

JANICE K. BREWER
Governor



CHARLES D. BROWN
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.az.gov

REGULAR SESSION MEETING MINUTES
(August 25, 2009)

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: None

OTHERS PRESENT: Charles D. Brown, Executive Director
Paula Brierley, Licensing Administrator
Karen Donahue, Board Investigator
Keely Verstegen, Assistant Attorney General

CALL TO ORDER – 8:30 a.m.

Ms. Kalis called the meeting to order at 8:30 a.m.

- 1. Review and Approval of Draft Minutes
 - a. July 28, 2009; Telephonic Meeting Minutes

Ms. Kalis opened the agenda item for discussion and asked if any Board member had any corrections for the minutes as presented. No Board member expressed any need for corrections to the minutes. Ms. Kalis moved the Board approve the minutes as presented. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

- b. July 29, 2009; Telephonic Meeting Minutes

Ms. Kalis opened the agenda item for discussion and asked if any Board member had any corrections for the minutes as presented. No Board member expressed any need for corrections to the minutes. Ms. Kalis moved the Board approve the minutes as presented. Ms. Akers seconded the motion. The motion carried by unanimous vote.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

Ms. Kalis stated that she would take some matters on the agenda out of order. The next item was taken out of order.

7. Initial Review, Discussion and Action on Complaint #09-01
Matthew Fryberger, P.T.

Ms. Kalis opened the matter for discussion. Mr. Fryberger was present and came forward to address the Board. Mr. Fryberger's attorney, Jeff Bernick, was present and came forward to address the Board. Mr. Bernick addressed the Board and expressed that he felt the complaint against his client should be dismissed. Mr. Bernick noted that Mr. Fryberger was not a party to the original complaint that resulted in the malpractice settlement which led to the Board complaint. Mr. Bernick stated that during the private suit a physician and physical therapist provided statements or testimony that Mr. Fryberger did not fall below the standard of care with his treatment with the involved patient. Mr. Bernick also noted that the lawyers for the person bringing the private suit wrote letters to the Board stating that Mr. Fryberger was not the party at fault for the delay in diagnosis for the involved patient.

Ms. Kalis opened the matter for questions from the Board. Mr. Sieveke noted that Mr. Fryberger did perform an evaluation, but that it was not documented that he communicated the findings to the referring health care provider, there is no discharge summary in the patient record, and that the legibility of the records was so deficient that Mr. Fryberger was requested to transcribe the records. Mr. Sieveke also noted that Mr. Fryberger did document a possible tear of the Achilles tendon in the initial evaluation and the patient failed to progress, which brings a question of whether timely intervention had taken place.

Ms. Kalis noted that Mr. Fryberger had documented at least five times his intent to refer or consult with the involved physician assistant or physician, but failed to document any consult or referral. Ms. Kalis moved that the Board send complaint #09-01; Matthew Fryberger, P.T. to Informal Hearing and add a possible violation of law A.R.S. §32-2041. Mr. Sieveke seconded the motion. The Board entered discussion and Dr. Cornwall noted that he agreed with the issues discussed and with adding the additional violation of law. Ms. Kalis called the vote and the motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Kalis took the next item out of order.

9. Initial Review, Discussion and Action on Complaint #09-19
Melissa Hourihan, P.T.

Ms. Kalis opened the matter for discussion. Ms. Donahue provided the Board with a summary of the complaint. The complaint was opened based on a letter received on June 4, 2009, alleging that while searching the internet under www.ChiropracticPeoria.com, the complainant came across a link to a website for a physical therapist (i.e: Exclusively Spine Physical Therapy). The complainant contends that "this physical therapist is advertising that she provides chiropractic care." Ms. Donahue provided the following analysis: Exclusively Spine Physical Therapy, LLC advertises and is listed on the internet; Google search of "chiropractors in Peoria AZ" lists other website entities besides chiropractors; Google search of "physical therapists in Peoria AZ" lists other website entities besides physical therapists; review of Exclusively Spine Physical Therapy's website provides no mention of chiropractic services provided; written e-mail communication to the complainant

confirms no chiropractic services are available at Exclusively Spine Physical Therapy; the investigation failed to find evidence that Ms. Hourihan advertises for chiropractic services.

Ms. Hourihan was not signed in and did not come forward to address the Board. Dr. Cornwall noted that there was no evidence that Ms. Hourihan was advertising as providing chiropractic services. Dr. Cornwall moved that the Board dismiss the complaint against Ms. Hourihan. Ms. Kalis seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Kalis took the next item out of order.

APPLICATIONS and CERTIFICATIONS

11. Review, Consideration and Action on Applications for Licensure and Certification

11(C) Request for Approval to Take National Physical Therapist Assistant Examination; Review of Documentation Related to Disclosure on “Personal Information” Section of Application and possible certification.

Fehr, Julie

Ms. Kalis opened this matter for discussion. Ms. Fehr was present and came forward to address the Board. Ms. Fehr noted that she reported a driving under the influence (DUI) conviction from 2006 on her application to the Board and was present to request approval to take the NPTE. Ms. Kalis noted that Ms. Fehr was injured in the accident related to the DUI. No Board members had questions of Ms. Fehr. Ms. Kalis moved to approve Ms. Fehr to take the NPTE and be licensed upon the Board’s receipt of a passing score on the examination. Mr. Robbins seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

11(B) Request for Approval to Take AZLAW Exam and / or National Physical Therapist Examination; Review of Documentation Related to Disclosure on “Personal Information” Section of Application, and possible licensure

Barduson, Beth

Ms. Kalis opened the matter for discussion. Ms. Barduson was not present. Ms. Kalis noted that Ms. Barduson had a pending charge for driving under the influence (DUI). Dr. Cornwall moved that the Board deny Ms. Barduson taking the NPTE and AZLAW until her criminal matter is resolved. No member seconded the motion and the motion failed. The Board discussed its options in reviewing Ms. Barduson’s application considering her pending criminal matter. Ms. Akers moved that the Board approve Ms. Barduson to take the

NPTE and AZLAW examinations and appear before the Board after receiving passing scores for consideration of licensure. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Targonski, Robert

Mr. Targonski was present and came forward to address the Board. Mr. Targonski provided a statement to the Board regarding his conviction for possession of cannabis. Mr. Targonski stated he learned from the incident and now uses sound judgment. Dr. Cornwall moved that the Board approve Mr. Targonski to take the NPTE and be licensed upon receipt of a passing score. Ms. Kalis seconded the motion. The motion carried by unanimous vote.

