

JANET NAPOLITANO
Governor



HEIDI HERBST PAAKKONEN
Executive Director

JONI KALIS, P.T.
President

ARIZONA STATE BOARD OF PHYSICAL THERAPY
4205 NORTH 7TH AVENUE, SUITE 208 PHOENIX, ARIZONA 85013
(602) 274-0236 Fax (602) 274-1378
www.ptboard.state.az.us

REGULAR SESSION MEETING MINUTES
October 28, 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: Donna Cordova, C.P.A.

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

CALL TO ORDER – 8:30 a.m.

1. Review and Approval of Draft Minutes

September 26, 2008; Regular Session Meeting

The Board requested clarification on agenda item number eight and Board staff confirmed that the draft reflects the Board's final vote on the matter. Ms. Kalis moved to approve the minutes as drafted. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

September 26, 2008; Executive Session Meeting

The Board reviewed the draft and Ms. Akers noted that the draft should reflect that she was not present for the agenda item from which she recused herself. Ms. Kalis moved to approve the draft as corrected. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

October 10, 2008; Special Session Meeting

The Board reviewed the draft and noted two typographical errors. Ms. Kalis moved to approve the draft with the identified corrections. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

2. Informal Hearing and Possible Action on Combined Complaints

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

#08-05; William Perry, P.T.

Ms. Kalis introduced the agenda item and Mr. Perry indicated he was present for the informal hearing with his attorney, Sterling Peterson. The licensee and Mr. Peterson exchanged introductions with the Board members and staff. Ms. Kalis swore in Mr. Perry, and swore in all of the witnesses who were in attendance and who wished to provide statements to, or testify before, the Board. Ms. Kalis reviewed the informal hearing procedures and possible outcomes. Ms. Hiller summarized the status of the cases noting that at the Board's August 28, 2008 regular session meeting during which the initial review of #08-05 was conducted, the Board voted to

combine the two cases for purposes of an informal hearing. Ms. Hiller explained that she would summarize the allegations for each case. She stated that #07-18; William Perry, P.T. was opened following receipt of a complaint filed by C.S., a former patient and former employee of Agility Physical Therapy, a practice owned by Mr. Perry. The complaint alleged that Mr. Perry allowed Tammy Groenwald, a physical therapy aide, to perform an initial evaluation of her and that Mr. Perry allowed Ms. Groenwald to treat patients without any on-site supervision in his Gilbert office between May 25 and June 8, 2007 while he was on vacation. Ms. Hiller noted that Mr. Perry's response to the complaint included written statements submitted by the staff of Agility Physical Therapy refuting that the Gilbert office was open during that span of time, as well as Mr. Perry's own rebuttal. Additionally Ms. Hiller noted that a copy of a patient schedule book for that period of time indicated that patients were either transferred to the Mesa office or their appointments were cancelled. Ms. Hiller described her findings relative to the review of the physical therapy records for C.S. and noted there were deficiencies including a missing evaluation and no plan of care, which Mr. Perry blamed on the transcription company. Ms. Hiller then summarized for the Board #08-05; William Perry, P.T. which was opened following testimony given by Alicia Peavey, P.T. during the informal hearing for #07-09; Alicia Peavey, P.T.. During the hearing Ms. Peavey stated that there were several dates during the episode of care for the patient S.B. for which Mr. Perry recreated lost treatment notes using her signature stamp and without her knowledge. She also testified that her physical therapy charges were routinely audited by Mr. Perry and that he added charges for services that were not provided based on the amount of time that patients were signed into the clinic. Ms. Peavey had stated that the charges for many dates of service to S.B. do not actually reflect what was provided. Ms. Hiller then summarized new information that came to the Board in early July in the form of two former office employees of Agility Physical Therapy alleging that Mr. Perry had in fact kept the Gilbert office open during his vacation in May and June of 2008 and had allowed Ms. Groenwald to work only with another physical therapy aide – a fact that Ms. Groenwald later corroborated during an interview with Ms. Hiller. Janeen Alvarez, the former office manager for Agility Physical Therapy also produced a copy of what she alleged to have been the actual patient schedule for that office during that period of time, and stated that the copy given to the Board by Mr. Perry was falsified. Ms. Hiller pointed to a written statement submitted by Mr. Perry in early August in which he admits to finding out about the status of the Gilbert office one or two days before returning from his vacation, and that out of fear for what would happen to him he “did something wrong” and altered the schedule book. Ms. Hiller called to the Board's attention the jurisdiction that was indentified for the case. In addition to her statements, Ms. Hiller noted that Ms. Alvarez provided two different sets of treatment notes for the patient C.S. and advised that the true copy includes notes signed by Mr. Perry on dates when he was on vacation, and that the other copy was altered by Mr. Perry. Ms. Hiller summarized her interview with Ms. Alvarez during which she described how Mr. Perry routinely audited the charges submitted by his physical therapist staff and how he would mark what they should be charged based on their time in the clinic – not based on what treatments were actually done. Ms. Alvarez explained to Ms. Hiller during this interview how she and other members of the billing staff were instructed to always bill a specific pattern of CPT codes they referred to as “4-2-1-1” for therapeutic exercise, manual therapy, ultrasound and electric stimulation regardless of what treatments were actually delivered. Ms. Hiller noted that in response to a subpoena Ms. Groenwald had submitted copies of some patient records consisting of charge sheets for services that she had provided (once she had become licensed as a physical therapist) that indicated her original markings for charges that Mr. Perry had altered prior to being submitted to the billing staff for entering into the computer.

