

JANET NAPOLITANO
Governor



HEIDI HERBST PAAKKONEN
Executive Director

JONI KALIS, P.T.
President

ARIZONA STATE BOARD OF PHYSICAL THERAPY
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REGULAR SESSION MEETING MINUTES
July 25, 2007

MEMBERS PRESENT: Joni Kalis, P.T., President
Randy Robbins, Secretary
Merlin Gossman, Member
James Sieveke, P.T., O.C.S., Member

MEMBERS ABSENT: Mark Cornwall, P.T., Ph.D., Vice President
Lisa Akers, P.T., Member

OTHERS PRESENT: Heidi Herbst Paakkonen, Executive Director
Peg Hiller, P.T., Investigator
Kellye Daldrup, Administrative Assistant
Keely Versteegen, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

1. Review and Approval of Draft Minutes

June 26, 2007; Regular Session Meeting

The Board discussed the minutes and noted that the Findings of Fact on the bottom of page three should be reworded in a better constructed sentence. Ms. Kalis moved the minutes be approved with that correction. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board then noted that page ten requires correction under the discussion of the supervised clinical practice period for Mr. Sunil George as the Interim Permit holder is not correctly identified. Ms. Kalis offered a friendly amendment to her motion to include this revision; Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

June 26, 2007; Executive Session Meeting

Ms. Kalis moved the minutes be approved as drafted. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

June 28, 2007; Special Session Meeting

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

#06-17; Roger Surette, P.T.

Mr. Surette was present for the hearing and was sworn in by Ms. Tanis Eastridge, Court Reporter. Ms. Kalis reviewed the informal hearing procedures and potential outcomes. Ms. Hiller provided a summary and status report of the investigation noting that the Board held the initial review of this complaint on May 22, 2007. The complaint was filed by G.R., a former patient who was treated by Mr. Surette from August 28 to November 7 of 2003. G.R. alleged

that Mr. Surette received insurance compensation from therapy that he never provided, that he altered a prescription from the referring physician and that he refused to provide copies of G.R.'s therapy records upon written request. In his response Mr. Surette provided treatment documentation and office communications that reflected appropriate therapy services were provided, billings were supported by treatment documentation, and that G.R.'s records were provided by staff. Physician records reflected prescription for treatment of both of G.R.'s shoulders by two different physicians. The Board voted to dismiss the original complaint allegations filed by G.R. as well as the corresponding jurisdictions. However, the Board voted to continue the investigation relative to concerns that Mr. Surette treated the left shoulder of G.R. prior to performing and documenting an evaluation of that shoulder, he provided treatment to the cervical spine of G.R. and did not document an evaluation, his documentation of the care of G.R. did not include a plan of care with clearly established goals, he did not document any objective findings for G.R. in the daily notations, and his discharge summary of G.R. referred to goals which were not present in the records. Ms. Hiller reminded the Board that it had added the possible jurisdiction of A.R.S. §32-2044(20) "Failing to maintain adequate patient records" to the investigation and had provided Mr. Surette with written notice of this fact in his invitation to informal hearing. Mr. Surette was present and stated that he saw this investigation as an opportunity to learn how to improve upon his documentation skills, and he advised the Board that his documentation in this case was substandard. He noted that he has hired Mr. Bob Direnfeld, P.T. to consult with him on making recommendations for improving his documentation. He indicated that he had also attempted to contact Ms. Kathy Brewer, P.T. as he understands that she teaches physical therapy documentation standards. Mr. Surette stated that he believes his documentation lacked some substance and that he is willing to work on improving his skills. The Board questioned how he knew to proceed with treatment if there were no documented goals or plan of care. He stated that he knows the physician and his protocol very well for this type of post-surgical patient. He noted that he is documenting more objective information on the patient's status as compared to G.R.'s records. The Board questioned why the Medicare intake form did not have a correlating treatment for that date and doesn't designate for which shoulder the referral was intended. Mr. Surette indicated that it is possible he didn't bill for that evaluation; he stated that his billing company didn't believe that he billed anything improperly relative to what he had documented. In the end he advised the billing company to drop the charges as he did not want to pursue them once he knew that the billing was in dispute by G.R. Mr. Surette surmised that it was also possible that he billed for the evaluation and treatment on a different date. He commented that he was educated and trained to perform an evaluative "scan" of a patient to assess neurological status, although he doesn't always document the fact that he performed this scan and that he was continually evaluating the patient's cervical spine and looking for radicular problems or symptoms to determine appropriateness of treatment. He attempted to treat her as a "whole person" but failed to document accordingly. Mr. Surette stated to the Board that he believes his documentation was sloppy and that it doesn't support what was billed, although he is confident that the amount of time and the treatment delivered were very appropriate. The Board noted that the potential jurisdiction of A.R.S. §32-2044(13) was previously addressed and dismissed as a result of the initial review of the case. Mr. Surette stated to the Board that the goals were not effectively stated in the beginning of the treatment and were not addressed at the end of the session. In closing Mr. Surette stated that this experience has been educational for him and that he is prepared to take courses and to take direction from the Board relative to his action plan for improvement. The Board concluded the questioning and reviewed the possible jurisdiction of A.R.S. §32-2044(20) noting that the licensee admits that his documentation was inadequate. The Board discussed the fact that the initial evaluation of G.R.'s right shoulder was deficient in that there was no clearing of the cervical spine, no rehabilitation goals were documented and no plan of care was documented establishing the appropriate