Ms. Kalis returned to the normal order of the agenda.

COMPLAINTS, INVESTIGATIONS and COMPLIANCE

2. Informal Hearing and Possible Action on Complaint #CC-08-02; 9:00 a.m.
 Jennifer Johnson, P.T.

Ms. Kalis noted that it was the time to hear the Informal Hearing against Jennifer Johnson, P.T., but Ms. Johnson was not present to address the Board. Mr. Brown provided a summary to the Board. Mr. Brown stated that the Board previously scheduled an Informal Hearing regarding the complaint against Ms. Johnson, but pended the matter until Ms. Johnson’s period to comply with her continuing competence requirements expired. Mr. Brown noted that Ms. Johnson has failed to respond to the Board notice of audit, notice of compliant, approval of six months to come into compliance with continuing competence requirements and has not communicated with the Board since the complaint was opened in 2008.

Ms. Kalis moved that the Board forward the complaint #CC-08-02; Jennifer Johnson, P.T., to Formal Hearing. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

3. Informal Hearing and Possible Action on Complaint #08-23; 9:00 a.m.
 Gary T. Smith, P.T.

Ms. Kalis called the Board’s attention to the Informal Hearing of Complaint #08-23; Gary T. Smith, P.T. Mr. Smith was present. The Board members and staff introduced themselves. Mr. Smith introduced himself. Mr. Smith was sworn in by Court Reporter Nicola Bauman-Delgado.

Ms. Kalis provided a summary of the proceeding process, the Boards possible actions, and Mr. Smith’s rights. Mr. Smith provided an opening statement and again inquired what discipline could occur. Ms. Kalis repeated the action the Board could take at this time.

Mr. Brown provided a summary of the complaint as follows:

November 28, 2008, Board staff received this complaint from M.K. against Mr. Smith with the following allegations: M.K. was charged high fees because his treatment was related to an accident; Mr. Smith's office was paid a contractually agreed amount from M.K.'s health insurance company; Mr. Smith billed M.K.'s auto insurance company \$1,000 for his medical coverage; Mr. Smith billed the remaining portion of the bill, \$3,165, to State Farm Insurance after being paid by M.K.'s auto insurance and health insurance companies. The Board reviewed this complaint for the first time on May 26, 2009 and forwarded the matter to an Informal hearing. The allegations noticed to Mr. Smith were: respondent charged patient M.K. high fees because his treatment was related to an accident; respondent's office was paid a contractually agreed amount from M.K.'s health insurance company; respondent billed M.K.'s auto insurance company \$1,000 for his medical coverage; respondent billed the remaining portion of the bill, \$3,165, to State Farm Insurance after being paid by M.K.'s auto insurance and health insurance companies; respondent treated the patient's lumbar region without first performing and documenting an examination of the lumbar region of the spine; respondent failed to respond to a Board subpoena in compliance with law, which may have interfered with a Board investigation.

Mr. Smith provided an additional statement to the Board noting that he has been on probation over the past year and learned a great deal about the law in Arizona. Mr. Smith stated he provided a copy of his contract with United Healthcare as soon as he was able to obtain a copy.

Dr. Cornwall asked Mr. Smith if he billed as many insurance companies as was allowed in order to cover the cost of care. Mr. Smith stated he billed all of the companies, but refunded United when an audit was performed. Mr. Smith explained that he was not aware United was originally billed and questioned how many physical therapists actually know what is happening day to day in their offices at all times.

Mr. Sieveke asked Mr. Smith to explain his understanding of subligation. Mr. Smith indicated he understood subligation to mean he could bill only one payor at a time. Ms. Ohlendorf asked Mr. Smith how he knows which insurance to bill. Mr. Smith stated that now he discusses the matter with the patient to establish ahead of time how the treatment is to be billed.

Mr. Brown noted that Mr. Smith refunded the money to United on December 3, 2008, which is before Mr. Smith was noticed of the Board complaint. Mr. Kalis asked Mr. Smith questions related to his initial evaluation. Mr. Smith noted that he does not test areas of the body that lack symptoms reported by the patient. Ms. Kalis asked Mr. Smith if he performed an shoulder exam and lower back exam. Mr. Smith stated he did not perform such exams. Ms. Kalis noted that Mr. Smith had treated areas without first performing an examination. Mr. Smith noted that with some patients you can tell what is happening and he treated the patient based on subjective complaints.

Dr. Cornwall asked Mr. Smith how he can treat the lower back without an exam. Mr. Smith stated he did not want to treat the lower back because the symptom occurred awhile after the accident and that he likes to treat one thing at a time. He just provided the care because of the symptom, but suggested to the patient that they treat the lower back when the patient is no longer receiving therapy for the initial injuries from the accident. Mr. Smith noted that he eventually requested a prescription to treat the lower back.

The Board discussed Mr. Smith's billing with Mr. Smith and noted that on several dates he billed for CPT codes 97112 and 97110. Dr. Cornwall asked Mr. Smith what service was actually performed for both codes and Mr. Smith stated he did not know. Mr. Smith later stated he felt that one billing was for a UBE for five minutes. Mr. Sieveke asked how long the service was supposed to last before it is billed and Mr. Smith stated five minutes was not enough.

