

JANET NAPOLITANO  
Governor



HEIDI HERBST PAAKKONEN  
Executive Director

JONI KALIS, P.T.  
President

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

**REGULAR SESSION MEETING MINUTES**  
**November 20, 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  
Peggy Hiller, P.T., Investigator  
Paula Brierley, Licensing Administrator  
Camilla Alarcon, Assistant Attorney General

**CALL TO ORDER – 8:30 a.m.**

**1. Review and Approval of Draft Minutes**

**October 28, 2008; Regular Session Meeting**

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

**October 28, 2008; Executive Session Meeting**

The Board reviewed the draft and the members concurred no corrections were required. Ms. Kalis moved the draft be approved. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**COMPLAINTS, INVESTIGATIONS and COMPLIANCE**

**2. Informal Hearing on Unlawful Practice Case**

**#08-03-UPI; Gary Smith, P.T.**

Mr. Smith was present for the hearing and was sworn in by the Court Reporter. He exchanged introductions with the members of the Board and the staff. Ms. Kalis reviewed the informal hearing procedures and possible outcomes of the case. Mr. Smith asked if the Board members had received his letter submitted relative to this case and received affirmation that the document had been provided to them. He explained that earlier in the year one of his offices was closed abruptly and some of his records were taken by his ex-wife, including his licensure renewal application. He also indicated that he was not able to access some of his mail due to the fact that he moved from his residence. Mr. Smith explained that his office manager located his renewal application form a few days before the renewal deadline and he understood that she sent it to the Board via overnight delivery. He stated that he later learned that this had not happened which

resulted in his practicing without an active license for two days not knowing that the application did not reach the office. Ms. Herbst Paakkonen explained that the first application submitted by Mr. Smith was postmarked on September 2, 2008 and it was the application that was received on September 5, 2008 that was processed as the first application had not arrived as of September 5. The Board noted that the postmark date of the application was September 2, 2008 and that if it has been sent at the time the application it was discovered which was on or about August 28, 2008, his license would not have lapsed. Mr. Smith stated his concerns about the terms of the consent agreement relative to the civil penalty and the effect that notifying his patients and their payers would have on his practice. He admitted that when he closed his other office, he did not immediately retrieve his renewal card which would have served as a reminder of the expiration date of his license. The Board concluded the questioning. The Board discussed the fact that in addition to the 3 days of unlawful practice Mr. Smith noted that he admitted to not filing his change of address with the Board. The Board discussed its options for punitive and corrective action and noted that its statutes preclude issuing a civil penalty to a licensee following an informal hearing. Dr. Cornwall moved to issue a Board order containing the same findings of fact and conclusions of law as the consent agreement with the following terms: a term of probation of 90 days during which time Mr. Smith must take and pass the jurisprudence examination; submit evidence of having sent notification of the period of time of his unlicensed practice to his employer, patients and their insurance payers; completion of 8 hours of community service pre-approved by Board staff and a Decree of Censure for his failure to notify the Board of his change of address. Ms. Kalis seconded the motion. The motion carried by a unanimous vote.

### **3. Initial Review and Possible Action on Complaint #08-10; Laurie Stratton, P.T.**

Ms. Kalis introduced the case and Ms. Ohlendorf disclosed for the record that she works for the same company as the licensee (HealthSouth) but that she has never met Ms. Stratton and she can preside over the case without bias. Ms. Hiller summarized the case noting that it was opened in May of 2008 following receipt of a complaint from a manager at the HealthSouth facility at which Ms. Stratton is employed and that she alleged that she was providing services to her patients that were unwarranted, that were beyond the point of reasonable benefit, and that she may have made notations in patients' records that were misleading in an effort to attempt to support their extended plans of care. In her written response to the complaint Ms. Stratton noted that she treats patients who are neuro cases and who have chronic conditions that warrant extended physical therapy care. Ms. Hiller advised the Board that nine sets of patient records that encompassed very extended episodes of care were reviewed during her investigation and Ms. Hiller noted that her findings relative to those records were summarized in the investigative record. She also commented that she observed very detailed justifications for the treatments in the records following the filing of the complaint. Ms. Stratton was present for the initial review of the case and Ms. Kalis advised the licensee that she could make an oral statement during this initial review of her case. Ms. Stratton commented that the HealthSouth facility in which she works is primarily an orthopedic practice and that she has a different philosophy than many of the other therapists relative to treating neuro patients. She stated that she documents thoroughly all of her treatments and that she does not make false statements in that process. She indicated that the difference in opinion that is the basis of this complaint was not resolved internally by HealthSouth which resulted in this case coming to the Board. The Board discussed that in light of the fact that the patient records indicate that patients are being seen by Ms. Stratton for very extended periods of time and that it is difficult to determine the patients' treatment goals from the records that the case should go to an informal hearing in order to explore the allegations further. Ms. Kalis moved to remand the case to an informal hearing; Mr. Sieveke seconded the