therapeutic evaluations. The Board also noted that G.R.'s re-evaluation lacks functional progress and lacks updates to the plan of care. Additionally, Mr. Surette documented treatment for the cervical spine on four dates but there is no documented evaluation of the cervical spine. The discharge summary notes that the patient's goals were met but no goals were documented, and the discharge summary did not address the patient's response to treatment at the time of discharge. Finally, Mr. Surette treated G.R.'s left shoulder prior to evaluating it, his treatment notes were scant relative to treatment provided and to the patient's subjective and objective status and response to treatment each day. Ms. Kalis moved to adopt the Board's determinations as Findings of Fact. Mr. Gossman seconded the motion. The motion carried by a unanimous roll call vote. Ms. Kalis moved to find Mr. Surette in violation of A.R.S. §32-2044(20). Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board noted that Mr. Surette has indicated his motivation and intentions for completing corrective action. Ms. Kalis moved the Board place Mr. Surette on probation for 12 months with the following terms: a review of five patient charts (of various payers) at three months and another three at six months if the first review indicates continued deficiencies; a passing score on the jurisprudence examination, and completion of a documentation course approved by Board staff. Mr. Sieveke seconded the motion. Ms. Kalis offered an amendment to her motion adding the requirement that Mr. Surette develop and submit documentation policies and procedures for his practice. Mr. Sieveke seconded the amended motion. The motion carried by a unanimous roll call vote.

3. Review and Consideration of Administrative Law Judge's Recommended Decision and Order #06-08; Julie Parish, P.T.

Ms. Herbst Paakkonen reported that on June 7, 2007 a formal hearing was conducted by the Arizona Office of Administrative Hearings (OAH) concerning complaint #06-08; Julie Parish, P.T concerning her failure to comply with the terms of a Board Order issued on June 27, 2006 as the final adjudication of a Board investigation that determined Ms. Parish failed to comply with the Board's continuing competence requirements for licensure renewal for the 2002-2004 licensure period. Ms. Herbst Paakkonen noted that the Order required Ms. Parish to serve a 30-day licensure suspension and pay a \$500 civil penalty. Ms. Parish is presumed to have complied with the licensure suspension as the Board has no indication that she was living and practicing in Arizona as her last known address was in Vermont. However, Ms. Parish has failed to submit the civil penalty. Ms. Herbst Paakkonen stated that the outcome of the formal hearing for this case is an Administrative Law Judge Decision containing Findings of Fact, Conclusions of Law, and a Recommend Order. She stated that she concurs with everything in the document and recommended the Board adopt Judge's conclusions as presented. Following discussion Ms. Kalis moved the Board adopt without modification the Findings of Fact recommended by the Administrative Law Judge. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved the Board adopt without modification the Conclusions of Law recommended by the Administrative Law Judge. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved the Board adopt without modification the Order recommended by the Administrative Law Judge stipulating that Ms. Parish's physical therapist license be revoked. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

