright's management of patient care, treatment documentation, and supervision of Ms. McCampbell for certain patients treated at Desert Sky Health & Rehabilitation Center. The possible jurisdiction for the complaint includes:

- **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, physical therapy students or interim permit holders 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(H)** "For each patient on each date of service, a physical therapist must provide and document all of the therapeutic intervention that requires the expertise of a physical therapist and must determine the use of physical therapist assistants and other assistive personnel to ensure the delivery of care that is safe, effective and efficient."
- **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." In her written response to the complaint Ms. Wright stated that she is on-site at all times when patient care activities are performed by Ms. McCampbell and that each morning she discusses with Ms. McCampbell the new patients, anything new or noteworthy with current patients, and the schedule for the day. She stated that she is in contact with Ms. McCampbell throughout the day regarding her patient treatments and that more than 90% of their patients are treated in the rehab gym where she is present, monitoring and guiding Ms. McCampbell's treatments and interactions. Ms. Wright affirmed that Ms. McCampbell is a competent and qualified P.T.A. and that only a physical therapist performs all patient initial evaluations with documentation, periodic re-evaluations with documentation and documentation of discharge. Ms. Wright also provided some comments relative to the treatments provided to the patients identified in the complaint. Ms. Hiller also called to the Board's attention the summary of an interview she conducted with Ms. Wright in May of 2006 concerning Ms. McCampbell. Ms. Wright was present for the initial review and agreed to address questions posed by the Board. The Board confirmed with Ms. Wright that it is she who assigns the patients at Desert Sky to the PT staff. Ms. Wright explained that prior to her accepting the director position at Desert Sky some of the policies were not clear or enforced prior to her taking responsibility for the department; specifically, she is aware of instances where the policy that 50% of the time patients are seen by a physical therapist was not always followed. She assured the Board that now under her direction all of the policies are clear and followed. Ms. Fearon moved to dismiss the complaint. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

5. Initial Review of Complaint

#06-12; Tana Blase P.T.

Ms. Fearon introduced the agenda item and Ms. Hiller summarized the complaint opened by the Board during the September 26, 2006 regular session meeting following the initial review of Complaint #06-02; Nicholas Wegener, P.T. During this review the Board expressed concerns about Ms. Blase's treatment, documentation, and billing for the patient Z.K. on November 10, 2005 as well as an alleged incident of Ms. Blase slapping the hand of Z.K. on that date. 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*** "A physical therapist shall respect the rights and dignity of all individuals and shall provide compassionate care."
 - ***Guide for Professional Conduct 1.1 B.*** "A physical therapist shall be guided at all times by concern for the physical, psychological, and socioeconomic welfare of patients/clients."
- **A.R.S. §32-2044(13)** "Charging unreasonable or fraudulent fees for services performed or not performed."

Ms. Hiller noted that Complaint #06-02; Nicholas Wegener filed by Z.K., a former patient at 360° Physical Therapy, alleged that on November 10, 2005 Mr. Wegener billed for a full treatment session when Z.K. was unattended exercising on her own for all but 20 minutes of treatment time with Mr. Wegener and Tana (Gocken) Blase P.T. and that "Tana" [later identified as Tana (Gocken) Blase, P.T.] 'smacked' Z.K.'s hand in a disciplinary manner during an assisted stretching exercise. Ms. Hiller reminded the Board that it had questioned whether the 45 minutes of exercise charged reflected direct one-on-one interaction with the patient or rather 'supervised' exercise while the P.T. was tending to other patients. Mr. Wegener had advised the Board that he did discuss the complaint about the hand slap with Ms. Blase and that an incident report was written after Z.K. filed the complaint. In her written response to the complaint Ms. Blase stated that the treatment billing on November 10, 2005 was appropriate and clarified that the first 15 minutes of treatment were provided under the supervision of Mr. Wegener, that she supervised Z.K.'s daily stretching and strengthening routine and provided verbal cues for proper technique for 15 minutes while providing manual therapy to another patient, that she then supervised Z.K. and provided verbal feedback as necessary during her strengthening exercises for 15 minutes while the other patient was receiving electric stimulation and explained that she then provided 15 minutes of manual therapy to Z.K. Ms. Blase stated that the correction she provided to Z.K. during the shoulder stretching activity was to gently redirect her left arm back down to the table and rephrase her instructions, and that Z.K. was not smacked or communicated to as if she were a child. Finally, she explained that it was Mr. Wegener who completed the daily note for Z.K. following discussion with Ms. Blase regarding the treatment she provided and they agreed it was not necessary for both of them to sign the daily note in the chart. Ms. Hiller noted that the treatment record for November 10, 2005 documents that Z.K. was present at 360° PT for one hour and she was billed for 15 minutes of manual therapy and 45 minutes of therapeutic procedures, but that the treatment documentation does not contain the detailed description of her time that Ms. Blase provided in her written response to the complaint. Ms. Blase was present and agreed to address the Board's questions. The Board asked her to clarify her use of the term "supervision" as it relates to how she interacted with the patient. Ms. Blase explained that she saw her first patient for ½ hour, then the last ½ hour of the patient's treatment visit she was with Z.K. While she was supervising the treatment for her scheduled patient, she also supervised Z.K. while she performed some of her exercises as she was in close proximity. The Board advised Ms. Blase that she can only bill for direct care provided to one patient at a time and therefore it

