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MURIEL MORIN-MENDES
Licensing Coordinator

CHELSEA VENTURINO
Administrative Assistant

BOARD OF PHYSICAL THERAPY EXAMINERS

7570 Norman Rockwell Lane, Suite 230
Las Vegas, NV 89143

Board Meeting Minutes

June 8, 2017

June 8, 2017 - Roll Call: Roll call to determine the presence of a quorum. After determining the presence of a quorum, the meeting was called to order at 9:00 a.m. Thursday, June 8, 2017, by Chairperson Tina Baum.

Board Members in attendance: Tina Baum, PT, DPT, WCS, ATC, CLT, Chairperson; Sherise Smith, PT, MSPT, CBIS Vice Chairperson; Brian Fearnley, PT, MPT, Secretary/Treasurer; James McKivigan, PT, DC, MPA, MA, Board Member; Andrea Menicucci MS, CCC-SLP, Board Member.

Staff in attendance: Lisa Cooper, Executive Director; Muriel Morin-Mendes, Licensing Coordinator; Chelsea Venturino, Administrative Assistant; Sarah Bradley, Senior Deputy Attorney General; Hal Taylor, Board Counsel; Deborah Dieter, Inspector; Stanley Kamimoto, Inspector.

1. **Pledge of Allegiance**
2. **Public Comment – None**
3. **Formal Hearing for Travis Wakefield, License #1243– Case # 2016-45.** (At the Board’s discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tina Baum called item three, Formal Hearing for Travis Wakefield, License #1243, Case # 2016-45.

Board Counsel, Hal Taylor, presented his case to include all documentation that the Board had obtained. The original complaint alleged that on November 25, 2014. Respondent prepared an evaluation care plan for patient J.M. The plan was signed by the Respondent six days later on December 1, 2014. If the evidence supports the allegations, the Respondent will be in violation of NAC 640.610 (1) (b) A licensee shall: within 72 hours after providing treatment to a patient, indicate in the record of the patient the treatment that was provided;

Mr. Kamimoto was sworn in.

Board Counsel, Hal Taylor, questioned Mr. Kamimoto regarding his investigation of the alleged violations. Board Exhibit: Submitted into evidence without objection.

Respondent, Mr. Wakefield, No questions for the investigator.

Mr. Wakefield presented his case

Questions were raised regarding the treatment date of the allegations surrounding the Thanksgiving weekend when the case was opened versus the completion of the case documentation, and proof of service.

Closing statement:

Board Counsel, Hal Taylor, based on the evidence we have, I believe we have proven the case that the Respondent did not complete his the information required within 72 hours.

Respondent, Travis Wakefield, I can provide that scanned copy if that is what the Board would like.

Relevant Jurisdiction:

Allegation 1: Mr. Wakefield was licensed during the time of the violation.

Motion: Sherise Smith made a motion that the jurisdiction statement is true.

Second: Brian Fearnley

Motion Carries Unanimously

Factual Allegations: On November 25, 2014, Respondent prepared a Physical Therapy Evaluation & Care Plan ("Plan") for Patient J.M. The Plan was signed by Respondent six days later, on December 1, 2014.

The Board found Mr. Wakefield's testimony was true and valid.

Motion: Tina Baum made a motion that the allegations are false, that the Board believes that there are additional documents that comply with NAC 640.160 (1) (b)

Second: Sherise Smith

Motion Carries Unanimously

Motion: Sherise Smith made a motion to dismiss case # 2016-45 based on the evidence presented does not support the violation and therefore, dismiss this case.

Second: Brian Fearnley

Motion Carries Unanimously

4. Formal Hearing for Darren Marchant, License # 1450 – Case # 2016-17. (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tina Baum calls item four, Formal Hearing for Darren Marchant, License # 1450, Case # 2016-17

Board Counsel, Hal Taylor, Case # 2016-17 was continued from the February 23, 2017, Board Meeting. The Board requested additional information from Mr. Marchant regarding patient records. The Board's staff obtained the records from Mr. Marchant, and the records were submitted into evidence with no objection. Mr. Marchant presented his evidence to the Board. Stating that the flow sheet is the written documentation that complies with NAC 640.610(1)(b).

Board Counsel, Hal Taylor asked questions of Mr. Marchant regarding the submitted evidence. On several occasions, Mr. Marchant failed to sign the documentation within the required 72 hours. Mr. Marchant conceded the delay of notes. However, NAC 640.610 is vague as to the requirement expected by the Board. He also, wanted the record to be noted that the violation was two years previous and that it is difficult to recall what transpired during that timeframe.

The Board asked questions of Mr. Marchant with regards to the flow sheet presented to the Board. The signature of the physical therapist is not on the document, and the flow sheet is initialed by a physical therapy technician, Per Mr. Marchant's testimony from February 23, 2017, Board Meeting, Mr. Marchant stated that the flow sheet would meet the requirement. However, the flow sheet did not accurately match the treatment for that day.

