

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
April 22, 2008

MEMBERS PRESENT: Joni Kalis, P.T., President
Mark Cornwall, P.T., Ph.D., Vice President
Randy Robbins, Secretary
James Sieveke, P.T., O.C.S., Member
Lisa Akers, P.T., Member
Kris Ohlendorf, P.T.A., Member

MEMBERS ABSENT:

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

CALL TO ORDER – 8:30 a.m.

1. Review and Approval of Draft Minutes:

March 12, 2008; Special Session Meeting

Hearing that there were no revisions required to the draft, Ms. Kalis moved to accept the minutes as prepared. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

March 25, 2008; Regular Session Meeting

The Board noted that agenda item number seven requires revision to indicate that Mr. Robbins recused himself from the consideration and vote of that agenda item. Ms. Kalis moved the minutes be approved with the noted revision. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

March 25, 2008; Executive Session

Hearing that there were no revisions required to the draft, Ms. Kalis moved to accept the minutes as prepared. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

April 2, 2008; Special Session Meeting

Hearing that there were no revisions required to the draft, Ms. Kalis moved to accept the minutes as prepared. Dr. Cornwall 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
#07-09; Alicia Peavey, P.T.**

Dr. Cornwall announced that he would recuse himself from the review and possible action on this agenda item. Ms. Herbst Paakkonen summarized Ms. Peavey's request that the Board reconsider its findings of fact and conclusions of law concerning her case that was resolved as a result of the informal hearing on March 25, 2008. Ms. Herbst Paakkonen called to the Board's attention the administrative rule R4-24-307 that outlines the bases upon which a licensee can file a request for review or rehearing of a Board decision. She further noted that because she did not

provide the transcript of the informal hearing she would recommend that the Board only consider whether to grant her a review or a rehearing and schedule any such review or rehearing on a future meeting agenda. The Board questioned whether the investigative record is clear with respect to the timing of the theft of the records. The Board discussed Ms. Peavey's statements in her letters to the Board and whether these were properly considered in the process of establishing the findings of fact for the case. The Board members concurred that the penalty was not excessive relative to this case and that it took into consideration the extenuating circumstances the licensee presented. Ms. Kalis moved to deny the request. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

3. Initial Review and Possible Action on Complaint

#07-14; Eric Ullman, P.T.

Ms. Hiller summarized the complaint filed by R.G., a former patient of Mr. Ullman who alleged that the licensee refused to provide physical therapy treatment as scheduled on July 3, 2007 and that Mr. Ullman refused to provide a referral to another physical therapist as he requested. Ms. Hiller noted that in his written response to the complaint Mr. Ullman affirmed he denied to provide treatment to R.G. on that date because of the policy of Miller Physical Therapy (his employer) that payment must be provided at the time of treatment and R.G. had failed to establish that he had proof of new insurance to support his statement that his new co-pay was \$30. She commented that Mr. Ullman further stated that he was uncomfortable referring R.G. to another physical therapist given his agitated state on that day, and that in lieu of a physical therapy referral he elected to refer the complainant to his physician. Ms. Hiller noted that the records were reviewed for compliance with the law. Mr. Ullman was present for the Board's review of the case and stated to the Board that the complainant reported positive outcomes during his course of physical therapy. Mr. Ullman noted that R.G. had arranged a new payment arrangement with the office staff as his insurance was terminating and therefore he was surprised when on July 3, 2007 R.G. engaged in a contentious argument with a member of the front office staff and was very disrespectful. Mr. Ullman stated that he attempted to diffuse the matter and continue the conversation in a private area away from the staff and other patients. Mr. Ullman stated that R.G. demanded a referral to another office but Mr. Ullman determined that he was not comfortable doing so under the circumstances. He further explained that R.G. was made aware of the fact that the office requires payment at the time of service and that because R.G. refused to pay for treatment that day it was not provided. The Board questioned whether Mr. Ullman would have considered trusting that R.G. would be able to provide proof of his new insurance shortly after that July 3 visit. The licensee explained his most recent understanding that R.G. would not have insurance after his most recent treatment session and that self-pay arrangements had been made. He noted that he was following the office policies and that R.G. had failed to provide proof of the fact that he had just recently obtained COBRA coverage. Mr. Ullman further asserted that the decision that R.G. was not eligible for treatment due to his refusal to pay for his care that day was made by the office staff. Mr. Ullman explained that he was not comfortable making a referral to another respected colleague due to R.G.'s rude and confrontational behavior on July 3. The Board questioned whether the business practices are flexible with respect to the payment policies. Mr. Ullman stated that they are not. The Board further questioned the licensee with respect to whether he communicated the incident to R.G.'s referring physician; he noted that it was faxed on July 6 following the holiday weekend. Mr. Ullman explained that R.G.'s offer to pay \$30 was not acceptable because he did not provide proof at the time of that visit that this was the amount of his co-pay under the new insurance plan R.G. stated he had obtained. Mr. Ullman explained his conversation with the owner of the practice and how they agreed that under the circumstances that they were uncomfortable with referring R.G. to another physical therapist. The Board discussed the fact that any medical office requires payment at the time of service and