motion. The motion carried by a unanimous vote. The Board elected to divide the sets of patient records for purposes of preparing for the informal hearing. Ms. Kalis will review the records for D.M. and M.M., Ms. Akers will review R.A. and C.V., Dr. Cornwall will review A.D. and C.E., Mr. Sieveke will review J.S. and T.S. and Mr. Robbins and Ms. Ohlendorf will review N.M.

**4. Initial Review and Possible Action on Complaint  
#08-15; Vicki Beaudet, P.T.**

Ms. Herbst Paakkonen summarized the complaint noting that it was opened by the Board following the resolution of complaint #08-08; Patrick Marmon, P.T.A. in order to investigate whether Ms. Beaudet was providing appropriate supervision of Mr. Marmon at Archstone Care Center. Ms. Herbst Paakkonen advised the Board that the possible jurisdiction for the case is listed in the investigative report, and called to the Board's attention the licensee's written response to the complaint which affirms that she is the on-site supervisor of Mr. Marmon while she is present in the facility but indicates that she is unable to provide general supervision as she is unable to accept telecommunications and to return to the facility when she leaves in the afternoon. Ms. Herbst Paakkonen called to the Board's attention the supporting documentation that Ms. Beaudet also submitted which illustrates the frequency with which patients are treated by a physical therapist, and noted that in her response the licensee questions what the law requires when a facility utilizes a mixture of on-site and general supervision of physical therapist assistants. She also reminded the Board that the investigation did not include any additional review of patient records but that that investigative report for #08-08; Patrick Marmon, P.T.A. which included the original records scrutinized were appended to this report. Ms. Beaudet was present for the initial review of the complaint and was granted permission to make a statement to the Board. Ms. Beaudet stated that she has been a licensed physical therapist for 28 years and that she has been employed with Therapy Network for 10 years and has worked for much of that time at Archstone Care Center. She affirmed that she is the on-site supervisor for Patrick Marmon, P.T.A. and explained how patients are scheduled in order to maximize the frequency that a patient is seen by a physical therapist. She explained that they have attempted to interpret the supervision law as best as they can and follow the restrictions established for general supervision even while there is a physical therapist in the facility. Ms. Beaudet further explained that Mr. Marmon is now appropriately documenting when his supervision is provided under general supervision as opposed to how he has documented in the past. The Board discussed the fact that the investigation confirms that Ms. Beaudet is complying with the law as it relates to supervision of Mr. Marmon. Dr. Cornwall moved to dismiss the complaint. Mr. Sieveke seconded the motion. The motion carried by a unanimous vote. Ms. Beaudet stated that it would very helpful to physical therapists for the Board to clarify the law when a mixture of onsite and general supervision of a physical therapist assistant is used.

