

JANET NAPOLITANO
Governor



HEIDI HERBST PAAKKONEN
Executive Director

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President

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REGULAR SESSION MEETING MINUTES
April 24, 2007

MEMBERS PRESENT: Joni Kalis, P.T., President
Mark Cornwall, P.T., Ph.D., Vice President
Randy Robbins, Secretary
Merlin Gossman, Member
James Sieveke, P.T., O.C.S., 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 8:34 a.m. Ms. Kalis introduced and welcomed Mr. James Sieveke, P.T., O.C.S., to the Board.

1. Review and Approval of Draft Minutes

March 27, 2007; Regular Session Meeting

Ms. Kalis introduced the agenda item and asked the Board to identify any necessary corrections to the draft minutes. Hearing none Ms. Kalis moved to approve the draft. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

2. Informal Hearing

#CC-07-01; Michael Webster, P.T.

Ms. Kalis introduced the agenda item and Mr. Webster exchanged introductions with the Board members and staff. Ms. Kalis reviewed the Board's informal hearing procedure and possible outcomes. Ms. Bauman-Delgado swore in Mr. Webster for the hearing. Ms. Herbst Paakkonen advised the Board that during its regular session meeting of February 27, 2007 the Board reviewed the findings of the Continuing Competence Audit Committee following the Committee's review the audit file reviewed of Mr. Webster who reinstated his license on September 27, 2006 and therefore was subject to automatic audit of his continuing competence requirements for the September 1, 2004-August 31, 2006 licensure period. Mr. Webster's continuing competence materials were received on December 24, 2006. The Board determined that Mr. Webster had submitted a total of 20.5 contact hours, but only 7 of those hours were obtained between September 1, 2006 and August 31, 2006. Accordingly the Board voted to open an investigation and invite the licensee to an informal hearing. Ms. Herbst Paakkonen noted that the possible jurisdiction for the complaint was listed in their report. She also called to the

Board's attention a letter submitted by Mr. Webster that addresses, in part, the allegations that he failed to complete the required 20 contact hours of continuing competence between September 1, 2004 and August 31, 2006. This letter explained that when he left the employment of Rehabilitation Management Solutions (RMS), company management refused to send him copies of his continuing competence documentation. In his opening statement to the Board Mr. Webster stated that he was aware of the fact that he would be audited and requested that RMS forward his continuing competence documentation to the Board on his behalf but he was advised that his documentation was no longer being maintained. Mr. Webster explained that as expeditiously as possible he completed the balance of his continuing competence requirements after reinstating his physical therapist license. The Board advised Mr. Webster that one of his professional responsibilities as a licensee is to be responsible for maintaining his continuing competence requirements. He concurred with the Board and noted that he thought he took the most prudent course he could when he realized that his former employer would not provide him with the copies of the continuing competence documentation. He further explained that he had earned many in-service hours through what he believed was a high-quality in-service education program that was provided to RMS employees on a regular basis – perhaps as often as 2-3 times each month. Mr. Webster explained that certificates were issued to the participants for these activities and that they were displayed on the wall of the practice. Mr. Webster stated that when he filed his licensure reinstatement application he was of the belief that RMS would immediately supply the copies of his continuing education activities because of the company's concerns that he had practiced without a license for a period of time. He suspects that because of the potential of lost reimbursement his former employer became unwilling to do anything on his behalf. He recalled a conversation with RMS management during which he was advised that his continuing education documentation was likely destroyed along with other personnel related documentation. Ms. Kalis reviewed the possible jurisdiction for the case and asked the Board to discuss whether any should be dismissed. Dr. Cornwall moved to dismiss A.R.S. §32-2044(3) and §A.R.S. 32-2044(14). Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board discussed the fact that while Mr. Webster's documentation initially suggested that he was attempting to mislead the Board, his testimony during the hearing was believable. Following additional discussion Dr. Cornwall moved and Mr. Gossman seconded the motion to dismiss the allegation that Mr. Webster violated A.R.S. §32-2044(12). The motion carried by a unanimous vote. Ms. Kalis moved to find Mr. Webster in violation of A.R.S. §32-2044(1). Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to adopt in a Board order the Findings of Fact that Mr. Webster failed to submit evidence of having submitting evidence of having completed 20 hours of continuing competence earned in the 2004-2006 licensure period. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to issue to Mr. Webster a Decree of Censure, Mr. Robbins seconded the motion. The motion carried by a unanimous roll call vote.

3. Informal Hearing

#CC-07-02; Helena Flansburg, P.T.

Ms. Kalis introduced the agenda item and announced that Ms. Flansburg would participate in the hearing telephonically. The Board members and staff exchanged introductions with Ms. Flansburg and Ms. Kalis reviewed the Board's informal hearing procedure and possible outcomes. Ms. Bauman-Delgado, Court Reporter swore in Ms. Flansburg for the proceeding. Ms. Herbst Paakkonen advised the Board that during its regular session meeting of February 27, 2007 the Board reviewed the recommendations of the Continuing Competence Audit Committee following the Committee's review of 54 audit submissions received between December 2006 and early February 2007. One of the audit files reviewed was that of Ms. Flansburg who reinstated her physical therapist license on September 21, 2006 and therefore was subject to automatic