Closing Statement:

Board Counsel, Hal Taylor, stated he feels the Board has met the burden of proof with regards to the alleged violation.

Respondent, Mr. Marchant, had no further comments.

Relevant Jurisdiction:

The Respondent was at all relevant times alleged in the attached Complaint a licensed Physical Therapist, and therefore subject of the jurisdiction of the Board pursuant to NRS Chapter 640 and NAC Chapter 640.

Motion: Sherise Smith made a motion that the jurisdiction statement is true.

Second: Brian Fearnley

Motion Carries Unanimously

Factual Allegations:

On or about October 28, 2017, Respondent signed off on medical records for treatment provided on October 22, 2014. The note was created more than 72 hours after treatment was provided.

Motion: Sherise Smith made a motion the factual allegations are true and correct as presented.

Second: Tina Baum

Motion passes with four votes in favor and one vote against.

Finding of Facts:

Pursuant to NAC 640.610(1)(b), a licensee is subject to discipline if the licensee fails to indicate in the patient record the treatment provided within 72 hours after providing treatment.

Motion: Sherise Smith made a motion in light of the fact the physical therapy technician is the only person who documented on the flow sheet on the day of treatment, and the record is incomplete, the state has proven a violation of NAC 640.610(1)(b).

Second: James McKivigan

Motion Carries Unanimously

Penalty:

Board Counsel, Hal Taylor, requested administrative cost of \$350.00 plus a fine of \$100.00

Respondent, Mr. Marchant, is requesting that the fine be reduced the administrative cost to \$150.00.

Motion: Sherise Smith made a motion to charge Mr. Marchant with \$250.00 in cost with no fine.

Second: Tina Baum

Motion Carries Unanimously

Motion: Brian Fearnley made a motion that the fee be paid within 60 days.

Second: James McKivigan

Motion Carries Unanimously

5. **Formal Hearing for Hyung Monk Lee, License # 3078 – Case # 2016-32.** (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tina Baum, Calls item five, Formal Hearing for Hyung Monk Lee, License # 3078, Case # 2016-32.

Board Counsel, Hal Taylor, presented signed Settlement Agreement, Mr. Lee, has paid the amounts set in the agreement.

Senior Deputy Attorney General, Sarah Bradley, review of the Settlement Agreement, Mr. Lee agreed to an Administrative Fine of \$200.00 and Cost of \$150.00 for a total of \$350.00. The violations are noted as NAC 640.560(1) Display of original license, NAC 640.560(2) Display of a copy of the license, and NRS 640.110(3) Location of display of license. On or about January 20, 2015, the Respondent was working at Manor Care, 2350 Wingfield Hill, Sparks, NV. Respondent had reportedly started work at the facility in December of 2014. No license was posted at the location.

Motion: James McKivigan made a motion to accept the signed Settlement Agreement for Hyung Monk Lee

Second: Tina Baum

Motion Carries Unanimously

6. **Formal Hearing for Daniel Robert Thour, License # 2777 – Case # 2016-46.** (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tina Baum, calls item six, Formal Hearing for Daniel Robert Thour, License #2777, Case #2016-46.

Questions of Executive Director Cooper

Board Counsel, Hal Taylor – Respondent Thour is not present, Case # 2016-46 this case was continued from the April Meeting due to notice issues. According to my notes, this license expired in 2015. That is correct? *Yes*

Board Counsel, Hal Taylor – Mailing records indicate that the notice was mailed to Daniel R. Thour, 37882 Los Cocos Drive W, Rancho Mirage, CA 92270. As far as we know is this the most current and most accurate address we have in our records? *To my knowledge, yes.*

Board Counsel, Hal Taylor – The allegation is: On or about January 19 2015, the respondent's primary professional address was Renown Home Health, 3935 S. McCarran, Reno, Nevada. Respondent's primary professional address in the Board files was Renown Medical Center, 1155 Mill St, Reno, Nevada. License posted was a copy, not the original. If allegations are found true, this will constitute a violation of NAC 640.560(1) Display of current License, and NAC 640.061(2) Primary professional address not updated.

NRS 622A.350 The Board can proceed to hear the matter if it finds that the absent party was given sufficient legal notice, which is defined in your NAC 640.130.

Questions for Executive Director Cooper:

Senior Deputy Attorney General, Sarah Bradley, Ms. Cooper are you the one that sent the notice? *Yes, I am.*

Board Counsel, Hal Taylor – In regards to the Complaint and notice of hearing, were those sent out 1st class and certified mail? *Yes, they were.*

Board Counsel, Hal Taylor – Did either 1st class mail or the certified come back returned mail? *Yes, they both came back unable to forward.*

Board Counsel, Hal Taylor – The address that these documents were sent to is the last known address of the Respondent? *Correct.*

Motion: Andrea Menicucci made a motion that the Complaint and Notice of Hearing were properly served to the licensee.