**5. Initial Review and Possible Action on Complaint  
#08-16; Jessica Berry, P.T.**

Ms. Herbst Paakkonen summarized the complaint noting that it was opened by the Board following the resolution of complaint #08-08; Patrick Marmom, P.T.A. in order to investigate whether Ms. Berry was providing appropriate general supervision of Mr. Marmon while he is treating patients at Archstone Care Center and she is at another location. Ms. Herbst Paakkonen advised the Board that the possible jurisdiction for the case is listed in the investigative report, and called to the Board's attention the licensee's written response to the complaint which states that she is in compliance with the law as it relates to general supervision of a physical therapist assistant. However Ms. Herbst Paakkonen noted that Ms. Berry submitted a copy of the now expired temporary session law relative to general supervision that was replaced by the administrative rule R4-24-303 in August of 2006. Ms. Berry was present for the initial review of the case and was granted permission to make a statement to the Board. Ms. Berry advised the

Board that she believes she had provided a complete response to the complaint allegations and that she is attending this review to answer the Board's questions. In response to the Board's questions she stated that she is not as familiar with the patients as the onsite supervisor, but that she relies on telecommunications and paperwork to inform her. Ms. Berry stated that the facility takes extreme care in scheduling physical therapy treatments such that patients are seen by a physical therapist more frequently than every 4<sup>th</sup> treatment visit. The Board questioned Ms. Berry relative to when she re-evaluates patients. Ms. Berry explained that she would go to Archstone at least once per month to review the paperwork and that she relies on the reports prepared by the physical therapist assistant. She also affirmed that she would come to the facility if called. Ms. Berry explained that the 4<sup>th</sup> treatment visit may be provided by a physical therapist other than her or Ms. Beaudet. Ms. Kalis moved the Board remand the case to an informal hearing. Mr. Sieveke seconded the motion. The Board debated whether an informal hearing is warranted in light of the information obtained for the investigation. The Board discussed whether the rule R4-24-303 requires the physical therapist that provides general supervision of a physical therapist assistant must be the therapist that re-evaluates and treats the patient every 4<sup>th</sup> treatment visit. The Board engaged in a discussion about the intent and clarity of the rule. The Board noted some concerns that Ms. Berry hasn't provided assurance that she is familiar with the patients that the physical therapist assistant is treating and that she is only familiar with them in the course of reviewing their charts. Ms. Hiller advised the Board that her investigation of #08-08; Patrick Marmon, P.T.A. found that the same on-site physical therapist is performing the evaluation and the re-evaluations of the patient. The Board questioned whether there were actual re-evaluations performed. Ms. Herbst Paakkonen advised the Board that it had previously adopted a Substantive Policy Statement (SPS) that clarifies the law as it relates to patient care management and supervision, but the document does not clarify the law as it relates to instances where a mixture of onsite and general supervision are utilized which is a question posed to Board staff frequently. The Board questioned why Mr. Marmon was indicating on the patient flow sheets that that Ms. Berry was his supervisor when it is apparent that there was a physical therapist, Ms. Beaudet, on site. Ms. Hiller reminded the Board that it had determined during the review of #08-08; Patrick Marmon, P.T.A. that he was documenting that every patient was seen under general supervision which was not accurate. The Board discussed whether an advisory letter was warranted as opposed to conducting an informal hearing as the letter could advise Ms. Berry to be aware of the current law. The motion on the informal hearing failed by a vote of 1-5. Dr. Cornwall moved to issue Ms. Berry an advisory letter that advises her to maintain knowledge of current law as it relates to supervision of assistive personnel and to advise that she understand the law as it relates to the different requirements for onsite and general supervision. Ms. Akers seconded the motion. The motion carried by a 5-1 vote. The Board directed staff draft revisions to the SPS in an attempt to clarify the law as it relates to using a mixture of onsite and general supervision of physical therapist assistants.

**6. Initial Review and Possible Action on Unlawful Practice Case Investigation  
#08-07-UPI; Blas Herrera, P.T.**

Ms. Herbst Paakkonen advised the Board that on October 10, 2008 Mr. Herrera came to the Board office to reinstate his physical therapist license and in the process indicated on the reinstatement form that he had practiced physical therapy for several days without a license. She noted that she had drafted a proposed consent agreement for the Board to review and adopt as a possible resolution to the case. Mr. Herrera was present for the Board's review of the unlawful practice case and he was granted permission to address the Board. He described his professional experience and credentials to the Board and apologized to his patients, employer and the State of Arizona for his error. He explained that upon discovering that he did not have an active license he promptly came to the Board office and reinstated his license. The Board thanked Mr. Herrera for his statement. Dr. Cornwall moved to issue the draft consent agreement to Mr. Herrera with

the additional requirement that he take and pass the jurisprudence examination. The motion also stipulated that if Mr. Herrera elected to not sign the agreement the case would be remanded to an informal hearing. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