In his opening statement, Mr. Perry advised the Board that he was sorry for his actions and that he did not intend to hurt anyone. The Board questioned Mr. Perry relative to his understanding of

the status of the Gilbert office prior to leaving on vacation. He stated that the office had recently become busy and that he had hoped that Ms. Groenwald would become licensed in time to treat patients at that office. However, when that didn't happen he instructed his office staff to find coverage. He stated that he left with the understanding that since coverage was not found, the office would be closed per his instructions to staff. The Board questioned when he became aware of the fact that the office was open and that Ms. Groenwald and another aide were the only ones "treating" patients. Mr. Perry replied that he found out two days before he was due to come home. The Board asked how he addressed the situation with his staff upon his return. He indicated that he reprimanded the staff, and he admitted to later falsifying the patient schedule for that time frame when the Board subpoenaed that information, admitting that he was scared of the repercussions. The Board asked Mr. Perry to explain his audit process for the charge sheets prepared by the therapists. He explained that he became concerned that the therapists were not charging properly for their time with their patients which compelled him to look more closely at the charge sheets and compare them against the time that the patients were present in the clinic. Mr. Perry stated that he did not do this with every charge sheet – perhaps only 10-20 percent – and he found that most of them were at least one unit short. He explained that he directed his staff to write on the charge sheet any time that could not be attributed toward treatments so he could take that into consideration when he adjusted their charges. The Board noted that the patient schedule for May 18, 2008 indicates that one physical therapist and one physical therapist assistant were scheduled to treat 20 patients in only a half-day period. The Board questioned how he could deliver one-on-one care with that busy schedule; he stated that all patients are treated in an open gym so he can monitor all patient treatments. Mr. Perry described how he allowed medical billing students to serve an internship in his clinic and surmised that they could have been responsible for some of the billing problems that have occurred. He denied that he instructed his billing staff to enter a uniform set of charges into the billing system. The Board queried the licensee on the two sets of records for the patient C.S. and asked him to identify what were the actual records. Mr. Perry commented that he believed it to be an acceptable practice that when records were lost by the transcription company or lost to a stolen computer that he could review what treatments had been provided for other dates of service and recreate them and sign them. He denied having a back-up system for his electronic records. He also speculated that the transcription company could have lost treatment documents. In response to the Board's questions Mr. Perry admitted to recreating the treatment records for S.B. for December 14 and 18, 2006 using information copied from other treatment notes. The Board asked why the treatment notes for S.B. for December 13, 2006 do not reflect that she was treated with electric stimulation but she was charged for this modality. Mr. Perry commented that it was probably an error of one of the billing students. Mr. Perry again admitted to falsifying the patient scheduling book for his Gilbert office in order to cover up the fact that it was open while he was on vacation and that an aide, Ms. Groenwald, treated patients.

The Board called Jared Kitamura, P.T. to testify and affirmed that he was sworn in. In response to the Board's questions Mr. Kitamura confirmed that he also submitted a false written statement to the Board relative to the status of the Gilbert office in late May and early June of 2007 and that he was aware that Ms. Groenwald was treating patients at that office with only another aide present. Mr. Kitamura said that he was uncomfortable with the situation and that he at first resisted writing the letter with the false statement, but that when he realized he was the lone hold-out in the office he acquiesced. He stated that he understood that Mr. Perry gave the directive to write the letter through Ms. Alvarez because Mr. Perry was always aware of everything that occurs in the operations of his business. Mr. Kitamura affirmed that under Mr. Perry's system of destroying the charge sheets, there was no way for the treating physical therapist to verify that the billing reflected actual treatments. The Board called Ms. Groenwald to testify and affirmed that she has been sworn in. Ms. Groenwald affirmed to the

