

JANET NAPOLITANO
Governor



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Executive Director

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REGULAR SESSION MEETING MINUTES
February 27, 2007

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

MEMBERS ABSENT:

OTHERS PRESENT: Heidi Herbst Paakkonen, Executive Director
Peggy Hiller, P.T., Program Compliance Specialist (Investigator)
Carol Loroña, Licensing Administrator
Keely Verstegen, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

The meeting was called to order at 8:35 a.m.

1. Review and Approval of Draft Minutes:

January 23, 2007; Regular Session Meeting

Ms. Kalis introduced the agenda item and the Board noted a few typographical errors for correction. Ms. Kalis moved the minutes be approved as corrected. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

January 23, 2007; Executive Session Meeting

Ms. Kalis introduced the agenda item and the Board noted there were no corrections to the draft. Ms. Kalis moved the minutes be approved as drafted. Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

February 6, 2007; Special Session Meeting

Ms. Kalis introduced the agenda item and the Board noted there were no corrections to the draft. Ms. Kalis moved the minutes be approved as drafted. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

2. Informal Hearing

#06-06; Tonya Bunner, P.T.

Ms. Kalis introduced the agenda item and confirmed that Ms. Bunner was present telephonically. The Board members and staff exchanged introductions with Ms. Bunner. Ms. Kalis reviewed the purpose and procedures relative to the informal hearing, and advised Ms. Bunner of the possible outcome of the proceeding. Ms. Tanis Eastridge, Court Reporter, swore in Ms. Bunner for the hearing. Ms. Hiller reviewed the investigative report for the Board noting that the Board held its initial review of Complaint #06-06 at the regular session meeting on January 23, 2007. The

complaint was opened in response to allegations filed by H.W., a former patient at BODYCENTRAL Physical Therapy that Ms. Bunner discouraged H.W. from seeking a neurological evaluation despite her reports of worsening neurogenic symptoms. The complaint further alleged that Ms. Bunner told H.W. that she teaches other therapists to inflate their bills and that she intentionally keeps sparse records. In her response to the notification of complaint Ms. Bunner stated that at no time during her treatment from April 2, 2004 through February 1, 2005 did H.W. express dissatisfaction with her care nor did she report worsening symptoms, and Ms. Bunner stated further that she would never discourage a patient from following up with another healthcare practitioner. Ms. Bunner denied that she teaches other physical therapists how to inflate their billing and she denied that she intentionally keeps sparse records. During the initial review of the complaint the Board discussed the fact that many of Ms. Bunner's entries in the physical therapy record are illegible and that the daily notes lack sufficient detail to support billings for multiple units of timed procedures. The Board noted that some tests and measurements Ms. Bunner might reasonably have performed are missing from the records. The Board questioned why Ms. Bunner did not address in her response to the complaint the issue of what information she teaches other therapists regarding PT coding and billing. The Board noted that the treatment records do not describe any worsening of H.W.'s neurological symptoms and it is not clear from Ms. Bunner's records when H.W.'s status changed. The Board voted to move this complaint to an Informal Hearing. At the Board's direction, Ms. Hiller prepared a time-line of H.W.'s provider visits and conducted a telephone interview with H.W. which revealed only that H.W. had a vague recollection of a conversation during which training programs were discussed and H.W. remembers Ms. Bunner informing her that different codes could be used for different treatments for billing purposes, but does not remember specifics of this informal conversation. In her opening statement, Ms. Bunner advised the Board that she regretted not being able to be present for the informal hearing due to health reasons. Ms. Bunner stated that H.W. was referred to her because of her high risk pregnancy status which is an area in which Ms. Bunner specializes. Ms. Bunner noted that H.W.'s pregnancy outcome was very good in that she was able to carry her twins nearly to term and they were born healthy, and she believes this was due in some part to the care she provided to H.W. Ms. Bunner commented that never did H.W. complain to her of the care that she received. Ms. Bunner explained that H.W. returned to her for physical therapy treatment 2 months after delivering her twins. She noted that H.W. has complex medical conditions so she proceeded carefully and cautiously with her treatment and accordingly H.W. progressed nicely with her treatment. Ms. Bunner stated that she never discouraged H.W. from seeking care from other providers and described H.W. as an educated and intelligent person who is very capable of making informed choices for her care. Ms. Bunner advised the Board that H.W. never mentioned any paralysis or related symptoms of her upper right quadrant during her treatment. If she had complained, Ms. Bunner definitely would have referred her to an appropriate practitioner or would have attempted to treat the symptoms with the concurrence of her primary care provider, Ms. Patricia Thornton, Nurse Practitioner. Ms. Bunner noted that all of the clinical staff working in her practice has taken the time to review and reflect on their documentation practices, and they have incorporated a new electronic system that better captures information and creates alerts to the physical therapists as needed. Ms. Bunner described her relationships with her referring practitioners as being "different" such that it necessitates regular telephone communications concerning the function levels of her pregnant patients. She described a typical telephone conversation between her and a referring nurse practitioner as involving discussions of 15 patients at once, but Ms. Bunner admitted that she wouldn't pull all 15 patient charts and record those discussions. Ms. Bunner affirmed that she was not asked to evaluate and treat H.W.'s neck initially; the focus was her pelvis given concerns of lack of stability during her pregnancy. After they met the established goals in that area, only then did H.W. and Ms. Thornton elect to pursue physical therapy treatment of her neck. Ms.