was entirely appropriate to refund the charges for Z.K.'s care on that date if not for the reasons that were stated (i.e. to maintain good relations with the patient). The Board also noted that the hand-smacking allegation could have been cleared up with clearer communication from Ms. Blase to the patient. Ms. Fearon moved to dismiss the complaint. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

2. Informal Hearing

#06-04; Lawrence Hurst

Ms. Fearon introduced the agenda item and the Board members and staff exchanged introductions with the licensee. Ms. Fearon swore in Mr. Hurst for the informal hearing, and she explained the purpose and potential outcomes of the informal hearing. Ms. Herbst Paakkonen summarized the complaint which was opened after the Board received notification from the Physical Therapy Board of California that this Board had conducted an investigation into allegations that while employed in a managerial position of the physical therapy department of Palo Verde Hospital in Blythe, California Mr. Hurst made inappropriate and sexually charged comments and gestures about and to certain individuals between March and April of 2003. The California Board's investigation revealed that Mr. Hurst had admitted to making some of the statements and that he was terminated from the hospital effective April 21, 2003 for violating the company's policy of engaging in prohibited harassment. The California Board and Mr. Hurst entered into a Stipulated Settlement and Order as a final resolution of the case which became effective on April 3, 2006. The terms of the Stipulated Order included a stayed revocation of the physical therapist license, a 30 day period of suspension of the physical therapist license, 5 years probation, completion of a course on the subject of sexual harassment in the workplace and practice restrictions consisting of no practice in a home setting, monitoring by a Board approved professional practice monitor, and having an unrelated third party present while treating female patients. Ms. Herbst Paakkonen noted that the Board conducted the initial review of this complaint on September 26, 2006. and that the Board approved a motion finding Mr. Hurst in violation of A.R.S. §32-2044(1) and of A.R.S. §32-2044(9) for purposes of offering Mr. Hurst a consent agreement containing the same terms and restrictions as the Settlement Order issued by the California Board with the exception of the licensure suspension term. The Board stipulated that failure on the part of Mr. Hurst to sign the consent agreement within 10 days of its receipt would result in the case being scheduled for an informal hearing. Mr. Hurst received the notice on October 11, 2006 but did not respond until after the signing deadline on November 14, 2006 at which time he sent an e-mail message questioning some of the language in the agreement. He was advised by Ms. Herbst Paakkonen that she was not authorized by the Board to negotiate any of the terms of the Agreement with him, and because he had failed to sign the Consent Agreement within 10 days of its receipt, his case would be scheduled for an informal hearing. Ms. Fearon noted that the jurisdiction for the complaint includes A.R.S. §32-2044(1) "Violating this chapter, board rules or a written board order" and A.R.S. §32-2044 (9) "Having had a license or certificate revoked or suspended or other disciplinary action taken...by the proper authorities of another state, territory or country." Mr. Hurst declined to provide an opening statement but acknowledged that the Board has jurisdiction over him even though he is not currently practicing in Arizona. He stated that he had some concerns with the proposed consent agreement and specifically questioned what violation of Arizona law would have occurred had he exhibited the same conduct in Arizona. The Board advised Mr. Hurst that A.R.S. §32-2044(10)(b) Grounds for disciplinary action addresses engaging in verbal conduct of a sexual nature. Mr. Hurst indicated that he does not dispute most of the terms of the proposed consent agreement but indicated that he would have difficulty meeting the term requiring reports be submitted by the California Board practice monitor as that person only reviews his daily scheduling log and completes a checklist confirming that he is not treating female patients without a third party