audit of her continuing competence requirements for the September 1, 2004-August 31, 2006 licensure period. Ms. Flansburg submitted a brief letter with her continuing competence materials indicating that at the time she reinstated her Arizona physical therapist license she was of the belief that she had completed the required 20 hours during the 2004-2006 licensure period, however she later realized that one of her courses was actually completed in February of 2004 which was prior to the 2004-2006 licensure period. On February 27, 2007 the Board was advised by staff that the Audit Committee found that Ms. Flansburg had submitted a total of 35 contact hours, but only 15 of those hours were obtained between September 1, 2006 and August 31, 2006. The Board voted to open an investigation and invite the licensee to an informal hearing. Ms. Herbst Paakkonen reported that on April 9, 2007 the Board office received a packet of materials from Ms. Flansburg consisting of a letter explaining her mistaken assumption that she was in compliance with the Board's continuing competence requirements for the 2004-2006 licensure period, and her efforts to comply with continuing education requirements for her Delaware physical therapist license. Ms. Herbst Paakkonen called to the Board's attention the chart listing Ms. Flansburg's continuing education courses and in which licensure period they were completed. Finally, she noted the possible jurisdiction for the case. In her opening statement Ms. Flansburg stated that what transpired was an honest mistake and that she simply did not pay close enough attention to the dates of her continuing education certificates. Ms. Flansburg explained that at the time she signed the affirmation statement on her reinstatement application she did so under the assumption that she had completed the hours. She commented that anticipated being audited and that she is accustomed to having to complete hours anyway for her physical therapist license in Delaware. The Board concluded the questioning and the members concurred that Ms. Flansburg's statements are believable. Dr. Cornwall moved to issue Ms. Flansburg an Advisory Letter citing the fact that she failed to complete the required contact hours, but that subsequent information indicates that she has since come into compliance. Mr. Gossman seconded the motion. The motion carried by a vote of 4-1. The Board also discussed the fact that Ms. Flansburg has already completed the continuing competence requirements for the 2006-2008 licensure period.

4. Informal Hearing

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

Ms. Kalis introduced the agenda item and the Board members and staff exchanged introductions with Ms. Andersen and her attorney, Mr. Henry Stein. Ms. Kalis reviewed the Board's informal hearing procedures and the possible outcome of the case. Court Reporter Ms. Nicola Bauman-Delgado swore in Ms. Andersen. On behalf of his client Mr. Stein explained that Ms. Andersen came to Arizona after having been licensed as a physical therapist in Illinois. She explained that she did not realize that her license would expire only 9 months after having been granted her initial license. Mr. Stein noted that Ms. Andersen contacted the Board by telephone to obtain guidance on the due date of her continuing competence requirement at which time she was advised that she did not have a requirement until 2008 and it was upon that basis that she assumed her license did not expire as soon as 2006. Mr. Stein stated that it was essential to Ms. Andersen that the public record be correct in that a finding be adopted stating that Ms. Andersen's failure to renew her license was inadvertent. Also, he indicated that Ms. Andersen wants a finding that, to the best of the Board's knowledge, no member of the public was harmed as a result of her failure to renew her license. Ms. Stein called to the Board's attention the letter that he in February that contains the language Ms. Andersen requested be incorporated into the order. Mr. Stein stated that Ms. Andersen is willing to accept all of the probation terms identified in the consent agreements offered to her even though they are relatively stern penalties. Ms. Andersen apologized to the Board for her ignorance relative to the lapse date of her physical therapist license and characterized the "miscommunication" that occurred when she

contacted the Board office inquiring into her continuing competence responsibilities. She noted that she renewed her Illinois physical therapist license on time even though she is not practicing there. Ms. Andersen explained that she has been barred from an employment position as a result of this pending investigation. She stated that she did not receive her licensure wallet card which would have indicated her licensure lapse date. She reiterated that her failure to renew her physical therapist license was unintentional. The Board advised the licensee that it is impossible at this time to ascertain whether any member of the public was harmed by Ms. Andersen's failure to renew her license. Mr. Stein stated that there is no evidence to demonstrate any harm. Mr. Stein requested that the Board accept Ms. Andersen's statements to that effect. He also questioned how a license could be issued that is only 9 months in duration. Mr. Sieveke questioned why she didn't realize that her licensure renewal card was not posted with those of the other therapists in her facility. Ms. Kalis moved to issue a Board Order that incorporates the findings of fact and conclusions of law in the revised consent agreement but that removes the civil penalty. Mr. Gossman seconded the motion. The Board discussed whether to issue an order or whether to offer Ms. Andersen a consent Agreement. Ms. Kalis moved the Board meet in Executive Session for purposes of obtaining legal advice from Board counsel. Upon resuming the meeting in public session Ms. Kalis re-stated the motion and asked for further discussion. The vote carried by a unanimous roll call vote.

5. Initial Review of Complaint

#06-16; Dana Kernan, P.T.