Bunner explained that she believed she could not address H.W.'s neck at the initial evaluation because the physical therapy referral was not for her neck, and she noted that her evaluation of H.W.'s neck evaluation was performed approximately 2 months later after she received the order from Ms. Thornton to do so. The Board questioned whether Ms. Bunner was trying to rule out radiculopathy during her initial evaluation of H.W.; Ms. Bunner affirmed that her testing was intended to do just that and that her conclusion was that there was no evidence of a cervical radiculopathy. The Board asked whether the initial evaluation indicates that she tested H.W.'s reflexes. Ms. Bunner responded that she didn't do it because none of the other neurological tests were positive. In response to the Board's questions, Ms. Bunner explained that a pregnant person would not be expected to have high rhomboid strength, but she admitted that she didn't write down the results of every muscle that was tested. Ms. Bunner also clarified for the Board that H.W. could not tolerate the prone position given her pregnancy status at that time – 27 weeks with twins – and therefore she tested H.W.'s rhomboid strength while she was bending forward as opposed to having her prone. Ms. Bunner commented that she will typically list in her treatment notes what information she has not recorded on the flow sheet, but will use both sets of notations to prepare her billing. She explained to the Board that sometimes H.W.'s treatment sessions were interrupted when H.W. had to take a telephone call or care for her young child who was sometimes present and that many of her patients are being treated under similar circumstances. Ms. Bunner stated that it is her understanding that a physical therapist can bill for the entire session even when treatment is interrupted, and that the clock continues to run for purposes of billing. The Board asked Ms. Bunner to explain why there is no flow sheet in the records for April 15, 2004 and questioned whether the flow sheet for April 6 serves that purpose. Ms. Bunner responded that she was unsure whether this was the case but she clarified how the treatments provided for April 15 translated into the billing charges she prepared. Ms. Bunner affirmed that throughout the course of H.W.'s treatment she was only recording handwritten notes and explained that the typed notes were prepared by her only for the Board's purposes relative to this complaint. The Board noted that her records lack satisfactory information to support the services that were billed. Ms. Bunner advised the Board that she has recently attended a continuing education course and accordingly she is much more vigilant about what she is documenting. The Board questioned how Ms. Bunner incorporated massage therapy into H.W.'s plan of care. Ms. Bunner explained that the massage therapist who provided services to H.W. was an independent provider who happened to work at BODYCENTRAL (she has since passed away). Ms. Thornton referred H.W. to massage therapy and that is how she came to receive that care. Ms. Bunner noted that H.W. had general overall muscle tightness due in large part to her automobile accident and Ms. Bunner commented that she had no concerns about contraindications for H.W. receiving massage therapy. The Board advised Ms. Bunner that H.W.'s insurance payer could perceive that Ms. Bunner added charges that are for physical therapy when she bills for massage therapy on behalf of the massage therapist. Ms. Bunner noted that she contacted the payer and was directed to use the 97140 code for the massage therapy services. The Board commented that Ms. Bunner's documentation does not support her use of massage therapy under the plan of care for H.W. The Board determined that there was likely a misunderstanding relative to Ms. Bunner teaching anyone how to code or bill and that this allegation should be dismissed. Ms. Bunner stated that since the massage therapist passed away in December 2005, she has employed 5 physical therapists and one PTA; she confirmed that the PTA had no role in H.W.'s care. The Board questioned why Ms. Bunner performed no reevaluations of H.W. after September 21, 2004. Ms. Bunner reiterated that she had continued to discuss H.W. with Ms. Thornton, but that she did not document these conversations. She noted that the charges for the massage therapy services may be higher than what a consumer could find elsewhere. Ms. Bunner also described by recall some of her rationale for the treatments provided but admitted to not having documented that information. Ms. Bunner stated that she believes the

