

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
October 23, 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

CALL TO ORDER – 8:30 a.m.

1. Review and Approval of Draft Minutes

September 25, 2007; Regular Session Meeting

The Board reviewed the draft minutes and noted one correction. Ms Kalis moved the minutes be approved as amended. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

September 25, 2007; Executive Session

The Board reviewed the draft minutes and noted two corrections. Ms Kalis moved the minutes be approved as amended. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

October 1, 2007; Special Session Meeting

The Board reviewed the draft minutes and noted one correction. Ms Kalis moved the minutes be approved as amended. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

October 1, 2007; Executive Session

The Board reviewed the draft minutes and Ms. Kalis moved they be approved as drafted. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

2. Initial Review of Complaint

#07-03; Anthony Heywood, P.T.

Ms. Hiller summarized the investigation of the case noting that it was opened in response to a complaint filed by D.L., a patient treated by Mr. Heywood at Foothills Sports Medicine Physical Therapy from November to December of 2005. The complaint alleged that during one of the treatments in December D.L. was burned by an electrical stimulation treatment given by an 'unknown female intern'. When she removed the electrical pad D.L. noticed a black charred scab but the employee apologized and walked off. When D.L. brought the burn to Mr. Heywood's

attention at the next treatment visit Mr. Heywood measured the scar and advised D.L. to keep an eye on the wound to make sure it did not get infected. D.L. was disgusted with the way Mr. Heywood handled the situation and he stated he could not get an explanation of how or why the burn occurred. D.L. further stated that he has a permanent scar on his leg and occasional sharp pain. In his response to the complaint Mr. Heywood stated that his review of D.L.'s chart indicated that the burn would have occurred on December 6, 2005 and that he was not the treating therapist for D.L. that day since he was not present at the clinic. Mr. Heywood also noted that D.L. did not report any injury on the day he alleged he was burned and the treating therapist Shane Hernandez, PT did not document any discoloration on D.L.'s ankle or any patient reports of having been burned. When on December 8, 2005 D.L. told Mr. Heywood that he might have been burned at his last treatment session. Mr. Heywood inspected the electrodes used on the patient and while he did not find any defects and the electrodes were discarded. Mr. Heywood stated that he inspected the site on D.L.'s lower left ankle where D.L. claimed he was burned; the site was red in color with no discharge present. Mr. Heywood affirmed he measured the area but the treatment notes indicate D.L. denied having any pain at the site. Mr. Heywood filled out an incident report concerning this matter. Mr. Heywood refuted that no one thought it was a big deal that D.L. got burned noting that he advised the patient on monitoring the site and advised DL to see a doctor if proper healing did not occur. Mr. Heywood further commented that D.L. returned for therapy on December 13, 2005 reporting that his ankle felt better and denied any pain at the site. DL received electric stimulation along with exercise, and Mr. Heywood observed the area on DL's lower leg and it was healing properly. Finally, Mr. Heywood noted that there are no student interns in the clinic and that all aides are properly trained on the use of the electrical stimulation equipment. Ms. Hiller stated that her investigative findings are that there is no documentation in the physical therapy record of December 6, 2005 concerning D.L.'s reporting a burn following electrical stimulation and no observations of a skin lesion noted by Mr. Hernandez, Mr. Heywood's note from December 8, 2005 documents D.L.'s report of having sustained a burn at the previous session and Mr. Heywood's objective descriptions of a skin lesion, and there is no documentation in D.L.'s physician's notes on January 4, 2006 concerning a lower leg burn sustained in physical therapy. The Board asked to review the photograph of D.L.'s ankle submitted with the complaint. The Board noted the inconsistencies in the reporting of the examination of the wound and some inconsistencies concerning the treatment notes and Mr. Heywood's response to the complaint. The Board discussed whether there was appropriate communication between the aide and the supervising therapist and noted that Mr. Heywood did not treat the patient on December 6, 2006. The Board also questioned whether the follow-up care of D.L. by Mr. Heywood on December 8 was appropriate relative to whether he discussed the alleged incident with the aide and whether he could have communicated with D.L.'s physician. The members concurred that while Mr. Heywood could have done a more thorough job of following through with the patient's complaint, they acknowledged that he did file the incident report. The Board also discussed whether the supervision ratio met the requirements of Board rule. Dr. Cornwall moved to dismiss all allegations against Mr. Heywood. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Dr. Cornwall moved to open a complaint against Shane Hernandez, P.T. concerning possible improper supervision of assistive personnel. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. The Board also directed Ms. Hiller to interview the aide in conjunction with the investigation with the new complaint.

