

JANET NAPOLITANO
Governor



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Executive Director

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ARIZONA STATE BOARD OF PHYSICAL THERAPY
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REGULAR SESSION MEETING MINUTES
February 26, 2008

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
Paula Brierley, Licensing Administrator
Tonya Shipman, Assistant Attorney General
Elizabeth Campbell, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

1. Review and Approval of Draft Minutes:

January 22, 2008; Regular Session Meeting

The Board noted some typographical errors on page 4. Ms. Kalis moved to approve as corrected. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

January 22, 2008; Executive Session

Ms. Kalis moved to approve the minutes as drafted. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

2. Review and Possible Action on Petition for Review or Rehearing of Board Decision #07-17; Luke Holiday (Todd Lukasik) P.T.

Ms. Kalis moved to meet in Executive Session to obtain legal advice from Board counsel. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session Mr. Holiday indicated he was present without an attorney. Mr. Sieveke announced that he would recuse himself from the discussion and the vote on this matter. Mr. Holiday indicated that everything he wished to say was in his letter to the Board. He stated that he only wants a fair and unbiased hearing. The Board questioned why Mr. Holiday felt he would have been judged unfairly by Mr. Sieveke. He stated that Mr. Sieveke is a very good therapist but that they had disagreements when they worked together and that some of the exchanges were heated. He indicated that Mr. Sieveke appeared to have judged him harshly. He noted that he has not had interaction with him since they were employed together; he commented that he didn't speak up about his concerns relative to Mr. Sieveke during the review of this case

because he didn't immediately recognize him and because he didn't have opportunity. Ms. Campbell stated whatever happened occurred 10 years ago which is a long time and that the Respondent and Mr. Sieveke have had no interaction since that time. She noted that the Respondent has not provided any evidence that Mr. Sieveke's mind was irrevocably closed on this matter and that speculation of bias alone is not enough to require a rehearing or review. The Board noted that the initial motion for the licensure suspension was 6 months but that Mr. Sieveke had suggested that was too lengthy. Mr. Holiday stated that he recalled Ms. Kalis was prepared to accept the Administrative Law Judge's recommendation. Ms. Kalis stated that this was not correct. The Board members concurred that none of Mr. Sieveke's statements constituted misconduct on the part of the Board; additionally they concurred that even if Mr. Sieveke had recused himself the outcome would have been the same. Ms. Kalis moved to deny Mr. Holiday's request for review or rehearing of the case. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

**3. Review and Possible Action on Complaint
#08-02; Margaret Gurnett P.T.**

Ms. Kalis moved the Board meet in Executive Session in order to obtain legal advice from Board counsel. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session Ms. Kalis noted that she is an acquaintance of one of the evaluators identified in the materials submitted by Ms. Gurnett. Mr. Hill stated that he met Ms. Gurnett following the Board's last encounter with her and that he has attempted to collect and submit information that the Board may find relevant. He noted that she has several accomplishments in her background and is a significant individual but that an injury in her past has precipitated some difficult times. He stated that the events of last summer were an aberration but that there is opportunity to restore Ms. Gurnett's license and allow her to practice under a new consent agreement that would consist of appropriate controls to include substance abuse monitoring and restrictions to practice. Mr. Hill stated that Ms. Gurnett is a person of substance and it is important to restore her ability to work in order for her to be successful. The Board questioned Ms. Gurnett about her non-compliance with the Board's order. She stated that she missed a screening, but that she has enrolled in a relapse prevention course with Compass, she will obtain a primary care physician next week, and she is now current with reporting her AA attendance. She stated that she has been denied inpatient treatment at three facilities due to non-qualification. Mr. Hill stated that Ms. Gurnett went to Dr. A because of her expertise in pain management. Mr. Hill stated that Dr. A had more information available to her than Dr. St. Germaine did which may have made the difference relative to why their recommendations were different. The Board questioned Ms. Gurnett relative to when she last obtained pain medication through emergency care. She said that she recalls obtaining the medication in March and May of 2007 due to pain she was experiencing when training horses. Mr. Hill noted that her current physician believes that Adderall is an appropriate medication for her. He also stated that there are economic confines that Ms. Gurnett is attempting to work within. The Board questioned why it has taken so long for her to obtain a physician. She stated that she didn't know how to accomplish that given her financial situation. She admitted to being in inpatient alcohol treatment for 28 days in 1991. The Board questioned what type of facility she could work in. She stated she would not work for a home health agency but that a hospital, outpatient or skilled nursing facility would be fine. The Board questioned whether she believes she needs to make lifestyle changes given that some of her preferred activities appear to be the cause of her pain. She stated that horsemanship is a very important part of her life. She indicated that she has modified her approaches with the horses and that at the first opportunity she intends to have a total knee replacement. In response to the Board's question, Mr. Hill stated that he was hoping for a consent agreement that would allow her to work in an environment where neither she nor