Board that she was hired by Mr. Perry to work as an aide in anticipation that she would pass the licensing examination and be granted a physical therapist license; she acknowledged that she had been unsuccessful with her previous attempts to pass the exam and that she continued to work as an aide while she studied. She recalled learning that she had again failed the exam shortly before Mr. Perry was scheduled to go on vacation; she noted Mr. Perry's wife confronted her angrily upon learning of this and accused her of sabotaging their family vacation. Ms. Groenwald admitted to the Board that she agreed to treat – but not evaluate – patients in the Gilbert clinic and that she was advised by Ms. Alvarez that Mr. Perry believed the law permitted her to be under the supervision of Jared Kitamura, P.T. because he was at the Mesa office of Agility Physical Therapy. Ms. Groenwald also confessed to making a false statement to the Board relative to the status of the Gilbert office during Mr. Perry's vacation in the form of the letter that was submitted by Mr. Perry as part of his response to #07-18; William Perry, P.T. She explained that she didn't want to do anything in opposition to Mr. Perry because he was so helpful to her as she prepared to take the licensure examination and that she gave her guidance on her clinical knowledge and skills. She stated that she suspects Mr. Perry likely knew that the Gilbert office was open the entire time he was on vacation.

Janeen Alvarez was called to testify and she affirmed that she had been sworn in. She explained that she previously worked for Mr. Perry as his office manager. Ms. Alvarez advised the Board that while she was the person who coordinated the collection of the letters from the staff that gave false statements about the status of the Gilbert office, it was Mr. Perry who requested them. Ms. Alvarez also gave testimony describing in what capacity she worked with Mr. Perry and how he worked with her to establish the system of entering billing information into the computer. She stated that at one point she was advised by Mr. Perry to enter charges using a set formula of "4-2-1-1" for therapeutic exercise, manual therapy, ultrasound and electric stimulation formula billing codes regardless of what the therapists recorded on the sheet. She testified that the charge sheets were ordered to be shredded by Mr. Perry after she entered them into the computer. Ms. Alvarez also called to the Board's attention the copy of the draft letter that she prepared addressing the Gilbert office closure while Mr. Perry was on vacation, and she noted the editing of the draft that Mr. Perry had made. Additionally she affirmed that she issued the directive to another member of the office staff to change the Gilbert patient schedule book as she was advised to do so by Mr. Perry. Ms. Alvarez stated that she had contacted Helene Fearon, P.T. to consult with her on some billing questions and concerns, and that the information she obtained from that contact was used by Mr. Perry as justification for his practice of increasing the charges. Ms. Alvarez also gave testimony relative to her insight into Mr. Perry's recreation of patient records for C.S. and for S.B. She affirmed which records for C.S. were the true copies and which had been subsequently changed by Mr. Perry. Ms. Alvarez noted that C.S. was in fact evaluated by Ms. Groenwald at the time Ms. Groenwald was unlicensed and working as an aide, and that the charges that were billed for C.S. could not have been accurate because the timed units well exceeded one hour and C.S. typically was treated only during her lunch period which was one hour or less. The Board asked Lisa Ford to appear to make her statement relative to this case. Ms. Ford affirmed that she was employed at Agility Physical Therapy in the office and that she was responsible at times for entering charges into the computer billing program. Ms. Ford stated that she was hired not having known anything about physical therapy care and billing and therefore she didn't have any concerns when she was directed by Mr. Perry and Ms. Alvarez to enter the "4-2-1-1" codes for each patient on each date they were treated. The Board called C.S. to appear to make her statement. C.S. explained that she was hired to work at the front desk at Agility Physical Therapy and after she complained of back pain one day, Mr. Perry directed her to obtain a script from her physician for physical therapy care. She indicated that she was willing to allow Ms. Groenwald to perform her evaluation because she knew of the difficulties that Ms. Groenwald had in passing the licensing examination, and she liked Ms. Groenwald and wanted

to help her practice her skills. C.S. stated that Mr. Perry was in the same room as Ms. Groenwald, but was not next to her offering supervision and guidance as he had claimed to be. C.S. stated that she remembered Ms. Groenwald had to find Mr. Perry on a couple of occasions during her evaluation to ask questions. C.S. described how she was terminated from employment by Ms. Alvarez at the direction of Mr. Perry, and it was after this event that she decided she would file the complaint with the Board because she knew that Mr. Perry's electing to keep the Gilbert office open during his vacation with only Ms. Groenwald there with another aide was wrong. The Board invited Emily Price to make her statement to the Board. Ms. Price stated that she was formerly a physical therapy aide at Agility Physical Therapy and stated that she was also directed by Ms. Alvarez to write the letter falsely stating that the Gilbert office was closed during Mr. Perry's vacation. She affirmed that she understood that Mr. Perry was the person giving the instructions through Ms. Alvarez. Ms. Price stated to the Board that it was she who was given the task of changing the patient scheduling book for the Gilbert office during that time frame; she affirmed that while it was Ms. Alvarez who gave her the assignment, Mr. Perry checked on her once or twice to assess her progress with that task. Priscilla Martinez was granted permission to address the Board. Ms. Martinez stated that she was also employed for a time at Agility Physical Therapy to answer telephones and do some clerical work, but that she didn't get involved in the billing. She indicated that she is Ms. Alvarez's daughter and that when she was directed to write a letter to the Board addressing the status of the Gilbert office, she refused and terminated her employment shortly thereafter. She stated that she knew Mr. Perry had directed her mother to collect the letters from the staff.