3. Initial Review of Complaint

#07-04; Paul Hospenthal, P.T.

Ms. Herbst Paakkonen advised the Board that the complaint was opened following receipt of electronic messages from T.H. alleging that she was seduced by Mr. Hospenthal seven years ago

while she was his physical therapy patient and that the patient-therapist relationship was “exploited” by Mr. Hospenthal. T.H. also alleged that beginning in March of 2000 they initiated a consensual sexual relationship and were romantically involved for several years while she continued to receive physical therapy care from him both in and out of his clinic, The Desert Institute of Physical Therapy. Mr. David Derickson submitted a response to the notification of complaint on behalf of Mr. Hospenthal stating that Mr. Hospenthal provided care to T.H. in January and February of 2000 but that all physical therapy care provided to her after that date was provided by Bonnie Kurth, P.T. as Mr. Hospenthal was embarking on a personal relationship with T.H. which would necessitate the termination of their patient-provider relationship. In the response Mr. Derickson indicates the personal relationship began in June of 2000 and that Mr. Hospenthal denies having provided physical therapy care to T.H. outside of the office during their romantic relationship. Ms. Herbst Paakkonen referred the Board to the possible jurisdiction for the case calling to the Board’s attention that the Board must consider the 1999 version of the American Physical Therapy Association Code of Ethics and Guide to Professional Conduct and not the 2004 version cited in the investigative report. Ms. Herbst Paakkonen noted that the Board was provided a summary of an interview Ms. Hiller and she conducted of T.H. Finally she advised the Board that she only reviewed the physical therapy treatment records for purposes of attempting to correlate T.H.’s treatment dates with the alleged time frame of her personal relationship with Mr. Hospenthal. Board staff commented that the investigation to this point in time only establishes that T.H. and Mr. Hospenthal agree that they engaged in a personal and sexual relationship at some point in time in 2000 but that they have different accounts as to when that relationship began. Also, the physical therapy treatment records for T.H. indicate that Mr. Hospenthal did not provide care to her after February 28, 2000 although T.H. states she was treated by Mr. Hospenthal both in and outside of his clinic throughout their four-year personal relationship. The Board reviewed the patient records and questioned why the treatment notes for May and June of 2000 are signed by Ms. Kurth but Mr. Hospenthal’s signature is at the bottom of that page. The Board also discussed the fact that T.H. recalls Mr. Hospenthal giving her a Valentine’s Day card and that according to the records she was seeing him for treatment in the month of February. The Board reviewed and discussed the options available for resolving a complaint. Ms. Kalis moved to remand the case to an informal hearing. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The Board also directed staff to request the complainant T.H., Ms. Kurth and “Dave”, the physical therapy aide identified in the interview of T.H., to participate in the informal hearing.

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

Luke Holiday, P.T. (formerly Todd Lukasik, P.T.)