Second: James McKivigan

Motion carries four votes in favor to one vote against

Motion: Tina Baum makes a motion to proceed with Formal Hearing in Case # 2016-46

Second: James McKivigan

Motion carries 4 votes in favor to one vote against

Questions for Deborah Dieter, Investigator

Investigator is sworn in.

Board Counsel, Hal Taylor, verified identity of Investigator Dieter, asked if Investigator Dieter was the investigator for this complaint? *Yes*

The primary professional address in the Board files was Renown Medical Center, 1155 Mill Street, Reno, NV correct? *Yes.*

That information came from the records that were current at that time? *Yes.*

At some point, you became aware that the Respondents primary professional address Renown Home Health, 3935 S. McCarran, Reno, NV? *They were providing therapy services.*

Is that the place they were providing most of their services for Renown? *Yes.*

That location is their real primary professional address, where they provide services? *Correct.*

With regards to this case, it is a license posting case, do you remember if the licenses were posted at both locations? *I cannot recall. I do know it was posted at the Home Health location; I do not recall if it was posted at Renown Medical Center.*

Per your investigative report, the copy of the license that was posted at the Home Health location, that was a copy and not an original? *Correct*

At this point, you cannot testify what license that was present at 1155 Mill Street, address? *I do not have that information; it would be in my investigative notes.*

There are more notes that you do not have? *Yes.*

Board Counsel, Hal Taylor, I think we need to table this matter until we can locate the notes pertaining to what license was posted at the primary professional address on record with the Board Office.

Vice-Chairperson, Sherise Smith, I have a question, I don't understand what difference it makes if it was a copy at their primary place of employment listed with the Board Office, you have that information, the information you are looking for is a moot point. You have already made the case of a copy of the license at the primary location of employment.

Board Counsel, Hal Taylor, that is one way of looking at it, I have no troubled going forward.

There was a copy of Respondents license posted at the Renown Home Health location? *Correct.*

On that basis, you concluded there was a violation of NAC 640.560(1)? *Correct.*

We do not have copies of the license that was posted, that is the evidence that I have at this time.

No further questions for Inspector Dieter.

Senior Deputy Attorney General, The Board made the determination that proper legal notice was given to the Respondent regarding the Formal Hearing. The Board decided to proceed in the licensee's absence. Pursuant to NRS 622A.350 (2) The Board can find that all of the allegations in the complaint are true. Given the fact the Respondent is not here, the Board also heard testimony from Ms. Dieter. If we look at the complaint, the first allegation is that the Respondent was licensed at the time the violation occurred. The other allegations are contained in the complaint, that on or about January 19, 2015, the Respondent's primary professional address was Renown Home Health, 3935 S. McCarran, Reno, Nevada. Respondent's primary professional address in the Board file was Renown Medical Center, 1155 Mill St. Reno, Nevada. License posted was a copy, not the original. Alleged violation are as follows: NAC 640.560(1) was violated because Respondent's original license was not posted in the primary professional address. The second violation is NAC 640.061(2) the Licensee shall notify the Board in writing of any change in his or hers residential or primary professional address within 30 days after the change. The Board needs to determine if those facts are true? If those facts are true, are the violations of law true? Given the fact the person is not here you can make that finding. At the same time, the burden of proof is on the State.

Relevant Jurisdiction:

The Respondent was at all relevant times alleged in the attached Complaint a licensed Physical Therapist, and therefore subject of the jurisdiction of the Board pursuant of NRS Chapter 640 and NAC Chapter 640.

Motion: Andrea Menicucci made a motion that the jurisdiction statement is true.

Second: Brian Fearnley

Motion Carries Unanimously

Finding of Facts:

On or about January 19, 2015, the Respondent's primary professional address was Renown Home Health, 3935 S. McCarran, Reno, Nevada, Respondent's primary professional address in the Board files was Renown Medical Center, 1155 Mill St., Reno, Nevada. License posted was a copy, not the original.

Motion: Andrea Menicucci made a motion that the alleged facts stated in the complaint are substantiated.

Second: Tina Baum

Motion Carries Unanimously

Motion: Andrea Menicucci made a motion the licensee was in violation of NAC 640.560(1) and NAC 640.061(2).

Second: Tina Baum

Motion Carries Unanimously

Sherise Smith wanted the record to reflect that she did vote nay for the proper legal notice.. However, she does believe the violations were proven.

Penalty:

Board Counsel, Hal Taylor, I believe this would be an appropriate case to issue a civil fine with an Administrative Complaint.

Motion: Andrea Menicucci made a motion to assess the license cost that the Board incurred not to exceed \$400.00, to be paid within 60 days and that staff gives the Respondent a list of the fees within 15 days.