Pamela Hawkinson was granted permission to address the Board. She stated that she never observed Mr. Perry doing anything that would be considered inappropriate, but admitted that she was not involved in any of the billing responsibilities. Ms. Hawkinson affirmed that she is still employed at Agility Physical Therapy. The Board granted Monica Tobey permission to make a statement to the Board. Ms. Tobey stated that she was hired by Mr. Perry, and that early in her employment she observed unprofessional behavior on the part of the staff. She commented that Mr. Perry is a person who placed his trust in others and that he would not have done the things of which he is accused. Mr. Peterson queried Ms. Alvarez, Ms. Groenwald, relative to their involvement in the actions of which Mr. Perry is accused. The Board allowed Sheri Perry to address the Board. She introduced herself as Mr. Perry's wife and described their concerns leading up to their vacation in late May of 2007. She explained that they had purchased airfare for all of the members of their family to travel to Hawaii and that while her husband was hoping to be in a position to leave, she believes that he would not have allowed his staff to keep the Gilbert office open without a physical therapist present. She stated that Ms. Alvarez took advantage of Mr. Perry and exploited his generosity. The Board granted permission to Byron Perry to make a statement on behalf of the licensee. He advised the Board that he is the business manager for Agility Physical Therapy and the brother of Mr. Perry. Byron Perry explained that he and the new billing staff are reviewing all patient billing statements; he noted that they are finding many instances of under-charging and neglecting to bill for some treatments in this process. Byron Perry advised the Board that they have not attempted to correct the improper charges that this investigation has revealed as he is waiting for some guidance from the Board. He affirmed that he was not working for his brother during the time frame that encompasses the Board's investigations.

The Board concluded the questions and allowed Mr. Perry to make a closing statement. Mr. Perry apologized to the Board for the mistakes that he made and stated his regret that he placed his trust where he should not have. Mr. Peterson stated that the main issues for the Board to consider involve the matter of the Gilbert office remaining open while Mr. Perry was on vacation during which time an aide treated patients, and the billing alteration issues. He stated that his

client is motivated to work with the Board to rectify these matters. Ms. Kalis moved to meet in Executive Session for purposes of obtaining legal advice. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session the Board members summarized the primary concerns identified as a result of the investigation and discussed the fact that Mr. Perry has admitted to committing very egregious acts amounting to fraud. The Board debated whether Mr. Perry's actions warrant a revocation or a suspension of his physical therapist license – both of which would require the case being remanded to a formal hearing. The Board discussed the fact that there were improper charges billed to Medicare and directed staff to refer this case to the Medicare fraud investigations department. Ms. Kalis voted to remand the case to a formal hearing. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. Ms. Versteegen requested some guidance from the Board relative to what recommendations to pursue from the Administrative Law Judge. The Board members concurred that punitive action should come in the form of a suspension of Mr. Perry's license until such time as he has an acceptable remediation plan in place. The Board discussed the components of such a plan would include Mr. Perry engaging a practice management consultant to develop a compliance plan for his documentation and billing procedures as well as for other aspects of his practice such as patient confidentiality. The Board also stated that a lengthy period of monitoring of his practice management compliance plan would be necessary, and that continuing education to address his knowledge deficits with respect to documentation, billing and compliance with the Health Insurance Portability and Accountability Act would also need to be completed. Mr. Sieveke moved the Board open investigations concerning Ms. Groenwald and Mr. Kitamura. Ms. Kalis seconded the motion. The motion carried by a unanimous vote. The Board discussed the possible jurisdiction for the two investigations, and elected to have Board staff identify the statutes that may have been violated. The Board concluded the informal hearing.

3. Initial Review of Complaint and Possible Action on Request for Acceptance of Voluntary Surrender of License While Under Investigation

#08-14; Allan Wade, P.T.