**#08-08-UPI ; Stephanie Dunn, P.T.**

Ms. Herbst Paakkonen summarized the case noting that on October 14, 2008 Ms. Dunn submitted her licensure reinstatement application and disclosed on the application she had practiced without an active license since September 1, 2008. Ms. Dunn was present for the Board's review of the case and stated that she has been a physical therapist for 16 years and has practiced in both New Jersey and California prior to moving to Arizona. She explained that as a solo practitioner she didn't have anyone to alert her to the fact that her license had lapsed. She admitted that she had not completed her continuing competence requirements for the 2006-2008 licensure period at the time of the lapse of her license, but upon discovering the fact that she was practicing without a license she came to the Board office to meet with Ms. Herbst Paakkonen to discuss what she needed to do. She indicated that she quickly completed online courses to fulfill her continuing competence requirements and then filed for reinstatement. She confessed that she knowingly continued to work even with a lapsed license because she could not afford to not work as she could lose her home. Ms. Dunn stated that she never meant to cause any harm with her actions. After questioning by the Board she clarified that she learned on October 7, 2008 that she did not have an active license, but she continued to practice knowing that she did not have a license because of financial reasons and so that she could complete her continuing competence requirements. She also admitted that she did not notify the Board in writing of her change of address. The Board discussed concerns that she knowingly continued to practice while she did not have an active license. The Board discussed adding possible jurisdiction of A.R.S. §32-2044(23), failing to notify the Board in writing of a change of address. The Board also reviewed A.R.S. §32-2044(16), aiding or abetting a person who is not licensed, §32-2044(17), failing to report to the Board any direct knowledge of an unprofessional, incompetent or illegal act that appears to be a violation, and A.R.S. §32-2044(12), violating the recognized standards of ethics of the physical therapy profession under Principle 4 of the American Physical Therapy Association Guide for Professional Conduct. The Board discussed what disciplinary terms should be included in a possible consent agreement. Ms. Kalis moved to offer a consent agreement to Ms. Dunn that adds the following to the draft document: she be required to take and pass the Board's jurisprudence examination, a finding of fact that she failed to notify the Board of her address change, a Decree of Censure for that violation, a finding of fact that she knowingly practiced without a license, and a conclusions of law of A.R.S. §32-2044(23) and §32-2044(12). The motion also stipulated that if Ms. Dunn failed to sign the agreement the case would be remanded to an informal hearing. Ms. Akers seconded the motion. The motion carried by a unanimous vote.

**#08-09-UPI ; Michael Branson, P.T.**

Ms. Herbst Paakkonen summarized the case noting that on October 17, 2008 Mr. Branson filed his licensure reinstatement application with the Board and on that application indicated that he had practiced for several days without a license. The Board reviewed the letter submitted by Mr. Branson and noted that the actual total number of days he practiced without a license is 36. Ms. Kalis moved to offer the draft proposed consent agreement to include 36 days of unlicensed practice as a finding of fact, a civil penalty of \$250 and to add the requirement that he take and pass the jurisprudence examination. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The motion also stipulated that Mr. Branson's failure to sign the consent agreement within 20 days will result in the case being remanded to an informal hearing.