Ms. Hiller summarized the status of Mr. Holiday’s most recent disciplinary history and reviewed the timeline describing several incidents of his lack of compliance with the terms of the order issued to him under two consent agreements and orders – one executed in February of 2007 and another in June of 2007. She noted that with the exception of the civil penalty of \$200 that he was ordered to pay under the terms of his February consent agreement, he has failed to meet any of his deadlines imposed by both of these consent agreements. Notably Mr. Holiday has failed to provide evidence of having completed his ethics course despite repeated requests for that information sent by Ms. Hiller via electronic mail. Ms. Hiller also commented that the \$400 civil penalty he was ordered to pay for missing the deadline for passing the Board’s jurisprudence examination deadline was also submitted several weeks late. Ms. Hiller noted the Board has the option of sending this case to a formal hearing. The Board discussed the fact that Mr. Holiday has not responded to any request for response from Ms. Hiller while on probation and commented that his actions and conduct indicate he is unwilling to be regulated. Ms. Kalis moved the Board open a new complaint alleging non-compliance with a Board order and that

this case be remanded to a formal hearing to pursue possible suspension or revocation of Mr. Holiday's physical therapist license. Mr. Robbins seconded the motion. Board staff noted that the hearing may not be scheduled for another 60 days depending on the availability and schedule of the Office of Administrative Hearings. The motion carried by a unanimous vote.

APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Adler, Carolyn	Baker, Tirsa	Coffey, Rachael
Chacon, Rennie	Compton-Griffith, Kelsi	Domina, Jason
Enfinger, Rebekah	Flaherty, Jessica	Galbavy, Jessica
Gaskill, Lauren	Geurts, Gerald	Hunt, Joshua
Hyytinen, Amy	Kaliski, Shari	Lange, Jessica
Meyer, Douglas	Novak, Devin	Ramage, Paulette
Randall, Talbot	Shah, Neema	Smith, Brody
Tutone, Danyle	Wardwell, Jana	Wiechec, Michael
Wright, Robert	Brandewie, Dawn *	Flaherty, Chris *
Sukhaphadhana, Natalie*	Oelschlaeger, Ashley*	

** Applicant disclosure on "Personal Information" section of application*

Dr. Cornwall disclosed for the record that Ms. Adler and Mr. Wright were formerly his students but that the professor-student relationship no longer exists and he is able to review and vote on their applications without bias. Ms. Kalis stated that the Board would first review all applications that did not involve disclosures on the "Personal Information" section of the application. The Board concurred that these files were administratively complete. Ms. Kalis moved to grant licensure to these applicants. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board noted that Ms. Brandewie disclosed that she was the subject of a malpractice lawsuit which was dismissed. The members concurred that while she did not provide any information relative to the allegations, it was not necessary to have that documentation as the court dismissed the suit. Dr. Cornwall moved to grant licensure to Ms. Brandewie. Ms. Akers seconded the motion. The motion carried by a unanimous vote. The Board noted that Ms. Flaherty reported that an anonymous caller alleged to the Texas Board of Physical Therapy that he cheated on the National Physical Therapy Examination. He denied having done so and the Texas Board took no action. In response to the Board's question the staff indicated that there was no additional follow up with the Texas Board. Dr. Cornwall moved to grant licensure to Mr. Flaherty. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board discussed the application of Ms. Sukhaphadhana and noted that while she submitted the required documentation concerning her DUI conviction, there was no information relative to the charge of driving without a valid driver's license. Following discussion Ms. Kalis moved to direct Board staff to request the missing information from Ms. Sukhaphadhana concerning this matter and if the response warrants further review the application will be scheduled on a future agenda of the Board; otherwise her license will be released upon her response. Mr. Gossman seconded the motion. The motion carried by a unanimous vote. The Board reviewed and discussed Mr. Oelschlaeger's application and his disclosure that he had been convicted of DUI in 2000. It was discussed that while all of the court records were complete relative to that conviction, he did not submit any information in conjunction with his open contained citation in 1998. The Board also noted that in his letter describing his application disclosures, he mentioned that he had practiced physical therapy in Mesa, Arizona for six weeks in 2006 and he did not hold a license during that period of time. Ms. Kalis moved to direct Board staff to request a written explanation from Mr. Oelschlaeger addressing both the resolution of the open container citation and the statement that he practiced physical therapy in Arizona prior to having been issued a physical therapist license; if the response requires further review his application will be scheduled on a future agenda of the