Ms. Kalis introduced the agenda item and Ms. Hiller summarized the complaint filed by Z.M., a former patient of Ms. Kernan who provided treatment to him from March 2 to May 26, 2006. The complainant alleged that Ms. Kernan engaged in a number of acts of unprofessional and unlawful acts including maintaining illegible and inaccurate records, providing him with excessive treatment, failing to obtain his informed consent for treatment, making false statements, billing for services not rendered and failing to provide complete treatment and billing records. In response to the notification of the complaint Ms. Kernan submitted a very detailed response to the complaint which addressed all of the allegations and stated in part that the records were legible, described how she proceeded with his treatment plan when Z.M. did not provide her with clear subjective information, affirmed that the treatment plan was appropriate and that Z.M. made progress toward his rehabilitation goals, stated that Z.M. did receive a copy of his treatment records, noted that the billing was appropriate and assured that the billing was reviewed with Z.M. Ms. Kernan's response explained that a physical therapist student who provided some of the treatments to Z.M. under her supervision was appropriately introduced to Z.M. and that he stated he didn't mind the student working with him. Ms. Hiller did note that Ms. Kernan stated in her response that Z.M. actually received much improved care as the student was able to spend quality one-on-one time with him when usually he would have done majority of his exercises with a physical therapy aide who would have been "overseeing several other patient exercises as well." Ms. Hiller summarized her review of the treatment records and noted that the billing records were consistent with the documentation of treatments with the exception of Ms. Kernan's statement concerning the care he received from the physical therapy aide for which multiple units of therapeutic exercise were billed. She also noted that Ms. Kernan refuted the allegation that she did not obtain informed consent from Z.M. when care was provided by Robert Sand, P.T.A. or by the aide. Ms. Kernan indicated to the Board that she was present for the review and discussion of the complaint but that she had no additional information to provide to the Board at this time. The Board questioned why the patient presented with a diagnosis but Ms. Kernan did not address this diagnosis and instead identified something different and the plan of care never related back to his diagnosis. The Board reviewed the identified jurisdiction and agreed that all should be considered given the information in the investigative report. The Board

then discussed whether to add A.R.S. §32-2044(4), engaging in the performance of substandard care. The Board also discussed the billing dispute element of the complaint and concurred that it lacks jurisdiction to investigate that allegation. Ms. Kalis moved to invite Ms. Kernan to an informal hearing, to add the additional jurisdiction of substandard care and to allow Ms. Kernan opportunity to respond to the allegation that she failed to address Z.M.'s diagnosis and to tailor his plan of care accordingly. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

6. Review and Possible Action on Non-Compliance with Board Order

Todd Lukasik, P.T.

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen reminded the Board that Mr. Lukasik had been interviewed by the Board on September 26, 2006 relative to his false statements on his licensure reinstatement application he filed on September 5, 2006. Mr. Lukasik had stated on his application that he had not practiced as a physical therapist since the lapse of his license on September 1, 2006, but his former employer submitted evidence showing that he had in fact practiced for two days. Ms. Herbst Paakkonen also reminded the Board that it had voted to reinstate Mr. Lukasik's physical therapist license only after he submitted evidence of having completed the continuing competence requirements for the 2004-2006 licensure period as he had not signed the affirmation statement on his reinstatement application. The Board's vote was that Mr. Lukasik's licensure reinstatement was predicated on him signing a Consent Agreement placing him on probation for 6 months and stipulating certain disciplinary terms be met. Mr. Lukasik's license was reinstated on February 8, 2007 as he had submitted evidence of having completed his continuing competence requirements and had signed the Consent Agreement. Mr. Lukasik's copy of the Consent Agreement was mailed to him on February 16, 2007 but it was returned to the Board office on March 13, 2007 labeled "Returned to Sender - Unclaimed". Ms. Herbst Paakkonen noted that one of the terms of the Agreement stipulates that Mr. Lukasik take and pass the Board's jurisprudence examination within 30 days from the effective date of the Order (on or about March 8, 2007). Mr. Lukasik didn't register for the examination until April 6, 2007 – well after his 30-day deadline to have taken and passed it. Ms. Hiller during this conversation that suggested he received the notice of certified mail, but that he had not claimed it. Dr. Cornwall asked when Mr. Lukasik realized that he did not receive the copy of the consent agreement. Mr. Lukasik replied that he had been out of the state and when he returned he found that the post office had attempted to send the certified letter to him but that it was too late to claim it. He explained that he had spent some time between September and December traveling and visiting family. Mr. Lukasik admitted to forgetting that he had probation terms to complete as he has not been practicing physical therapy. The Board questioned why Mr. Lukasik's statements should be considered as truthful when he has made misrepresentations to the Board previously as to his work status. Mr. Lukasik stated that he did not know. He indicated that he plans to practice physical therapy on a PRN basis and on weekends. The Board questioned why he did not take the jurisprudence examination within the 30 day deadline; he explained that he became confused because he remembered being told that his testing window with the Federation of State Boards of Physical Therapy (FSBPT) is 60 days. He recalled registering for the examination in early February with the intention of taking it in early April. When he realized in early April that his registration was not processed, he called the Board office to inquire about his status. Mr. Lukasik stated that he is scheduled to take the examination on May 5, 2007 and he commented that he is looking forward to taking his ethics course required by the Order and putting this matter behind him. In response to the Board's question he indicated that he has not yet identified an ethics course but that he plans to work with Ms. Hiller in this process. The Board debated whether offering a new Consent Agreement with additional disciplinary terms would be appropriate or whether the case should be remanded to a

hearing at which time the Board can issue an Order. Ms. Kalis moved to modify the current Consent Agreement stipulating a new deadline for the completion of the Consent Agreement as May 30. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to offer Mr. Lukasik a Consent Agreement containing the Finding of Fact that he failed to take and pass the Board's jurisprudence examination within the 30 day deadline stipulated by his order, the Conclusion of Law that Mr. Lukasik violated A.R.S. §32-2044(1), failure to comply with a Board order. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Mr. Gossman moved the Board impose a civil penalty of \$400 in the Order section of the Consent Agreement and that he be allowed 14 days to sign the agreement; failure to do so will result in the case being sent to a formal hearing. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

7. Request for Modification to Consent Agreement and Order

#CC-06-04; Margaret Batalden, P.T.