Ms. Herbst Paakkonen summarized the investigation for the Board noting that the complaint was opened after receiving a copy of a report from the Arizona Department of Health Services, Long Term Care Licensure division. This report summarized an investigation into allegations that Mr. Wade made statements to a family counselor that for a period of several months beginning in 2007 he touched the breasts and vaginas of up to 20 patients at three different nursing homes in Mesa for which he had worked. Ms. Herbst Paakkonen advised the Board that appended to the Department of Health Services report was an investigative report prepared by a detective with the City of Mesa Police Department concerning these allegations. She explained that this investigation was launched when the family counselor working with Mr. Wade telephoned him out of concern for other sexually inappropriate comments that Mr. Wade made during a family counseling session. Ms. Herbst Paakkonen identified the possible jurisdiction for the complaint as listed in the investigative report. She commented that Ms. Hiller had sent notice of the complaint opening to Mr. Wade's address of record, and that the certified mail receipt indicated that he received it at a different address. Additionally, she explained, Mr. Wade did not file a renewal application on or before August 31, 2008 and accordingly his license lapsed. However, she called to the Board's attention the language of §32-3202 and how it relates to the Board maintaining jurisdiction over Mr. Wade. She stated that Mr. Wade did not issue a written response to the complaint by the deadline indicated in the notice, but that on September 26, 2008 his attorney, Mark Andersen, submitted a letter indicating that his client has been advised to not respond to the allegations and that he has elected to "voluntarily relinquish" his physical therapist license. Ms. Herbst Paakkonen advised the Board that it has the authority to accept a voluntary surrender of a license under A.R.S. §32-2047(7), and that the statute stipulates that

doing so constitutes disciplinary action. She called to the Board's attention the draft consent agreement that was prepared with assistance from Ms. Versteegen for the Board's consideration and possible approval. The Board discussed the language in the Conclusions of Law section and discussed whether to add in additional Findings of Fact. The Board received assurance from Ms. Herbst Paakkonen that a voluntary surrender of licensure is a reportable action to the Health Integrity Practitioners Data Bank. Dr. Cornwall moved to approve the Consent Agreement and to allow Mr. Wade 20 days to accept it; failure to sign the agreement will result in the case being remanded to a formal hearing for purposes of seeking revocation of the license. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

**4. Review, Interview and Possible Action on Request for Termination of Probation
#06-18; Patrick Domanico, P.T.**

Ms. Hiller advised the Board that during its September 26, 2008 regular session meeting it reviewed a report that summarized the probation compliance status of Mr. Domanico and the licensee's request to grant him termination of his probation. She relayed to the Board the Conclusions of Law and remediation terms of the Board Order issued to Mr. Domanico, and summarized his efforts to comply with the probation requirements. Ms. Hiller reminded the Board that on September 26 it had identified some questions relative to whether the treatment for the patient K.Z. that he documented supported the billing for certain timed units. She further noted that the Board had elected to invite Mr. Domanico to come before the Board for a probation compliance interview and to address their questions. Finally, she called to the Board's attention the information that the licensee submitted that explains his use of direct contact notations and timed codes for the treatment provided to K.Z., and the clarification of K.Z.'s insurance policies relating to billing for timed codes. The Board invited Mr. Domanico, who was present for the interview, to address their questions. The Board asked Mr. Domanico to explain the patient's insurance company's requirements for charging treatments to timed codes. Mr. Domanico explained that he and his office staff verified that K.Z.'s insurance payer does not impose the same requirements as does Medicare for timed codes, and he explained the written information from the insurer that confirms his billing for K.Z.'s treatments were allowed and were appropriate. Dr. Cornwall moved to grant Mr. Domanico termination of his probation. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

**5. Review and Possible Action on Proposed Remediation Plan
#06-21; Melissa Hourihan, P.T.**

Ms. Hiller reminded the Board that during its regular session meeting on September 26, 2008 it had heard a request from Ms. Hourihan to grant an extension to her term of probation in order to allow her extra time with which to comply with her requirement that she complete a Board-approved documentation mentoring program under the guidance of a Board-approved mentor. Ms. Hiller noted that the Board did grant the request for the extension through the execution of a consent agreement, and that the Board imposed some additional deadlines and incremental steps for the implementation of the mentoring program. She further advised that Lora Davis, P.T. had submitted a documentation remediation and corrective action plan on behalf of Ms. Hourihan that outlines the course of action, the resources to be used, and the timeline Ms. Davis has developed for Ms. Hourihan. The Board discussed the plan, noted that she had indentified the American Physical Therapy Association's "Defensible Documentation" publication as a component of the plan, and questioned whether Ms. Davis intends to use the Board's new documentation rule R4-24-304. Adequate patient records as the basis for the mentoring program. Ms. Hiller advised the Board that she will inform Ms. Davis of the recent implementation of this rule. Dr. Cornwall moved to approve the proposed remediation plan. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

6. Initial Review and Possible Action on Unlawful Practice Case Investigation

#08-05-UPI: Brooke Olsen, P.T.