Board but if the explanation is satisfactory his license will be released after review by the Board staff. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

Allen, Lara	Barnes, Jacob	Florey, Robin
Hanson, Christine	Jenkins, Mona	Johnson, Richard
Logan, Megan	Murov, Marilyn	Pettit, Stacy
Rexius, Melenda	Russell, Cheryl	Sanders, Vanessa
Tanori, Kristen		

Ms. Kalis disclosed for the record that she knows Ms. Russell but that she is able to vote on her application without bias. The Board conducted the substantive review of the applications for certification and noted that they were administratively complete. Ms. Kalis moved to grant certificate to the listed applicants. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

**7. Substantive Review of and Possible Action on the Following Applications for Physical Therapist Licensure – Foreign Educated Graduates of Programs Not U.S. Accredited
Roland Pinzon**

The Board reviewed the application file for Mr. Pinzon and noted that his credential evaluation report indicates that his education is substantially equivalent to that of a graduate of a U.S. accredited program except that his program did not address aerobic capacity. The Board also noted that his file was administratively complete, although he will need to complete a supervised clinical practice period (SCPP) as he has no practice experience in the U.S. Ms. Herbst Paakkonen explained that Mr. Pinzon passed the National Physical Therapy Examination (NPTE) on his third attempt and that his English proficiency examination scores (the TOEFL, the TSE and the TWE) were submitted with his first application in October of 2006. She noted that had Mr. Pinzon requested those scores to be reported to the Board with his most recent application they would have been expired which would require him to take the Internet Based TOEFL examinations. The Board reviewed the rule R4-24-203 and concurred that it does not contemplate that English proficiency examination scores can be several years old if an applicant fails the NPTE multiple times and files multiple examinations in the process. The Board members concurred that a rule revision would be required in order to address this situation. Dr. Cornwall moved to find Mr. Pinzon's application file administrative complete and his education substantially equivalent to that of a graduate of a U.S. accredited program, and to notify him of his requirement to complete an SCPP that would provide him with aerobic capacity training. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

**8. Review and Possible Action on Supervised Clinical Practice Period Proposal
Angelica Hernandez – Applicant for Physical Therapist Licensure**

Ms. Herbst Paakkonen advised the Board that this matter was placed on the Board's agenda for special consideration at the request of the applicant and her attorney. She explained that on August 30, 2007 the Board determined that Ms. Hernandez must complete an SCPP as she had provided very limited information describing her U.S. clinical practice experience. She noted that Ms. Hernandez was provided a statement of application deficiencies on March 8, 2007 which indicated that she had not submitted any information relative to this requirement. However, following the Board's previous determination that Ms. Hernandez must complete the SCPP Ms. Hernandez submitted documentation indicating that she completed the equivalent of a 6-month SCPP for the California Board of Physical Therapy. This information was received too late for inclusion on the Board's September 25, 2007 meeting agenda as Board staff was unable to obtain advise from legal counsel relative to how to proceed with the untimely submission and

could not transmit the voluminous document with enough advance notice to allow the Board to properly review the materials. Ms. Herbst Paakkonen stated that Ms. Verstegen advised the Board that because the submission was received too late to be considered during the substantive review of her application file, it is up to the Board to determine whether Ms. Hernandez's special request for reconsideration of the SCPP requirement will be heard. The Board members concurred that the matter could be revisited. Ms. Herbst Paakkonen answered questions relative to Ms. Hernandez's licensure in California and her work experience. Dr. Cornwall moved to accept the SCPP completed in California and to grant licensure to Ms. Hernandez. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