present. In response to the Board's questions Mr. Hurst affirmed that this third party is a physical therapy aide unrelated to him but employed by him. Mr. Hurst also explained that in order to sign the agreement the deadline for completion of the sexual harassment courses must be adjusted due to the unavailability of the courses until January 2007. Mr. Hurst responded to additional questions posed by the Board by stating that he currently owns his own private practice in Blythe, California and his wife is the only other therapist in his clinic. He also explained that he hasn't yet been matched with a practice monitor pursuant to the stipulated agreement with the California Board because that Board does not currently have an approved mentor who is willing to come to Blythe. He noted that prior to owning his own practice he worked for the hospital from which he was terminated. Mr. Hurst informed the Board that he has always had a third party present in the room when treating female patients. He stated that he has not completed any sexual harassment training since leaving the employment of the hospital but that he could recall previously taking some courses addressing hostile work environment and sexual harassment. The Board discussed whether to modify the consent agreement offered to Mr. Hurst in order to accommodate the issues that he had identified. Ms. Cornelius advised the Board that the offer to accept the consent agreement must be in effect today only with revisions proposed, or else the action should be in the form of issuing a Board order. Mr. Hurst stated for the record that he understood that the Board has authority over him to offer and accept the consent agreement and its terms. The Board proposed the agreement be revised to stipulate that the sexual harassment course be completed by January 30, 2007, that his third party treatment observer submit a monthly signed affidavit attesting that she was present during his treatment of all visits with females by the 5th of each month, and that Mr. Hurst be allowed to petition the Board for early termination of probation. The Board received Mr. Hurst's oral agreement to the consent agreement and he also signed a marked up copy of the document. Ms. Cornelius advised Mr. Hurst that the executed copy will be sent in the mail following its revision. Ms. Fearon moved the Board accept the modified consent agreement as presented to Mr. Hurst. Mr. Robbins seconded the motion. The roll call vote was unanimous.

6. Initial Review of Unlawful Practice Case Investigation

#06-17-UPI; Jillian Andersen, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen advised the Board that on November 22, 2006 Ms. Loroña was contacted by phone by Ms. Andersen to discuss the status of her license. Ms. Andersen's place of employment, Osborn Rehab Center, recently came under new management and Ms. Andersen was informed by her supervisor that a check of the Board's web-site revealed that her license was not active. Ms. Loroña advised Ms. Andersen that her license had expired on August 31, 2006. Ms. Andersen admitted that she may have received her licensure renewal application form at her previous address in Illinois – the address that the Board still had on record as Ms. Andersen had never informed the Board of the fact that she had relocated to Arizona. Ms. Andersen admitted she had continued to practice as a physical therapist since August 31. That afternoon Ms. Andersen came to the office of the Arizona Board of Physical Therapy to file her renewal and reinstatement application and she indicated on the form that she practiced as a physical therapist with a lapsed license from September 1 through November 22 of 2006 and that she would follow up with a list of the specific dates. Ms. Andersen's license was reinstated on November 22, 2006. Ms. Herbst Paakkonen noted that the Board may consider this case under:

- A.R.S. §32-2027, License or certificate renewal: "A licensee or certificate holder shall renew the license or certificate pursuant to board rules. A licensee or certificate holder who fails to renew the license or certificate on or before its expiration date shall not practice as a physical therapist or work as a physical therapist assistant in this state."

- A.R.S. §32-2044(1), Grounds for disciplinary action: “violating this chapter, Board rules, or a written order of the Board.”
- A.R.S. §32-2048(A), “it is unlawful for any person to practice or in any manner claim to practice physical therapy or for a person to claim the designation of a physical therapist unless that person is licensed pursuant to this chapter. A person who engages in an activity requiring a license pursuant to this chapter to who uses any word, title or representation in violation of section 32-2042 that implies that the person is licensed to engage in the practice of physical therapy is guilty of a class 1 misdemeanor.”
- A.R.S. §32-2044(23), “failing to report to the board a name change or a change in business or home address within thirty days after that change.”