Ms. Herbst Paakkonen advised the Board that Ms. Olsen filed a licensure renewal application on September 2, 2008 which was after the renewal deadline of August 31, 2008. She noted that Kellye Daldrup sent to Ms. Olson the licensure reinstatement application, and that when it was received by the Board office it indicated that Ms. Olson had admitted to practicing as a physical therapist without an active license from September 9-11, 2008. Ms. Herbst Paakkonen noted the possible jurisdiction for the unlawful practice case and called to the Board’s attention the matrix that outlines the disciplinary actions that the Board has followed with previous cases. Dr. Cornwall moved to offer Ms. Olsen a consent agreement finding her in violation of the listed statutes for her 3 days of unlicensed practice, and to offer her a consent agreement containing disciplinary terms of the \$100 civil penalty; the reporting of the unlicensed practice to her employer, patient and their insurance payers; and a passing score on the jurisprudence examination. The motion also stated that if she fails to sign the agreement within 20 days, the case will be remanded to an informal hearing. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

#08-06-UPI; Holly Augustine, P.T.

Ms. Herbst Paakkonen stated that Ms. Augustine filed a licensure reinstatement application on September 15, 2008 on which she disclosed that she has practiced as a physical therapist without a license for 7.5 days from September 1-15, 2008. She noted that Ms. Augustine had faxed a letter stating that she had been granted her initial license on July 22, 2008 and that she had notified the Board of her changes of address, but the licensure renewal application was sent to her previous address in Minnesota. Ms. Herbst Paakkonen explained that the Board did indeed receive the change of address notification on July 23, 2008, but that the envelope containing her newly granted licenses and her licensure renewal application – along with a very prominent advisory that renewal applications were due on or before August 31, 2008 – was mailed to Ms. Augustine’s address of record one day prior to receiving the change of address. Ms. Kalis moved to offer Ms. Augustine a consent agreement finding her in violation of the listed statutes for her 3 days of unlicensed practice, and to offer her a consent agreement containing disciplinary terms of the \$100 civil penalty; the reporting of the unlicensed practice to her employer, patient and their insurance payers; and a passing score on the jurisprudence examination. The motion also stated that if she fails to sign the agreement within 20 days, the case will be remanded to an informal hearing. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

APPLICATIONS FOR LICENSURE & CERTIFICATION

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

Bain, John	Beck, Patricia**	Coldiron, April*
Delap, Celeste	Digiovanna, Vincent	Facelo, Jason
Gonzalez, Joseph	Goodine, Jessica	Gregor, neil
Haws, John	Hollmann, Melissa	Jiles, Jeffrey
Modafferi, Katie	Nichols, Meredith	Nikolaides, Panagiotes
Parker, Donna	Piacentino, Lynn	Priest, Alice
Rodriguez, Cristina	Tinney, Tonya	Trcka, Jenee

**Applicant disclosure on “Personal Information” section of application*

***Special consideration of administratively complete file*

The Board reviewed the application files and noted that they were administratively complete. The Board determined that the applications of Ms. Beck and Ms. Coldiron would be considered under a separate discussion. Ms. Kalis moved to grant licensure to the remaining listed applicants. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Ms. Beck was present for the Board’s review of her application and explained that she has not practiced as a physical therapist for the past 10 years as she completed her naturopathic medical

degree and that has been practicing as a naturopathic physician since completing her education. She explained that she would like to return to the practice of physical therapy part-time in order to augment her income. The Board questioned where she believes her clinical skills are since she ceased practicing physical therapy. Ms. Beck indicated that she is comfortable with her medical training and knowledge and that returning to practice will not be a challenge for her. The Board reviewed A.R.S. §32-2028 and discussed the options that the Board has to assess an applicant's knowledge and skills when that person has not held a license to practice physical therapy for three years or more. The Board discussed the fact that the Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy is an option in that it is an examination that assesses a physical therapist's competency based on a number of scenario-based clinical questions. Board staff advised that a PRT candidate can release the results of the examination to a licensing Board. The Board also noted that the PRT can identify any areas of practice where knowledge deficiencies exist. Dr. Cornwall offered a motion requiring that Ms. Beck take the PRT – releasing the results to the Board – and if she is determined by the tool to be competent her license shall be granted. The motion also stipulated that if there are any content areas identified as below the level of competence, Ms. Beck shall be required to complete a continuing education course (minimum of 6 contact hours) that is pre-approved by Board staff and that addresses the knowledge deficiency. Ms. Akers seconded the motion. The motion carried by a unanimous vote. The Board then reviewed the application of Ms. Coldiron and Board staff explained that at the end of September the applicant had signed a consent agreement with the Kentucky Board of Physical Therapy in which she admitted to several violations of law including creating fraudulent records and billing for treatment that were not provided. Ms. Kalis moved to meet in Executive Session for purposes of obtaining legal advice. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Upon resuming the meeting in public session Ms. Kalis moved to deny the application and to deny licensure to Ms. Coldiron as the violations of law in Kentucky establish that she lacks the good moral character required by A.R.S. §32-2044(A)(1). Ms. Ohlendorf seconded the motion. The motion carried by a unanimous vote. Ms. Verstegen advised the Board that Ms. Coldiron has 35 days to appeal the decision which would be heard by an administrative law judge with the Office of Administrative Hearings.