filing of the complaint was motivated by the billing dispute with H.W. as she had refused the 50% deduction requested by H.W. which she considered exorbitant noting that she will often agree to a 10-15% reduction of a bill, but she felt the request for the 50% deduction was actually a demand. Ms. Bunner stated that never before did H.W. complain about her care, and she believes that H.W. filed the complaint to retaliate for the billing. The Board concluded the questioning and reviewed the possible jurisdiction for the complaint. Following discussion, Dr. Cornwall offered a motion and Ms. Kalis seconded dismissing the jurisdiction of A.R.S. §§ 32-2041(A), 32-2044(4) and 32-2044(12). The Board discussed that there is no evidence that Ms. Bunner failed to refer H.W. to another provider, and noted that H.W.'s records support that Ms. Bunner provided appropriate care in that Ms. Bunner can articulate why she did certain things even if that information is not recorded. The motion carried by a unanimous vote. The Board then reviewed A.R.S. §§ 32-2044(1) and 32-2044(20) and commented that while the evaluation appears to have met the minimum standards, the treatment records are scant, the discharge summary is inadequate and the documentation does not support her billing. The Board members concurred that Ms. Bunner's verbal recalled clarifications with respect to the treatment record for H.W. were helpful that she was able to provide during the questioning, but the records do not specifically address what occurred and for how long. The Board also noted that there is a lack of summary and progress reports for the patient and that none of the telephone contacts with H.W.'s referring practitioner were recorded which would have revealed this information. Ms. Kalis moved to find Ms. Bunner in violation of A.R.S. §§ 32-2044(1) and 32-2044(20). Ms. Fearon seconded the motion. The motion carried by a unanimous roll call vote. The Board discussed the fact that while Ms. Bunner has indicated she has instituted some changes to her documentation practices, a review of her records to confirm this is warranted. The Board discussed disciplinary options including issuing a decree of censure, imposing a probation period for the chart reviews, and debated whether to require Ms. Bunner to complete a continuing education course noting that some of the statements made by Ms. Bunner reflect that she may not understand coding and documentation standards. Dr. Cornwall moved to place Ms. Bunner on probation for one year and that she submit to a review of 3 patient charts (all discharged patients); if the charts meet the standards of the law, Ms. Bunner can petition the Board for early termination of probation. If the charts do not meet the standards of the law, Ms. Bunner must complete a physical therapy billing/coding/documentation course that is pre-approved by the Board staff; and submit to a second review of 3 charts (all discharged patients). Mr. Robbins seconded the motion. The motion carried by a unanimous vote. The Board concurred that a Decree of Censure was not warranted in this case. Ms. Fearon moved to adopt as findings of fact that Ms. Bunner's treatment records lack enough information to support the charges billed, contains an inadequate and incomplete discharge summary, lack adequate progress notes and contain insufficient notations in the existing progress notes, her notations are illegible, and the treatment records were below the standards of the law in that the documentation doesn't always describe the treatment provided. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Bunner stated that she has made many of the changes discussed to her documentation and is eager to demonstrate to the Board how her documentation has improved.

3. Initial Review of Complaint

#06-12; Meg Rodney, P.T.