**7. Review and Possible Action on Scheduled Compliance Interview**

**Trent Tripp, P.T.**

Ms. Ohlendorf announced that she would recuse herself from this agenda item as she works at the same facility as the licensee. Mr. Tripp was present for his scheduled interview and he advised the Board that nothing has changed substantially since he last met with the Board in May. He indicated that he continues to work in the same facility and has been employed there for almost two years; he also noted that he continues to live in the same location. Mr. Tripp mentioned that he very recently obtained a new sponsor who has ten years of sobriety and who is very focused on working with him on the steps to recovery. He explained that he selected a new sponsor who is well grounded in the steps and who will encourage him to work harder. In response to the Board's questions he stated that his sobriety date is March 20, 2006. Mr. Tripp advised the Board that he attends four NA meetings per week and that he has resumed working his steps with his new sponsor in earnest. He also noted that he continues to meet every other week with his Recovery Group that is comprised of individuals who are licensed health care professionals. Mr. Tripp described how he is taking on more leadership roles with his group and discussed the volunteer work that he is performing. He stated he is still optimistic relative to his recovery and that he is happy with his job. The Board noted that the annual re-evaluation performed by Dr. Michel Sucher is very positive. The Board thanked Mr. Tripp for participating in the interview and wished him well.

**8. Review and Possible Action on Non-Compliance with Consent Agreement**

**Sharon Louthan, P.T.**

Ms. Herbst Paakkonen advised the Board that Ms. Louthan was granted a physical therapist license in July of this year under the terms of a consent agreement that required she undergo a substance abuse evaluation within 90 days of the affective date of the agreement. She reminded the Board that during its September 26, 2008 regular session meeting the Board reviewed and granted a request for an extension of time until October 31, 2008 with which to complete the evaluation. She advised the Board that since the issuance of the letter granting that extension, the Board office has heard nothing from Ms. Louthan and never received a copy of the required evaluation. The Board discussed its options including opening an investigation and remanding the case to a formal or an informal hearing. Ms. Kalis moved to open an investigation under A.R.S. §32-2044(1), failing to comply with a Board order, and to remand the case to a formal hearing. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote.

**9. Review and Possible Action Concerning Audited Licensees' Compliance with Continuing Competence Requirements for 2004-2006 Licensure Period**

**Aaron Breese, P.T.**

**Jeffrey Weiske, P.T.**

Ms. Herbst Paakkonen explained to the Board that the listed licensees reinstated their physical therapist licenses and were therefore subject to audit of their continuing competence requirements. She noted that their initial audit found that while they had completed 20 contact hours of continuing competence, they were found out of compliance with the requirements and pursuant to Board rule were granted 6 months with which to come in to compliance. Ms. Herbst Paakkonen advised the Board that their follow-up audits of their subsequent submissions resulted in a recommendation by the Continuing Competence Auditors that they be found in compliance with the requirements. Ms. Kalis moved to find the listed licensees in compliance with the continuing competence requirements. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

## **APPLICATIONS FOR LICENSURE & CERTIFICATION**

### **10. Review and Possible Action on Supervised Clinical Practice Period Proposal**

#### **Kristin Stirling**

The Board reviewed the Supervised Clinical Practice Period (SCPP) proposal submitted by Ms. Stirling and the members concurred that it meets the acceptable standards as prescribed by Viard rule. Ms. Kalis moved to approve the SCPP proposal submitted by Ms. Stirling and to issue her an Interim Permit. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

#### **Delaila Rhoades**

The Board reviewed Ms. Rhoades' SCPP proposal and Ms. Brierley advised the Board that yesterday she received written clarification via facsimile from the applicant's proposed supervisor that the SCPP does indeed total the required 500 hours. The Board discussed the fact that Ms. Rhoades does not have a secondary supervisor in her proposal and noted that this could adversely affect her ability to complete the SCPP if her supervisor cannot fulfill her role. Ms. Kalis moved to approve the SCPP proposal submitted by Ms. Rhoades and to issue her an Interim Permit. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The Board directed staff to advise Ms. Rhoades in writing that it is in her best interest to obtain a secondary or back-up supervisor.

#### **Roland Pinzon**

The Board reviewed the SCPP proposal and noted that the proposed supervisor is the Director of Rehab for the facility. Ms. Brierley advised the Board that Mr. Pinzon's supervisor has provided written assurance that that he does perform patient care 100% of the time and accordingly can provide the necessary supervision of Mr. Pinzon. The Board noted that the proposal also lacks a secondary supervisor. Ms. Kalis moved to issue Mr. Pinzon an Interim Permit and to approve his SCPP upon receipt of a revised start date and end date. Dr. Cornwall seconded the motion. The motion carried by a unanimous vote. The Board directed staff to advise Mr. Pinzon in writing that it is in his best interest to obtain a secondary or back-up supervisor.