Second: James McKivigan

Motion carries four votes in favor, one vote against

Board Member, Brian Fearnley, Wanted to note for the record that he did not feel it was fair that the licensee was assessed fines and he did not have the opportunity to represent himself. He does feel the proper legal notice was given according to NRS 622A.350.

Board Member, Andrea Menicuci, I wanted to note for the record the Board needs to accept some responsibility that the case was not dealt with in a timely fashion and that it would be punitive to assess a fine when the Board should be concerned with recuperating their costs to process the complaint.

- 7. Formal Hearing for Curtis Jensen, License # 2557 – Case # 2016-07.** (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tina Baum called item seven, Formal Hearing for Curtis Jensen, License # 2557 – Case # 2016-07.

Board Counsel, Hal Taylor, Case # 2016-07, On September 9, 2014, the respondent performed an initial evaluation on a patient, which the Respondent signed on September 16, 2014. On September 17, 2014, (corrected complaint) Respondent prepared a discharge summary on the same patient, which the Respondent signed on October 7, 2014. Neither of the records were signed within 72 hours after providing treatment which is an alleged violation of NAC 640.610(1)(b).

Mr. Jensen is not present. However, Mr. Wakefield is representing both Curtis Jensen and Keri Graves.

Questioning of Mr. Wakefield by Board Counsel, Sarah Bradley Senior Deputy Attorney General. Mr. Wakefield is not a licensed attorney and therefore cannot represent Mr. Jensen or Ms. Graves according to 622A.310 states: In a contested case a licensee can appear on their behalf or have an attorney represent them. Due to you not being a licensed attorney in the State of Nevada, we cannot allow you to represent the licensees.

No Action Taken

- 8. Formal Hearing for Keri Graves, License # A-0592 – Case # 2016-11.** (At the Board’s discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Motion: Sherise Smith made a motion to continue item eight to the next Board Meeting.

Second: Brian Fearnley

Motion Carries Unanimously

- 9. Formal Hearing for John Giles, License # 2343 – Case # 2016-16.** (At the Board’s discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tina Baum calls item nine; Formal Hearing for John Giles, License # 2434 – Case # 2016-16

Board Counsel, Hal Taylor, Case # 2016-16, For the record, the only allegation the state is proposing, that on July 14, 2014, Respondent performed a re-evaluation and did not sign the record until July 20, 2014. I removed the 21-day records violation as I do not feel we have supporting evidence.

Senior Deputy Attorney General, Sarah Bradley, for the record, Mr. Taylor is withdrawing the allegation on page 3 of NAC 640.592(1)(d) and amending the Facts stating, “On May 12, 2014, Respondent performed an initial examination, but did not sign the record until May 12, 2014,” and sticking, “The recertification occurred more than 21 days after the initial examination. The only alleged violation is as follows, “On July 14, 2014, the Respondent performed a recertification examination, but did not sign the record until July 20, 2014.”

The Complaint was amended per NRS 622A.320(4); The prosecutor may amend the charging document at the hearing if the amendment is not considered material and the substantial rights of the licensee would not be prejudiced by the amendment.

Per NRS 622A.350 – This is the statute that talks about when a licensee fails to appear for a hearing. Executive Director, Lisa Cooper, was sworn in for the record. Testimony was given to the service of Complaint and Notice of Hearing was mailed to John Giles, P.O. Box 443, Mesquite, NV, 89024 was the best and current address known to the Board for this licensee. The Complaint and Notice of Hearing were mailed both 1st class mail and certified through the United State Postal Service. The Board Office received the certified mail back with the note of unclaimed.

Motion: Andrea Menicucci made a motion that the Complaint and Notice of Hearing was properly served to the licensee.

Second: Tina Baum

Motion Carries Unanimously

Per NRS 622A.350 Effect of failure to appear (1) If a party fails to appear at a scheduled hearing and a continuance has not been scheduled or granted, any party who is present at the hearing may make an offer of proof that the absent party was given sufficient legal notice. Upon a determination by the regulatory body or hearing officer that the absent party was given sufficient legal notice, the regulatory body or hearing

panel or officer may proceed to consider and dispose of the case without the participation of the absent party.

Motion: Andrea Menicucci made a motion to proceed with the hearing in the licensee's absence.

Second: James McKivigan

Motion Carries Unanimously

Board Counsel, Hal Taylor, Case # 2016-16, admitted into evidence exhibit B. Exhibit B was admitted with no objection. Review of exhibit B.

Questions regarding the initial evaluation, daily note, and the recertification note. It was discovered that the treatment was performed July 14, 2017, and the note was completed on July 20, 2017.

Relevant Jurisdiction:

The Respondent was at all relevant times alleged in the attached complaint a licensed Physical Therapist, and therefore subject of the jurisdiction of the Board pursuant to NRS Chapter 640 and NAC Chapter 640.

