

JANET NAPOLITANO
Governor



HEIDI HERBST PAAKKONEN
Executive Director

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ARIZONA STATE BOARD OF PHYSICAL THERAPY
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SPECIAL SESSION MEETING MINUTES
October 1, 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
Lisa Akers, P.T., Member

MEMBERS ABSENT:

OTHERS PRESENT: Heidi Herbst Paakkonen, Executive Director
Peg Hiller, P.T., Investigator
Keely Verstegen, Assistant Attorney General

1. Initial Review of Complaint and Possible Action Including Summary Suspension
#07-10; Margaret Gurnett, P.T.

Ms. Hiller summarized the investigation that began when the Board received the initial complaint on June 25, 2007 from a former employer alleging that on June 5, 2007 Peggy Gurnett was accused of the theft of five Fentanyl patches from Tender Care Home, an assisted living center in Tucson. Ms. Gurnett's employment was terminated based on her possession of narcotics outside of Tender Care Home. Additional information from a second former employer was received on September 19, 2007 alleging that Ms. Gurnett was terminated from employment due to allegations of her theft of Vicodin from a home health patient on August 6, 2007. Ms. Hiller noted that Ms. Gurnett's address of record in the Board's database is an address in Bozeman, Montana and she had to obtain Ms. Gurnett's Tucson address from personnel records subpoenaed from Nursefinders as the licensee failed to notify the Board of her change of address when she relocated to Tucson. Ms. Hiller stated that Board staff has concerns that the receipt of two different complaints within three months alleging suspected theft of drugs from patients' residences might reflect a pattern that places the public health, safety or welfare in jeopardy. Accordingly this case was presented to the Board for consideration of a possible summary suspension of Ms. Gurnett's physical therapist license #7537 pending proceedings by the Board pursuant to A.R.S. §32-2045(A)(4). Ms. Hiller noted the investigative report lists the possible jurisdiction under which these allegations may be considered and she summarized the materials comprising the report. Ms. Hiller called to the Board's attention her summary of the telephone interview with the daughter of the patient confirming her mother witnessing the theft by Ms. Gurnett of the Vicodin pills. Mr. Jim Stuehringer introduced himself as an attorney and stated that he represents Ms. Gurnett as of this afternoon and that they have not had opportunity to review the materials relative to this case. Mr. Stuehringer stated that Ms. Gurnett has been licensed as a physical therapist in Montana since 1988 and has not had any complaints. Mr.

Stuehringer reported that Ms. Gurnett is scheduled to begin a new job on Monday, October 8 and she is her sole financial supporter. Mr. Stuehringer stated that Ms. Gurnett found the Fentanyl patches in the parking lot of the skilled nursing facility and returned them to a CNA when she saw they were half filled. He indicated that the facility had no recourse but to terminate her since she was a probationary employee but that Ms. Gurnett denies any wrongdoing. With respect to the second allegation Mr. Stuehringer stated that Ms. Gurnett wishes to invoke her 5th Amendment privilege. Mr. Stuehringer noted that Ms. Gurnett suffered a serious injury to her leg a few years ago and has taken Vicodin prescribed by her physician for on-going pain. Finally Mr. Stuehringer stated that Ms. Gurnett would be willing to participate in the Board's Substance Abuse Recovery Program established at A.R.S. §32-2050 and that she wants to pursue the job that she is scheduled to begin next week. Ms. Kalis moved the Board meet in Executive Session in order to receive legal advice from Board counsel. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. After resuming the meeting in public session Dr. Cornwall asked Ms. Gurnett if she feels she has an addiction to Vicodin. She stated that it is possible she does because she has had it prescribed to her frequently since her leg injury in 2003. She indicated that she is willing to be evaluated. In response to questioning Ms. Gurnett admitted to taking Vicodin two days ago and commented that she had a prescription issued in May which has recently run out. The Board questioned why Ms. Gurnett would agree to treatment if she doesn't know if she is addicted. Mr. Stuehringer said that Ms. Gurnett is willing to gain insight into whether she has a problem. He advised that his client would not address the question of the theft due to the possibility that she could be criminally prosecuted. In response to the Board's question Ms. Gurnett stated that it was an oversight on her part that she did not notify the Board of her addresses in Arizona. The Board discussed the report issued by Bayada Nurses with respect to her alleged apology for the theft. The Board also discussed the fact that it had received two separate but very similar complaints concerning theft of controlled substances from patients and noted that the Board's responsibility is to protect the public. Ms. Kalis moved to summarily suspend the physical therapist license held by Ms. Gurnett. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote. Mr. Stuehringer asked the Board to consider its charge to provide licensees with a substance abuse recovery program which would also accomplish the Board's mission to protect the public; the Board could place Ms. Gurnett on a tight leash without depriving her of her ability to make a living. The Board discussed an evaluation and the length of time it might take for her to complete one. Ms. Kalis moved to adopt the findings of fact as described in the investigative report and to also adopt a finding that that Board took this action because Ms. Gurnett poses an immediate risk to the public and because she failed to provide the Board with notice of her whereabouts. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to find Ms. Gurnett in violation of A.R.S. §32-2044(1), violating statutes, §32-2044(7), committing a felony, §32-2044(8), practicing as a physical therapist when physical or mental abilities are impaired by the use of controlled substances, §32-2044(12), failing to adhere to the recognized standards of ethics of the physical therapy profession, and §32-2044(23) "Failing to report to the board a name change or change in business or home address within thirty days after that change. Ms. Akers seconded the motion. The motion carried by a unanimous vote. Following discussion Ms. Kalis offered an amendment to the original motion to remove A.R.S. §32-2044(7), commission of a felony or misdemeanor of moral turpitude from the conclusions of law. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

2. Request and Possible Action on Proposed Modification to Consent Agreement #06-20; William Sifling, P.T.

Ms. Kalis advised the Board that Mr. Sifling is currently receiving inpatient substance abuse treatment and he has been offered a consent agreement stipulating that his physical therapist

license is to be suspended until he appears in Arizona for a hearing. Mr. Sifling sent a letter to the Board stating that he was willing to sign the agreement but that he wanted a finding of fact stating that he believed the drug possession charges were going to be dropped by the County Attorney's office. The Board discussed the fact that a finding could be incorporated that accepts Mr. Sifling's point of view and that this does not amount to a final determination. Ms. Verstegen advised the Board that the Board can decide this finding of fact at the conclusion of the hearing. Ms. Kalis moved to offer Mr. Sifling an amended consent agreement incorporating an additional finding of fact that the Respondent stated he was advised the criminal charges would not be filed and therefore he did not report the charges on his licensure renewal application. Mr. Sifling is granted 20 days with which to sign the agreement and failure on his part to sign it will result in the case being remanded to a formal hearing. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

CALL TO THE PUBLIC

None

ADJOURNMENT

The meeting adjourned at 6:00 p.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Randy Robbins,
Secretary