4. Initial Review of Complaint

#06-19; Heather Overly, P.T.

Ms. Hiller informed the Board that Ms. Overly had intended to be present but instead had to attend a funeral. Ms. Hiller summarized the investigation in response to a complaint filed by A.M. concerning his home-based physical therapy with Heather Overly, P.T. The complainant alleged that Ms. Overly jerked his leg during a treatment session in his home which caused him

soreness and extreme pain. An MRI ordered by A.M.'s physician over one month later revealed a herniated disk for which he received three epidural injections and further physical therapy by Lisa Akers, P.T. In her response to the complaint Ms. Overly noted that she has practiced physical therapy for 28 years and has extensive experience in orthopaedic therapy. She also stated that one of her strongest areas of practice is with total knee replacement patients such as A.M. She denied jerking his leg during treatment and described how she stretched his leg. Ms. Overly also noted that nowhere in the treatment notes did A.M. report the back discomfort or pain described in the complaint. Finally, Ms. Overly pointed to the progress that A.M. made during the episode of care. Ms. Hiller summarized A.M.'s physical therapy treatment records and commented that they comply with A.R.S. § 32-2044 (20) "adequate patient records." Ms. Hiller summarized her findings with respect to A.M.'s medical records and his physical therapy care provided by Ms. Akers. She also noted that Chris Searle, P.T. provided physical therapy care to A.M. following Ms. Overly's treatments and that Mr. Searle's records lack any mention of patient complaints of back pain; additionally his notes record A.M.'s excellent progress and denial of pain complaints as of his discharge from care on March 27, 2006. The Board discussed how Ms. Overly described the leg stretch she performed on A.M. during the initial evaluation, and discussed the one-month lapse between his last home health physical therapy treatment and his report of pain to his physician. The Board also discussed the fact that the treatment provided to A.M. could not have reasonably caused the pain and symptoms that the patient reported. The Board noted that the physician's records did not contain any mention of the back pain or symptoms that A.M. reported several weeks later. The Board members concluded that there was no causality between the physical therapy treatment provided by Ms. Overly and the back pain that A.M. later experienced. Ms. Kalis moved to dismiss the complaint. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

5. Initial Review of Complaint

#06-20; William Sifling, P.T.

Ms. Herbst Paakkonen summarized the investigation noting that when Mr. Sifling filed his licensure renewal application for the 2006-2008 licensure period he did not report the fact that on May 13, 2006 he was charged with Possession of Dangerous Drugs (a class 4 felony), Driving While Under the Influence of Intoxicating Liquor (a class 1 misdemeanor), and Driving While Under the Influence of Intoxicating Drugs (a class 1 misdemeanor). However, on October 10, 2006 Mr. Sifling notified the Board that on September 29, 2006 he pled guilty in Superior Court of Arizona Maricopa County to lesser charges of Possession of Drug Paraphernalia (a class 6 undesignated felony) and of DUI (a class 1 misdemeanor). Board staff opened the complaint and notified Mr. Sifling of its investigation in December of 2006; in February of 2007 the Board received a letter from Mr. Sifling in which he stated that he failed to report these charges as he erroneously believed they were dropped, but he admitted to using methamphetamine or "crystal meth" beginning in 2005 and until his arrest on May 13, 2006. Mr. Sifling submitted documentation indicating that he is serving a 4 ½ year term of court-ordered supervised probation in Los Angeles County, California for the convictions which includes a drug/alcohol treatment program. The Board office also received notification that Mr. Sifling was disciplined by the Physical Therapy Board of California specific to being placed on an Initial Probationary License in that state as a result of the criminal convictions. The Order issued by the California Board indicated that Mr. Sifling was placed on probation and ordered to participate in that Board's substance abuse diversion program. Ms. Herbst Paakkonen explained that on May 17, 2007 Mr. Sifling had called Ms. Hiller to request that the initial review of the case be scheduled for the July Board meeting rather than the June Board meeting so that he could arrange to be present and so that he could have additional time with which to collect and submit copies of his probation requirements. Ms. Herbst Paakkonen stated that she also spoke with Mr. Sifling on