Motion: Sherise Smith made a motion that the jurisdiction statement is true. July 14, 2014, the Respondent performed a recertification examination and did not sign the record until July 20, 2014. These facts support a violation of NAC 640.610(1)(b) a licensee is subject to discipline if the licensee fails to indicate in the patient record the treatment provided within 72 hours after providing treatment.

Second: Brian Fearnley

Motion Carries Unanimously

Board Counsel, Hal Taylor, recommends an administrative fine of \$100.00 and cost of \$250.00 for a total of \$350.00

Motion: Tina Baum made a motion to fine Mr. Giles with \$400.00 in administrative fees (Board Cost) and not administrative fine due and payable within 60 days.

Second: James McKivigan

Motion fails 2 votes in favor and 3 votes against.

Motion: Brian Fearnley made a motion to assess an administrative fee not to exceed \$750.00 to be paid to the Board within 60 days. Within 15 days the Executive Director will provide a list of the cost levied

Second: Andrea Menicucci

Motion Carries Unanimously

10. Formal Hearing for Jeffrey Smith, License # 1344 – Case # 2016-14. (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

Chairperson, Tian Baum calls item ten Formal Hearing for Jeffery Smith, License #1344 Case #2016-14.

Board Counsel, Hal Taylor, Case # 2016-14. The allegations are the Respondent performed a physical therapy evaluation on September 22, 2014. The patient was reevaluated on October 20, 2014; a physical therapist assistant was involved in the treatment under the supervision of Respondent. If the allegations are true, this would be a violation of NAC 640.592 (1)(d) A physical therapist who supervises a physical therapist assistant who provides treatment to a patient shall provide the required treatment and reevaluate the patient not less than every seventh day of treatment or within 21 days, whichever occurs first.

The Respondent is sworn under oath and a reminder for the Board's Investigator, Stanley Kamimoto

Board Counsel, Hal Taylor, Exhibit A, and B are entered into the record without objection.

Questioning of Investigator, Stanley Kamimoto regarding Exhibit A and B. The exhibits show that an evaluation was performed on September 22, 2014, and a reevaluation of October 20, 2014. In the investigation, Mr. Kamimoto did not see any indication that a reevaluation occurred between September 22, 2014, and October 20, 2014.

Respondent, Mr. Smith asked questions of Investigator Kamimoto. Did you obtain a copy of the physical therapist notes? Investigator Kamimoto did not; he copied the scheduled visit. What was date was of the last physical therapist assistant note before the patient was discharged? Investigator Kamimoto did not have a copy of the record as established. Do you have a copy of the missed visits reports? Investigator Kamimoto did not. Do you have a copy of employee records, do you know if I took any vacation days around that time? Investigator did not. No further questions of Investigator Kamimoto.

Board asked questions of Investigator Kamimoto.

Board Member, James McKivigan, Investigator Kamimoto, are these all the records you obtained? Yes. We do not have any possible records of extenuating circumstances between September 22, 2014, and October 20, 2014? No.

Vice-Chairperson Sherise Smith, Does it say somewhere how many PTA visits there were during this period? *Investigator Kamimoto replied that I have a chart in my file.*

Respondent Smith, objected to the admittance of any document that was not provided in discovery.

Chairperson, Tina Baum, sustained the objection.

Investigator Kamimoto redirected to the original question from Vice Chairperson Sherise Smith.

Vice Chair Sherise Smith, Based on the exhibits provided, without the PTA visit notes, we cannot determine the timeframe of the 7th visit or 21 days.

Board Member, Andrea Menicucci to Investigator Kamimoto, do you know for a fact that the Respondent was out of compliance without providing the appropriate number of visits within 21 days. *According to the records that I copied, yes.*

There are no further questions for Investigator Kamimoto.

Respondent Smith, opening statement, the company that he worked for at that time, has been purchased by another company. When I received notification regarding this case, I contacted Mr. Taylor to get some information which he provided. I contacted the company that I worked for and was not able to obtain the records. I cannot remember the events that took place back in 2014. My testimony today is this. I might be guilty, or I may not be guilty. I do not know; we do not have the evidence as to what happened.

Questions of Respondent Smith.

Vice-Chairperson, Sherise Smith, Respondent Smith you say there are a plethora of reasons why it might not be done within the 21 days. Can you give me examples of why this would happen? *She canceled her appointments all the time. I could have shown up to the house, and she could have been sick, and I would not perform any treatment, I would have documented the reason in the missed visit report. We had a compliance officer, and she would notify the therapist if there were a patient that was going out of compliance on the visits or the days.*

Board Member, Andrea Menicucci, What was your companies policy on the 21st day, if you could not see the patient, how did you deal with that? *I would do the evaluation, the physical therapist assistant would do five or six visits, and I would be scheduled for treatment on the sixth or seventh visit. I did the assessment and the reassessment after 21 days; I am not disputing the fact, I am disputing what the circumstances occurred between the visits.*

Chairperson, Tina Baum, Respondent Smith if I have an extenuating circumstance, I will put in the note of the reevaluation why the reevaluation was late. Is that reasonable to assume that you would do the same? You seem to be very astute in your practice. I would not have put in the reassessment note; I would have put it in the missed visit note, and it would have been documented in the file.