Mr. Smith stated that he had recently undergone a records review by an insurance company and was found to be under the national average for billing. His 2008 visits averaged eight visits for spinal treatment. Mr. Sieveke noted that the handwriting on the February 26 progress note appeared to match the writing on the patient progress report. Mr. Smith stated it was his handwriting. Ms. Kalis asked Mr. Smith if he had a closing statement. Mr. Smith replied that he did not wish to make a closing statement.

The Board entered deliberations. Ms. Akers noted Mr. Smith's reimbursement before the investigation was a positive sign. However, she noted his billing was not accurate and his documentation was not in compliance. Dr. Cornwall agreed with Mr. Akers and added that Mr. Smith billed for service not done or not documented and that Mr. Smith treated the patient lower back without performing an exam of that area or failed to document the exam of that area.

Ms. Kalis stated that she was troubled that the patient was there for neck treatment, but received treatment to the lower back without evaluation when there was a history of low back surgery. Mr. Sieveke agreed that there is a process to an examination that is graduated and Mr. Smith did not follow that process. He further noted that is not uncommon for a symptom to appear well after an accident. Mr. Robbins questioned if there was a difference in philosophy to the initial exam or if substandard care occurred. Ms. Akers stated she was less concerned with the cervical spine exam and more concerned with the lack of evaluation of the lower back. Mr. Sieveke agreed.

Ms. Kalis moved that the Board issue Findings of Fact:

1. Respondent treated patient M.K.'s thoracic spine on 2/12, 14, 21, 26, 28/07 and 3/2, 7, 9, 16, 19, 21, 23/07 without documenting an evaluation of the thoracic spine.
2. The patient record for M.K. failed to document regular reevaluations.
3. Respondent treated M.K.'s lower spine with manual therapy on 3/14, 16, 19, 21, 23/07 but did not evaluate the lower back. The patient record indicates the patient had a history of low back surgery.
4. Respondent inappropriately charged CPT code 95851 for cervical range of motion testing at the same time he performed and charged for an initial evaluation of M.K.'s neck and shoulder regions.
5. Respondent documented evaluation of M.K.'s shoulder lacked a range of motion evaluation and comprehensive strength assessment.
6. Respondent's documented time in the patient record demonstrates M.K. was overcharged for therapeutic exercises/therapeutic activities on 2/12, 14, 21/07.
7. Respondent documented on 4/4/07 strength, range of motion, and mobility was within normal limits; however, Respondent admitted he did not perform the tests necessary to make an assessment of within normal limits

Mr. Sieveke seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						

Abstained						
Absent						

Mr. Smith asked to speak to the Board. Ms. Kalis stated his time to make a statement had passed.

Dr. Cornwall moved that the Board drop the violation of A.R.S. §32-2044(18). Ms. Kalis seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Kalis moved the Board adopt the following Conclusions of law:

- **A.R.S. §32-2044(1)** “Violating this chapter, board rules or a written board order.”
- **A.R.S. §32-2043 (J)**. “A physical therapists responsibility for patient care management includes accurate documentation and billing of the services provided.”
- **A.R.S. §32-2044(4)** “Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.”
- **A.R.S. §32-2044(13)** “Charging unreasonable or fraudulent fees for services performed or not performed.”
- **A.R.S. §32-2044(20)**. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that comply with board rules and that contain at a minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.
 - **R4-24-303. Patient Care Management** A. A physical therapist is responsible for the scope of patient management in the practice of physical therapy as defined by A.R.S. § 32-2001. For each patient, the physical therapist shall:2 . **Perform and document periodic reevaluation**

Ms. Akers seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

The Board discussed the possible disciplinary action it would take in this case. Ms. Kalis moved that the Board place Mr. Smith on probation for one year with the possibility for early termination. As terms of the probation Mr. Smith will complete a continuing education course in record keeping to be preapproved by Board staff, a 6-8 hours continuing education course in coding and billing to be preapproved by Board staff, and that Mr. Smith undergo a minimum of one records review of 3 patient records selected by Board staff. If Board staff finds the records not in compliance with law, Mr. Smith will undergo one additional audit of 3 patient records by Board staff within three months of notice by Board staff that the records reviewed in the initial audit are not in compliance with law. Dr. Cornwall seconded the motion. The motion carried by roll call vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Ms. Kalis informed Mr. Smith he could contact Board staff with any questions.

There is a transcript available through Driver and Nix Court Reporting for this agenda item.

The Board recessed from 10:21 to 10:36

4. Informal Hearing and Possible Action on Complaint #08-25; Scheduled for 9:30 a.m.
David P. Guy, P.T.

Ms. Kalis called the Board attention to the Informal Hearing of complaint #08-25; David Guy, P.T. Mr. Guy was present. The Board members and staff introduced themselves. Ms. Guy introduced himself. Mr. Guy was sworn in by Court Reporter Nicola Bauman-Delgado.

Ms. Kalis provided a summary of the proceeding process, the Boards possible actions, and Mr. Guy's rights. Mr. Brown provided the following summary to the Board.

The Board received this complaint on December 17, 2008, from the mother of patient A.G., a former patient of Mr. Guy. The complaint alleged: David Guy treated A.G. for more conditions than what was ordered by the referring physician and that David Guy "scared" the patient and her mother into letting him provide additional treatment. The Board initially reviewed the complaint against Mr. Guy on April 28, 2009 and voted the matter to Informal Hearing. The allegations noticed to Mr. Guy are Respondent treated A.G. for more conditions than ordered by the referring physician; Respondent "scared" the patient and her mother into letting Mr. Guy provide additional treatment; Respondent may have failed to create and maintain adequate patient records as required by law; Respondent's documentation of services performed may not match service billed; Respondent may have failed to properly evaluate and refer A.G. to the appropriate health care provider.