Ms. Kalis introduced the agenda item and Ms. Hiller summarized the investigation of this complaint which was opened in response to a letter received from Mr. Frank Clark, Coordinator of the AHCCCS Clinical Quality Management Unit in which he referred to a (then) 18-month old patient I.R. who was receiving therapy at home through the Arizona Early Intervention Program (AzEIP) and DES/Division of Developmental Disabilities (DDD). In his letter Mr. Clark alleges that on or about May 16, 2006 I.R. sustained a bone fracture, and that I.R. had

received therapy on that date from Ms. Meg Rodney with Saguaro Therapy and Ms. Gabriella (Gaby) Felix, Early Intervention Therapist, from the Saguaro Foundation REACH program and that the fracture may have been the result of the therapy. A conversation with Mr. Clark indicated the incident likely occurred in the family's home while the father was watching. According to Mr. Clark the child's father thought the treatment was too aggressive. Mr. Clark was uncertain as to the difference between a licensed physical therapist and an intervention therapist, and he refused to provide any information as to how the information concerning the alleged incident had come to AHCCCS due to issues of confidentiality. Ms. Hiller confirmed with AzEIP that I.R.'s plan of care included care provided by a physical therapist and an "early interventionist", Ms. Felix. In her written response to the complaint Ms. Rodney noted that I.R. did not receive physical therapy on May 16, 2006 – the date of the alleged fracture – and that his last treatment visit was on May 15, 2006. She also noted that on May 16, 2006 I.R. was seen by Ms. Felix. Ms. Rodney stated that she has no supervisory role over Ms. Felix, I.R. received Developmental Special Instruction (DSI) services through Saguaro Foundation's REACH program and physical therapy services through Saguaro Therapy and that these agencies and their providers are independent of the other. Ms. Rodney also noted that Ms. Felix attended I.R.'s physical therapy session on May 15, 2006 to observe what Ms. Rodney was addressing with the child and that no training was involved. Ms. Rodney affirmed that the May 15, 2006 treatment was unremarkable and that I.R. did not fuss or cry during the treatment. Ms. Rodney was contacted on May 25, 2006 by Ms. Edy Ramirez, I.R.'s DDD Support Coordinator to report that I.R.'s mother said he had pain two days after Ms. Felix saw him and therefore they were requested that physical therapy services be put on hold until June. Ms. Rodney was informed on May 29, 2006 by I.R.'s father during a telephone call that his appointment would be cancelled as new x-rays indicated a fracture of I.R.'s kneecap and ankle. Ms. Hiller noted that the I.R.'s treatment records are legible and complete, although there is no discharge summary although a progress report is dated May 15, 2006 which is the date of the final treatment visit. She called to the Board's attention the notation and conversations mentioned in Ms. Rodney's response. I.R.'s records were subpoenaed from the Saguaro Foundation REACH program which include Ms. Felix's English-language translations of her Early Intervention visit notes including the note on May 16, 2006 which indicates I.R. did not want to roll over to his tummy. A handwritten note dated May 23, 2006 notes that I.R.'s mother alleged that her son had an injury during Ms. Felix's service period. Ms. Hiller advised the Board that her investigative findings indicate that the documentation supports Ms. Rodney's affirmation that she did not provide treatment to I.R. on May 16, 2006 which is the date of the alleged leg fracture. Additionally Ms. Rodney affirms that she has no supervisory responsibilities towards Ms. Felix. Of note is the fact that a letter from DDD concerning their investigation of these allegations identifies a police report in which the father specifically referred to Ms. Felix as causing I.R.'s broken leg. Ms. Hiller noted that Ms. Felix is not under the Board's jurisdiction. Ms. Rodney was present for the Board's review and discussion and she stated to the Board that at no time during her treatment visit with I.R. on May 15, 2006 did I.R. show any signs of discomfort and that her subsequent discussion with Ms. Felix indicated that he wasn't in discomfort on May 16 when she saw him. Ms. Rodney noted that Ms. Felix does not serve as assistive personnel. She responded to the Board's questions concerning the treatment she provided indicating that because I.R. he was not crawling or walking on his own she only worked with him on trunk stability and that she may have put him on his hands and knees. Ms. Rodney asserted that she did not handle I.R. much on May 15 because most of her time was used discussing equipment needs with the family. The Board questioned Ms. Rodney relative to the purpose of an early interventionist. She explained that person is charged with assisting the child in meeting developmental milestones; some of the things that they do may appear to be the same as what a physical therapist does, but they do them for different reasons such as positioning a child in such a way as to engage his interest in toys while the physical