debated whether Mr. Ullman's decision to refer R.G. back to his physician was the appropriate action. The Board further debated whether Mr. Ullman's follow-up was timely, or whether the patient-provider relationship required Mr. Ullman to make a physical therapy referral. The Board reviewed and discussed the American Physical Therapy Association Code of Ethics as it might relate to the case. The Board noted that financial/payment policies and procedures vary from clinic to clinic. Ms. Kalis moved to issue an advisory letter noting that Mr. Ullman has an ethical and professional duty to either refer a patient to another physical therapist as requested or to immediately refer the patient back to the referring physician. Ms. Akers seconded the motion. The motion carried by a vote of 5 to 1.

**4. Initial Review and Possible Action on Complaint
#07-15; Emmerson Salamat, P.T.**

Ms. Hiller summarized the complaint, filed by the Director of Compliance at RehabCare Group which owns Sun View Care Center, that alleges Mr. Salamat failed to complete and maintain physical therapy treatment records and accordingly was terminated from employment with the company. Ms. Hiller noted that her follow up contact to the complainant yielded additional information – notably electronic records with substantial attachments containing spreadsheets of the facility's audit findings that appear to indicate that Mr. Salamat did not complete all of the required physical therapy records. Mr. Salamat stated in his written response to the complaint that all of his records were complete and that personnel changes in medical records personnel department resulted in the deficiencies in the patient charts; Ms. Hiller noted the licensee only addressed the complaint allegations in general terms, and she described the challenges she experienced with respect to contacting the licensee as the information in the Board's database was not current. Ms. Hiller advised the Board that Helene Fearon, P.T., contract investigator for the Board, was consulted for purposes of reviewing the records and in doing so selected a representative sample to audit. Ms. Hiller commented that Ms. Fearon's findings are that the charts were indeed incomplete and entire records are absent from the charts. Mr. Sieveke moved to remand the complaint to an informal hearing. Mr. Robbins seconded the motion. The Board questioned whether the investigation should continue with respect to reviewing additional patient charts. The Board also questioned whether the investigation should also involve reviewing whether occupational therapy and speech therapy records were missing for the same dates from which some inferences could be drawn. The Board noted that Mr. Salamat had arrived during the discussion and allowed him opportunity to speak. Mr. Salamat explained the nature of his employment with Sun View Care Center and how he sometimes traveled to other facilities owned by the same company. He noted that he was typically the only physical therapist treating patients at that facility, and he stated that the occupational therapist employed by that facility is also under investigation by her board for essentially the same allegations. Mr. Salamat stated that he left employment on good terms. In response to the Board's questions he affirmed that he wrote his own notes and that each provider kept separate records; completed records were submitted to the medical records office. Mr. Salamat indicated that he kept current with his notes on a daily basis. He stated that he can recall completing notes that are now missing from the patient charts, and explained that patient charts were audited by the corporate office. The motion on the table carried by a unanimous vote. The Board directed Ms. Hiller to ascertain how many physical therapists were treating patients at the facility and affirmed that a review of the missing physical therapy records against the missing occupational therapy records would assist with the investigation. The Board further directed Ms. Hiller to investigate whether any subsequent audits or reviews of charts at the facility may have further identified records deficiencies; the Board also directed staff to invite the complainant to participate in the informal hearing as an investigational witness.

5. Review and Possible Action on Petition for Termination of Probation

#06-22; Kimberly Ramsey, P.T.