the public are at risk; the requirements must be very rigid. Ms. Campbell stated that she would be happy to carry out any action the Board determines is appropriate including another consent agreement with strict and comprehensive requirements, or proceed with the case to formal hearing. The Board discussed how a consent agreement could ensure the public was protected. In response to the Board's questions Ms. Gurnett explained that the relapse prevention program consists of 15 participants who meet once or twice weekly which is run by Craig Lees at Compass. She explained that she has previously participated in an after-care program. The Board members concurred that any consent agreement offered to Ms. Gurnett must include a stay of revocation and revocation of her license if she violates any terms in the agreement, and that she be precluded from working independently or in home health. The Board members further agreed that the agreement must require continued drug testing, one physician that will oversee all her medications, on-going participation in a relapse prevention program, and monthly reports from supervisors. The Board directed staff and legal counsel to draft a consent agreement that will be reviewed during a special session teleconference meeting. Ms. Kalis moved to continue the matter pending acceptance of a consent agreement between the parties. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

4. Initial Review and Possible Action on Complaint

#07-11; Mark D'Aloisio P.T.

Ms. Hiller summarized the investigation noting that this complaint was received from G.C., a former patient at Functional Performance Center who alleges that on April 27, 2007 Mr. D'Aloisio had him perform an exercise that resulted in a severe worsening of his right knee pain and functioning similar to when he first injured his knee in 2002. She noted that G.C. demanded a refund of \$75.00 for that treatment but the Center refused to provide it. Ms. Hiller summarized Mr. D'Aloisio's response to the complaint which included statements that G.C.'s objective evaluation consisted of comprehensive testing the knee and that his assessment *found* no structural damage. She noted that the licensee further stated the findings from the evaluation were discussed with G.C. and a plan of care was established and agreed upon by the patient and that at no time was G.C. advised to perform any exercise against his wishes, G.C.'s concerns were fully discussed and the patient was able to successfully complete the exercise without pain. Finally Ms. Hiller commented that Mr. D'Aloisio's response indicated G.C. demonstrated independence with all home exercise activities and a follow-up appointment was scheduled; when G.C. sent an email in advance of that appointment about the pain he was experiencing Mr. D'Aloisio responded with an e-mail to rectify the situation but became threatening and the matter was turned over to legal counsel. Additionally Ms. Hiller called to the Board's attention the possible jurisdiction for the complaint as listed in the investigative report. Ms. Hiller noted that her findings indicate G.C.'s reports to Mr. D'Aloisio and his physicians describe a chronic history of fluctuating right knee pain since 2002 but that the Board shall decide whether Mr. D'Aloisio's exercise prescription for G.C. and the treatment on April 27, 2007 worsened the patient's condition. She advised the Board that there is no follow-up documented in G.C.'s records. The Board noted a disconnect between G.C.'s MRI and what G.C. reports in his complaint. It was noted that the exercise prescribed by Mr. D'Aloisio isn't common and discussed the photograph that the licensee submitted with his response to the complaint. The Board questioned why he chose that particular exercise. The Board reviewed Mr. D'Aloisio's conclusion statements in his response and discussed a possible theory as to why he made the clinical decisions he did. It was noted that the initial evaluation appears to be complete and that Mr. D'Aloisio documented attempts to communicate with G.C. relative to his concerns as professionally as possible. The Board also commented that G.C. didn't appear to want to accept the assistance that was offered to him relative to his concerns. The Board concluded that the

exercise Mr. D'Aloisio selected for G.C. was appropriate and was likely not the cause of his pain. Ms. Kalis moved to dismiss the complaint. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

5. Initial Review and Possible Action on Complaint

#07-12; Jil Brown P.T.