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen advised that on December 18, 2006 the Board reviewed findings of the Continuing Competence Audit Committee that indicated Ms. Batalden had failed to complete 20 contact hours of continuing competence during the 2004-2006 licensure period contrary to her affirmation on her licensure renewal application that she had completed the requirement. Ms. Batalden's audit submission indicated that she had completed only 10.8 contact hours between September 1, 2004 and August 31, 2006. The Board adopted Findings of Fact, Conclusions of Law and probation terms in a Consent Agreement that Ms. Batalden signed on January 8, 2007; the terms consisted of being placed on probation for 6 months during which time she is to take and pass the Board's jurisprudence exam, pay a civil penalty of \$250, and come into compliance with the continuing competence requirements for the 2004-2006 licensure period. Following a telephone conversation Ms. Batalden e-mailed Ms. Herbst Paakkonen on April 12, 2007 to request modification to the consent agreement citing her anticipated inability to take the jurisprudence examination prior to July 18, 2007 due to work demands and surgery scheduled for May 8, 2007. Her e-mail requests a one-month extension of her term of probation which would consist of a modification to the existing consent agreement granting her until August 18, 2007 to take and pass the jurisprudence examination. Ms. Herbst Paakkonen advised the Board that its options consist of granting or denying this request. The Board discussed the fact that Ms. Batalden filed this request half-way through her probation term and questioned why she didn't take the examination earlier. Following additional discussion Dr. Cornwall moved to offer Ms. Batalden a consent agreement that grants her until August 18, 2007 to take and pass the jurisprudence examination. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

8. Request for Termination of Probation

Bryan Hannley, P.T.

Ms. Kalis announced that she would recuse herself from the consideration of this agenda item. Dr. Cornwall asked Ms. Hiller to summarize the status of Ms. Hannley's probation and she reported that Mr. Hannley, P.T. is seeking termination of probation relative to case #05-11. She reviewed his probation compliance history beginning with the original Board order placing him on probation for 12 months commencing on November 7, 2005 for violations of A.R.S. § 32-2044(4) substandard care, §32-2044(12) unethical conduct, and §32-2044(20) inadequate records. When his 6 month review of patient records identified continued problems with supervision of assistive personnel and patient care management Mr. Hannley and the Board entered into an amended consent agreement and order requiring that he work with a professional mentor; Ms. Valerie Phelps, P.T. was subsequently approved as his mentor. A 90-day extension of time was later granted to Mr. Hannley to allow him to complete his clinical mentorship as

described in his mentoring plan which extended until April 17, 2007. Ms. Hiller reported that Mr. Hannley has complied with all terms of his Orders of Probation and Consent Agreement and she called to the Board's attention the documents illustrating the completion of his probation requirements. She also advised the Board that Mr. Hannley's original Order stipulated staff review of records at the 6-month, 9-month, and 12-month points and that while she conducted the 6-month review which precipitated the consent and amended order for mentoring, his mentorship with Ms. Phelps included on-going review of records during his final 6 months of probation which in her estimation has fulfilled the intent of the Order. Ms. Hiller further recommended the Board terminate Mr. Hannley's probation. The Board and Ms. Hiller commented on Mr. Hannley's very extensive research and the scope of his activities with his professional mentor. The Board noted that Ms. Phelps is held in high regard and that Mr. Hannley's compliance documentation demonstrates that he benefited from her expertise. Ms. Hiller advised the Board that one of the goals of Board staff is to develop a list of Board approved mentors, grouped by area of expertise, for purposes of sharing with probated licensees which will render the process of mentor selection and approval more efficient as the Board is using mentorship increasingly as a remediation tool. The Board concurred that the staff should pursue this effort. Dr. Cornwall moved to grant termination of probation to Mr. Hannley. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Richard Sedillo, P.T.

Ms. Kalis introduced the agenda item and Ms. Hiller summarized the request for termination of probation and summarized the status of his compliance with his order of probation. She reminded the Board that Mr. Sedillo, was placed on probation by the Board for six months commencing on July 31, 2006 for violations of A.R.S. § 32-2044(1), violating statute or rules, and §32-2044(20), failing to maintain adequate patient records based on findings 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. She noted that Mr. Sedillo's only probation term required him to submit to a review of six Medicare patient records to establish his compliance with the Board's statutes and rules. Ms. Hiller reminded the Board that In October 2006 six records were reviewed by Ms. Donna Borden, P.T., contractor for the Board, and that several of the records were determined by Ms. Borden to be incomplete and one of the records reviewed was missing documentation for multiple dates of service. The missing records were later discovered but based upon Ms. Borden's findings of incomplete record, Mr. Sedillo agreed to undergo an additional review of records by Board staff. Ms. Hiller reported that she conducted this review on March 6, 2007 which found all of the records complete and in compliance with statute and rules. She called to the Board's attention her summary of those records and a reflective sample copy of one of the discharged patient records rather than copies of all six records. Ms. Hiller stated that it is her recommendation the Board find that Mr. Sedillo has successfully completed the terms of his Order of Probation warranting termination of his probation. The Board discussed the report and noted that Mr. Sedillo's records had improved significantly and concurred that the records were complete. Ms. Kalis moved to approve the termination of Mr. Sedillo's probation. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

9. Review and Possible Action on Board Staff Request for Authority to Terminate Probation for Unlawful Practice and Continuing Competence Cases

Ms. Kalis introduced the agenda item and Ms. Herbst Paakkonen summarized the request noting that the Board has recently adjudicated 16 unlawful practice cases and 6 continuing competence violations cases and that the disciplinary terms for these cases do not require any substantive review to determine that they have been met. Ms. Herbst Paakkonen commented that A.A.C.