## **BOARD BUSINESS AND REPORTS**

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

- a. Financial Report:** No additional information to report.
- b. Board Staff Activities:** No additional information to report.
- c. FSBPT Initiatives and News:** No additional information to report.
- d. Rule Writing Update:** No additional information to report.
- e. Legislative Update:** Ms. Herbst Paakkonen called to the Board's attention two news articles that call into doubt whether a special legislative session will be called before the end of the year to address the \$1.2 billion budget deficit for the State of Arizona. She also recommended the Board take a position on the issue of whether to work with the Arizona State Legislature to change A.R.S. §32-2022(B)(4) relative to the requirement that a foreign educated applicant for physical therapist licensure be authorized to practice in the country of education. Ms. Herbst Paakkonen explained why this requirement has historically existed in the Board's statutes in that it is intended to help prevent "graduates" of foreign "diploma mills" from becoming licensed as physical therapists. Ms. Herbst Paakkonen advised that if the Board takes the leadership on this issue and requests the change to the statute – as opposed to a change being imposed on the Board – it will be in a better position to request the proposed legislation be pulled from consideration if any unfriendly amendments are attached. The Board members agreed by consensus that it would be preferable for the Board to be actively involved in the proposed changes and directed Ms. Herbst Paakkonen to coordinate with Stuart Goodman, the Board's Legislative Liaison, on working with a sponsor to amend the statute such that the Board has waiver authority over the requirement established at A.R.S. §32-2022(B)(4).

**12. Review, Discussion and Possible Action on Executive Director Hiring**

Ms. Herbst Paakkonen advised the Board that they have not yet been granted approval to hire for an Executive Director since the submission of the “mission critical” hiring approval request on September 29, 2008. Ms. Kalis summarized her recent discussion with the Governor’s Policy Advisor during which the Advisor accused Ms. Herbst Paakkonen of having a conflict of interest in that she is currently working for the Board but intends to begin work for one of the associations that has filed a notice of claim with the State of Arizona for the \$100,000 sweep from the Board’s fund. Ms. Kalis informed the Board that she asked whether the Policy Advisor would approve the Board’s mission critical hiring request if Ms. Herbst Paakkonen resigns prior to the anticipated date of December 23, 2008. She stated that the Policy Advisor informed her that she had a “clerk” in mind that she would place in that position. Ms. Kalis stated that she informed the Policy Advisor that the Board requires someone with more advanced experience and skills than a “clerk”. Ms. Kalis was then was informed by the Policy Advisor that she wants the Arizona Board of Physical Therapy to “share” the Acupuncture Board’s Executive Director. Ms. Kalis further explained that she had attempted to contact Jan Leshner, the Governor’s Chief of Staff, to request that she grant approval for the hiring of the Executive Director. She noted that she did initially receive a message from Ms. Leshner in which she stated that she would see to it that the approval was granted, but that this did not occur and all subsequent messages left with Ms. Leshner were not returned. Ms. Kalis stated that she was actually admonished by the Governor’s Policy Advisor for going to Ms. Leshner instead of taking her questions or concerns to her. Ms. Kalis stated that she then pointed out that the problem facing the Board is the hiring blockade that the Policy Advisor has put into place. The Board discussed the fact that A.R.S. §32-2003 authorizes only the Board to employ the necessary staff to carry out the administrative duties of the Board and that it has both the funds and the appropriation to do so. The Board also discussed the fact that other Boards whose fiscal circumstances are far worse than have been granted approval to hire an Executive Director when the incumbent has resigned. Ms. Kalis advised the Board that the Policy Advisor stated to her that the funds collected by the Board belong to the State of Arizona and that the Executive Directors of the Board work for and report to her and not to their respective Boards. Ms. Kalis noted that she spoke with the President of the Acupuncture Board and confirmed that their Executive Director has no interest in working for the Arizona Board of Physical Therapy and that the Acupuncture Board has no interest in sharing that position. Ms. Herbst Paakkonen stated that she would resign her position immediately if the Policy Advisor first commits in writing to lift the hiring blockade so that the Board will not be adversely impacted by her departure and the resultant vacancy. Ms. Alarcon explained the conflict of interest issue relative to the Office of the Arizona Attorney General representing all state agencies and noted that the Attorney General’s office does not encourage state agencies to sue one another. She stated that it is her understanding that this issue is being discussed and researched within the Office of the Attorney General and that hopefully soon this Board will have some advice. The Board discussed the fact that it is willing to hire an independent attorney in order to represent its legal interests relative to the Board’s statutory authority to hire an Executive Director. The Board discussed the fact that it sets a dangerous precedent when a Governor dictates who and whether a regulatory Board hires because this type of interference compromises that Board’s independent regulatory authority and taints the regulatory process. The Board questioned whether the next step could involve a Governor attempting to dictate who is, and who is not, disciplined based on political considerations and not based on the actual facts of the case. The Board discussed its options relative to contracting with someone who could perform the administrative duties of the Board until the hiring blockade is lifted. The Board also discussed how outside counsel would be engaged to represent the Board. The Board discussed whether it could request a meeting with Ms. Leshner to discuss all of these issues but Ms. Kalis stated that based on her conversation with the Policy Advisor and on Ms. Leshner’s failure to