Ms. Andersen was present for the Board’s review and was granted permission to address the Board. She explained that she began working in Arizona in September of 2005. She recalled that her supervisor, a physical therapist, had checked with her at the end of July to see if she had completed all of her continuing competence requirements. Ms. Andersen telephoned Ms. Lorona who confirmed that she did not have a continuing competence requirement and she mistakenly assumed that her license was not due to be renewed until 2007. She indicated that she had renewed her Illinois license and noted that this paperwork includes a licensure expiration date but her Arizona wall license did not have an expiration date. She further commented that she did not receive the wallet card that listed that expiration date. Ms. Andersen explained that her new supervisor in November informed her that her license was not active and after verifying this she immediately came to the Board office to renew it. She provided the Board a list that indicated she practiced for 41 days without a physical therapist license from September to November. She stated that she is willing to pay whatever penalty the Board imposes, but because she is a single parent she asked the Board take her situation into consideration and allow her to pay the penalty over time. Ms. Fearon moved the Board find that Ms. Andersen practiced as a physical therapist without a license for 41 days and to find her in violation of the listed statutes. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Ms. Fearon moved to offer Ms. Andersen a consent agreement that would place her on probation for 6 months during which time she must take and pass the Board’s jurisprudence examination, pay a \$1,000 civil penalty, provide evidence of having reported to payers the fact that she was not licensed for the period, and complete 20 hours of community service; failure to sign the agreement within 20 days will result in the case being scheduled for a hearing. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

#06-16-UPI; Scott Peterson, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen summarized the case reporting that on November 8, 2006 Ms. Hiller was contacted by e-mail by a credentials analyst to verify the license of Mr. Peterson. Ms. Hiller notified the analyst that Mr. Peterson held that physical therapist license until August 31, 2006 at which time it had expired. Ms. Herbst Paakkonen noted that a few days prior, a Scott Peterson had faxed to the Board office a request for a duplicate license on November 3, 2006 that was awaiting processing. Later on November 8 Ms. Hiller received a telephone call from Mr. Peterson during which he admitted that he had failed to renew his physical therapist license on or before August 31, 2006 and had continued to practice as a physical therapist since that time. Mr. Peterson’s licensure renewal application was mailed to his mailing address on file but the application was returned to the Board office as undeliverable. On November 9 Mr. Peterson came to the office of the Arizona Board of Physical Therapy to file his renewal and reinstatement application which indicated a different mailing address Mr. Peterson indicated on the Reinstatement and Renewal Affirmation of Employment Status form that accompanies the reinstatement application that he practiced as a physical therapist with a lapsed license for 45 days during the months of September, October and

November. Mr. Peterson's license was reinstated on November 9, 2006. The possible jurisdiction for the case includes:

- A.R.S. §32-2027, License or certificate renewal: "A licensee or certificate holder shall renew the license or certificate pursuant to board rules. A licensee or certificate holder who fails to renew the license or certificate on or before its expiration date shall not practice as a physical therapist or work as a physical therapist assistant in this state.
- A.R.S. §32-2044(1), Grounds for disciplinary action: "violating this chapter, Board rules, or a written order of the Board."
- A.R.S. §32-2048(A), "it is unlawful for any person to practice or in any manner claim to practice physical therapy or for a person to claim the designation of a physical therapist unless that person is licensed pursuant to this chapter. A person who engages in an activity requiring a license pursuant to this chapter to who uses any word, title or representation in violation of section 32-2042 that implies that the person is licensed to engage in the practice of physical therapy is guilty of a class 1 misdemeanor."
- A.R.S. §32-2044(23), "failing to report to the board a name change or a change in business or home address within thirty days after that change."

Ms. Fearon moved the Board find that Mr. Peterson practiced as a physical therapist without a license for 45 days and to find him in violation of the listed statutes. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Ms. Fearon moved to offer Mr. Peterson a consent agreement that would place him on probation for 6 months during which time he must take and pass the Board's jurisprudence examination, pay a \$1,950 civil penalty, provide evidence of having reported to payers the fact that he was not licensed for the period, and complete 20 hours of community service; failure to sign the agreement within 20 days will result in the case being scheduled for a hearing. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

