

JANET NAPOLITANO  
Governor



HEIDI HERBST PAAKKONEN  
Executive Director

JONI KALIS, P.T.  
President

**ARIZONA STATE BOARD OF PHYSICAL THERAPY**  
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**REGULAR SESSION MEETING MINUTES**  
**July 15, 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:**

**June 24, 2008; Regular Session Meeting**

The Board noted one typographical error on page two of the draft. Ms. Kalis moved the minutes be approved with the correction. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**June 24, 2008; Executive Session Meeting**

Ms. Kalis moved to meet in Executive Session for purposes of discussing a possible revision to the draft minutes. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session Ms. Kalis moved to accept the minutes with the correction to the typographical error discussed in the Executive Session. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

**COMPLAINTS, INVESTIGATIONS and COMPLIANCE**

**2. Informal Hearing and Possible Action on Complaint**

**#07-18; William Perry, P.T.**

Ms. Kalis introduced the informal hearing and Ms. Hiller explained to the Board that in recent days new information has been presented relative to this case that will require additional investigation. Ms. Verstegen advised the Board that in light of this development the Board should table the informal hearing. Ms. Kalis moved to table the hearing and reschedule it for a future date. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**3. Review of Probation Compliance Status, Compliance Interview and Possible Action**  
**#06-20; William Sifling, P.T.**

Ms. Ohlendorf announced that she would recuse herself from consideration and action relative to this agenda item as she used to work with Mr. Sifling. Ms. Herbst Paakkonen summarized the

status of his compliance noting that while he has missed a few reporting deadlines, the reports from Dr. Michel Sucher who is managing Mr. Sifling's aftercare program and drug screening have all indicated that the licensee is in compliance. She noted that the most recent report from Dr. Sucher was received on July 8, 2008. Mr. Sifling advised the Board that his AA sponsor is an excellent sponsor who he has known for years and that while he isn't the best in terms of meeting deadlines and providing detailed reports, he would like to maintain the relationship and encourage him to be more prompt and complete with his reports. The Board questioned the licensee relative to the circumstances surrounding his termination from employment with HealthSouth Rehabilitation Hospital. Mr. Sifling indicated that the termination from employment emerged from a misunderstanding. He stated that he was ill for a few days early in his 90 day probation term and was unable to work. He further explained that during a probationary status meeting with his supervisor he was admonished for this absence as company policy does not allow for any absences – even for illness – within the 90 day probation term. Mr. Sifling stated to the Board that he felt that he was being treated unfairly. He then explained that he did call in sick on the Monday in question but that he later received a message from someone at the facility inquiring about his status. He commented that when he had to call in sick on the subsequent day, he decided that his employment was probably over at that point and that he should move on and find another job. Mr. Sifling indicated that he didn't receive any additional contact from HealthSouth until about a week later. He explained to the Board that after experiencing the second episode of illness that he should look for other employment due to intolerance of illness-based absences on the part of HealthSouth. In response to the Board's questions Mr. Sifling affirmed he was seen by a physician during this time frame. He surmised that perhaps he internalized the situation and circumstances, but decided that he had experienced some difficulties while on probation status. In response to the Board's questions Mr. Sifling stated that he probably would have attempted to stick it out with HealthSouth if he had known how difficult it would be to find work; he also affirmed that he has not yet found another job. Mr. Sifling explained that he suffers from chronic sinus infections that are debilitating and cause extreme fatigue; while at HealthSouth he would take rest breaks but now that he is unemployed he is able to rest for longer periods of time and manage his illness. He stated that he has never found treatment that works for this situation. Mr. Sifling explained that being sober has enabled him to better manage his stress and health. He acknowledged that he is a difficult person to hire but that he is hopeful that a job will open up for him soon. Ms. Kalis moved to meet in Executive Session for purposes of obtaining advice from legal counsel. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session the Board advised Mr. Sifling that in the future he should be more diligent in matters of employment. The Board concluded the interview and elected to take no action.