Mr. Guy provided an opening statement that he felt there are no grounds to the complaint made against him. The patient was referred for a hip click, but Mr. Guy found additional problems during his examination of the patient, which included problems with her feet, scoliosis, and cervical problems. Mr. Guy stated he did a thorough evaluation as he documented and felt that most of the problems could be attributed to the cervical problem. Mr. Guy stated that he had two other physical therapists in his office evaluate A.G. and they had the same conclusions. He then informed A.G. her cervical spine was unstable and she had more problems than just a hip click. A.G. initially took the information well, but when Mr. Guy's instructions restricted her ability to play soccer and participate in a stretching program she became scared. However, Mr. Guy stated the symptoms resolved after his treatment. Mr. Guy stated he called the referring physician and informed him of his findings in a message, but the physician never returned his call. Mr. Guy stated the patient was charged for care, but did not pay.

Dr. Cornwall question Mr. Guy regarding his initial evaluation. Mr. Guy stated he noted rotatory changes and subluxation in the cervical spine, which he assessed through static palpation. Mr. Sieveke asked what Mr. Guy was assessing and Mr. Guy stated it was alignment and stability. Ms. Kalis asked if Mr. Guy did range of motion of the neck and Mr. Guy stated he did and the result was full range of motion and painless, which is why he did not record the range of motion. Dr. Cornwall asked if Mr. Guy did an evaluation of the cervical spine before the last visit. Mr. Guy stated he performed an evaluation at every visit. Mr. Guy stated the cervical problems were gone on the last visit. Mr. Sieveke asked why Mr. Guy did not treat the cervical spine until the last visit. Mr. Guy stated he could not explain why.

Dr. Cornwall asked what Mr. Guy's goal of cervical mobilization was. Mr. Guy said it was to gain greater mobility. Dr. Cornwall asked if increased mobility was counter productive to the instability. Mr. Guy stated he was trying to increase mobility to move her into normal alignment.

Ms. Kalis asked if Mr. Guy evaluated both hips and he stated he did, but only documented one. When asked why Mr. Guy did not respond. Ms. Kalis asked how the scoliosis was determined and Mr. Guy stated it was based on a leg length test. Mr. Sieveke asked what he did about the leg length difference. Mr. Guy stated he suggested she get a heel lift from a pharmacy. Mr. Guy stated the hip click resolved and that he gave A.G. a home program.

Ms. Kalis asked Mr. Guy if he assessed the patient's gait. Mr. Guy stated he assessed hip function. Mr. Guy further stated that he only documented positive findings with this patient. Mr. Guy did not keep a copy of the home program he gave to A.G. Dr. Cornwall asked Mr. Guy if he told A.G. she could become a quadriplegic. Mr. Guy stated no, but he did provide a scenario in which playing soccer could cause such a circumstance with someone with severe instability in their neck. Mr. Guy claimed that the hip clicking resolved when he claims he corrected the cervical instability. However, Dr. Cornwall noted that the discharge summary said the cervical issues and click were still present. Mr. Sieveke noted that Mr. Guy never referred the patient back to the referring physician when the additional problems were found. Ms. Akers noted that there was no complaint of neck pain. Ms. Kalis asked Mr. Guy if the cervical evaluation was only palpation and Mr. Guy stated it was.

The Board ended questioning and entered deliberations. Mr. Guy stated he has retired from practice due to a medical condition. Ms. Kalis asked the other Board members if they felt the initial evaluation was adequate. Dr. Cornwall stated he did not feel it was adequate as there was no neurological evaluation done, no bilateral symptoms, a questionable link from the cervical problem to the hip click, and that he found no match from the documented evaluation to the treatment provided.

Ms. Kalis noted that the patient presented with a hip click, but Mr. Guy treated the cervical spine after only evaluating the cervical spine with palpation. Mr. Sieveke noted Mr. Guy did not document treatment to the cervical spine until the last date of treatment.

Ms. Kalis moved that the Board go into Executive Session to obtain legal advice. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

The Board entered Executive Session at 11:30 a.m.

The Board returned to Regular Session at 11:48 a.m.

Ms. Kalis summarized some options of findings of fact for the case.

1. Patient A.G. was referred to Respondent for treatment of a right hip "click" during ambulation.
2. Respondent scared patient A.G. and her mother by stating that A.G.'s cervical spine was severely unstable.
3. Respondent stated he determined the C2-3 and C6-7 were subluxed based on palpation only. Respondent stated to the Board that A.G. had full pain free cervical range of motion on all planes.
4. Respondent had patient A.G. perform exercises of the cervical spine on 02/18/08 and 02/22/08, but failed to document an evaluation of the cervical spine.
5. Respondent documented a series of cervical exercises on 02/11/08, but failed to specifically document what services were provided.
6. Respondent documented performing cervical stabilization and mobilization on 02/22/08, but failed to perform an initial evaluation of the cervical spine.
7. Respondent's initial evaluation stated A.G.'s right calcaneus was laterally subluxed. Respondent stated to the Board that he determined the subluxation based solely on visual assessment.

8. Respondent’s plan of care included recommended interventions for mobilization and stabilization, but failed to specify what body part or joint should be mobilized or stabilized.
9. Respondent stated that A.G.’s neck problems are more severe than her hip problem, but did not document a cervical spine evaluation to support such a determination.
10. Respondent failed to document gait, neurological findings, cervical range of motion, posture, and failed to tie the initial evaluation findings to treatment.
11. Respondent failed to document left side hip and knee range of motion and strength and flexibility, but initiated treatment to the left hip and knee.
12. Respondent documented full range of motion to right hip and knee but then instituted strengthen exercises to the same area. Respondent documented flexibility of the ITB to be within the normal limits, but had patient stretch the ITB. Respondent stated he was promoting endurance with exercises provided to A.G., but the weights and repetitions documented in the patient record promote strength over endurance. Respondent used exercises to increase mobility when his stated goal was to improve stability.