Vice-Chairperson Sherise Smith, Is there ever a case in a situation like this where there is a PTA involved, and sometimes you also see them or do you hand it off to the PTA, and you do not see them until the required reporting is needed? *Most of the time I keep them. The majority of the cases I keep, and this case the patient was a long term care patient.*

No further questions of Respondent Smith

Closing statement:

Board Counsel, Hal Taylor, I am very open with my file, and the only documents I received were Exhibit A and Exhibit B. Based on the records I received there were more than 21 days, between the initial evaluation and the reevaluation. Based on the evidence this was a case of a supervised physical therapist assistant, the Board may have other questions regarding the case. However, I believe we have met the burden of proof to find a violation of NAC 640.592 (1)(d).

Respondent Smith, Everything he said is true to the end of pre-conference of evidence. There are several factors that have not been addressed and not taken into consideration. We do not know what happened because we do not have all the evidence. Therefore, I do not believe they have proven the case.

Relevant Jurisdiction:

Allegation 1: Mr. Smith was a licensed physical therapist at the time of the alleged violation.

Motion: Sherise Smith made a motion that Allegation 1 is true.

Second: Brian Fearnley

Motion Carries Unanimously

Factual Allegation:

Respondent performed a physical therapy evaluation on Patient D.G. on September 22, 2014, Patient D.G. was re-evaluated on October 20, 2014. A physical therapist assistant was involved in treatment under the supervision of Respondent.

Deliberation:

Board Member, Andrea Menicucci, Based on the exhibits we have, we can certainly look at the dates and see they are not in compliance. There are other documents, and we do not know what those documents support or negate. I am going to find it very difficult to make a decision that we have proven our case, which he is in violation and understanding that home health documentation and compliance laws. I believe there are circumstances where you miss visits, as long as they are documented and we cannot prove that they are or they are not at this point.

Motion: Sherise Smith made a motion that the evidence provided did not prove a violation of NAC 640.592 (1)(d) and therefore, dismiss this case.

Second: James McKivigan

Motion Carries Unanimously

11. Application Review. (At the Board's discretion, the Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. NRS 241.030 and NRS 241.033) (for possible action)

A. Ryan Resnik

Chairperson, Tina Baum, calls item eleven Application Review, A. Ryan Resnik.

Discussion regarding applicant's application:

Mr. Resnik submitted an endorsement application to the Nevada Board, Mr. Resnik received a license in the State of Washington, there are restrictions placed on his current license in Washington. Mr. Resnik is before the Board to review his Application by endorsement. The restriction on Mr. Resnik's license is as follows: Random urine drug testing, weekly online support group, three recovery meetings per week, and a work site monitor.

WRAMP determines how long he should be involved in the program. Mr. Resnik volunteered to share his compliance to the Nevada Board. Mr. Resnik will be maintaining his Washington license. Once Mr. Resnik takes the position of Director of a clinic, the State of Washington will remove the Supervisor requirement, due to his two-year compliance he has completed.

Vice Chairperson, Sherise Smith, I would like to commend you on your organization and the way you presented this to us today.

Motion: Tina Baum made a motion to grant a probationary license for Mr. Resnik to mirror the conditions that have been established by the Washington Physical Therapy Board. He will send a request to the Washington Board to send information to our agency.

Second: James McKivigan

Motion Carries Unanimously

B. Marissa Coppinger

Chairperson, Tina Baum, calls item eleven, Application Review, B. Marissa Coppinger.

Discussion regarding applicant's application:

Ms. Coppinger's application is up for an application review due to an issue with disclosing criminal history that warranted a Board review. Ms. Coppinger stated that she did not disclose an arrest that was on her record due to the age of the arrest. The action was a lapse in judgment, and she has corrected her behavior and has not had any other involvement with the law.

Motion: Tina Baum made a motion to approve an unrestricted license for Marissa Coppinger

Second: Andrea Menicucci

Motion Carries Unanimously

12. Investigation Department (For possible action)

a. Status of outstanding cases

Chairperson, Tina Baum, Calls item twelve, Investigation Department, A. The status of outstanding cases. Currently, there are 31 cases that need 233B letters, 5 cases that we need to contact attorneys, 21 cases that we need additional information, 13 new cases for 2017, and 5 Complaints that were compiled this Board Meeting.