July 11 and requested that he submit that information in advance of the Board's scheduled review of this case. Mr. Sifling failed to submit that information and instead faxed a letter requesting another delay of the scheduled review of the case. Ms. Herbst Paakkonen reported that she was advised by Mr. Sifling's probation monitor with the California Board that a copy of his diversion program could not be released because Mr. Sifling is monitored by an independent third-party company pursuant to California law. However, it was noted that Mr. Sifling has a copy of his diversion program and he can arrange for that information to be sent to the Board. The Board discussed Mr. Sifling's lack of follow through with requests for information from the Board. Ms. Kalis moved the Board invite Mr. Sifling to an informal hearing and that he be present before the Board for the hearing. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

6. Initial Review of Complaint

#06-21; Melissa Hourihan, P.T.

Ms. Hourihan was present for the review of the complaint with legal counsel Ms. Gail Hornstein. The Board members and staff exchanged introductions with Ms. Hourihan who indicated that she was willing to answer any questions posed by the Board. Ms. Hiller summarized the investigative report noting that the complaint was filed by a former patient D.C. alleging that Ms. Hourihan made exaggerated claims about the ability of the Spinedex machine (VAX-D) to "cure" his herniated disks and that the Spindex treatments were ineffective in treating his condition. Ms. Hourihan stated in her written response to the complaint that her assessment was that D.C. would benefit from physical therapy to restore range of motion and strength, to decrease pain and to return the patient to the prior level of function and she denied promising D.C. that the treatments would cure him. Ms. Hourihan affirmed that D.C. was a reasonable candidate for this therapy although certain conditions decreased his chances for meeting his goals. She also stated that it was D.C.'s desire to move forward with the treatment even though his rehabilitation prognosis was "poor to fair". Ms. Hiller noted that she reviewed both the physical therapy treatment and medical records for D.C. and had summarized her findings in the investigative report, and she called to the Board's attention the potential jurisdiction or conclusions of law relating the allegations. Ms. Hourihan advised the Board that she believed her treatment of D.C. was appropriate and that she believes she is skilled in the use of the VAX-D system which isn't a widely known treatment but is becoming increasingly understood and used by physical therapists. The Board members discussed the fact that VAX-D is a type of traction machine. Mr. Sieveke proposed a motion remanding the case to an informal hearing. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board asked that the investigator obtain from Ms. Hourihan more detailed information on VAX-D and its use in advance of the informal hearing.

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

List of licensee names available from Board office by request

Ms. Herbst Paakkonen summarized the recommendations of the Continuing Competence Audit Committee's July 11, 2007 teleconference meeting during which five licensees submitted documentation demonstrating that they had come into compliance with the requirements during their six-month allotment of time. Ms. Kalis moved the Board find the listed licensees in compliance. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