Ms. Kalis asked if any member had additions or corrections to her proposed findings of fact. Mr. Sieveke stated he felt Respondent failed to follow-up with the referring physician regarding his findings in the cervical spine.

Ms. Kalis added the finding of: Respondent failed to immediately follow-up with the referring physician regarding his findings of severe instability in the cervical region. Ms. Kalis moved that the Board adopt the above suggestions as the Findings of Fact in this case. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

The Board moved to the discussion of the possible Conclusions of Law. The Board discussed the possible lawful conclusions provided in the Informal Hearing Brief as noticed to Mr. Guy.

Ms. Kalis moved that the Board adapt Conclusions of Law as follows:

- **A.R.S. §32-2041(A)** (A). A physical therapist shall refer a client to appropriate health care practitioners if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice or if physical therapy is contraindicated.
- **A.R.S. §32-2044(1)** “Violating this chapter, board rules or a written board order.”
- **A.R.S. §32-2044(4)** “Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.”
- **A.R.S. §32-2044(12)** “Failing to adhere to the recognized standards of ethics of the physical therapy profession.”
- ***Code of Ethics/Guide for Professional Conduct 2.2*** “A physical therapist has an obligation to provide accurate and truthful information. A physical therapist shall not make statements that he/she knows or should know are false, deceptive, fraudulent, or misleading.”
- **A.R.S. §32-2044(14)** “Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession.”
- **A.R.S. §32-2044(20)**. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that comply with board rules and that contain at a

minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.

- **R4-24-304.(A)** Adequate Patient Records; 3. The patient record contains sufficient information to: C. Justify the therapeutic intervention,

Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

The Board began discussion of a possible order. Dr. Cornwall suggested that some continuing education in the areas of diagnosis and documentation may be appropriate. Ms. Kalis moved that the Board issue an Order to Mr. Guy to include the following:

Mr. Guy is placed on probation for a period of six months in which time he must complete a minimum of 12 hours of continuing education in spinal diagnosis including cervical diagnosis and intervention related to general muscular skeletal disorders; a minimum of 6-8 hours of continuing education in documentation of initial evaluations and daily treatment interventions. All continuing education must be preapproved by Board staff. Mr. Robbins seconded the motion. The motion carried by unanimous roll call vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

There is a transcript available through Driver and Nix Court Reporting for this agenda item.

5. Informal Hearing and Possible Action on Complaint #08-26; Scheduled for 10:00 a.m. Matthew Neiberg, P.T.

Ms. Kalis called the Board attention to the Informal Hearing of complaint #08-26; Matthew Neiberg, P.T. Mr. Neiberg was present with his attorney Dominique Barrett. Ms. Kalis provided a summary of the proceeding process, the Boards possible actions, and Mr. Neiberg’s rights. The Board members and staff introduced themselves. Mr. Neiberg and his attorney introduced themselves. Mr. Neiberg was sworn in by Court Reporter Nicola Bauman-Delgado.

Mr. Brown provided the Board with the following summary.

The Board received this complaint December 22, 2008 with the allegations that Respondent told the patient (J.P.) that the size and weight of her breasts could contribute to her back problems. Respondent asked J.P. to remove her shirt during the evaluation. Respondent told J.P. he was having problems with his wife and had not been intimate his wife in three months. When J.P. was getting up from the prone position, J.P.’s underwear was showing. Respondent commented that they, J.P.’s underwear, were cute.

The Board reviewed this complaint for the first time on May 26, 2009 and referred the matter to Informal Hearing with the allegations that Respondent told the J.P. that the size and weight of her breasts could contribute to her back problems. Respondent asked J.P. to remove her shirt during the evaluation. Respondent told J.P. that he was having problems with his wife and had not been intimate his wife in three months. When J.P. was getting up from the prone position, J.P.'s underwear was showing. Respondent commented that they, J.P.'s underwear, were cute. Respondent may have failed to create and maintain patient records in accordance with law, to include failing to document his discussion with J.P. about her breast size causing her back pain, and failing to document the appropriateness of using assistive personnel. Respondent may have failed to properly supervise assistive personnel.

Ms. Barrett provided an opening statement making the following points.

1. Mr. Neiberg acknowledges he failed to document his discussion with patient J.P. regarding her breast size causing back problems.
2. Mr. Neiberg claims he never asked J.P. to remove her shirt, which was confirmed by another therapist that entered the treatment room.
3. Mr. Neiberg did have a signed consent for treatment in the file which is provided by the clinic where he was working.
4. Mr. Neiberg had worked with the physical therapy tech that was in the office and had knowledge of the techs abilities.

Ms. Kalis asked Mr. Neiberg to explain why he stated the patient was inappropriately dressed. Mr. Neiberg explained the patient was wearing tight clothes to include jeans. Mr. Sieveke asked Mr. Neiberg to explain the discussion relating to the patients breast size. Mr. Neiberg explained he did an examination and started the patient on some exercises related to muscular strain and he noticed the patient's breast size and he made the correlation of the breast size and her back pain, which is when he mentioned it to the patient. Mr. Neiberg stated that she had a history of back pain for one year and it had increased a month prior to treatment.

Dr. Cornwall asked if the primary complaint was muscular and Mr. Neiberg stated it was. Ms. Akers questioned Mr. Neiberg about his comment on the patient's underwear. Mr. Neiberg stated on the patient's second visit she was again not properly dressed as she was wearing tight clothes and low cut jeans. When the patient was moving from the prone position to sitting her underwear was showing and he did say they were cute, but he did not say it in a sexual manner and did not intend for the patient to hear the comment.