7. Review and Possible Action on Request for Termination of Probation #05-20; Richard Sedillo, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen reported that Mr. Sedillo is seeking termination of his probation which began on August 22, 2006 relative to violations of A.R.S. § 32-2044(1), violating statute or rules, and §32-2044(20), failing to maintain adequate patient records. The Board found that Mr. Sedillo failed to maintain patient records while employed at the Arizona Pain Clinic as the Board's investigation revealed that records were missing from numerous patient charts. Mr. Sedillo's Board order stipulated that he must submit to a review of six patient charts, selected at random by the Board or its agent, from his patient case load with all of the patients having Medicare as their primary payer; if possible, three of the records reviewed shall be for patients actively engaged in treatment and three of the records shall be for discharged patients. The purpose of the review is to ascertain whether they are in compliance with the Board's statutes and rules and to ascertain improvement in the areas of deficiency noted in this Order. Ms. Herbst Paakkonen noted that Ms. Donna Borden, P.T., contract investigator for the Board, was engaged to perform the review of patient records stipulated by the Order. Ms. Borden conducted the review with Mr. Sedillo on October 12, 2006 and on October 23, 2006 submitted a written report summarizing her findings. While Ms. Borden's commented on each of the charts reviewed, of primary concern was the fact that several notes were missing from the active patient file of M.B. – a file selected at random by Ms. Borden for review as Mr. Sedillo only had 2 active Medicare patients – not 3 as stipulated by the Order. Ms. Borden discussed the missing records with Mr. Sedillo on October 12 but at that time he was unable to produce the missing records. On October 17, 2006 Mr. Sedillo e-mailed and telephoned Ms. Hiller to inform her that the missing records for M.B. were located behind the copier in his office. This information was relayed to Ms. Borden who made an unannounced site

visit to Mr. Sedillo's office on November 1, 2006 to review the found records. Her findings are summarized in an Addendum report. Ms. Herbst Paakkonen noted that Mr. Sedillo submitted a letter on December 6, 2006 requesting termination of his term of probation. Additionally, Mr. Sedillo's Office Manager, Ms. Jennifer Johnson, submitted a written explanation of the temporary misplacement of several of the records in M.B. chart affirming Mr. Sedillo's statements. The Board reviewed Ms. Borden's report and noted that her findings indicated that only one of his charts was complete. In response to the Board's questions Mr. Sedillo stated that even though the Board's Order did not require him to do so, he recently completed a 7 contact hour continuing education course in patient records management. The Board questioned whether the course was helpful; Mr. Sedillo indicated that it was somewhat helpful although it related more to billing and coding issues. The Board asked Mr. Sedillo to explain his understanding of what constitutes a discharge summary. He explained that he believes that it should address the patient's status, measurements and response to treatment. The Board asked why some of the records indicate that there are two discharge notes with two different dates, one record contains a discharge to a home program with no such program documented, and one discharge summary appears to contradict a previous notation. Mr. Sedillo explained that he dictates his notes. The Board discussed some options relative to the case and Ms. Cornelius advised the Board that if a subsequent review of Mr. Sedillo's records reveals that he is still not meeting the requirement, a new consent agreement could be offered to him presumably with additional remediation term; if the agreement is rejected, the Board could open a new investigation. She further advised that the Board could deny his request for termination and obtain his approval to conduct another review before the end of the probation period. Ms. Kalis moved to deny Mr. Sedillo's request for termination of probation and directed Board staff to review another set of his records. Ms. Fearon seconded the motion. The motion carried by a unanimous vote. The board discussed with Mr. Sedillo the fact that his records contain some "sloppiness" and that he could benefit from a discussion with Ms. Borden concerning her chart review findings. Mr. Sedillo agreed to submit to a second review of his patient records and stated that he is willing to respond in writing to Ms. Borden's report. The Board advised Mr. Sedillo to be more detailed and clear with his documentation.

8. Review and Possible Action Concerning Misdemeanor Conviction

Shauna Smith, P.T.

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen updated the Board relative to Ms. Smith's DUI charge she initially reported on June 5, 2006. The Board had reviewed Ms. Smith's licensure renewal application on July 25, 2006 on which she noted that, among other charges, she was charged with driving under the influence of alcohol on May 22, 2006 in Tucson. On July 25 she advised the Board that she had pled not guilty to the DUI charges and that the trial on these charges was scheduled for October 19, 2006. The Board voted to renew Ms. Smith's license and directed her to report the court's decision. On November 13, 2006 the Board office received from Ms. Smith a copy of her DUI Minute Entry Order and Judgment issued by the Pima County Court indicating that on October 19, 2006 she was found guilty of one count of DUI but was found not guilty of one count of extreme DUI. The terms of her sentencing included unsupervised probation, 1 day of incarceration, enrolling in an alcohol/drug evaluation and an education/treatment program and paying a fine. Ms. Smith also submitted a letter explaining that her alcohol/drug evaluation determined that the appropriate education and treatment program is the DUI Level II program which is less rigorous than the Level I program designated for individuals whose blood alcohol contents (BAC) were of the extreme variety. Ms. Smith was granted approval to address the Board and apologized for the event assuring the Board that the event is an isolated one and that in no way will this occur again and affect her ability to care for her patients. She explained that her evaluation outcome was based on an interview and consideration of her blood alcohol content