D. Scott Mellish – Applicant for Physical Therapist Licensure

Dr. Cornwall announced that he would recuse himself from the discussion and vote on this agenda item. The Board reviewed and discussed the SCPP proposal submitted by Mr. Mellish and noted that the proposal previously approved was withdrawn by the supervisor. The Board noted that the proposed facility, Western Arizona Regional Medical Center, will provide Mr. Mellish with an appropriate SCPP. The Board questioned whether the proposed supervisor, Steven Schwab, P.T. would be an appropriate supervisor as the Director of Rehabilitation is often busy with administrative responsibilities, but the Board concluded that it is reasonable to expect in this particular facility and community Mr. Schwab will likely have significant patient care responsibilities. Mr. Sieveke moved to approve the SCPP proposal submitted by Mr. Mellish. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

9. Request for Accommodation to the Jurisprudence Examination In Accordance with the Americans with Disabilities Act and Possible Action on Application for Licensure

Marsha Lindsey – Applicant for Physical Therapist Licensure

The Board reviewed and discussed the request submitted by Ms. Lindsey and the supporting documentation provided by her physician relative to her disabilities and how they are manifested in her activities of daily living. The Board questioned whether all of the requested accommodations are available to the applicant; Ms. Herbst Paakkonen stated that several of the items listed would have to be addressed by the Prometric testing site and that she and Paula Brierley, Licensing Administrator for the Board, had discussed with Ms. Lindsey which accommodations the Board could approve in accordance with the information provided to the jurisdictions by the Federation of State Boards of Physical Therapy. The Board discussed the recommendations of Ms. Lindsey's physician. Dr. Cornwall moved the Board grant Ms. Lindsey time and a half with which to take the examination, a separate testing room, and a paper and pencil version of the jurisprudence examination. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

10. Request for Approval to Take National Physical Therapist Examination; Review of Documentation Related to Disclosure on "Personal Information" Section of Application

Christopher Livingston - Applicant for Physical Therapist Assistant Certification

Mr. Livingston was present for the Board's review of his application and agreed to address his criminal conviction history. He explained that he had a reckless youth which resulted in some bad choices on his part. Mr. Livingston described the driving under the influence, disorderly conduct and improper use of a credit card convictions to which he pled guilty in the early 1990s. He assured the Board that he no longer lives a reckless lifestyle and that he is now a responsible person who is dedicated to a career in physical therapy. Ms. Kalis moved the Board approve Mr. Livingston to take the NPTE for physical therapist assistants and that he be granted certification upon the Board's receipt of a passing score. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

Jose Tanco - Applicant for Physical Therapist Assistant Certification

Mr. Sieveke stated for the record that he would recuse himself from the discussion and possible action concerning the applicants. The Board reviewed and discussed Mr. Tanco's explanation of events that led him to plead guilty to possession of stolen property in 1993. The Board noted that the applicant completed all court ordered requirements associated with this conviction and that he provides assurance that he makes better choices relative to with whom he spends his time. Dr. Cornwall moved to allow Mr. Tanco to take the NPTE and to grant him certification upon receipt of a passing score. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

Jimmy McClay - Applicant for Physical Therapist Assistant Certification

Ms. Kalis and Mr. Sieveke stated for the record that they know the applicant but that they are able to vote on his application without bias. The Board reviewed and discussed Mr. McClay's application and noted that he disclosed two prior DUI convictions dating back several years. The Board members concurred that given the length of time that had passed since these events, as well as the fact that the applicant stated he no longer engages in these activities, he should be allowed to proceed with the application process. Ms. Kalis moved to allow Mr. McClay to take the NPTE and that he be granted certification upon receipt of a passing score. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

11. Executive Director's Report – Discussion and Possible Action

a. Financial Report: No additional information to report.