therapist is positioning the child in an effort to build strength. Ms. Rodney noted that an early interventionist's background may consist of formal education in early education and child development, or may consist of on-the-job training. The Board questioned whether these personnel have assessment skills. Ms. Rodney said that they do only to the extent of what is identified in the family service plan. The Board expressed some concerns that there is an implication that an early interventionist or developmental specialist may be considered assistive personnel to a physical therapist and discussed whether the AzEIP system appears to be placing a physical therapist at risk for failure to appropriately manage patient care with respect to the activities that they are performing. Ms. Hiller described to the Board the responsibilities of the developmental assistant according to the information on the web-site of the Division of Developmental Disabilities and stated that she found no evidence that would suggest the early interventionists are operating as assistive personnel to a physical therapist. The Board also noted that the record reflects that a sibling of I.R. had been playing rough with him and that the parents never identified Ms. Rodney as the cause. Ms. Rodney affirmed that the system intend that the early interventionists are service coordinators for the family, but are not identified as assistive personnel to a physical therapist. Ms. Fearon moved to dismiss the case due to lack of evidence to suggest that Ms. Rodney caused the fracture and to refer the case back to DDD with the Board's conclusions and an advisement as to the evidence in the investigative record that suggests Ms. Felix may have caused the injury to I.R. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

4. Initial Review of Unlawful Practice Case Investigation

#07-01-UPI; Melani Byrnes, P.T.

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen reported that on February 7, 2007 Ms. Melani Byrnes telephoned to self-report that she had failed to renew her Arizona physical therapist license by August 31, 2006 and had continued to practice part-time. Ms. Byrnes' license was reinstated on February 8, 2007. Ms. Byrnes indicated on the Reinstatement and Renewal Affirmation of Employment Status form that accompanies the reinstatement application that she practiced as a physical therapist with a lapsed license part-time from September 1, 2006 through February 7, 2007, and attached a list of the specific dates which totaled 56. Ms. Herbst Paakkonen noted that the possible jurisdiction for the Board to consider 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. Herbst Paakkonen advised the Board that she did not find conclusive evidence that Ms. Byrnes had failed to file a change of address with the Board; her licensing file did not contain any such notification, but the Board office did not receive back in the mail Ms. Byrnes' licensure renewal application indicating a failed delivery attempt due to an incorrect address. Ms. Byrnes

was present for the Board's review of this case and agreed to answer the Board's questions. She indicated that she moved at the end of 2005 and sent notification of her address change to several entities, but admitted that she didn't maintain back-up documentation that would establish this fact. Ms. Byrnes explained that when she didn't receive her renewal application in the mail, she wasn't concerned and didn't realize the deadline had passed. She only learned there might be a problem when her billing was rejected from the State of Arizona as she is a contract provider with the Department of Economic Security's Division of Developmental Disabilities. Ms. Byrnes stated that she erroneously assumed that her license was due to be renewed in 2007. She noted that she has now implemented a reminder system to ensure that she does not make this mistake again. Ms. Herbst Paakkonen described the basis upon which the Board has previously calculated the civil penalty, and the Board noted that application of this formula would result in a civil penalty of a substantial amount – \$2,250. The Board discussed with Ms. Byrnes the fact that changing her address with one state agency does not ensure that the information is forwarded to another agency. She described her contract work with the State of Arizona and noted that she has informed them of her lapse in license. She also described the humanitarian and volunteer service work that she does in and around Tucson. The Board discussed possible probation terms relative to capping the civil penalty at \$1,000 and discussed waiving the community service requirement as she has provided evidence that she is already engaging in these activities. Ms. Kalis moved to adopt a finding of fact that Ms. Byrnes practiced physical therapy without a license for 56 days, to find Ms. Byrnes in violation of A.R.S. §§ 32-2027, 32-2044(1) and 32-2048(A) and to offer her a consent agreement establishing a six month term of probation during which time the licensee must pay a civil penalty of \$1,000 and take and pass the Board's jurisprudence examination. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board concurred that failure on the part of Ms. Byrnes to sign the consent agreement within 20 days will remand the case to an informal hearing.

5. Request and Possible Action on Request for Acceptance of Voluntary Surrender of Licensure 06-02-CC; Angell Eggleston, P.T.