return her telephone calls such a meeting would be unlikely to happen. The Board discussed the adverse impact that not having an Executive Director would have on applicants for licensure and certification, existing licensees and certificants, and the public that relies on the Board to adjudicate consumer complaints. The Board further discussed the fact that a delay in hiring the Executive Director will only exacerbate the shortage of physical therapists in that issuing licenses will take longer and that applicants will experience a loss of income when the issuance of their licenses and certificates are unnecessarily delayed. The Board noted that this dynamic will result in lost tax revenues to the State of Arizona – not to mention the fact that patient care will be adversely affected which harms the public that the Board is charged with protecting. Ms. Kalis moved to issue a formal written request to the Office of the Arizona Attorney General for independent legal counsel to represent its interests with respect to its ability to hire an Executive Director. Mr. Robbins seconded the motion. The motion carried by a unanimous vote. Ms. Kalis moved to pursue contracting with a Board Administrator in the interim period. Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

### **13. Discussion and Possible Action on Draft Proposed Revisions to A.A.C. R4-24-101(11).**

#### **Definitions, Table 1. Time-frames, and R4-24-301. Lawful Practice**

Ms. Herbst Paakkonen provided an overview of the Notice of Proposed Rulemaking which proposes a revisions to A.A.C. R4-24-1-1(11) to indicate that the Coursework Tool recognized by the Board as of July 1, 2009 will be the 5<sup>th</sup> Edition of the FSBPT Coursework Tool, that proposes to add a timeframe for renewal of a license or certificate as there is no such timeframe in the rules, and that makes the requested revisions to R4-24-301. Lawful practice which includes requirements for informed consent for physical therapy treatment. The Board discussed the proposed revisions and, as an aside, noted that it will be difficult or perhaps impossible to meet the established time frames for issuing licenses if the Board's attempts to hire its Executive Director continue to be blocked. The Board discussed the issue of consent for examination as well as for treatment. Additionally the Board debated whether rule language should be adopted that addresses ensuring that the patient understands the potential risks involved in treatment – reasonable, material or associated. Ms Kalis moved the Board approve the draft with the following revision: reverse subsections D and E and in both subsections insert the word "examination". Mr. Robbins seconded the motion. The motion carried by a unanimous vote.

### **CALL TO THE PUBLIC**

None

### **ADJOURNMENT**

The meeting adjourned at 12:10 p.m.

Prepared by,

Heidi Herbst Paakkonen  
Executive Director

Approved by,

Randy Robbins  
Secretary