Ms. Hiller summarized the status of Ms. Ramsey's probation file noting that she was placed on probation for six months for failing to disclose on her 2006 license renewal application that she had been convicted in March of 2004 for a DUI, for failing to disclose that she had been denied a license by the Physical Therapy Board of California, for her failure to disclose the same information to the California Board, and for her failure to notify this Board of her relocation to California. Ms. Hiller called to the Board's attention Ms. Ramsey's probation requirements as stipulated in her Order of Probation, summarized the licensee's timely completion of all of the requirements, and noted Ms. Ramsey is seeking termination of her probation. Ms. Kalis moved to grant termination of probation. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

#06-17 Roger Surette

Ms. Hiller advised the Board that the licensee's Order of Probation stipulated that he undergo a review of five randomly selected patient charts and that the purpose of the review today was to determine whether a second review of records was necessary depending on the completeness of the records. She noted that she had completed her review of the charts she selected and that she had summarized her findings in the report submitted to the Board. The Board requested clarification with respect to how Ms. Hiller indicates her findings; Ms. Hiller explained the process and the tool utilized in her records review process and how this tool relates to the statutes and rules. The Board discussed an apparent disconnect between statements made on the discharge summaries and the rehabilitation goals documented in the patient plans of care. The Board further noted some undated discharge summaries, some missing informed consent notations, and missing communiqués to the referring physician. Ms. Kalis moved to require Mr. Surette undergo an additional review of records in accordance with the Board Order. Mr. Sieveke seconded the motion. Ms. Hiller advised the Board that Mr. Surette has received a copy of her review findings and he is aware of the issues she identified. The Board discussed the fact that the licensee's documentation has improved with respect to documenting patient progress toward goals. The motion carried by a unanimous vote.

6. Review and Possible Action on Request for Acceptance of Consent Agreement

Susan Hillman, P.T.

Mr. Robbins announced that he would recuse himself from the discussion and possible action on this agenda item. Ms. Herbst Paakkonen summarized the status of this case noting that during its March 25, 2008 meeting the Board heard and approved Ms. Hillman's request to accept the voluntary surrender of her physical therapist license through a consent agreement that indicates violations of law for Ms. Hillman's failure to respond to her notice of continuing competence audit within 30 days as required by Board rule. Ms. Herbst Paakkonen explained that following the March 25 meeting Ms. Hillman contacted her to inquire whether the Board would accept from her a signed copy of the original consent agreement – containing probation and disciplinary terms – that was previously offered to her as she has decided she does not wish to surrender her physical therapist license. Ms. Herbst Paakkonen advised the Board that she suggested to Ms. Hillman she returned a signed copy of the original consent agreement, along with copies of her continuing competence documentation, for the Board to consider at its next meeting. Ms. Herbst Paakkonen noted that Ms. Hillman did forward a signed copy of the consent agreement along with copious amounts of continuing competence documentation that established the licensee did complete the requirements even though she did not submit these materials within the 30 days required. The Board discussed modifying the consent agreement to add a finding of fact that Ms. Hillman did eventually submit her continuing competence documentation which demonstrated she was in compliance with the requirements for the 2004-2006 licensure period. The Board also discussed striking some of the conclusions of law in light of this new information. Ms. Kalis

moved to add the finding of fact as discussed, to delete the conclusions of law for A.R.S. §32-2044(3) and (14), and to allow Ms. Hillman 30 days to sign the new consent agreement. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

**7. Review and Possible Action Concerning Continuing Competence Case
 #08-02-CC; Darcy Norman, P.T.**

Ms. Herbst Paakkonen reported that the Board last saw this continuing competence non-compliance case during its regular session meeting of January 22, 2008 at which time the Board voted to offer the licensee a consent agreement containing findings of fact, conclusions of law and disciplinary terms for her failure to respond to the notice of continuing competence audit sent to her following the reinstatement of her physical therapist license. Ms. Herbst Paakkonen advised the Board that the deadline for the offer of the consent agreement had passed with no response from Ms. Norman. Ms. Herbst Paakkonen noted that the Board did not direct the case to an informal or formal hearing in January in the event Ms. Norman failed to sign the consent agreement that was offered. The Board discussed whether to send the case to either a formal or an informal hearing, and obtained clarification from Ms. Versteegen relative to what options exist to the Board following either an informal or a formal hearing. Ms. Kalis moved to remand the case to an informal hearing. Mr. Sieveke seconded the motion. The Board discussed whether sending the case to a formal hearing is appropriate given her lack of communication with the Board. The Board also discussed that a consent agreement could be offered that accepts a voluntary surrender of her license. The motion carried by a unanimous vote. Dr. Cornwall moved and Mr. Robbins seconded a motion to include a consent agreement that would accept the voluntary surrender of Ms. Norman's license.

APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Gretchen Armstrong	Roberto dos Santos	Steven Ferris
Jeremy Devine*	Carol Hess	Shirley McGeehon
Alison Russell		

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

***Applicant from a CAPTE Approved Foreign Program*

The Board discussed Mr. Devine's disclosure on his application and concurred that the event resulting in the malpractice settlement had occurred long ago. The Board's discussed the application for Ms. McGeehon and noted that she has not maintained a physical therapist license in any state for many years and that she has not practiced physical therapy for eight years. The Board reviewed and discussed A.R.S. §32-2028. Reinstatement of license or certificate and noted the options the Board has to determine an applicant's competency when the person has not held a physical therapist license for three years or more. Mr. Sieveke moved to require Ms. McGeehon complete 80 hours of continuing competence and to issue her an interim permit for purposes of completing a supervised clinical practice period. Ms. Kalis seconded the motion. The Board affirmed that it would accept any continuing competence courses that she may have completed during the period of time she held no license. The motion carried by a unanimous vote with one abstention. Ms. Kalis moved to grant licensure to the remaining listed applicants. Mr. Robbins seconded the motion. The motion carried by a unanimous vote with one abstention.

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

Jennifer Fry	Rhonda Moonier	Barbara Woodlief
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**Applicant disclosure on "Personal Information" section of application*

The Board noted there were no questions or clarification required with respect to the listed applicants and that the files are administratively complete. Ms. Kalis moved to grant certification

to the remaining listed applicants. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote with one abstention.

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

a. Review of Supervised Clinical Practice Period Proposal

George Rodriguez

The Board reviewed the Supervised Clinical Practice Period (SCPP) proposal submitted by Mr. Rodriguez who was previously granted an Interim Permit by the Board. The Board members concurred that the proposed facility would provide him with well-rounded clinical experience and noted that the proposed supervisors possess appropriate experience. Ms. Kalis moved to approve the SCPP proposal. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote with one abstention.

b. Review of Education, Determination of Supervised Clinical Practice Period Requirement, Request for Approval to Take the NPTE and Possible Action on Determination of Licensure

Harold Ilao

The Board reviewed the application file, noted the applicant graduated from a physical therapy program in the Philippines, and that his credential evaluation report indicates his education has been found to be substantially equivalent to that of a graduate of a U.S. accredited program. The Board noted Mr. Ilao scored very high on the Test of English as a Foreign Language (TOEFL). Ms. Kalis moved to grant Mr. Ilao approval to take the NPTE and to direct staff to advise the applicant that after passing the examination he must submit an SCPP proposal. Mr. Robbins seconded the motion. The motion carried by a unanimous vote with one abstention.

Luis Tisselli

The Board reviewed Mr. Tisselli's application file and noted that his credential evaluation report indicates he is deficient with respect to semester credit hours in general education. Ms. Kalis moved to find the applicant's education not substantially equivalent to that of a graduate of a U.S. accredited program and that he must complete the educational deficiencies as indicated in the report. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The Board discussed that it would like to address on a future meeting agenda whether to promulgate a rule that would preclude an applicant from completing an SCPP at a facility that intends to hire that applicant as doing so may present a conflict of interest. The Board also questioned how it is verified that an applicant's native language is English. Board staff advised that the administrative rule doesn't prescribe any process for making this determination so the applicant is trusted to be honest. Ms. Herbst Paakkonen noted that the nursing profession's federation of regulatory boards has adopted a policy that recognizes certain countries where English is the predominant language spoken and that this policy could give this Board some guidance. The Board directed staff to provide Mr. Tisselli with information about the FCCPT advisory program for foreign trained physical therapists with educational deficiencies. The Board also directed staff to advise the applicant that he can complete his educational deficiencies through CLEP (College Level Examination Program) with the exception of his chemistry and physics courses. The motion carried by a unanimous vote with one abstention.