Ms. Hiller summarized the complaint noted that it was opened by staff in response to a written complaint filed by S.H. who holds power of attorney for FM-P, a resident of Arcadia Estate Adult Living at the time this complaint was filed. Ms. Hiller noted the complaint stated FM-P was hospitalized following an episode of spousal abuse; she also reported FM-P was later transferred to Kivel Nursing Home where she received both physical therapy and occupational therapy. Ms. Hiller advised the Board that the complainant stated Ms. Brown prematurely discharged FM-P from care with discharge notes stating that she was not making any progress; the complainant further noted that FM-P was unable to perform basic activities of daily living such as sit to stand, transfer into and out of bed, walk more than 75 feet with a walker, and help with simple grooming/dressing activities. Ms. Hiller summarized Ms. Brown's response to the complaint in which the licensee described her evaluation and treatment plan for FM-P, the patient's response to the treatment and her eventual decline in functional abilities and interest in her rehabilitation. Additionally Ms. Hiller stated that in her response Ms. Brown described her discussion with S.H. relative to the discharge plan for FM-P. She also noted that at her request Ms. Brown submitted re-written treatment notes for FM-P that are more legible. Ms. Brown was present for the initial review of the case and voluntarily came before the Board to explain the case. She noted that the complainant was provided some options relative to continuing the patient's care but she didn't follow any of those options. Ms. Brown stated that she is very empathetic to the patient's plight and feels that the complainant was being a strong advocate for the patient. Ms. Brown indicated it is her belief that because she was the last provider involved with FM-P that she became the target for S.H.'s complaint. In response to the Board's questions Ms. Brown indicated that the patient may have experienced some loss of cognition and was very emotional at times. She stated she informed all involved parties of the patient's discharge plan, documented all of her discussions, and reminded the Board that she had requested the involvement of a social worker due to her concerns. In response to the Board's questions Ms. Brown explained that the patient's condition did improve while she was at the facility in that she was able to walk a distance. She noted that the patient was not interested in doing a home program. Additionally Ms. Brown commented that the patient was offered another provider but did not take that opportunity. Dr. Cornwall moved to dismiss the complaint. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

6. Initial Review and Possible Action on Complaint

#08-01; Lawrence Humphrey, P.T.

Ms. Herbst Paakkonen advised the Board that staff opened this complaint following notification of an Adverse Action Report filed in the Healthcare and Integrity and Protection Data Bank by the Kentucky State Board of Physical Therapy. She indicated the report noted disciplinary action was issued against Lawrence Humphrey, P.T. who is also licensed in Arizona and prompted Board staff to request copies of the Kentucky Board's complaint documents concerning Mr. Humphrey. Ms. Herbst Paakkonen commented the documents indicate Mr. Humphrey violated a Kentucky statute by failing to obey an administrative regulation requiring he provide evidence of completing the continuing competency activities required by that Board for their 2005-2007 licensure period. Ms. Herbst Paakkonen noted the possible jurisdiction for this case, and called to the Board's attention the documents supplied by the Kentucky Board. The Board questioned how these cases originate and Ms. Herbst Paakkonen described how filed

Adverse Action reports are issued by the Federation of State Boards of Physical Therapy to all jurisdictions in which an individual is licensed. The Board discussed the fact that the violation was specific to Kentucky law and that the matter appears to have been addressed by the Kentucky Board and no further action is necessary to protect the public. Ms. Kalis moved to dismiss the case. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Alvarez, Jose	Belowich, Sean	Bradford, John
Brand, Holly	Clinard, Tiffany	Deacon, Santana
De Szoeki, Evan	Hoban, Wendi	Lugoj, Ivlian
Luther, Jennifer	Majestic, Lori	Reece, Jennifer
Rotondo, Carolina	Stanziano, Patrizio	Thomas, Mathew
Thoreson, Sarah	Toth, Leah	Weakland, William

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

**** Applicant from a CAPTE Approved Foreign Program**

Noting there were no questions concerning the administrative and substantive completeness of the applicant files, Ms. Kalis moved to license the listed applicants. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The Board members noted that one applicant passed the National Physical Therapy Examination on his seventh attempt and another applicant passed on the sixth attempt.