APPLICATIONS FOR LICENSURE & CERTIFICATION

8. Review and Possible Action on Application for Physical Therapist Licensure

Susan DeForest

Ms. Herbst Paakkonen advised the Board that on June 26, 2007 the Board had voted to revoke the Interim Permit issued to Ms. DeForest which had allowed her to participate in a Supervised Clinical Practice Period (SCPP). The Board voted to revoke the permit on the basis that the SCPP supervisors had indicated on Ms. DeForest’s Clinical Performance Instrument (CPI) evaluation form that she did not have the current knowledge or skills to re-enter the practice of physical therapy. The application file of Ms. DeForest was prepared for final Board review and action, but on July 24, 2007 Ms. DeForest filed a request that the Board consider accepting the withdrawal of her application. Ms. Verstegen advised the Board that accepting the withdrawal was within the Board’s purview and discretion. Following discussion Mr. Sieveke moved the Board approve the request by Ms. DeForest that her application for physical therapist licensure be withdrawn. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

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

Anderson, Barbara	Lim, Byoung Joon	Skaar, Janet
Barnes, Steven	Linder, Jennifer	Telles, Kari
Butterfield, Amanda	Lodermeier, Kate	Telles, Staci
Casari, Timothy	Mangold, Mary Lynn	Thompson, Courtney
Felke, Erin	Mann, Laura	Unale, Rosemarie
Feroz Marano, Elizabeth	Mathews, Carolyn	Vaughn, Amanda
Fredenburg, Kevin	Medina, Israel	Wyrwa, Kristin
Hansen, Emily	Merhege, Brad	Young, Lindsey
Hargis, Michelle	Moran, Stephanie	Kenniston, Nancy
Harris, Janet	Mottet, Beverly	Espinoza, Jacquelyn
Kocher, Katie	Murphy, Bethany	
Kozuchowski, Jakub	Nelson, Charla	
Lasley, Ryan	Nguyen, Kim P	

** Applicant Interview Scheduled*

The Board reviewed the application files and Ms. Kalis announced that Ms. Kenniston’s application would be discussed separately. The Board and staff noted that Mr. Merhege’s application indicated a recent and brief lapse in his practice history which relates to him selling his physical therapy practice in New Mexico and relocating to Arizona. Ms. Kalis moved to grant licensure to the listed applicants with the exception of Ms. Kenniston. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Ms. Herbst Paakkonen informed the Board that the office had received a letter from the Pennsylvania Board of Physical Therapy indicating that the national examination score earned by Ms. Kenniston was listed on a report that was destroyed in a fire. Because her score – as well as that of several thousand other licensees – were never archived by any entity and were therefore permanently lost, it is impossible to obtain any official reporting of that score. The Board discussed the fact that the letter from the Commonwealth of Pennsylvania indicates that Ms. Kenniston’s examination score met the established passing standard at the time for licensure in Pennsylvania which is the same standard that Arizona recognizes for anyone who took that particular examination. Ms. Kenniston was present for the Board’s review and discussion of her application and was granted permission to address the Board. Ms. Kenniston explained that she was unaware of the fact that her national examination score was destroyed in a fire and that she only learned of this problem when she applied for a physical therapist license in Arizona. She stated that she has practiced physical therapy in Pennsylvania for 30 years – 15 in outpatient and 15 years in-patient. She commented that she works mostly with elderly patients and that she has done a lot of work with post-surgical patients and back/shoulder patients. The Board received assurance from Ms.

Herbst Paakkonen that Arizona's examination scores have been properly archived and preserved. Ms. Kalis moved to grant licensure to Ms. Kenniston. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

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

Buchert, Kimberly	Henry, Brooke	Wilson, Megan
Cooper, Kelli	Kappelman, Melissa	
Evenson, Kimber	Merritt, Ginga	

The Board reviewed the application files and discussed the fact that the National Physical Therapy Examination score transfer report for Ms. Merritt indicates that her license in California is "delinquent" while her verification from the Physical Therapy Board of California indicates that the license is active. Ms. Herbst Paakkonen advised the Board that the score report is likely not current information and that California uses the term "delinquent" as Arizona uses the term "lapsed". Ms. Kalis moved the Board grant certification to the listed applicants. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