determination which was at a level considered impaired to the slightest degree. Ms. Smith assured the Board that she no longer drinks alcohol and drives. She explained that she drinks occasionally – mostly on weekends – usually wine while at dinner with friends perhaps 2-3 times per week. Ms. Smith stated that her stress relievers include exercise, spending time with friends, reading and other hobbies. She stated that she has worked in the same position for 18 years and that she has an excellent work record. Finally she noted this experience has been painful and that she can guarantee that she will not be back before the Board in this situation. The Board concurred that an investigation concerning whether Ms. Smith has a substance abuse problem is not warranted.

9. Review and Possible Action Concerning Audited Licensees' Compliance with Continuing Competence Requirements for 2004-2006 Licensure Period

Ms. Fearon introduced the agenda item and Ms. Herbst Paakkonen briefly summarized the audit review process and explained how the Audit Committee members developed their recommendations. She provided an overview of the 5 tables in which the licensees were grouped depending on their audit results and noted that 77% of the audit group were found to have been in compliance with the continuing competence requirements – the highest percentage to date. Dr. Cornwall moved to find the licensees listed in Table 1 in compliance. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Ms. Herbst Paakkonen clarified that the licensees in Table 2 submitted evidence of having completed at least 20 contact hours, but failed to submit adequate documentation to establish that the contact hours met the requirements of the Board's rules. Ms. Fearon moved to find the licensees in Table 2 and pursuant to R4-24-401(J) to grant them six month with which to come into compliance. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board discussed the fact that Ms. Beverly Pishkur, P.T. had failed to submit her continuing competence documentation by the 30-day deadline, but that she discovered her error and mailed the materials such that they arrived the day after the Audit Committee meeting. Board staff had reviewed Ms. Pishkur's documentation and determined that it met the requirements of the Board rules. Dr. Cornwall moved to issue Ms. Pishkur an advisor letter to address timely compliance with responding to the notice of audit. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board discussed the fact that three licensees failed to respond to the notice of audit – Ms. Amy Brill, P.T., Ms. Angell Eggleston, P.T., and Ms. Marjorie Huber, P.T. Dr. Cornwall moved to offer these licensees a consent agreement with findings of fact to consist of determining they are out of compliance with A.R.S. §32-2044(1) violating Board rules (specifically, R4-24-401(G)(2) which stipulates that a licensee must respond to a notice of continuing competence audit within 30 days); A.R.S. §32-2044(3), obtaining or attempting to obtain a license or certificate by fraud or misrepresentation; A.R.S. §32-2044(12), failing to adhere to the recognized standards of ethics of the physical therapy profession; and A.R.S. §32-2044(14), making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession. Dr. Cornwall also moved that the Board offer in that consent agreement a probation term of 6 months with which they must come into compliance with the continuing competence requirements, pay a civil penalty of \$500, take and pass the Board's jurisprudence examination, and accept their voluntary surrender of the license if any of the terms are not met; failure on the part of the licensees to sign the agreement within 20 days will result in the case being scheduled for informal hearing. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board discussed the group of licensees who had failed to submit evidence of having completed the required number of contact hours – Ms. Margaret Batalden, P.T., Ms. Carene MacElwee, P.T. and Mr. Timothy Pate, P.T. Ms. Fearon moved to find them in violation of A.R.S. §32-2044(1) violating Board rules (specifically, R4-24-401(G)(2) which stipulates that a licensee must respond to a notice of continuing competence audit within 30 days); A.R.S. §32-