**4. Initial Review and Possible Action on Complaint  
#08-03; Anthony Granger, P.T.**

Ms. Akers announced that she would recuse herself from the discussion and vote on this agenda item. Ms. Hiller advised the Board that this complaint was filed by a former patient, J.C., who stated that the traction treatment Mr. Granger provided to her at Akers Physical Therapy caused her great pain and discomfort. Ms. Hiller noted that J.C. had been treated by other physical therapists at the facility for about one month prior to the two treatment sessions that Mr. Granger performed, and that the physician who had referred J.C. to physical therapy had stipulated very conservative treatment. Ms. Hiller affirmed that the treatment records indicate that traction was added to the patient's plan of care by Mr. Granger on the second date that he saw J.C. Ms. Hiller summarized the licensee's response to the complaint in which Mr. Granger explained his clinical rationale for using traction on J.C., and in which he stated that prior to performing the 90/90 lumbar positional distraction he discussed it with the patient. Additionally Ms. Hiller called to

the Board's attention Mr. Granger's statement that the patient did not use the call button he provided to her while the treatment was being administered and his recollection that the patient reported feeling 'OK' following the treatment. Ms. Hiller also stated that Mr. Granger reported that he has been working with his employer since in January of this year to develop and implement a proactive clinical mentoring program as a quality assurance measure to which he has adhered. Ms. Hiller called to the Board's attention the summaries of her review of J.C.'s physical therapy and medical records, as well as the possible jurisdiction for the complaint. The Board concurred that in order to resolve this case, answers must be obtained to several questions that must be posed to the licensee. Dr. Cornwall moved to invite Mr. Granger to an informal hearing. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. Ms. Hiller asked the Board whether any additional jurisdiction should be added to the complaint and whether additional investigation should be conducted. The Board concurred that no additional jurisdiction should be added and no additional investigation is necessary at this time.

**5. Initial Review and Possible Action on Complaint  
#08-04; Matthew Shuey, P.T.**

Ms. Kalis introduced the agenda item and Ms. Hiller reported that the complaint was filed by J.C., a former patient of Mr. Shuey who was treated on various dates in December of 2007 for bilateral hip and rotator cuff symptoms. The complainant alleged that the treatment provided by Mr. Shuey was too intense and that the licensee refused to modify the exercises at his request when they proved to be painful. In his written response to the complaint Mr. Shuey affirmed that he treated J.C. and that reasonable progress was made by the patient before he was discharged to a home exercise program. Ms. Hiller noted that during this investigation she reviewed J.C.'s physical therapy treatment records, his medical records, his most recent physical therapy records, and his pain management records and she summarized in the investigative report her findings. The Board questioned the therapeutic exercise charges that were recorded for the treatment sessions on December 8, 18 and 20 of 2007 and discussed why there were differences in the charges across those dates of service. The Board questioned whether the patient could have been anxious to restore his previous level of function and discussed the possibility that J.C. could have pushed himself too much physically with respect to his rehabilitation. The Board reviewed all of the patient's diagnoses and commented that the medical records make mention that J.C. was performing some exercises too frequently and strenuously. The Board noted that J.C.'s physical therapy records document both subjective and objective improvements throughout the course of treatment; additionally J.C.'s medical records consistently contain reports that his symptoms were improved following his course of treatment by Mr. Shuey but that they worsened in March and April 2007 following his discharge from physical therapy treatment. Dr. Cornwall moved to dismiss the case. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

**6. Review and Possible Action on Request for Acceptance of Consent Agreement  
#08-02-CC; Darcy Norman, P.T.**

Ms. Herbst Paakkonen reminded the Board that it had previously voted this case to a formal hearing as Mr. Norman had failed to respond to his notice of continuing competence audit and had failed to contact the Board during the past several months as attempts were made to resolve this case. She advised the Board that in early June Mr. Norman telephoned her to report that he had just returned from traveling extensively in Europe for his job, but that he had returned to his home in California for a brief period at which point in time had received the complaint and notice of formal hearing. He also reported concerns that mail sent to his address of record by the Board was not properly forwarded to him. Ms. Herbst Paakkonen noted that after updating the licensee on the status of this case Mr. Norman had requested a settlement conference. She called to the Board's attention the copies of his continuing competence documentation that were faxed to the Board on June 10, 2008 which indicated that between September 1, 2004 and August 31,

2006 he had completed at least 124 qualifying contact hours. She summarized the outcome of the settlement conference noting that Mr. Norman stated that maintaining his Arizona physical therapist license is very important to him and that he is willing to accept disciplinary action for his failure to comply with the audit reporting requirements. She further called to the Board's attention a proposed consent agreement that was negotiated with the licensee and advised that Mr. Norman has returned to Europe to work for two years. The Board discussed a licensee's responsibility to notify the Board of his whereabouts. The Board also reviewed and discussed the proposed consent agreement. Ms. Kalis moved to modify the agreement to add a finding of fact that describes the progression of the case to an informal and then a formal hearing, to eliminate the term that would allow Mr. Norman to write an essay reviewing the Board's statutes and rules which would then require him to take and pass the jurisprudence examination, and to require Mr. Norman to notify the Board staff two weeks in advance of his registration for that exam. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote. The Board received assurance from Ms. Versteegen that if Mr. Norman declines the consent agreement the Board could pursue the same disciplinary action that is in the original notice of hearing and which could include a suspension or revocation of his physical therapist license.