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen noted that on December 18, 2006 the Board had reviewed the recommendations of the Continuing Competence Audit Committee and discussed the fact that Ms. Eggleston failed to respond to the notice of continuing competence audit that she received in October 10, 2006. Ms. Eggleston was found in violation of the following:

- A.R.S. §32-2044 Grounds for Disciplinary Action (1), violating this chapter, Board rules or a written order [specific to A.A.C. R4-24-401(G)(2) "Within 30 days of receipt of a notice of audit, a licensee shall submit evidence to the Board that shows compliance with the requirements of continuing competence"];
- A.R.S. §32-2044 Grounds for Disciplinary Action (3), attempting to obtain a license by fraud or misrepresentation;
- A.R.S. §32-2044 Grounds for Disciplinary Action (12), failing to adhere to the recognized standards of ethics of the physical therapy profession.

Additionally, the Board voted to offer Ms. Eggleston a Consent Agreement containing the above stated findings of fact and conclusions of law, and disciplinary terms under a 6-month term of probation including a \$500 civil penalty, a passing score on the Board's jurisprudence examination, and submission of evidence of having come into compliance with the Board's continuing competence requirements. Upon receiving the consent agreement Ms. Eggleston contacted Ms. Herbst Paakkonen by telephone and stated that she was dismayed that the Board took the action it did on December 18, 2006 as she remembered mailing her documents to the Board (although she admitted that she had no receipt or proof of having done so). Ms. Eggleston objected to the Board's conclusions of law and informed Ms. Herbst Paakkonen that she would

not participate a hearing concerning this matter and that she was no longer interested in maintaining her Arizona physical therapist license. She was informed that if she wished the Board to consider accepting her voluntary surrender of licensure, that request would be presented to the Board for possible approval and final resolution of this case. Ms. Eggleston filed the request on January 22, 2007. Ms. Herbst Paakkonen drafted a consent agreement that has been offered to licensees in virtually identical situations for the Board to review, modify and approve or reject for purposes of accepting Ms. Eggleston's surrender of licensure. Ms. Herbst Paakkonen also advised the Board that Ms. Eggleston submitted her continuing competence documentation with her request for acceptance of her surrender of licensure; review of these materials demonstrated that had she submitted these materials on or before her deadline of November 9, 2006, Ms. Eggleston would have been found in compliance with the continuing competence requirements. During the discussion of the request the Board questioned whether Ms. Eggleston understood that she was requesting the Board take action that constitutes disciplinary action. Ms. Herbst Paakkonen advised the Board that she does not provide legal advice to licensees but if asked will offer suggestions as to whom might give legal advice. Ms. Kalis moved to offer the consent as drafted. Mr. Gossman seconded the motion. The Board then discussed whether to notice Ms. Eggleston to participate in an informal or formal hearing if she declines the offer of the consent agreement. Ms. Fearon offered an alternate motion that offers the consent agreement to Ms. Eggleston with a letter that identifies her options if she should decline to sign it within 15 day, those options being either an informal hearing that could be conducted telephonically or a formal hearing. Mr. Gossman seconded the motion. The motion carried by a vote of 4-1.

6. Request for Modification to Proposed Consent Agreement

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

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen reminded the Board that on December 18, 2006 Board found that Ms. Andersen had failed to renew her Arizona physical therapist license and had practiced without a license on 45 dates from September 1, 2006 through November 22, 2006. Following discussion the Board voted to offer Ms. Andersen a consent agreement adopting findings of fact, conclusions of law and prescribing certain disciplinary terms be met under an order. The Board granted Ms. Andersen 20 days to sign the agreement which she received on January 5, 2007; shortly before the signing deadline Ms. Andersen contacted Ms. Herbst Paakkonen to request an extension in order to allow an attorney to review it. A one-week was granted, and on February 2, 2007 the Board office received an e-mailed request from Mr. Henry Stein, Ms. Andersen's attorney indicating that he wished to request some minor modifications to the order on behalf of his client. Ms. Herbst Paakkonen advised Mr. Stein that all consent agreement negotiations are conducted by the Board and the Board would entertain his request on February 27, 2007. Mr. Stein submitted his client's request that an additional paragraph be inserted into the findings of fact section of the agreement stating that the lapse of licensure was inadvertent and that no patients were harmed during that period of time, and requested an addition to the order section indicating that all public reports of the disciplinary action reflect the same. The Board discussed the requested and commented that the only evidence provided to the Board to suggest that the lapse of license and the period of unlicensed practice was inadvertent is Ms. Andersen's statements to that effect. The Board further discussed the fact that it cannot adopt a finding that no patients were harmed because the potential does exist that a future case before the Board could establish Ms. Andersen did harm a patient during that period of time she was unlicensed. Ms. Herbst Paakkonen advised the Board that Ms. Andersen has opportunity to submit a statement concerning the Board action to the national data bank, and that she can submit a written response that she can designate is public record to accompany the disciplinary action. Ms. Kalis moved the Board offer Ms. Andersen a