R4-24-308(D) requires a licensee or certificate holder to appear before the Board following a period of probation (“restriction”), no one will experience any harm if the responsibility of termination probation in these cases is delegated to Board staff. The Board discussed the fact that licensees and certificate holders would still have the responsibility to request termination of probation in writing. Ms. Herbst Paakkonen also stated that in the future all consent agreements executed for unlawful practice cases and for continuing competence violations would stipulate that termination of probation would be assessed by Board staff. Dr. Cornwall offered a motion granting approval to Board staff for terminating the probation terms of anyone placed under a disciplinary order for unlawful practice or for a continuing competence violation. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

SUBSTANTIVE REVIEWS OF APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Kate M. Berry	Sophia M. Brink	Lura M. DeVito
Daniel J. Dziadura	Lorie A. Ehler	Daniel M. Eilerman
Thomas G. Gardner	Laura A. Gillie	Tupper D. Gillie
Richard Gonzales	Kristen A. Guise	Bradley S. Hicks
Erin L. Hicks	Matt J. London	Nolan L. Lubarski
Christine H. Masefield	Joseph R. Masefield	Eric M. Mills
Amarilys Pena Melendez	Vone K. Phrommany	Rachele A. Podowski
Amanda J. Ravenscroft	Kelly M. Sanders	Steven M. Schwab
Amy E. Thiele	Kathy H. Wall	Jason D. Wheeler
Anna M. Wingate		

Ms. Kalis introduced the agenda item and Dr. Cornwall disclosed that Mr. Gonzales was previously his student but that the professor-teacher relationship no longer exists. Ms. Kalis noted that Ms. Brink was disciplined by the Ohio Board of Physical Therapy in 2005 for using the term “P.T. Applicant” and for practicing as a physical therapist prior to making application and becoming licensed by that Board. Her license in Ohio is currently in good standing. Dr. Cornwall moved to grant licensure to the listed applicants. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

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

Omer Bryant	Kurt B. Dunlap	Tara L. Green
Elizabeth A. Holthaus	Dianne G. Smith	Richard K. Zipse

Ms. Kalis introduced the agenda item and Mr. Gossman reported that Mr. Bryant is a foreign educated physical therapist and is a U.S. educated physical therapist assistant. Mr. Bryant completed his education as a physical therapist assistant and has been previously licensed as such while completing the coursework deficiencies for his physical therapist education and pursuing licensure as a physical therapist. Ms. Lorona reported that Mr. Bryant also has an open application for licensure as a physical therapist, and the Board noted that he has met all of the requirements for certification as a physical therapist assistant in Arizona. Ms. Kalis 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 Programs Not U.S. Accredited

a. Review of Supervised Clinical Practice Period Proposal

ZsaZsa V. Punay

Ms. Kalis read the name of the applicant and noted that Ms. Punay has submitted a proposal consisting of a 40 hour per week Supervised Clinical Practice Period (SCPP) at a rehabilitation facility in Yuma for 90 days. Ms. Lorona advised the Board that Mr. Cal Zimmerman, P.T. would serve as the primary supervisor and that two secondary supervisors have also been identified if Mr. Zimmerman is ill or on vacation during that 90 day period. Ms. Kalis offered a motion granting Ms. Punay an Interim Permit and approving the SCPP proposal. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Wendello L. Tanael

Ms. Kalis read the name of the applicant and noted that Mr. Tanael is proposing to complete his SCPP at Aegis in Phoenix. The Board reviewed and discussed the information submitted that described the facility and the physical therapy services delivered. The Board members concurred that the facility appears to offer Mr. Tanael an appropriate SCPP opportunity. Ms. Kalis offered a motion granting Mr. Tanael an Interim Permit and approving the SCPP proposal. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

13. Executive Director's Report

a. Financial Report: Ms. Herbst Paakkonen reported that April revenues are below expectations at this time.

b. Board Staff Activities: Ms. Herbst Paakkonen reported that she does not have any updates at this time on the anticipated relocation of the Board office.

c. FSBPT Initiatives and News: The Board agreed by consensus to forward the names of the individuals who served on the Board's jurisprudence examination standards setting committee to the Federation for possible candidates to serve on the standards setting committee for the new versions of the National Physical Therapy Examinations (NPTE) for physical therapists and physical therapist assistants. Ms. Herbst Paakkonen advised the Board that any nominations sent to FSBPT would result in those individuals being invited to apply to serve on the NPTE standards setting committees. Dr. Cornwall reported on his participation in a recent meeting of the Practice Review Examination Task Force. He indicated that the examination will consist of a 100 question examination developed by FSBPT that will test a individual's general knowledge of practice and identify a that person's weaknesses. Dr. Cornwall also noted that the examination can be an option for a continuing competency activity as well as a remediation tool. The examination will have a content outline and be based on theoretical cases upon which the candidate will apply his or her knowledge. He commented that he would want to encourage as many Arizona licensed physical therapists to take the examination during the pilot period while it is offered for no fee. FSBPT hopes to have the examination developed within one year. Dr. Cornwall also reported on the work of the Referral for Profit RFP Development Task Force. He indicated that during the Task Force's recent meeting there was a great deal of discussion relative to whether the RFP and the resultant research will truly accomplish the objective that the Delegate Assembly intended as the issue is very difficult to research and the study may not yield what was envisioned. Dr. Cornwall reported that \$50,000 has already been spent to draft the RFP questions so that leaves only \$200,000 to conduct the actual study unless the issue is presented again to the Delegate Assembly in the form of a request for additional funding. Furthermore, this issue has the potential to consume all of the Federation's research budget for the next several years.

d. Legislative Update: Ms. Herbst Paakkonen reported that HB 2115 was signed by the Governor on April 16, 2007 which modifies the Board's statutes such that the Board will have the authority to order a licensee or certificate holder to complete continuing education under a non-disciplinary order. The effective date of the statutory change is not yet known as it will occur 90 days after the close of the legislative session and that date has not yet occurred.