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

Crabtree, Linda	Cvitanov, Natalie	Edwards, Nichol
Fernino, Denise	Fink, Stephen	Hines, Shelley
Oellig, Chad	Perez, Israel	Rusnov, Alice
Wisdom, Kelly	Wist, Ronald	

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

Ms. Kalis called for questions or comments on the application files and the Board discussed the fact that Mr. Perez is not required to submit verification of being licensed or certified in Utah because that state does not regulate physical therapist assistants. The Board questioned why some of the applicants have completed the citizenship form with verification while other applicants have completed a different form and didn't submit verification. Ms. Brierley explained that depending on when the application was filed, the applicant was either subject to the requirement of the short form that doesn't require verification while applicants filing after a certain date were required to complete the longer citizenship form that requires verification. Ms. Kalis moved to certify the listed applicants. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

9. 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, Administratively Complete File and Supervised Clinical Practice Period Proposal

Ionel Cornea

The Board reviewed Mr. Cornea's file and discussed the fact that it was administratively complete and he has provided evidence of having completed his educational deficiencies. The Board noted the site of his proposed supervised clinical practice period (SCPP) at Valley View Medical Center in Mohave, Arizona under the supervision of Gail Eades, P.T. Ms. Kalis moved

to find Mr. Cornea's education substantially equivalent to that of a graduate of a U.S. accredited program, to determine that his application file is complete and to grant approval of the proposed SCPP. Mr. Gossman seconded the motion. The motion carried by a unanimous vote.

b. Review of Education, Administratively Complete File and Determination of Supervised Clinical Practice Period Requirement

George Rodriguez

The Board reviewed Mr. Rodriguez's file and noted that he has a physical therapy degree, nursing degree and a medical degree all from schools in the Philippines. The Board commented that while the applicant's physical therapy education is substantially equivalent, he has submitted no evidence of having any U.S. clinical practice experience. Dr. Cornwall moved to find Mr. Rodriguez's education substantially equivalent to that of a graduate of a U.S. accredited program, to determine that his application file is complete and to require him to complete an SCPP. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

10. Review and Possible Action on Supervised Clinical Practice Period and Substantive Review of Application for Licensure

D. Scott Mellish

Dr. Cornwall recused himself from the discussion and vote of this agenda item. The Board noted that the CPI evaluation of Mr. Mellish was very glowing and clearly indicated progress on the part of the Interim Permit holder. The Board commented that the supervisor had indicated Mr. Mellish's skills had developed during the period to an extent that the facility is willing to employ him. Mr. Sieveke moved to grant licensure to Mr. Mellish. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

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

Frances Vasquez Wright – Applicant for Physical Therapist Assistant Certification

Ms. Herbst Paakkonen reminded the Board that this file was initially reviewed last month and the Board determined at that time that the applicant had not submitted all of the requested information relative to her criminal conviction disclosure. She noted that Board staff had requested in writing that Ms. Wright forward all of the missing information and in the process had received some of the information from her. She also mentioned Ms. Wright had informed the Board staff in a voice-mail message left the previous day that one of the outstanding charges was dismissed with prejudice, but the documentation hadn't yet been received from the applicant. Ms. Herbst Paakkonen advised the Board that in the process of attempting to obtain a copy of this most recent court action, criminal convictions dating back to the 1980s were forwarded to the Board office by the Cochise County Court late in the afternoon of the previous day. Ms. Campbell stated that Ms. Wright has a history of several criminal cases involving theft and it isn't always clear which cases for which we have all of the information and for which information is lacking – especially given recent developments. She recommended the Board's assigned attorney conduct a comprehensive review of all of the documentation in order to prepare a summary for the Board next month given that the file is not yet administratively complete. Ms. Kalis moved to table action on the application until the file is complete. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

12. 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:** The Board questioned Ms. Herbst Paakkonen relative to Arizona Physical Therapy Association presenting a request to the Board relative to the issue of referral for financial gain. She stated that the Association's Governmental Affairs Committee has indicated an interest in coming before the Board possibly to request support for or participation in pursuing statute or rule changes relative to this issue. She noted that she has advised the Association that the Board will likely want to have this discussion after receiving the result of the study commissioned by the Federation of State Boards of Physical Therapy on this issue and that the study may be completed this fall. The Board discussed the fact that this issue is very challenging to research from a public protection perspective.
- d. Rule Writing Update:** No additional information to report.
- e. Legislative Update:** Ms. Herbst Paakkonen reported on the legislative proposals that will sweep \$100,000 from the Board's fund. She advised the Board to anticipate that the sweep is virtually a foregone conclusion and that she has concerns about fund sweeps being utilized to address the fiscal year 2009 budget shortfall. Ms. Herbst Paakkonen noted that none of the bills proposing consolidation of boards have advanced in the Arizona State Legislature.