2044(3), obtaining or attempting to obtain a license or certificate by fraud or misrepresentation; A.R.S. §32-2044(12), failing to adhere to the recognized standards of ethics of the physical therapy profession; and A.R.S. §32-2044(14), making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Fearon moved to offer these licensees a consent agreement a probation term of 6 months with which they must come into compliance with the continuing competence requirements, pay a civil penalty of \$250, take and pass the Board’s jurisprudence examination, and accept their voluntary surrender of the license if any of the terms are not met; failure on the part of the licensees to sign the agreement within 20 days will result in the case being scheduled for informal hearing. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Dr. Cornwall moved to find those licensees who reported contact hours earned after August 31, 2006 (Mr. James Kostrewa and Ms. Stacey Foote) in violation of A.R.S. §32-2044(1) violating Board rules (specifically, R4-24-401(G)(2) which stipulates that a licensee must respond to a notice of continuing competence audit within 30 days); A.R.S. §32-2044(3), obtaining or attempting to obtain a license or certificate by fraud or misrepresentation; A.R.S. §32-2044(12), failing to adhere to the recognized standards of ethics of the physical therapy profession; and A.R.S. §32-2044(14), making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Fearon moved the Board offer these licensees a consent agreement a probation term of 6 months with which they must come into compliance with the continuing competence requirements, pay a civil penalty of \$1,000, take and pass the Board’s jurisprudence examination, complete a professional ethics course of at least 8 hours, that that they be automatically audited in 2008. Ms. Kalis 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

Carol Bernstein	Elizabieta Bule	Kelly M. Challet
Lance M. Cotton	Rachelle L. Gunther	Margaret A. Gurnett
George Gutknecht	Linda M. Hanrahan	Sharon C. Jennings
Julie F. Lee	Jennifer A. Lewis	Angela S. Lloyd
Katharine Maguire	Melissa L. McInnis	Karla L. Medina
Jennifer R. Patro	Mary V. Pepper	Taylor J. Reed
Rosemary M. Reitz	Anita L. Townsend	Monica A. Williams

Ms. Fearon introduced the agenda item and the Board reviewed the applications for the listed individuals. Ms. Lorona explained to the Board that Ms. Gurnett may have been required by on of the other jurisdictions to take the National Physical Therapy Examination as she had previously only take the Registry examination. The Board also noted that Ms. Hanrahan disclosed the fact that she has had shoulder surgery and is in the process of rehabilitation and is modifying her practice activities accordingly as currently her range of motion is limited due to the possibility of a future tear. Ms. Fearon moved to grant licensure to the listed applicants. Mr. Gossman 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

John L. Fields	Charlene R. Graham	Patricia J. Jenni
Jason D. Langley	Sharon L. Riffle	Kim N. Rutt
Jose D. Santana	Shayna M. York	Ruth A. Zimmer

Ms. Fearon introduced the agenda item and the Board reviewed the applications for the listed individuals. The Board noted that Ms. Jenni had disclosed some arrests and convictions for possession of controlled substances in the past and prior to her education and licensure as a physical therapist assistant, but noted that she has had no criminal record since that time and has provided written assurance that she has changed her lifestyle. Ms. Fearon moved to grant certification to the listed applicants. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

a. Review of Supervised Clinical Practice Period Proposal

Armando Adano

Ms. Fearon read the name of the applicant and Ms. Loroña clarified that Mr. Adano is actually requesting the Board approve a different supervisor, Ms. Miriam Brodar, P.T., at the same facility that had already been approved because the supervisor previously approved by the Board has since left that facility. Mr. Adano already has been granted his Interim Permit but must still complete the 90 day SCPP. Ms. Lonora reported that Mr. Adano is currently en route to Arizona from the Philippines. She also explained that his new proposal includes both a primary and back-up supervisor. Ms. Fearon moved to approve Mr. Adano's modified SCPP relative to the proposed supervisors. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

Shelly DeLa Paz

Ms. Fearon read the name of the applicant and received clarification from Ms. Lorona that Ms. De La Paz is proposing that her SCPP be directed by two supervisors – Ms. Kathleen Coyne, P.T. and Ms. Christine Heywood, P.T. Ms. Lorona stated that it appears that Ms. Heywood is the primary supervisor as her role in the facility is more focused on patient treatments. Ms. Fearon moved to grant Ms. De La Paz an Interim Permit and to approve her proposed SCPP. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

b. Review of Completion of Supervised Clinical Practice Period and Determination to Grant or Deny Licensure

Sheenam Arora

Ms. Fearon read the name of the applicant and the Board reviewed and discussed the application file. The Board questioned why her mid-point and ending evaluation dates on the Clinical Performance Instrument form were within 1.5 weeks of one another. Ms. Lorona clarified that both of Ms. Arora's supervisors actually did the end-point evaluations in November because Ms. Susan Meland, P.T. appears to have completed the mid-point evaluation section of the form as there in only once place for the ending evaluation to be recorded. The Board discussed the fact that the evaluation of the Interim Permit holder's skills was very good. Ms. Kalis moved to grant licensure to Ms. Arora. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

c. Review of Education and Request to take the National Physical Therapy Examination