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

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

d. Rule Writing Update: Ms. Herbst Paakkonen recommended the Board consider appointing Victor McLeod, P.T.A. and Careen MacElwee, P.T. to serve on the Board's Continuing Competence Rule Revision Task Force. Both Mr. McLeod and Ms. MacElwee have indicated that they are willing and able to serve if appointed. Ms. Herbst Paakkonen stated that the appointments would bring the composition of the Task Force to five physical therapists and one physical therapist assistant member with Ms. Akers serving as the Board member liaison. Mr. Gossman offered a motion appointing Mr. McLeod and Ms. MacElwee to the Task Force. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

e. Legislative Update: Ms. Herbst Paakkonen advised the Board that she would attend a portion of the Health Committee of Reference sunset review meeting on November 6, 2007 to hear at least the discussion concerning the Arizona Board of Occupational Therapy Examiners. Ms. Herbst Paakkonen also distributed her evaluation of the Legislative Liaison bids submitted by two entities. She addressed questions relative to the Board's budget for the service and the term of the contract. Dr. Cornwall moved the Board extend a contract to Goodman Schwartz Public Affairs for 2007-2008. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

12. Review and Possible Action on Proposed Substantive Policy Statement: Interim Permit and Supervised Clinical Practice Period Requirements

Ms. Herbst Paakkonen reminded the Board that during a previous meeting the Board has directed her to draft a substantive policy statement (SPS) that would clarify the law as it relates to the requirements of a supervised clinical practice period (SCPP). The Board reviewed the draft SPS and discussed the proposed language. Ms. Herbst Paakkonen noted that a Notice of Proposed Rulemaking has been filed that, among other changes, would require the minimum number of hours for an SCPP be 500. The Board directed Ms. Herbst Paakkonen to incorporate additional

language that states each supervisor must complete the Clinical Performance Instrument evaluation form and clarifying that the supervisor is responsible for notifying the Board in writing of the starting date, mid-point date and ending date of the SCPP. The Board also directed her to bring the revised draft back for review on the next regular session meeting agenda.

13. Review and Possible Action on Potential Statutory Revisions

The Board reviewed and discussed the chart listing the potential statute revisions that were brainstormed during the Model Practice Act workshop that Ms. Kalis, Mr. Sieveke and Kay Wing, President-Elect of the Arizona Physical Therapy Association, participated last month. Ms. Herbst Paakkonen explained the rule language that allows the Board to deny licensure or certification to an applicant who has committed any of the grounds for disciplinary action in A.R.S. §32-2044; the Board concurred that the title of the statute could be amended in the future to reflect that it also addresses denial of licensure and certification. The Board members also concurred that the 2008 legislative session would not be the appropriate time to seek statutory authority to compensate Board members. The Board concluded that none of the proposed changes listed are of a critical nature at this time but that the list should be retained for future consideration.

14. Review and Possible Action on Board Member Meal Reimbursement

The Board reviewed the chart prepared by Ms. Herbst Paakkonen noting that the Board had established the current reimbursement rate for lunch at \$6.00 at some point in time prior to 2001. Ms. Herbst Paakkonen advised the Board that the State Travel Policy of the State of Arizona allows a reimbursement for up to \$16.00 for lunch for anyone eligible for reimbursement and traveling in an official state capacity to Phoenix. The Board discussed the potential fiscal impact and commented that it was minimal. Ms. Kalis moved to establish the lunch meal reimbursement rate for members of the Arizona Board of Physical Therapy be increased to \$16.00. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

15. Review and Possible Action on Executive Director Performance Review

The Board may vote to hold an Executive Session pursuant to A.R.S. §38-431.03(A)(1) to discuss personnel matters, A.R.S. §38-431.03(A)(2) to discuss confidential information, A.R.S. §38-431.03(A)(3) to receive legal advice

Ms. Kalis moved to meet in Executive Session. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. Mr. Gossman moved to adopt the recommendation made in Executive Session for a salary adjustment based on the very favorable performance evaluation. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