A discussion regarding outstanding cases, there are incomplete cases, there are documents missing, in the past, there were issues with training. Old cases vs. new cases and what is the timeline that they will be completed. Hal will get a complete list of cases to that he has in his office to the Board. The Board would like the 31 cases that need 233B letters sent to the Attorney General's Office.

No Action Taken

b. Dismissed Case

Discussion on previously dismissed cases, not enough evidence in the file is the primary reason for dismissal.

The cases highlighted in yellow, are cases that were dismissed before my arrival with the Board
Pink highlight, are cases that were dismissed in previous Board Meetings and I provide the alleged violation. The cases with no highlight, are the cases that we dismissed in the April Board Meeting and I provided the alleged violation.

No Action Taken

13. Ratification of licenses approved and issued by authority of the Board per NRS 640.090, NRS 640.146, NRS 640.240 and NRS 640.250. (For possible action)

Vice Chair, Sherise Smith commended Muriel and Chelsea for the quick turnaround time of the licenses.

Motion: James McKivigan made a motion to approve the ratification of the licenses approved and issued by the authority of the Board per NRS 640.090, NRS 640.146, NRS 640.240 and NRS 640.250.

Second: Sherise Smith

Motion Carries Unanimously

14. Discuss, amend and approve Board meeting minutes for April 1, 2017, and April 2, 2017. (For possible action)

Motion: James McKivigan made a motion to approve the Board Meeting minutes from April 1, 2017, and April 2, 2017, with the edits as necessary.

Second: Tina Baum

Motion Carries Unanimously

15. Discussion, review, and possible action regarding pending legislation (For possible action)

a. SB 437

i. NRS 640.140 repealed

ii. NRS 640.120 issue with temporary exemptions

b. Legislation reviewed by the Executive Director

Chairperson, Tina Baum calls the item fifteen a. Discussion, review, and possible action regarding pending legislation.

Executive Director, Lisa Cooper, SB 437 passed out of the Legislature and had moved to the Governor's Office for his signature. SB 437 will go into effect October 1, 2017. We will wait to print new books due to the pending changes with the NRS and NAC. Once the Legislative Counsel Bureau has codified the language, the new law books can be printed with the correct information.

Chairperson, Tina Baum calls the item fifteen a. ii. **NRS 640.140 repealed.**

Executive Director, Lisa Cooper, NRS 640.140 was repealed in SB 437.

Vice Chair, Sherise Smith, with the implementation of Course Work Tool 6, can we utilize NRS 640.145 (e)?

Senior Deputy, Sarah Bradley, We may be able to add something to the regulations to help with the loss of this NRS. The Legislative Commission is going to look harsher at reciprocity. They want to allow more reciprocity than less. The way it is written, it is information submitted with the application, if the Board is going to require anything else, we will need to add it to regulation.

Executive Director, Lisa Cooper, Foreign educated applicants contacted the office and prompted this discussion, the office was asked if we allowed for retro course work tool and we do not.

Vice Chair, Sherise Smith, correct, we do not use the course work tool retro.

Executive Director, Lisa Cooper, at this point we can implement something in the NAC and try and get back the repealed language in 2019.

Chairperson, Tina Baum calls item fifteen ii. **NRS 640.120 issue with temporary exemption**

Executive Director, Lisa Cooper, in the past the Board has issued a temporary exemption for licensure for applicants that have passed their exam and are waiting for their final graduates from their schools. We will need to carry legislation to correct the language.

No Action Taken

Chairperson, Tina Baum calls the item fifteen b. **Legislation reviewed by the Executive Director**

Executive Director, Lisa Cooper, stated "I attached a list of the bills that I tracked during the Legislative Session. I went back through the hours that it took to work on SB 437 before SB 142 was combined with it. I spent a total of 21 days that included weekends, nights and regular business time. SB 437 was the Association Bill and not our Bill until they got combined. The Association employed Rocky Finseth, Neena Laxalt is the lobbyist that the Board employees. It is a conflict of interest for our lobbyist to advise or work for the interest of the Association. We could have better utilized my time if the Association had vetted SB 437 with the agencies were opposed to the language and worked out a solution before going forward with

the bill in its controversial state. I am keeping a list all the NRS and NAC that need to be changed or updated.

I will discuss with the lobbyist the compact and what we will be working on in the 2019 Legislation Session.”

No Action Taken

16. Discussion and possible action regarding financial reports and budgetary approvals (For Discussion and possible action)

A. 2017 Budget vs. Actual Expenses

Chairperson, Tina Baum, Calls item sixteen A. 2017 Budget vs. Actual Expenses

Vice Chair, Sherise Smith, under Out of State Travel there is an addition error on the year to date balance.

Board Member, Andrea Menicucci, Under Host Fund, what falls into that category?

Executive Director, Lisa Cooper, Board meeting meals, retreat meal, Board Member plaque, items like that. The total renewal income will balance out for the expenses for the following year.