14. Discussion and Possible Action on Credentialing of Arizona Delegate for the 2007 Delegate Assembly of the Federation of State Boards of Physical Therapy (FSBPT)

Ms. Herbst Paakkonen advised the Board that the Federation of State Boards of Physical Therapy would again fund a Delegate and an Alternate Delegate from each jurisdiction to participate in the 2007 Annual Meeting and Delegate Assembly to be held September 7-10 in Memphis, Tennessee. Ms. Herbst Paakkonen is funded to attend by virtue of the fact that she is a Board administrator, and Ms. Hiller is also funded as the Ethics and Legislation Committee is responsible for the Model Practice Act pre-conference session. Ms. Herbst Paakkonen recommended the Board delay the decision whether to send an additional Board member at the agency's expense until the FY 2008 appropriation is determined and the budget has solidified. Mr. Gossman moved to credential Ms. Kalis as the Delegate with Mr. Robbins to serve as the Alternate Delegate. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Dr. Cornwall stated that he would investigate whether Northern Arizona University will fund his participation; Ms. Herbst Paakkonen commented that these costs could likely be shared with the Board.

15. Review and Possible Action on Stakeholder Meeting Regarding Proposed Revisions to R4-24-101 and R4-24-303

Ms. Kalis introduced the agenda item and reviewed the history of the public comment period as it relates to the proposed changes to R4-24-101 and to R4-24-303. She explained that the purpose of this agenda item is to establish an additional opportunity for stakeholders in the proposed changes to R4-24-101 and R4-24-303 to provide comments in addition to those comments that were submitted during the public comment period which ran from December 22, 2006 through January 26, 2007. Ms. Kalis noted that during the public comment period the Board received nearly 40 comments on the proposed rules; these were reviewed and discussed during a Special Session Board meeting on February 6, 2007 during which time the Board adequately addressed all of the comments. The Board then submitted the proposed rules to the Governor's Regulatory Review Council, and the Council reviewed and discussed the proposed rule on April 3, 2007. The Council did not take action on the proposed rules but sent the proposed rules back to the Board for purposes of meeting with the stakeholders one additional time. Ms. Kalis advised that the purpose of this discussion is to allow for additional stakeholder comments to the proposed rules. Ms. Courtney LeVinus addressed the Board reiterating the comments submitted by the Arizona Association for Home Care (AAHC) during the public comment period. Specifically, it is the position of the AAHC that the requirement of the 15 minute response time by the physical therapist to the physical therapist assistant working under the therapist's general supervision is unreasonable. Also unreasonable according to the AAHC is the requirement that the supervising physical therapist must re-evaluate and treat the patient at least every 4th treatment visit. The Board asked Ms. LeVinus how the AAHC proposes to define "readily available" pursuant to that specific language in the statute reminding Ms. LeVinus that Arizona law requires a rule-making agency to define such a term in specific language so that the individuals being regulated clearly understand the requirement. Ms. LeVinus stated that "within the hour" would be acceptable. Ms. Mary Aloe, P.T. addressed the Board concerning the requirement that the physical therapist treat the patient every 4th treatment visit. She indicated that it is unreasonable to require the physical therapist to see the patient that frequently in a

home health setting because in her observation the patients are not acute to the degree that a patient in an acute care setting would be. She further stated that frequent treatment visits by the physical therapist would not add value to a patient's treatment visit that a physical therapist assistant would be unable to provide. Ms. Aloe noted that if the rule allowed the physical therapist to see the patient every 6th visit, that therapist would have the flexibility to see the patient more frequently. She commented that in her observation a precedent has been set in that other states do not require physical therapists to see the patient as frequently as every 4th visit. Finally, Ms. Aloe stated that more frequent visits by the physical therapist will interrupt the continuity of care and the therapeutic relationship between the physical therapist assistant and the patient. The Board questioned how it is that Ms. Aloe would characterize the home health patients as being relatively non-acute. Ms. Aloe responded that she has made that observation as more patients are receiving care in their homes as a result of elective surgeries. Ms. Susie Stevens, lobbyist for the Arizona Physical Therapy Association, addressed the Board emphasizing that the dynamic of the supervising relationship by the physical therapist to the physical therapist assistant is critical and that physical therapists must maintain their responsibilities as managers of patient care while the physical therapist assistant serves in a delegation role. Ms. Stevens emphasized that some patients, by virtue of the plan of care that has been established by the physical therapist, may not have opportunity to receive treatment by a physical therapist if the plan of care consists of fewer than 6 visits and that this is not ideal patient care. She further noted that if a physical therapist responds to the assistant's communications after one hour, the entire visit is lost as is the opportunity to help the patient. Ms. Kay Wing, President-Elect of the Arizona Physical Therapy Association, reminded the Board that there was a process, involving representatives of all types of physical therapy care settings, through which the Board researched the topic of general supervision of physical therapist assistants which culminated in the drafting of the proposed rule language. She stated that the Board should not revised the proposed rule language as anything other than what the Board has proposed will compromise the safety and the quality of care for physical therapy patients. Ms. Wing comments that a response time of 15 minutes is very reasonable as it requires the physical therapist to give timely direction to the physical therapist assistant during the course of the treatment visit when it is most important, and so that the opportunity to provide the necessary benefits to the patient are accomplished and not squandered. Ms. Diane Killeen, member of the Board's Rule Writing Task Force, stated that the recommendations made by the Task Force were not developed haphazardly and that she was charged with the responsibility by the Task Force to research the requirements with respect to frequency of visits by the physical therapists across all states. Her research found that every 4th treatment visit was the most common. Ms. Killeen commented that she has treated home health patients for 17 years and in her observation home health patients are discharged from hospital care with higher acuity levels and it is because of this reason that she will not allow a physical therapist assistant to work under her general supervision. She questioned whether a physical therapist assistant could accurately assess a patient's acuity issues. Ms. Killeen described to the Board patients for whom she has recently provided physical therapy care at home who had serious health complications. Ms. Killeen also noted that there is no reason why she could not respond to a patient within 15 minutes. In summary she noted that the rules were drafted with full consideration given to patient protection and quality care. Dr. James Roush, P.T. addressed the Board and indicated that in addition to his oral comments he will submit written comments to the Board. He stated that he alone as a physical therapist is responsible for the care of his patients – not the physical therapist assistant and not a home health agency. Dr. Roush noted that physical therapist assistants are paraprofessionals who are extenders of care and their activities are to be directed only by the physical therapist. He stated that it is imperative for the physical therapist to attempt to see his or her patient at least once each week and therefore the