11. 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 Education and Determination of Licensure

Jennifer Pascual

The Board reviewed the application file and discussed the fact that Ms. Pascual became licensed in the State of Missouri, but returned to the Philippines and worked for a testing center tutoring physical therapists in that country on how to pass the National Physical Therapy Examination. The Board also noted that Ms. Pascual returned to Missouri less than one year ago and has only worked for a skilled nursing facility. Ms. Kalis moved the Board find that Ms. Pascual's education is substantially equivalent to that of a graduate of a U.S. accredited program. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board noted that while Ms. Pascual has requested the Board waive the requirement that she complete a Supervised Clinical Practice Period (SCPP), the applicant has worked for less than one year and only for one facility that has not given her enough experience practicing of physical therapy in a U.S. setting. Ms. Kalis moved to require Ms. Pascual complete a SCPP in a facility that would give her a broad range of physical therapy experience. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

12. Executive Director's Report

a. Financial Report: Ms. Herbst Paakkonen noted that the application totals spreadsheet comparing fiscal years 2002 to 2007 indicated that while applications dropped from 2006 to 2007, the total received in 2007 actually was higher than the 2005 total. Future projections will be based on numbers that more closely resemble the 2005 and 2007 figures as 2006 may have been an aberration.

b. Board Staff Activities: Ms. Herbst Paakkonen reported that the office relocation plans were being executed with the actual move date of August 1, 2007. She described how the staff is notifying the public through its web-site, voice-mail and mailing inserts of its unavailability August 1-3.

c. FSBPT Initiatives and News: Ms. Herbst Paakkonen announced that both she and Ms. Hiller have been asked to present sessions at the Annual Meeting of the Federation of State

Boards of Physical Therapy (FSBPT) in September. Additionally Ms. Hiller agreed to moderate the Issues Forum.

d. Rule Writing Update: The Board noted that the task force appointed to assist the Board with revisions to Article 4 would likely require another physical therapist member; Ms. Herbst Paakkonen also stated that two physical therapist assistants were suggested for appointment by one of the task force members. Ms. Hiller agreed to follow up with Ms. Betsy Lindsey, P.T. to ascertain her availability and to contact the physical therapist assistants in anticipation of one of them agreeing to serve and to attend the Board's August 30, 2007 meeting.

e. Legislative Update: No additional information to report.

13. Discussion and Possible Action on Funding Staff and Board Member to Participate in the Annual Meeting of the Federation of State Boards of Physical Therapy

The Board reviewed and discussed the projections for two representatives of the Arizona Board of Physical Therapy to be funded to participate in the Annual Meeting of FSBPT. Following discussion that addressed the benefits of a new Board member and a new member of the staff attending the meeting for education and training purposes, and after discussing the costs associated with funding the participation of two individuals to attend the meeting, Ms. Kalis moved to send Ms. Brierley and Mr. Sieveke to the annual meeting. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

14. Review, Discussion and Possible Action on Approval of Proposed Fiscal Year 2008 Operating Budget

Ms. Herbst Paakkonen explained that the budget submitted to the Governor's Office of Strategic Planning and Budget (OSPB) and to the Joint Legislative Budget Committee (JLBC) in August of 2006 anticipated the need for a significantly higher appropriation for fiscal year 2007 than in fiscal year 2006. However, the projected operating costs for the fiscal year are coming in about \$37,000 lower than the appropriation. She noted that employee related costs are coming in lower than anticipated, and the costs associated with moving the office and occupancy are also below what was projected. The Board discussed some of the anticipated costs for the current fiscal year relative to newsletters/bulletins, information technology and formal hearings. Mr. Gossman moved to adopt the proposed budget. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

CALL TO THE PUBLIC

None.

ADJOURNMENT

The meeting adjourned at 11:35 a.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Randy Robbins,
Secretary