Ms. Kalis questioned Mr. Neiberg about the comment he made regarding J.P.'s husband returning home from a military deployment. Mr. Neiberg stated J.P. made a comment that she could not wait to see him, her husband, but the comment was said in a flirtatious way with a wink and a smile. Mr. Neiberg said he tried to change the subject and move the conversation forward by indicating we all go through dry spells. Ms. Kalis asked Mr. Neiberg about his interpretation of the patient's comment that she liked the treatment hard as long as it helped. Mr. Neiberg said that this was said again with a wink and a smile, but he did not respond.

Ms. Kalis asked if the patient is normally offered a gown for treatment and Mr. Neiberg stated it was standard. Mr. Neiberg stated J.P. had requested to see Mr. Neiberg after the second visit, but then called to cancel the next day. Mr. Neiberg stated he worked at the facility for two weeks.

Mr. Sieveke questioned Mr. Neiberg regarding his billing for two units of manual therapy on 12/10/2008 when he documented 20 minutes of care. Mr. Neiberg stated the 20-minute treatment should have only been one unit, but he could not recall how billing was entered at the facility.

Mr. Neiberg provided a closing statement indicating that he is sorry for any miscommunication.

The Board entered deliberations regarding this case. Ms. Kalis noted the patient file contained an informed consent document, which was not of his design and not under his control. Dr. Cornwall and Ms. Akers noted that they felt much of the allegations were based on miscommunication and misunderstandings between Mr. Neiberg and J.P.

The Board discussed the possible improper billing on 12/10/2008 and the application of A.A.C. R4-24-303(5). Mr. Robbins questioned Mr. Neiberg’s ability to actually review the billing when he worked there a short period and left after J.P.’s second visit.

Ms. Kalis moved that the Board adopt findings of fact that Mr. Neiberg documented that he provided 20 minutes of manual therapy on 12/10/2008, but billed for two units of services, Mr. Neiberg documented 20 minutes of therapeutic exercises and billed two units of services; adopt conclusions of law A.R.S. §32-2044(1) and A.A.C. R4-24-303, and issue a decree of censure. Mr. Sieveke seconded the motion. The Board entered discussion regarding the billing of patient J.P. and the appropriateness of the billing. Ms. Kalis called the vote by roll call. The motion failed with five Nay votes to one Aye vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X					
Nay		X	X	X	X	X
Recused						
Abstained						
Absent						

Ms. Akers moved the Board dismiss the complaint against Mr. Neiberg and issue an advisory letter to be aware of his working conditions, be aware of use of words so they cannot be misconstrued sexually, be aware of billing standards as related accurate time in billing. Mr. Robbins seconded the motion. The motion carried five Aye votes to one Nay vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye		X	X	X	X	X
Nay	X					
Recused						
Abstained						
Absent						

6. Review, Discussion and Action on Complaint and Proposed Consent Agreement #09-08
Paulette Olson, P.T.

Ms. Kalis opened the matter for Board review. Ms. Olson was not present, but her attorney, Gordon S. Bueler came forward to address the Board on Ms. Olson’s behalf. Mr. Brown provided a summary for the Board. The case against Ms. Olson was voted to Informal Hearing on June 23, 2009 regarding allegation that Ms. Olson failed to respond to an audit of her continuing competence activities within 30 days as required by law and that Ms. Olson failed to change her home and/or business address within thirty days as required by law. Ms. Olson was offered a consent agreement following the June 23, 2009 Board meeting and Mr. Bueler has requested the consent agreement be modified.

Mr. Bueler addressed the Board and stated that Ms. Olson admits she did not respond to the notice of audit when the notice was received at her address of record, which is her parent’s residence since she is a traveling physical therapist. Once the second notice was received, Ms. Olson sent in her complete continuing competence documentation, which the Board found to be in compliance. Mr. Bueler requested the findings that Ms. Olson failed to change her address removed from the consent agreement along with the conclusion of law regarding a change of address. In addition. Mr. Bueler

proposed a \$250.00 fine rather than the \$500 fine, probation, and jurisprudence examination currently offered in the consent agreement.

Ms. Akers asked Board staff what the normal fine is in such a consent agreement and Mr. Brown stated it is normally \$500. Dr. Cornwall stated he was ok with the \$250.00. Ms. Kalis moved that the Board delete Finding of Fact 12, Conclusion of Law 16, and the jurisprudence examination and probation from the consent agreement offered to Ms. Olson and offer and order of a \$250.00 civil penalty to be paid within 30 days of the effective date of the order. The consent agreement must be signed within 20 days of notice or the matter will be forwarded to Informal hearing. Ms. Ohlendorf seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

The Board recessed at 1:32 p.m.

The Board returned to Regular Session at 1:40 p.m.

8. Initial Review, Discussion and Action on Complaint #09-18
Dawn Beach, P.T.A.

Ms. Kalis called the Board's attention to the agenda item. Ms. Donahue provided a summary of the case to the Board. Dawn Beach P.T.A. provided physical therapy care to the complainant's husband, G. H., from January 3, 2008 until June 30th 2008 to assist him in regaining strength following back surgery. The Complainant claims it was evident that her husband was mentally deficient at the time the services were rendered and has, since the alleged incident, been medically declared incompetent and is currently living in an assistive living center. During the course of treatment G.H. wrote and provided to Ms. Beach three (3) personal checks totaling \$81,000.00. Ms. Beach accepted and cashed the above mentioned checks each within six (6) days of receipt in 2008. The complainant states she was unaware of the checks being written or redeemed until her accountant brought it to her attention in April 2009. The complainant requests that the entire sum of \$81,000 be returned and that Ms. Beach's Physical Therapist Assistant certificate be revoked. The investigator's analysis includes: Ms. Beach invoiced G.H. for a total of 86 visits at a rate of \$70.00 per visit for a total of \$6020.00. Ms. Beach invoiced G.H. \$660.00 on 6/30/08 for "drove car to KS". Invoices for G.H. total \$6680.00. The complainant provide copies of the cashed checks to Dawn Beach: February 19, 2008 Check # 1963 amount: \$6,000.00; March 18, 2008 Check # 1983 amount: \$25,000.00; April 22, 2008 Check # 2004 amount: \$50,000.00.