proposed rule language prescribing every 4th treatment visit is appropriate and warranted. Mr. James Tompkins, P.T. addressed the Board and noted that he is employed by the Mayo Clinic in Scottsdale which is one of the largest employers of physical therapists in the state. He reminded the Board that the distinction between the education that a physical therapist receives versus that of a physical therapist assistant is significant and it is noteworthy that the law appropriately reflects that distinction by stipulating that only a physical therapist may perform an evaluation, establish a plan of care, perform re-evaluations and discharge a physical therapy patient. He noted that all state practice acts stipulate that physical therapists are solely responsible for the care provided to patients including any treatments that are delegated to a physical therapist assistant. Mr. Tompkins stated that in his observation patients are aging and that co-morbidities are on the rise as are acuity levels as patients are being discharged sooner from hospital care than has been the case in prior years. He mentioned that physical therapists are being increasingly tested and challenged as a result of these changing dynamics. Mr. Tompkins advised that Board that he could not imagine waiting an hour to respond to a patient and that the proposed rules are appropriate relative to providing safe care to patients. He also questioned whether some employers might over-utilize physical therapist assistants for financial reasons. Mr. Tompkins concluded by commenting that the Mayo Clinic utilizes their highly qualified physical therapist assistants only under on-site supervision and urged to the Board to refrain from adopting rules that are any looser than those proposed. Ms. Linda Duke, P.T. stated her support for the proposed rules but indicated that previous speakers had already made the points that she had intended and therefore it was not necessary for her to speak. Ms. Tami Hirasawa, P.T. stated to the Board that she has spent several years treating pediatric patients and while she respects physical therapist assistants and the role that they can play in the care of a patient, it is necessary for the Board to adopt the rules as proposed as it is very appropriate for the physical therapist to treat a patient a minimum of every 4th treatment visit. Ms. Tere Bryant, P.T. a home health therapist for 16 years, stated to the Board that managed care is limiting hospital stays and frequency of home health visits for patients. She noted that most of her patients are older than 70 years and many of them have cardio-pulmonary issues which complicates their care. Ms. Bryant reported that she has referred 4 patients in the past week to the hospital due to their acuity levels. She advised the Board that she is of the opinion that the role of physical therapist assistants in home health settings should be very limited as a result of their education and training being more limited than that of a physical therapist. Ms. Bryant indicated that a physical therapist must see a patient a minimum of once per week and certainly no less than every 4th treatment visit. Ms. Bryant also stated that the response time by the physical therapist to a call from the physical therapist assistant should be immediate in the event the patient requires hospitalization. She indicated that she would only allow a physical therapist assistant to see only orthopedic patients perhaps once each week. Ms. Beth Gibson, P.T. appeared before the Board and noted that she has practiced in home health care for 17 years and that she served on the Board's Rule Writing Task Force. She stated that every visit with a patient in home health is a reassessment of that patient which is best done by the physical therapist. Ms. Gibson noted that physical therapist assistants do not have the education or training necessary to re-evaluate patients and cannot modify a patient's plan of care. She commented that she would have preferred that the proposed rules stipulate that the frequency of visits required by the physical therapist should be every other or every three treatment visits. Ms. Gibson reiterated that patient safety should be the focus of the proposed rules. She further questioned whether home health agencies are being motivated by profits and not by what is in the best interest of the patients. Ms. Carol Leonard, Registered Nurse and Director of patient care for two home health agencies for 15 years in the Phoenix area, stated that home health agency directors are advocates of utilizing physical therapist assistants in order to reduce the possibility that a patient will have to return to the hospital. She stated that the RNs serving as case managers for home health patients