## **APPLICATIONS FOR LICENSURE & CERTIFICATION**

### **7. Review and Possible Action on Disclosure on Licensure or Certification Renewal Application Fernando, Julie**

Ms. Herbst Paakkonen summarized Ms. Fernando's request for renewal of her physical therapist license under a complete restriction of practice noting that the licensee has on two previous occasions reported to the Board on her application for licensure renewal that she continues to be afflicted with fibromyalgia which prevents her from practicing physical therapy with skill and safety, but that she is working on a rehabilitation plan to eventually return to practice. Ms. Herbst Paakkonen noted that the Board has executed consent agreements with Ms. Fernando in the past that have granted her renewal of her license but precluded her from actually practicing until she submits evidence to the Board that a physician has determined she can practice competently. The Board discussed the fact that the applicant has come before the Board on a previous occasion to discuss her disease, symptoms and her involvement in support groups and public education efforts. The Board questioned Ms. Versteegen relative to why a consent agreement would be warranted in this instance. Board counsel advised that Ms. Fernando has indicated she is willing to enter into the consent agreement for renewal of her physical therapist license with this restriction in order to keep her license and that the Board can protect the public by executing such an agreement. Following discussion Dr. Cornwall moved to offer a consent agreement similar to the one offered in 2006. Mr. Robbins seconded the motion. The motion carried by a vote of 5-1.

### **8(A). Review and Possible Action on Request for Approval to Take National Physical Therapist Examination; Review of Documentation Related to Disclosure on "Personal Information" Section of Application**

#### **Tvedt, Lucas**

The applicant was present for the Board's review and discussion and was granted permission to address the Board. Mr. Tvedt explained that he wanted to be present for the Board's review and vote on his application for licensure because he wanted to address any questions the Board might have. He stated his awareness that being of good moral character is the first requirement that must be met to qualify for physical therapist licensure and that he understands why this is the case as good moral character is directly related to patient care and the standing that physical therapists have in the medical community. Mr. Tvedt indicated that he has learned from the infraction that he committed six years ago and has modified his behavior accordingly. Ms. Kalis

offered a motion allowing Mr. Tvedt to take the National Physical Therapy Examination and that he be granted licensure upon receipt of a passing score. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

### **8(B). Substantive Review and Possible Action on Applications for Physical Therapist Licensure**

<b>Little, Richard *</b>	<b>Louthan, Sharon *</b>	
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*\*Applicant disclosure on "Personal Information" section of application*

The Board reviewed the application file for Mr. Little and noted that the settlement for the malpractice case involving the applicant was very substantial even though the final judgment found no fault on the part of the applicant. Ms. Kalis moved to grant licensure to Mr. Little. Ms. Ohlendorf seconded the motion. The motion carried by a unanimous vote. The Board reviewed the application file for Ms. Louthan and Ms. Brierley explained that the applicant had stated to her that she was not aware that she was required to disclose on the application all of her prior arrests for DUI. However Ms. Brierley noted that she caught the fact that Ms. Louthan had prior arrests and convictions as they were cited in the court records for her most recent DUI conviction. The Board discussed whether to require Ms. Louthan to participate in an application interview or whether to order her to complete a substance abuse evaluation given the three DUI convictions and her failure to report two of them on her application. The Board discussed the fact that the three DUI convictions were 10 years old or more. The Board debated whether any of the information provided, in combination with the applicant's failure to report all of the DUI cases, could indicate Ms. Louthan has an on-going substance abuse problem. It was further noted that she makes no mention of whether she has been treated for substance abuse or whether she still participates in AA. Ms. Kalis moved to grant Ms. Louthan a physical therapist license under a Consent Agreement that requires a three-year term of probation, completion of a substance abuse evaluation by a Board staff approved evaluator (addictionologist) that must be completed within 90 days of signing the agreement, and that requires Ms. Louthan to comply with any treatment recommendations issued by that evaluator; failure to sign the consent agreement will result in denial of the license. Mr. Sieveke seconded the motion. The roll call vote was 5-1 in favor of the motion.