In review of www.Beachfitness1.com, under the tab "About me" it is written that "Dawn graduated at the top of her class in physical therapy school and is a Licensed Physical Therapist Assistant." In review of the Arizona Corporation Commission database, Beach Fitness LLC is an Arizona LLC indicating that her legal business entity is registered in Arizona. On June 4, 2009, Executive Director Charles Brown received a phone call from the complainant stating that Dawn Beach gave a portion of the money back. Complete repayment was not provided due to expenses and bad investments. Dawn was provided the money as a loan. The complainant requested the complaint be dropped.

Ms. Beach provided a statement to the Board. Ms. Beach indicated she was working as a personal trainer when G.H. was her client. G.H. offered her significant amounts of money for her training services, but she

refused the money initially. G.H. became very irritated when she refused the money and insisted she accept the money. Ms. Beach accepted the money and invested the money in stocks that were suggested by G.H.

Ms. Beach stated she met G.H. at a skilled nursing facility she was working at as a personal trainer and a physical therapist assistant. Dr. Cornwall asked Ms. Beach if she solicited loans from G.H. and she stated she did not. Ms. Kalis moved that the matter be voted to an Informal hearing. Ms. Sieveke seconded the motion to explore the issue. The Board discussed whether they had jurisdiction over Ms. Beach when she was reportedly working as a personal trainer.

The Board discussed whether Ms. Beach’s advertising on her website indicated falsely that she graduated from a physical therapy school when she graduated from a physical therapy assistant program and whether Ms. Beach indicated she was licensed as a Physical Therapist Assistant (P.T.A.) in Arizona. The Board noted Ms. Beach is licensed in California. The Board noted her website does not indicate where she is licensed as a PTA.

The Board discussed possibly investigating the matter further to establish what position Ms. Beach was holding when she first encountered G.H. at the skilled nursing facility. Ms. Kalis called the motion to a vote. The motion failed four Nays to two Ayes.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X			X		
Nay		X	X		X	X
Recused						
Abstained						
Absent						

The Board discussed that there is not currently a code of ethics referenced in law related to P.T.A.’s, but that the American Physical Therapy Association has adopted new ethics codes for Physical Therapists and P.T.A.’s.

Dr. Cornwall moved that the Board dismiss the complaint against Ms. Beach and issue an Advisory Letter regarding misleading advertising on her website which indicates that she graduated from a physical therapy school and is licensed as a P.T.A., and improperly accepting gifts or money from clients not earned through services provided. In addition, the Board staff is to report the improper acceptance of money to the Adult Protective Services and Attorney General’s Office and other appropriate agencies. Mr. Sieveke seconded the motion. Ms. Kalis expressed outrage at how Ms. Beach had taken advantage of a vulnerable adult. The motion carried with five Aye votes and one Nay vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye		X	X	X	X	X
Nay	X					
Recused						
Abstained						
Absent						

CONSENT AGENDA; REVIEW, CONSIDERATION and ACTION

- 10. Applications For Licensure & Certification
The Board may vote to go into Executive Session pursuant to A.R.S. §38-431.03(A)(2) for purposes of discussing confidential information or §38-431.03(A)(3) to obtain legal advice

10(A). Substantive Review, Consideration and Action on Applications for Physical Therapist Licensure

Baurichter, Stephen	Broadbent, Mary	Brooks, Diane
Cartwright, Leigh	Conklin, Laura	Davenport, James

Davies, Amanda		Dusell, Annalise
Erickson, Kendall	Gauerke, Rebecca	Gilbert, Molly
Gilmore, Tennell	Horstman, Eric	Kimoto, Kristen
Kowatch, Deborah	Lang, Vanessa	Levene, John
Mottram, Robert	Poloni, Joseph	Reeves, Amanda
Rini-Davis, Angela	Thorne, Jeffrey	

Ms. Kalis asked if any Board member would like anyone listed above removed from the consent agenda. Dr. Cornwall asked to have David Doublestein removed. Dr. Cornwall also disclosed that some persons listed were his students, but he did not feel he could not judge the matter fairly and did not recuse himself.

Ms. Kalis moved to approve the above persons for licensure. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Doublestein, David

Dr. Cornwall asked why Mr. Doublestein had no work listed in his history since 2005. Ms. Brierley reported that he has owned his own business since 2005, which is why he did not list it in his work history. Dr. Cornwall moved to issue Mr. Doublestein a license as a physical therapist. Ms. Kalis seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

10(B). Substantive Review, Consideration and Action on Applications for Physical Therapist Assistant Certification

Delagrave, April	Him, Chanthoeun	Valdes, Robert
Vasquez, Gerardo		

Ms. Kalis asked if any Board member would like someone removed from the above list on the consent agenda. No member made a request. Ms. Kalis moved that the Board approve certification as physical therapist assistants the above persons on the Board’s agenda. Dr. Cornwall seconded the motion. The motion carried by unanimous vote.

Vote	Ms. Kalis	Dr. Cornwall	Mr. Robbins	Mr. Sieveke	Ms. Akers	Ms. Ohlendorf
Aye	X	X	X	X	X	X
Nay						
Recused						
Abstained						
Absent						

Consent Agenda Ends

APPLICATIONS and CERTIFICATIONS

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

1) Supervised Clinical Practice Period Proposal Fnu, Charu

Ms. Kalis opened this matter for discussion. Ms. Charu came forward to address the Board. The Board asked Ms. Charu how she decided upon the proposed facility and supervisor for her supervised clinical practice period. Ms. Charu indicated the facility was one of the few willing to supervise her. Dr. Cornwall moved to approve Ms. Charu's proposed supervised clinical practice period. Ms. Kalis seconded the motion. The motion carried by unanimous vote.