Motion: James McKivigan made a motion to approve the year to date budget.

Second: Tina Baum

Motion Carries Unanimously

B. 2018 Proposed Budget Narrative

Chairperson, Tina Baum calls item sixteen B. 2018 Proposed Budget Narrative

Vice Chair, Sherise Smith, asked questions regarding line item 5015 income for Continuing Education Fee. Since we are moving forward with ProCert, should we reduce the amount of income?

Executive Director, Lisa Cooper, this is a hard item to predict the first year. I believe once we have established the rule going forward we will need to decrease the income amount. This year, I do not believe it will be an issue.

Vice Chair, Sherise Smith, asked questions regarding line item 5011 and 5012. We need to reduce the amount in that line item to the amount of last year.

Board Member, Andera Menicucci, based on this 2018 budget, we have a deficit of \$19,941.03. Looking at the comparison of 2017 and proposed 2018.

Board Member, Andrea Menicucci, what is the methodology for the budget?

Executive Director, Lisa Cooper, I review historical reports, review the needs of the office and make a determination of the projection.

Discussion on each line item to reduce the spending in the budget.

Motion: Sherise Smith made a motion to change the line items as follows:

There was a \$5,000 error in the total gross expenses: it should be \$403,091.03 and not \$398,091.03.

5011 Active License List to \$500.00

5012 lost license to \$500.00

6003 Salary \$144,000.00

6200 Retirement Benefit 18,000.00

6601 Transportation/Airfaire to \$9,000

6603 Lodging to \$4,000

6601 Medical Insurance should be deleted as a line item

9001 Computer Repair/Service \$2,000.00

9002 Software 20,000.00

Executive Director Cooper was instructed to redo the report with the reflected changes and send a copy of the updated budget with changes to Board members for review.

Second: James McKivigan

Motion Carries Unanimously

C. 2018 Proposed Budget for discussion, review, and approval of expenses including Out-of-

State Travel.

D. Update of InLumon – New Software Database

Chairperson, Tina Baum, calls item sixteen D, Update of InLumon – New Software Database

Executive Director, Lisa Cooper, we are experiencing issues with the online renewal system and back office renewals at this time.

No Action Taken

17. Discussion and possible action regarding original PT License Parchment. (For possible action)

- a. Discussion of original signature of Board Members

Chairperson, Tina Baum, calls item seventeen a. Discussion of original signature of Board Members.

Staff handed out a mockup of the parchment license for Board approval.

Motion: James McKivigan made a motion to approve the parchment with edits.

Second: Sherise Smith

Motion Carries Unanimously

18. Update regarding FSBPT. (for discussion only)

- a. Foreign Educated Standards Committee
- b. Ethics and Legislation Committee
- c. Monthly News Briefs
 - i. 2017, Volume 19 Number 1, 2, 3, 4, and 5.

No Action Taken

19. Consideration of recommendations of the Advisory Committee on Continuing Education for continuing education courses reviewed at the Advisory Committee on Continuing Education Meeting. (For possible action)

- a. May 23, 2017

Chairperson, Tina Baum, calls item number nineteen a. Consideration of recommendations of the ACCE Committee.

Motion: Sherise Smith made a motion to approve the courses as outlined in the May 23, 2017, ACCE Committee Meeting.

Second: James McKivigan

Motion Carries Unanimously

20. Discussion, and possible action regarding the request of an Attorney General's Opinion regarding the scope of practice of a physical therapist. (For possible action)

No Action Taken

21. Review, Discussion, and Possible Action regarding Nevada Administrative Code 640. (For Possible Action)

- a. The Board will review comments and feedback from Workshops conducted on April 22, 2017 and May 20, 2017, of NAC Chapter 640 and determine if changes or additions are needed
- b. The Board will review NAC Chapter 640 and determine if changes or additions are needed

No Action Taken

22. Review, discussion, action regarding the Parking Lot of outstanding Board Agenda Items. (For possible action)

No Action Taken

23. Update on James Dunning Case # A-14-701094-C (For possible action)

- a. Mailing of the Retraction Statement
- b. Website Retraction Statement
- c. Emailing Retraction Statement

Chairperson, Tina Baum, calls item twenty-three, Update on James Dunning Case #A-14-701094-C **Senior Deputy Attorney General, Sarah Bradley**, the documents have not been filed through the courts. Therefore the case is not dismissed. The Board has completed all the required mailings and posting. The mailing of the retraction statement was sent twice as the original postcard was incorrect. The website retraction statement was properly posted on the website and has remained on the website for a while. The retraction statement was also emailed to all licensees.

24. Report from Board Chair (For possible action)

- a. Future Agenda Items
- b. Board Meeting Schedule

25. Report from Legal Counsel (Non-meeting, attorney-client privilege)

26. Public Comment - None