### **8(C) Review and Possible Action on Applications of Foreign Educated Graduates of Programs Not U.S. Accredited - Review of Final Clinical Performance Instrument**

#### **Ionel Cornea**

The Board reviewed the Clinical Performance Instrument that was recently re-submitted by Mr. Cornea's supervisor and noted that there were many comments made that were helpful for purposes of determining whether the applicant's clinical skills are at entry level for purposes of practicing physical therapy. Ms. Kalis moved to grant licensure to Mr. Cornea. Ms. Ohlendorf seconded the motion. The motion carried by a unanimous vote.

## **BOARD BUSINESS AND REPORTS**

### **9. Executive Director's Report – Discussion and Possible Action**

- a. Financial Report:** No additional information to report.
- b. Board Staff Activities:** Ms. Herbst Paakkonen reported that she has been contacted recently by an individual who is a CPA and who has applied to serve as a public member on the Board. She reminded the Board that earlier this year the Arizona Society of Certified Public Accountants had conducted a search of its members for purposes of identifying someone who was interested in this appointment. She indicated she will keep the Board apprised of this development.
- c. FSBPT Initiatives and News:** No additional information to report.

**d. Rule Writing Update:** The Board members agreed by consensus to appoint Mike Lebec, P.T., Ph.D. to serve on the Continuing Competence Rule Writing Task Force as he has expressed an interest in this topic.

**e. Legislative Update:** No additional information to report.

## **10. Legislative Report and Review of and Possible Action on Proposed Modern Health Board Consolidation Plan**

### **Stuart Goodman, Legislative Liaison**

The Board welcomed Mr. Goodman and invited him to provide an overview of the recently completed legislative session. Mr. Goodman stated that he and Ms. Herbst Paakkonen made a “good team” throughout the session with respect to working together and sharing information. He explained the history of the fiscal year 2008 and 2009 budget deficit projections from the beginning of the session to the end and how the projected deficits increased while revenue projections consistently fell far short of what the general fund budget anticipated. He noted that following the fund transfers some boards were actually left insolvent while this Board was less adversely affected. Ms. Herbst Paakkonen and Mr. Goodman commented that the Governor’s Office of Strategic Planning and Budget (OSPB) is recommending boards raise fees and also lay off staff. Ms. Herbst Paakkonen explained that she is seriously contemplating preparing a rules package that would institute fee increases in the event that an additional sweep of the Board’s funds is conducted; this package would be held until such time that it would need to be filed. Mr. Goodman advised the Board that while there was some discussion on the part of legislators to insert language in the budget reconciliation bill that would direct swept funds be returned to the 90/10 agencies, this did not actually occur. Mr. Goodman then explained how the passage of SB 1006 will change the Board’s statutes to stipulate that a license belonging to a person who is on active military duty shall not expire and shall be extended 180 days after that person returns from duty. Mr. Goodman also noted that SB 1100 did not make it out of the Senate; it was one of the bills that was orphaned as a result of the end-of-the-session meltdown in the Senate. He explained how this legislation would have adversely affected self-supporting boards by forcing them to adjust fees depending on a formula involving the agency’s fund balance and revenues; He also noted the challenges that the legislation would have created in terms of the lengthy rule promulgation process. Mr. Goodman reminded the Board of the Governor’s State of the State address with respect to consolidating health boards to achieve economies of scale. He explained that this issue has been reviewed and discussed numerous times in the past by various Governors, and that the Auditor General in its 1995 study found that doing so would adversely affect public protection and actually cost more than what would presumably be saved. The Board discussed the fact that the proposed consolidation plan was scant on details, poorly developed and based on inaccurate information and assumptions. The Board noted that it is irresponsible to even consider implementing any plan that overlooks the impact of costs to the general fund, the costs associated with establishing the required office space, and the cost of purchasing the information technology. The Board affirmed its position that the current regulatory structure of independent boards ensures that the focus is on public safety and service to licensees. The Board noted that the proposed structure introduces several problems in terms of inadequate staff to serve the boards, erosion of staff expertise, lack of clarity with respect to who actually appoints or hires the Executive Director, and how the proposed structure could create a situation that would open the door to regulatory extortion. The Board questioned why this agency was even included in a discussion of consolidation of boards. Following additional discussion the Board directed Ms. Herbst Paakkonen to work with Mr. Goodman to prepare a draft response to the proposed board consolidation plan for purposes of reviewing and discussion during the August 26, 2008 regular session meeting. The Board thanked Mr. Goodman for his report and for his dedicated and excellent work on behalf of the agency.

Regular Session Meeting  
July 15, 2008

**CALL TO THE PUBLIC**

None.

**ADJOURNMENT**

The meeting adjourned at 11:45 a.m.

Prepared by,

Heidi Herbst Paakkonen  
Executive Director

Approved by,

Randy Robbins  
Secretary