13. Review and Possible Action on Review and Possible Action on Proposed Revisions to the Following Sections of the Arizona Administrative Code

R4-24-201. Application for a Physical Therapist License

R4-24-203. Supervised Clinical Practice

R4-24-207. Application for a Physical Therapist Assistant Certificate

R4-24-208. License or Certificate Renewal; Address Change

Article 3. Regulation of Physical Therapy

Jeanne Hann, the Board's contract rule writer, was present for the review and discussion of the second draft of the suggested changes to selected rules in Article 2 of the Board's administrative rules as well as Article 3. The Board directed Ms. Hann to incorporate language into R4-24-204 that stipulates a supervised clinical practice period supervisor must complete both the mid-term and final evaluative components of the Clinical Performance Instrument. The Board reviewed the suggested language for R4-24-301 and how the subsections address different aspects of informed consent. Following the discussion the Board members agreed by consensus to proceed with the suggested language. The Board questioned whether the suggested language at R4-24-304(A)(4) could be clearer and identified a possible typographical error in subsection C of the suggested rule. The Board directed Ms. Herbst Paakkonen to take the comments back to Ms. Hann so another draft could be prepared in time for the Board's special session meeting that will be scheduled before the next regular session meeting.

14. Board Member Training

Reviewing Documentation – Helene Fearon, P.T.

Ms. Fearon reviewed with the Board highlighting Medicare policies as being the driving force behind documentation standards. She discussed common compliance issues, fraud reporting, the multitude of third-party payers and skilled therapy considerations. Ms. Fearon explained the fact that CPT codes used by physical therapists are not specific to physical therapy and are used by various providers. She offered to the Board some additional resources to which the members can

refer, and described her approach to reviewing patient records for completeness and compliance with payer requirements. Ms. Fearon discussed what the Board should reasonably expect to find on a complete evaluation and how certain elements of an evaluation could result in a finding of inadequate documentation. She advised that treatment notes should support what was billed and that they should be dated. The Board discussed with Ms. Fearon instances where patients were given exercises and complain to the Board that they were overcharged. Ms. Fearon advised that if a physical therapist leaves the patient while the patient performs therapeutic exercise and bills for it, that patient was billed inappropriately. Direct contact time and total treatment time are critical to determining whether documentation supports billing, but few physical therapists are documenting time. She commented that the Board should ask a therapist whose billing is under scrutiny to justify his or her involvement with the patient when using the therapeutic exercise code. Ms. Fearon stated that of 8500 CPT codes, ultrasound is the most commonly used. She noted that patients should be weaned off of modalities rather than abruptly ending them at the end of the episode of care. She also mentioned that gait training codes are most commonly misused in the skilled nursing facility setting. Ms. Fearon explained the use of the wound care CPT codes.

15. Review and Possible Action on Request for Interim Permit/Supervised Clinical Practice Period Approval and Review and Determination of Continuing Education Coursework Approval

Eliza Cho

The Board reviewed the application file for Ms. Cho. The Board questioned whether the applicant submitted a course outline relative to the examination preparation course she completed; Board staff advised that she only submitted what was presented to the Board. The Board staff noted that Ms. Cho had not communicated with the Board since the initial review of her application during which the Board determined that because she had not held a license for more than three years she must complete continuing education coursework as a SCPP in Arizona. Ms. Kalis moved to approve Ms. Cho's SCPP proposal and to direct her to submit a course outline for the Board staff to review; if the course does not meet the Board's requirements she must complete additional coursework. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

CALL TO THE PUBLIC

Public input is encouraged. Presentations will be limited to five minutes. Please be aware, however, that the Board may not discuss, consider or take action at this meeting on any item not appearing on its agenda. During the Board meeting, additional public comment may be requested, but is generally not allowed.

ADJOURNMENT

The meeting adjourned at 2:10 p.m. The Board scheduled a special session teleconference meeting for March 12 at 10:15 a.m.

Prepared by,

Heidi Herbst Paakkonen, Executive Director

Approved by,

Randy Robbins, Secretary