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: Ms. Herbst Paakkonen advised the Board that the members who attended the Federation's Board Member Training the previous week would report

on their experience. Ms. Ohlendorf reported that the training was very good and she reviewed with the Board the list of suggested actions provided to the training participants for review and consideration with their respecting jurisdiction boards. The Board discussed inviting Dargan Erwin, P.T. and President of the Federation Board of Directors to the Board's October 28, 2008 meeting for purposes of summarizing the findings of the Referral for Financial Gain study. Mr. Sieveke reported that even after a year of service on the Board he also found the experience to be valuable. He noted that there were three public members at the training and that it was interesting to hear their perspective. He stated that the training illustrated to him that the average physical therapist is probably very naïve to regulatory issues as well as to the opportunities to serve in a regulatory capacity. Both Ms. Ohlendorf and Mr. Sieveke emphasized the magnitude of information that the FSBPT generates, the support provided to the jurisdictions, and marveled at the tight security of the examination which extends to access within the building. They also spoke to the wide variations that exist between the jurisdictions relative to the law. After discussion of the jurisprudence examination revision plan, the Board directed Ms. Herbst Paakkonen to follow up with Susan Layton, Vice President of FSBPT, on the possible need to recruit volunteers for this effort.

d. Rule Writing Update: No additional information to report.

e. Legislative Update: Ms. Herbst Paakkonen reported that a number of rumors continue to circulate relative to what, if anything, is happening with the Governor's Modern Health Board Consolidation plan. She noted that it was very difficult to provide the Board with any updates as to date no information has been provided in writing to the potentially affected boards. She also stated that the consolidation rumors vary so significantly that it is impossible to discern fact from fiction. Ms. Herbst Paakkonen commented that Stuart Goodman has continually provided her with assurance that any legislative proposal would be met with great resistance by the majority of legislators and that the opportunities for introducing legislation in the current session have all but completely evaporated. She assured the Board that she will continue to provide updates as soon as reliable information is available. Ms. Herbst Paakkonen reminded the Board that the recent passage of HB 2620 requires a transfer of \$100,000 from the dedicated fund of the Arizona Board of Physical Therapy on or before June 30, 2008. She commented that she has yet to hear anything relative to whether any funds might be swept from the Board's fund in 2009. The Board questioned whether the members of the legislature are troubled by the fund sweeps; Ms. Herbst Paakkonen stated that the magnitude of the budget shortfalls of \$1.2 billion and \$2.0 billion for fiscal years 2008 and 2009 respectively have essentially forced this type of action. Ms. Herbst Paakkonen advised the Board that she has invited Mr. Goodman to the June 24, 2008 meeting to provide a legislative session wrap-up report.

12. Review and Possible Action on Proposed Substantive Policy Statement: Physical Therapist Continuing Competence Requirements

Ms. Herbst Paakkonen advised the Board that she prepared this draft, with assistance from Ms. Hiller, following the continuing competence discussion that ensued during the Board's March 25, 2008 meeting. She noted that the objective is to provide clarification of the continuing competence requirements established in Board rule for the benefit of licensees, and to provide a reference to the Board as well. The Board reviewed the draft and noted one correction on the first page of the draft. The Board indicated that the draft addresses all of the sub-topics in a clear and organized fashion. The staff described for the Board the random audit process and the use of a volunteer audit committee to develop recommendations to the Board. The Board suggested some clarifying revisions to the Category A Activities section. Ms. Herbst Paakkonen and Ms. Hiller indicated that they will review the section that addresses documentation requirements section in the hopes of clarifying that sub-topic as well. The Board directed the staff to bring the draft back on the May meeting agenda with the requested revisions.

13. Discussion and Possible Action on Credentialing of Arizona Delegate for the 2008 Delegate Assembly of the Federation of State Boards of Physical Therapy (FSBPT)

Ms. Herbst Paakkonen briefly summarized for the Board the Federation's jurisdiction delegate credentialing process and the organization's commitment to fund the participation of both a Delegate and an Alternate Delegate to the Annual Meeting and Delegate Assembly. She discussed with the Board the State of Arizona's out-of-state travel policy restrictions. Dr. Cornwall advised the Board that he will plan to attend the meeting as a faculty member as funded by his program budget at Northern Arizona University. Mr. Sieveke nominated Ms. Kalis to serve as the Arizona delegate and Ms. Akers to serve as the Alternate Delegate. Mr. Robbins 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

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Randy Robbins
Secretary