BOARD BUSINESS AND REPORTS

The Board may vote to go into Executive Session pursuant to ARS §38-431.03(A)(2) for purposes of discussing confidential information or §38-431.03(A)(3) to obtain legal advice

12. Executive Director's Report – Discussion and Possible Action

- a. Financial Report – Nothing additional reported.
- b. Board Staff Activities - Mr. Brown requested the Board allow staff to enter into an Interagency Service Agreement (ISA) with the Board of Occupational Therapy and the Board of Athletic Training to use a Board meeting room that will be built in the building where the Board office is located. Mr. Brown reported the cost would be \$1,500 per year. The Board provided consensus approval to enter into an ISA as requested if the staff finds the completed Board room acceptable. In addition, staff is to still schedule the use of the B-1 room at 1400 W. Washington for the year 2010.
- c. News Bulletin - the Board recognized Ms. Kalis receiving a Service Award from the Federation of State Boards of Physical therapy and provided consensus that the Bulletin presented by staff be distributed.
- d. Rule Making - The Board designated Ms. Kalis and Ms. Ohlendorf to serve as liaisons to a Supervision Advisory Group being formed by staff. In addition, Dr. Cornwall was designated to serve as liaison to the Continuing Competence Advisory Group.
- e. Volunteer Forms - No additional information.
- f. Executive Director's Evaluation - Ms. Kalis explained that Mr. Brown has been with the Board for a little less than a year; however, now is the normal time for the Executive Director's evaluation. The Board agreed to complete the evaluation forms and send them to Ms. Kalis who will compile the individual ratings and present them to Mr. Brown to place on the September agenda.
- g. Legislation - Mr. Brown reported that Stuart Goodman is working to secure a sponsor for the Board's omnibus legislation it plans to run next legislative session. In addition, Mr. Brown reported that he expects a response to the proposed omnibus language from the AzPTA shortly.

13. Review, Discussion, and Action on A.R.S. §32-2024; Application Process for Taking the Arizona Jurisprudence Examination

Ms. Kalis called the Board's attention to the above agenda item. Mr. Brown summarized for the Board that under A.R.S. §32-2024 it appeared that the Board should limit any applicant's ability to take the AZLAW exam and NPTE exam until Board staff receives all other components of an application. In addition, Mr. Brown stated that interpretation of A.R.S. §32-2024 indicates that a person answering yes to a good moral character question, must wait for approval from the Board to take the AZLAW exam and the NPTE examination. The

Board discussed the current Board policy and the proposed policy. The Board noted the current policy was not updated following the Board's adoption of a formal jurisprudence examination.

The Board determined through consensus that all applicants submitting an application after August 25, 2009, will not be allowed to take the AZLAW exam and the NPTE until after all other application documentation is received. In addition, all applicants answering yes to a good moral character question, must first receive approval from the Board to take the AZLAW exam and the NPTE.

14. Review, Discussion, and Action of Objection to Rule Based Upon Economic, Small Business or Consumer Impact; A.R.S. §41-1056.01

Ms. Kalis opened this matter for discussion. Mr. Brown provided the Board with an update to the objection filed by Mr. Halili. On June 1, 2009, Adi Halili, P.T. sent notice to Board staff that he is filing an objection to A.A.C. R4-24-203 under the Board's rule A.A.C. R4-24-502 and A.R.S. §32-41-1056.01.

In accordance with A.R.S. §32-41-1056.01, the Board published the objection in the State register. The 30 day comment period ended August 21, 2009. No comment was received. The Board will need to take two actions. The first is to respond to any comment, but none was received. Second, the Board needs to make a decision about the objection. The decision must be to take no action, initiate a rule making, amend the rule, or repeal a rule. If the Board decides to conduct rule making it must begin in 45 days from the date the Board's response and decision is published.

On June 23, 2009 the board reviewed its rules as objected to by Mr. Halili. The Board will need to make a decision based on the information provided by Mr. Halili. Mr. Brown noted that Mr. Halili's objection appeared limited to the rule making involving A.A.C. R4-24-203 and its change to require the TOEFL exam and credential evaluation to be dated within 18 months of the examination.

Dr. Cornwall noted that Mr. Halili's objection brought up some interesting points such as does the TOEFL keep someone from getting a license in Arizona. Dr. Cornwall noted that he did not feel the data provided by Mr. Halili demonstrated that the TOEFL prevents people from getting a license in Arizona. Dr. Cornwall also noted that while the objections brought by Mr. Halili have the possibility to be true, but that he feels the current data does not support Mr. Halili's claims.

Ms. Kalis noted that with other exams such as the NPTE, the Board does not lower scores to make it easier for applicants to enter the profession. Dr. Cornwall noted that Arizona TOEFL requirements are not out of line with some educational institutions and that entrance into an educational environment is less of a public safety issue than a score to gain licensure.

Dr. Cornwall noted that Mr. Halili did object to the Board's substantial equivalency of foreign education, but he noted that Mr. Halili's objection fails to take into account the long history the United States has in its requirement of a liberal studies/general education foundation and in cannot be substituted with professional education courses as suggested by Mr. Halili. The Board continued its discussion of the TOEFL exam requirements in score and timing. In addition, the Board discussed the substantial equivalency issues in Mr. Halili's objection.

Dr. Cornwall moved that the Board take no action and conclude it was correct in estimating that the economic and other impacts related to the 18-month requirement of a passing TOEFL exam and substantially equivalent credential evaluation. Ms. Kalis seconded the motion. The motion carried by unanimous vote.

CALL TO THE PUBLIC

Ms. Kalis offered a call to the public, but no member of the public came forward to address the Board.

ADJOURNMENT

The meeting adjourned at approximately 3:10 p.m.

Prepared by,

Charles D. Brown
Executive Director

Approved by,

Randy Robbins
Secretary