16. Board Training – Presented by Mark Lane, V.P. Vice President of Professional Standards and Assessment and Susan Layton, Federation of State Boards of Physical Therapy

a. Evidence-Based Remediation and Discipline

b. Continuing Competence

Mr. Lane delivered presentations to the Board on the topic of Evidence-Based Remediation and Discipline. He reviewed the current research that mostly relates to the discipline of physicians and discussed some remediation models. Mr. Lane shared some resources that could be used by the Board in the development of remediation and discipline guidelines should the Board elect to do so. He noted that other regulatory boards have done so and indicated where in the presentation materials those documents could be found. Ms. Lane and Ms. Layton also reported on the renewed focus of the FSBPT on the topic of continuing competence and efforts to develop a program for use by the jurisdictions. Mr. Lane reviewed with the Board the purpose of jurisdiction boards requiring licensees to demonstrate continuing competence, and noted that the public expects board to perform this function. Mr. Lane reviewed the strawman continuing

competence model currently under development by FSBPT and indicated that a continuing competence committee will soon be formed to guide the Federation's work in this arena. The Board recognized the members of the recently appointed Continuing Competence Rules Revision Task Force who were in attendance to hear the presentation. Mr. Lane addressed questions posed by the Task Force and Board members, and the Board members provided Mr. Lane with feedback relative to the strawman model. No action was taken on this agenda item.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

17. Review and Possible Action on Proposed Consent Agreement

#07-10; Margaret (Peggy) Gurnett, P.T.

Ms. Herbst Paakkonen reported on the status of the case concerning Ms. Gurnett noting that on October 1, 2007 the Board issued a summary suspension of her physical therapist license based on an investigation that revealed she was terminated by her employer for taking narcotic medication from a home health patient and that found she was terminated by another employer for having narcotic drugs in her possession outside of the facility. Ms. Herbst Paakkonen noted that the Board filed a Notice of Complaint and Formal Hearing with the Arizona Office of Administrative Hearings for this case and that the hearing was scheduled for October 18, 2007. However, Ms. Gurnett requested a continuance as she was unable to secure legal counsel in time and Ms. Herbst Paakkonen indicated that she was awaiting confirmation that the hearing would be rescheduled for November 14, 2007. Ms. Herbst Paakkonen advised the Board that in the meantime Ms. Verstegen drafted a consent agreement with input from Ms. Hiller and herself that could essentially constitute a temporary resolution of the case as it would ensure that Ms. Gurnett's license would be suspended until she completes a substance abuse evaluation which will help the Board determine if and when she is safe to return to the practice of physical therapy. Ms. Herbst Paakkonen further stated that the consent agreement must be approved by both the Board and Ms. Gurnett must also sign the document. Ms. Gurnett participated in the discussion telephonically and indicated that she is willing to comply with the consent agreement but she is not willing to admit to guilt relative to the theft of the drugs because of the possibility that criminal charges will be filed against her. She stated that she did complete a substance abuse evaluation performed by Dr. Jacqueline St. Germaine on October 22 and the Board should receive it soon. Board staff clarified that Ms. Gurnett voluntarily sought the evaluation and assured the Board that it was prepared by a Board-approved evaluator. Ms. Gurnett stated that she listed some points of concern with the consent agreement that she would like acknowledged. She stated that she is unsure whether she can commit to the signing of the document without a finding that there is no admission of guilt relative to the theft of the drugs. She also commented that her attorney has advised her to not sign the Consent Agreement based on the language that acknowledges another agency may elect to institute criminal or civil proceedings once the document becomes public record. She stated that it would her preference that she return to work as soon as possible. The Board discussed the options for resolution of this case and commented that executing the consent agreement would move the case forward more expediently than waiting for the formal hearing and the issuance of the Administrative Law Judge's recommendation. The Board advised Ms. Gurnett that the consent agreement must be signed as drafted but that Ms. Gurnett's statements relative to her unwillingness to admit to guilt of the theft will be reflected in the minutes of the Board meeting and would therefore be public record. Ms. Gurnett advised the Board that she has experienced some losses in the process of this investigation. Dr. Cornwall moved to approve the consent agreement and provided Ms. Gurnett signs it prior to the formal hearing, to vacate the hearing. Mr. Sieveke seconded the motion. The motion carried by a vote of 5-1.

CALL TO THE PUBLIC

None

ADJOURNMENT

The meeting adjourned at 2:35 p.m.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Randy Robbins
Secretary