7-B. Substantive Review and Possible Action on Applications for Physical Therapist Assistant Certification

Barba, Cari	Clemens-Romo, Cori	Gallagher, Shawn
Hyde, Christopher	Reiner, John	Stirling, Kristin **
Szamecki, Amanda		

* Applicant disclosure on "Personal Information" section of application

** Special consideration for administratively complete file

The Board reviewed the files for the listed applicants and elected to review that filed by Ms. Stirling under separate discussion. Ms. Kalis moved to grant certification to the listed applicants. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote. Ms. Stirling was present for the review of her application and agreed to address questions posed by the Board. Ms. Stirling stated that she has not worked as a physical therapist assistant since 1995 because she was raising her children. She explained that for the past month she has been working as a physical therapy aide at a privately owned orthopedic clinic and that her supervising physical therapist is supporting her effort to become certified. The Board reviewed A.R.S. §32-2028 and discussed its options relative to assessing an applicant's knowledge and skills when that person has not held a certificate to work as a physical therapist assistant for three years or more. The Board discussed the supervised clinical practice period option and explained to Ms. Stirling that the type of facility that the Board would approve would allow her to gain experience working with a broad range of physical therapy patients and situations. Ms. Kalis moved to require that

Ms. Stirling submit a proposal for completion of a 90-day supervised clinical practice period at a facility that will enable to relearn her skills across the spectrum of physical therapy care. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

**7-C. Request for Approval to Take National Physical Therapist Examination; Review of Documentation Related to Disclosure on “Personal Information” Section of Application
Andres Avalos**

The Board invited Mr. Avalos to appear to address questions relative to his disclosure on his application that prior to his admission to the physical therapist assistant program at Pima Medical Institute, he had pled guilty to two separate misdemeanor charges of possession of controlled substances. Mr. Avalos advised the Board that he has become a different person since those events and that he is dedicated to becoming a physical therapist assistant. In response to the Board’s question he stated that he does not believe his prior illegal activities will affect his ability to provide safe care to patients. The Board allowed Stacy Simons, P.T. to make a statement on behalf of Mr. Avalos’ character. She advised the Board that Mr. Avalos has been hired to work as an aide in her clinic until such time that he becomes certified as a physical therapist assistant. She stated that she is impressed with his knowledge, skills and professionalism. Ms. Simons noted that she had not observed any problems with his conduct and that he always reports to work early. Ms. Kalis moved the Board approve Mr. Avalos to take the National Physical Therapy Examination and that he be granted certification upon receipt of a passing score. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

BOARD BUSINESS AND REPORTS

8. 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 that she had just observed that an electronic message from Jeanne Hann, contract rule writer, had been delivered to her email account that contains the draft proposed revisions to R4-24-101(11), the definition of Coursework Tool, to Table 1, the application time-frames, and to R4-24-301. Lawful Practice. She assured the Board that this draft would be on the Board’s November 20, 2008 meeting agenda for review and possible approval.
- e. **Legislative Update:** No additional information to report.

9. Review, Discussion and Possible Action on Executive Director Hiring

Ms. Herbst Paakkonen advised the Board that Sharon Laurence from the Arizona Department of Administration Human Resources division was not able to stay for this agenda item but that prior to her departure she indicated that there has been no word on the approval of the Board’s “mission critical” request for approval to replace her as Executive Director. Ms. Kalis reported to the Board that she had placed a telephone call to Jan Leshner, Chief of Staff for Governor Janet Napolitano, to inquire into the status of the approval. Ms. Kalis stated that Ms. Leshner left her a voicemail message five days ago that left the impression there would be positive action on the request, but since that time there have been no developments. The Board reviewed A.R.S. §32-2003(7) and noted that it appears to grant only the Board the authority to “employ necessary personnel to carry out the administrative work of the Board”. A discussion was held relative to whether the Arizona Department of Administration has the authority to determine whether the Board can hire for a vacant position. The Board noted that although Ms. Herbst Paakkonen had provided about 90 days of notice to replace her, an entire month has been lost waiting for William Bell, Director of the ADOA, to approve the request. The Board directed Ms. Herbst

Paakkonen to proceed with advertising for the position in the hopes that some qualified candidates will submit their resumes and some of the lost time can be recouped. The Board provided Ms. Herbst Paakkonen with some additional topics to incorporate into candidate interview questions; she assured the Board that she will work with either Ms. Laurence or Tom Kernan to develop some appropriate questions.