would largely be responsible for making the determination whether a patient would return to the hospital. Ms. Leonard noted that no physical therapist in her organization is being directed by anyone to supervise a physical therapist assistant under general supervision. She commented that it is not unreasonable for a physical therapist to see a patient between each 6th treatment visit that the physical therapist is required to see the patient. Ms. Leonard advised the Board that a response time of 15 minutes would be a problem because the physical therapist would find that her phone would be ringing off the hook while she is performing an evaluation. She further commented that if a patient requires immediate attention, anyone who is seeing the patient should know to call 9-1-1. The Board questioned Ms. Leonard relative to how frequently an RN re-evaluates the home health patient; Ms. Leonard responded that it may vary from 2-4 times per week. The Board questioned whether the patient would benefit from the physical therapist assistant being directed at the initiation of the visit that the patient should not be treated which necessitates a faster response time on the part of the physical therapist. Mr. Christopher Hanson, P.T. stated that he was in support of the comments made by the Arizona Physical Therapy Association which favorably reviewed the proposed rules. He stated that he had given much thought to the proposed requirement of the 15 minute response time; he determined that the physical therapist should be selective with respect to which calls will be responded to giving priority to the call from the physical therapist seeing one of his patients which is in that patient's best interest. Ms. Yvonne Harrison, P.T. addressed the Board and spoke to how home health care has changed over the years that she has practiced physical therapy. She stated that today patients are sometimes discharged from intensive care to home care which was not the case 10-15 years ago. Ms. Harrison explained that managed care is driving these changes and stated that it is imperative for a physical therapist to maintain the autonomy to choose how physical therapy care is provided and by whom. She reminded the Board that comparisons cannot be drawn between physical therapist assistants and other types of health care assistive personnel. Ms. Harrison stated that the proposed rules are a good compromise and that it is inappropriate for any one industry such as the home health industry to dictate what a physical therapist may or must do. She responded to the Board's questions with the statement that a 15 minute response time is appropriate and noted that any physical therapist who accepts the responsibility for supervising a physical therapist assistant has agreed to be there for that patient and for the assistant. Ms. Karen Donahue, P.T. introduced herself as a member of the Arizona Physical Therapy Association Board and the Practice Committee of the Association. She stated that the rulemaking process was a 7-month process during which time the process allows for open comment. She opined that the fact that the Board has been asked to conduct yet another discussion of the proposed rules appears to have pushed aside all previous efforts by the Board to engage those regulated by the rules just for purposes of having this discussion. Ms. Donahue commented that it is disappointing that she needs to be here today to remind everyone that the Board followed the rulemaking process. She stated that if she as a physical therapist elects to delegate patient care to a physical therapist assistant under a general supervision arrangement, her absolute responsibility is to that patient and that her highest priority is to the telephone call coming from the physical therapist assistant. Ms. Donahue also noted that while she believes that patients deserve the best possible care, she accepts the consensus that it is appropriate for the patient to be seen by the physical therapist every 4th treatment visit. Ms. Debbie Bierwas, P.T. identified herself as a physical therapist who has worked in a variety of settings including home health, hospitals and skilled nursing facilities, and noted that she was an alternate to the Rule Writing Task Force and sat in on the discussions of the group. She stated that she supports the proposed rules. Ms. Bierwas spoke to the statements made earlier that CMS (Medicare) wants to avoid re-hospitalizing patients. She stated that when patients are discharged from a skilled nursing facility, they do not have the benefit of a RN case manager involved in their care. She also noted that it is appropriate to compare the supervision relationship and associated

considerations of CNAs and physical therapist assistants as they are not similar types of assistive personnel. Ms. Bierwas commented that everyone has Caller ID which allows the physical therapist to easily see when the physical therapist assistant is calling. She mentioned that if a physical therapist is being constantly called by the physical therapist assistant with questions, perhaps the physical therapist made an incorrect judgment to delegate care to that assistant. Ms. Bierwas reminded the Board that the law stipulates that no one can give any direction to the physical therapist assistant other than the physical therapist. Following the close of the testimony Ms. Kalis asked whether the Board heard any new and compelling comments that would necessitate any revisions to the proposed rules. Ms. Herbst Paakkonen advised the Board that it would need to schedule a special session public meeting to work on any revisions with the contract rule writer if the Board deems that revisions are necessary. The Board noted that the comments received emulate those that were made during the drafting process and the public comment period. The Board also commented that the attention seems to be focused on care provided in home health but reminded the public that there are many more settings where physical therapy care can be delivered. The Board stated that any rulemaking agency cannot possibly make all of the stakeholders happy, but that it has attempted to strike as much of a consensus as possible. The Board reminded the public that the agency's statutory responsibility is to protect the patient – not anyone else. The Board stated that the Task Force appointed by the Board for purposes of researching supervision of physical therapist assistants and with proposing rule language did a very good and thorough job with their research and in making recommendations to the Board. The Board's goal has been to take a common sense approach to how physical therapy care is provided to patients and there are some care settings, such as home health, where it is necessary to ensure that the physical therapist has more frequent contact with the patient. Finally, the Board discussed the fact that there are patients who would object to care being provided by a physical therapist assistant. Ms. Kalis moved to resubmit the rule package as presented to the Governor's Regulatory Review Council. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

16. Discussion and Possible Action on Scheduling of August 2007 Regular Session Meeting

The Board agreed by consensus to change the August meeting date from the 28th to the 30th and to schedule a special session teleconference meeting on August 14 at 8:30 a.m. for purposes of reviewing applications for licensure and certification in order to prevent any substantive review time frame violations on the part of the Board.

CALL TO THE PUBLIC

Ms. Beth Gibson, P.T. thanked the Board for its work and stated that attending the meeting was very informative.

ADJOURNMENT

The meeting adjourned at 1:25 p.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Randy Robbins
Secretary