revised consent agreement that adds a finding of fact stating that Ms. Andersen stated to the Board that her failure to renew her license was inadvertent and was not intended to cause any harm, and that Ms. Andersen be allowed 20 days to sign or decline the agreement (failure to sign would send the case to an informal hearing). Ms. Fearon seconded the motion. The motion carried by a unanimous vote.

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

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen summarized the recommendations of the Continuing Competence Audit Committee that met on February 6, 2007. She noted that the recommendations included the majority of files reviewed were found to be in compliance with nine of those files consisting of resubmissions by licensees previously found out of compliance. She asked the Board if there were questions relative to the audit process and received none. Dr. Cornwall moved to find the 9 licensees listed in Table 2 of the recommendations report out of compliance with the continuing competence requirements of R4-24-401 and to grant them six months with which to come into compliance. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to find the licensees listed in Table 1 in compliance with the continuing competence requirements; Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board discussed the fact that two licensees – Michael Webster and Helena Flansburg – completed only 7 and 15 hours respectively prior to reinstating their licenses. The Board debated whether to adopt conclusions of law and disciplinary action in consent agreements based on the available information, or to request the licensees participate in an informal hearing before the Board for purposes of obtain additional insight into why some of their contact hours were only completed after reinstatement of their licenses. Dr. Cornwall moved the Board open cases concerning Mr. Webster and Ms. Flansburg providing them notice and opportunity to respond, and invite them to informal hearings. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Elizabeth A. Bernci	Matthew J. Brown	Paul J. Gagne
Edna C. Gomez	Corey J. Harshey	Bringa M. Johnson
Scott D. Kneller	Lucas J. Ladouceur	Kimberly K. Madison
Christopher E. McCain	Kristi R. Miller	Margaret E. Moore
Myrtle N. Raines	Danielle J. Schulte	Hyrum R. Tenney
Katrina D. Zannitto		

Ms. Kalis announced the agenda item and asked the Board for questions or comments on the listed application files. Hearing none she moved to grant licensure to the listed applicants. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

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

Richard D. Dubose	Suzan R. Moore	Andrew Rivera
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Ms. Kalis announced the agenda item and asked the Board for questions or comments on the listed application files. Hearing none she moved to grant certification to the listed applicants. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

10. 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

Louella L. Bellon

Ms. Kalis read the name of the applicant and the Board reviewed the submitted proposal for Ms. Bellon's Supervised Clinical Practice Period (SCPP). The Board noted that Ms. Bellon did not herself submit a letter with the proposal, but Ms. Loroña assured the Board that the proposed supervisor did submit all required information. Ms. Lonora also confirmed that the SCPP is for a 40-hour per week assignment. The Board discussed whether the proposed facility provided ample opportunity for Ms. Bellon to treat a broad range of patients; following discussion the Board members concurred that it was appropriate. Ms. Kalis moved to grant Ms. Bellon an Interim Permit and to approve the proposed SCPP. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

Sunil S. George

Ms. Kalis read the name of the applicant and Ms. Loroña advised the Board that Mr. George had submitted his proposal to complete a SCPP at Phoenix Baptist Hospital which he would begin upon passing the NPTE and the Arizona jurisprudence examination. Ms. Loroña confirmed that Mr. George's application file is otherwise complete. Ms. Kalis moved to grant Mr. George an Interim Permit and to approve his SCPP proposal upon the Board office receiving his passing scores on the NPTE and the jurisprudence examination. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