10-A Presentation by E. Dargan Ervin, P.T., President of the Federation of State Boards of Physical Therapy Board of Directors – A Referral for Financial Gain Research Study Update

The Board welcomed Mr. Ervin and thanked him for traveling to Arizona to provide a briefing on the outcome of the Referral for Financial Gain study that was funded by the FSBPT. Mr. Erwin summarized the history of FSBPT involvement in the Referral for Financial Gain issue noting that most recently the Delegate Assembly in 2007 passed a motion that funded a study intended to examine whether the Referral for Financial Gain issue has public protection implications. Mr. Erwin summarized for the Board the presentation delivered by the Lewin Group – the research organization that was awarded the contract to perform the study – at the Annual Meeting of the FSBPT in September of the year. He stated that the study found there is no finding that there is evidence of patient harm occurring in a presumed referral for financial gain arrangement, although there is some interesting data that speaks to the length of time between referral and treatment when comparing patients in presumed referral for financial gain situations relative to patients who are not. He noted that there was some criticism of the sources of some of the data that was used in the study that have been communicated to The Lewin Group and that based on those concerns the study was retooled. However, he noted, doing so did not change the original study findings. Additionally Mr. Erwin noted that the 2008 Delegate Assembly voted to direct the FSBPT Board of Directors and the staff to continue to monitor the Referral for Financial Gain issue as it relates to public protection – something that is being done already. He stated that the FSBPT can now turn its attention back to high priority areas such as the National Physical Therapy Examination and the continuing competence initiative. The Board asked when the final publication of the study will be available; he stated that he isn't certain but that it will first be released to the FSBPT Board of Directors and that board will determine whether and how to publish or distribute the report. The Board asked whether the data in the study can be made available for other research efforts. Mr. Erwin affirmed that the FSBPT Board of Directors has discussed the fact that there is valuable data that can be mined. The Board again thanked Mr. Erwin for visiting the Arizona Board of Physical Therapy and reporting on this significant event.

10-B Presentation by Susan Layton, Vice President of the Federation of State Boards of Physical Therapy – A Continuing Competence Initiative Update

Ms. Layton thanked the Board for allowing her to report on the progress of the continuing competence initiative of the FSBPT. She stated that there have been some major developments since she last spoke with this Board in October of 2007. She reviewed the 2007 FSBPT Delegate Assembly establishing the initiative and that made the significant investment of \$2.5 million to develop the system and the tools for the jurisdictions' use. Ms. Layton reminded the Board that the General Practice Review Tool was released in July, and thanked the Board for its support of that tool and for their participation in its development. She announced that the Orthopedic Practice Review Tool is currently in development and anticipated to go live in December of 2009. Ms. Layton advised the Board that the Continuing Competence committee of the FSBPT has indicated it wants the system to use meaningful and valuable activities, and is urging verification of 100% of the continuing competence activities completed. However, she noted, the programs are so large in scope that the FSBPT only has the administrative capacity to verify a fraction of them. She further explained that the Committee is recommending a system be

established that includes tools for use by both physical therapists and physical therapist assistants. Ms. Layton indicated that the FSBPT Board of Directors has approved a 10-year plan for this initiative and is pledging the financial resources to make it happen. She commented that the effort includes collecting input from various stakeholders, and mentioned that Ms. Herbst Paakkonen was interviewed as part of this process as she is the administrator of a member board. Ms. Layton stated that phase one of the system will roll out in July of 2009 and this phase encompasses the licensee and jurisdiction components. She explained that phase two will involve the vendor approval system, and that will happen in 2009-2010. Ms. Layton reviewed with the Board several charts that illustrate the model and define the criteria for the certification process. The Board posed questions to Ms. Layton and allowed members of the public to also make comments and ask questions. Ms. Herbst Paakkonen explained that the Board is working on revising the administrative rules that address the continuing competence requirements in an effort to repair the rules, and that the challenge is how to time its rulemaking efforts to coincide with the work of the FSBPT. She also noted that this Board has not yet determined what components of the system may be useful. The Board thanked Ms. Layton for the update and advised her that this agency will continue to monitor the development of the continuing competence initiative and determine in the future whether and how to implement it in Arizona.

CALL TO THE PUBLIC

None.

ADJOURNMENT

The meeting adjourned at 5:20 p.m. The next regular session meeting will be November 20, 2008 at a location to be announced.

Prepared by,

Heidi Herbst Paakkonen
Executive Director

Approved by,

Randy Robbins
Secretary