Ramon Engracia

Ms. Fearon read the name of the applicant and the Board noted that Mr. Engracia graduated from a physical therapist education program located in the Philippines in 1997. His licensure verification from the Philippines indicates that he was registered there as of 2001, but provides no information relative to his status between then and 2004. The Board discussed the fact that his credential evaluation prepared by FCCPT indicates that he has completed all of the coursework required by the 4th edition of the Coursework Tool. The Board directed Ms. Loroña to request Mr. Engracia to provide information relative to his work history between his graduation from physical therapy school in 2001 and 2004. Ms. Kalis moved to find Mr. Engracia's education substantially equivalent to that of a graduate of a U.S. accredited program

and to grant him approval to take the NPTE. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

**13. Review and Possible Action on Request for Approval to Take National Physical Therapy Examination by Physical Therapist Assistant Applicant; Disclosure on “Personal Information” Section of Application
Lawrence D. Guerrero**

Ms. Fearon read the name of the applicant and the Board noted that the criminal conviction Mr. Guerrero reported was for driving on a suspended license in the early 1990s which was several years before he began the physical therapist assistant education program at Pima Medical Institute. Ms. Kalis moved to grant Mr. Guerrero approval to take the National Physical Therapy Examination and to grant him certification upon receipt of a passing score. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**14. Review and Possible Action on Supervised Clinical Practice Period Proposal
Steve Podzielnny – SCPP**

Ms. Fearon read the name of the applicant and the Board discussed the proposal and noted that Mr. Podzielnny was proposing to work only 8-16 hours per week for the duration of the supervised clinical practice period (SCPP). The Board debated whether this amount of time would be adequate to assess the applicant’s skills and competency as a physical therapist assistant. The Board discussed the proposed supervisor and agreed that he would obtain good supervision and experience under Chris Markey, P.T. in the facility. The Board discussed whether extrapolating the number of hours over a longer period of time would satisfy the requirement. The Board reviewed R4-24-202 and discussed its options. Ms. Fearon moved the Board accept the proposal with a recommendation that he fulfill the 16 hour requirement and that he be certified upon completion of the supervised clinical practice period. Dr. Cornwall seconded the motion. The Board debated whether to require Mr. Podzielnny to take and pass the NPTE. Ms. Cornelius advised that the Board could revisit the decision to take the NPTE in light of what he has proposed which consists only of a limited SCPP. The Board again reviewed and discussed A.R.S. §32-2025(D) and R4-24-202. The Board discussed whether the SCPP could be completed on a part-time basis over a longer period of time – perhaps for the entire 6 month duration of the Interim Permit that would be granted to Mr. Podzielnny. Ms. Fearon withdrew the motion. Ms. Kalis moved the Board grant Mr. Podzielnny an Interim Permit and approve a 16-hour per week SCPP to be completed over 6 months and that the proposed facility and supervisor be approved. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

15. Executive Director’s Report

a. Financial Report: Ms. Herbst Paakkonen advised the Board that she had received the revenue and expenditures report for the month ending November 30, 2006 and that she would e-mail that report and her written analysis within the next few days.

b. Board Staff Activities: No additional information to report.

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

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

e. Legislative Update: No additional information to report.

16. Review and Possible Action on Proposed Rule Promulgation Strategy for Fiscal Year 2007

Ms. Herbst Paakkonen informed the Board that Ms. Jeanne Hann, the Board’s contract rule writer, has agreed to meet with Board staff on January 10, 2007 to work on revisions to the remainder of the administrative rules in Title 4, Chapter 24 with most of the effort focused on cleaning up poor language and reviewing the written criticisms of rule to R4-24-301 (addressing

informed consent). Additionally, Ms. Cornelius will review the rules that address investigations and subpoenas and forward any suggestions to the staff. The Board directed staff to not only make the identified changes to specific rules in Article 2, but also to work with Ms. Hann to clarify the Board's intent with respect to R4-24-202 to address the fact that a minimum number of hours is expected for a successful supervised clinical practice period. The Board appointed a work group consisting of Ms. Fearon and Ms. Kathy Brewer, P.T. to join Ms. Kalis and Ms. Hiller in recommending new rule language addressing patient care documentation standards. Ms. Fearon and Mr. Robbins volunteered to attend the January 24, 2007 oral proceeding for the proposed changes to R4-24-303, Patient care management.

CALL TO THE PUBLIC

None.

ADJOURNMENT

The meeting was adjourned at 12:25 p.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

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