Maria E. Villamarzo

Ms. Kalis read the name of the applicant and Ms. Loroña advised the Board that Ms. Villamarzo's credential evaluation report was previously reviewed by the Board, but the Board could not make a determination relative to whether her education was substantially equivalent to that of a graduate of a U.S. accredited program because International Consultants of Delaware (ICD) had not used the correct version of the Coursework Evaluation Tool. Ms. Villamarzo's revised report has been issued by ICD and it is before the Board for review. The Board noted that the applicant's NPTE score transfer report indicates that she was once licensed in Missouri, although there is no other evidence to support this. The Board also discussed the fact that she was unable to produce a passing score on the former Test of Spoken English (TSE), and her scores on the current Internet Based Test of English as a Foreign Language (iBT) are not passing scores. Ms. Kalis offered a motion finding Ms. Villamarzo's education substantially equivalent to that of a graduate of a U.S. accredited program, and that she be informed of the requirement of a passing iBT score and verification of licensure in Missouri. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

c. Review of Supervised Clinical Practice Evaluation Form and Determination to Grant or Deny Licensure

Maria C. Sy

Ms. Kalis read the name of the applicant and the Board reviewed her completed Clinical Performance Instrument (CPI) evaluation form and noted that she accomplished all of the requirements listed. The Board questioned whether the signer of the form is a physical therapist as there is no indication as such. Ms. Loroña indicated that Ms. Sy was informed in writing of the fact that the CPI must be completed by a physical therapist. Ms. Kalis moved licensure be granted to Ms. Sy after Ms. Loroña confirms the CPI was completed by a physical therapist. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

11. Executive Director's Report

a. Financial Report: Ms. Herbst Paakkonen reiterated that the agency is on track to overspend the FY 2007 appropriation by \$4,000 but that the unspent appropriation of \$14,500 from FY 2006 can be used to meet expenditure needs including unanticipated moving expenses. She indicated that no viable option for office relocation has been identified at this time and that the Arizona Department of Administration has contacted a contract real estate broker to identify possibilities.

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

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

d. Rules Revision Update: Ms. Herbst Paakkonen reported that she is awaiting notification from the Board's assigned analyst with the Governor's Regulatory Review Council (GRRC) whether any edits to the submitted draft are required. At this point in time, the goal is still to present the proposed rule to the Council on April 3, 2007 which, if approved, would result in an effective date of the rule as on or about June 3, 2007. Ms. Herbst Paakkonen will notify the Board if the analyst determines any substantive changes to the draft must be made.

e. Legislative Update: Ms. Herbst Paakkonen discussed S.C.R. 1016 and the challenges that it would present to the Board relative to addressing and requesting legislation before the Arizona State Legislature. She stated that she will inform the Board as this legislation progresses.

12. Review and Possible Action on Proposed Draft Substantive Policy Statement: Requirements for a Supervised Clinical Practice Period (SCPP)

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen advised the Board that she had attempted to draft a Substantive Policy Statement (SPS) to address concerns that had emerged from previous Board discussions relative to the fact that the Board's administrative rule R4-24-204; Supervised clinical practice, does not stipulate a minimum or maximum number of hours per week that the Interim Permit holder must complete. The Board noted that the prior rule that addressed supervised clinical practice did prescribe minimum and maximum numbers of hours to be completed each week, but that it lacked flexibility; the intent of the new rule was to grant the Interim Permit holder some flexibility, but it has unintended consequences in that it does not establish any parameters. Ms. Herbst Paakkonen noted that as is the case with any SPS, the adopting agency must exercise caution to ensure that it does not amount to attempting to adopt a rule without completing the rulemaking process; to that end she asked Ms. Verstegen to carefully review the draft and be prepared to advise the Board on this issue. Ms. Verstegen stated that after reviewing the draft she came to the conclusion that it does indeed cross over to a rulemaking and that it won't accomplish the intended objective because a SPS is not enforceable. The Board members debated whether the drafted SPS clarifies R4-24-204, or augments that rule. Ms. Herbst Paakkonen commented that Ms. Lorona researched whether the Clinical Performance Instrument, the evaluative tool for the SCPP, does not provide any guidance relative to this issue. Ms. Verstegen also advised the Board that if adopted as a SPS, it could be challenged before the Governor's Regulatory Review Council and as a result of a hearing could be struck down. The Board concurred that the draft should be tabled at this time and directed Ms. Herbst Paakkonen to continue pursuing the effort to revise R4-24-204 in order to include the minimum and maximum hours required per week for a SCPP.

CALL TO THE PUBLIC

None

ADJOURNMENT

The meeting adjourned at 11:55 a.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Randy Robbins
Secretary