



1 therapy treatment were readily available; 3) failing to document patient evaluations; 4) failing to  
2 complete all physical therapy visits per a written plan of care; and 5) failing to prepare a final  
3 discharge summary. Licensee failed to request a hearing, therefore on October 18, 2007 the Board  
4 issued Final Order by Default (Assessment of Civil Penalty). The Final Order found that Licensee  
5 had: 1) failed to maintain patient confidentiality in violation of ORS 688.140(2)(t); (failure to  
6 maintain patient confidentiality) 2) failed to ensure patient records were readily available in  
7 violation of ORS 688.140(2)(a) (violation of Board rule), specifically OAR 848-040-  
8 0110(6)(records must be readily accessible); and 3) failed to complete all required documentation  
9 in violation of ORS 688.140(2)(a)(violation of Board rule), specifically OAR 848-040-0130  
10 (documentation of initial evaluation required) and OAR 848-040-0170 (documentation of  
11 discharge required). The Board assessed a civil penalty of \$2,000 with \$1,000 stayed, and the civil  
12 penalty was due within 30 days of execution of the Final Order. In addition, Licensee was  
13 required to complete a Board approved course on HIPAA regulations within 60 days of the  
14 execution of the Final Order.

15 On April 15, 2008, the Board issued a Notice of Proposed Disciplinary Action for  
16 Licensee's failure to comply with the Final Order, dishonesty with the Board and failure to  
17 cooperate with the Board. Licensee requested a hearing, and the issues were resolved through a  
18 Stipulated Agreement and Final Order dated December 31, 2008 (Stipulation 1). Through that  
19 document, Licensee stipulated that he committed the following violations: 1) failing to comply  
20 with the final order by failing to timely pay the civil penalty and failing to timely complete a  
21 HIPAA course, which constituted violations of ORS 688.140(2)(a) (violation of Board rule); and  
22 2) failing to cooperate with the Board by providing false information when he appeared before the  
23 Board at its April 4, 2008 meeting, which constitute a violation of ORS 688.140(2)(m) (failure to  
24 comply with ethical standards as adopted through administrative rules), specifically OAR 848-045-  
25 0020(2)(u)(A) and (B) (failure to cooperate with the Board). The Board and Licensee agreed to  
26 the imposition of the following sanction: 1) a 30 day license suspension; 2) the assessment of a

1 \$1,000 civil penalty; 3) a two year license probation; and 4) and during the probationary period,  
2 Licensee would provide a copy of Stipulation 1 and all public records to all employers and provide  
3 the Board with evidence that he satisfied this requirement.

4 On March 16, 2009, the Board issued Notice of Proposed Disciplinary Action (Suspension  
5 and Probation) when Licensee failed to cooperate with the Board by failing to pay the civil penalty  
6 and failing to communicate with the Board regarding making payments. Licensee's conduct  
7 constituted violations of ORS 688.140(2)(a)(violation of Board rule), specifically OAR 848-045-  
8 0020(2)(h)(failure to comply with an order of the Board).

9 On March 31, 2009, Licensee allowed his license to lapse. On March 25, 2011, Licensee  
10 applied to have his lapsed license reinstated. In lieu of issuing a Notice of Proposed Denial of  
11 Renewal Application, Licensee and the Board resolved the issues through a Stipulated Agreement  
12 and Final Order (Stipulation 2), which was executed on April 27, 2011. Through Stipulation 2,  
13 Licensee stipulated that he failed to timely pay the civil penalty, which constituted a violation of  
14 ORS 688.140(2)(a) (violation of Board order), specifically OAR 848-045-0020(2)(h) (failure to  
15 comply with an order of the Board). Licensee stipulated to the imposition of the following  
16 sanction: 1) payment of the previously assessed civil penalty prior to reinstatement of the lapsed  
17 license; 2) a probationary license for three years; and 3) during the probationary period, he would  
18 provide a copy of Stipulation 2 and all public records to his employer(s) and provide the Board  
19 with evidence that he satisfied this requirement.

## 20 ISSUES

- 21 1. Did Licensee fail to comply with an order of the Board?
- 22 2. Did Licensee commit an act of moral turpitude in the practice of physical therapy?

## 23 FINDINGS OF FACT

24 On October 30, 2011, Licensee obtained employment and began practicing as a physical  
25 therapist in Oregon. At that time, he failed to tell his employer that his license was on probation  
26 and failed to provide the employer with any of the public documents as required in Stipulation 2.

1 In addition, Licensee failed to advise the Board that he was employed, and he failed to provide any  
2 evidence that he provided a copy of all the public documents to his employer. Three months after  
3 he was hired, Licensee provided his employer with a copy of Stipulation 1 when it was requested  
4 for insurance credentialing; he failed to provide a copy of Stipulation 2 or any of the other public  
5 documents related to his past disciplinary history. Additionally, on the copy of Stipulation 1  
6 provided to the employer, he crossed out and dated the sentence describing the requirements of  
7 providing the employer with a copy of Stipulation 1 and other public documents and further  
8 requiring him to provide the Board with evidence of such.

### 9 DISCUSSION AND CONCLUSIONS OF LAW

10 The burden of presenting evidence to support a fact or position rests on the proponent of  
11 the fact or position.” ORS 183.450(2). Here, the Board has the burden of proving its allegations  
12 by a preponderance of the evidence. See *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule  
13 regarding allocation of burden of proof is that the burden is on the proponent of the fact or  
14 position); *Cook v. Employment Div.*, 47 Or App 437, rev. den. 290 Or 157 (1980) (in the absence  
15 of legislation adopting a different standard, the standard in administrative hearings is  
16 preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder  
17 is persuaded that the facts asserted are more likely true than false. *Riley Hill General*  
18 *Contractors v. Tandy Corp.*, 303 Or 390 (1987).

19 Here, Licensee signed Stipulations 1 and 2 whereby he agreed to certain conditions. One  
20 of those conditions required him to advise the Board if he was employed to practice as a physical  
21 therapist in Oregon. Licensee was hired and began such employment on October 30, 2011, yet he  
22 failed to advise the Board of that employment. Additionally, he agreed if re-employed to provide  
23 the new employer with copies of the two Stipulations and any other public documents related to his  
24 past discipline. He failed to satisfy that requirement when his employment commenced. This  
25 conduct constitutes multiple violations of ORS 688.140(2)(a) (violation of Board order),  
26 specifically OAR 848-045-0020(2)(h)(failure to comply with an order of the Board).

1 Three months after Licensee began his employment, when requested for insurance  
2 credentialing, he provided his employer with a copy of Stipulation 1; however, on the employer's  
3 copy, he crossed out and dated the sentence describing the requirements of providing the employer  
4 with a copy of the Stipulation and other public documents and further requiring him to provide the  
5 Board with evidence of such. Licensee's conduct constitutes a violation of ORS 688.140(2)(a)  
6 (violation of Board rule), specifically OAR 848-045-0020(2)(i) (moral turpitude, including but not  
7 limited to deceit and dishonesty).

8 **SANCTION**

9 The Board's sanction authority includes suspending or revoking a license, imposing  
10 "conditions, restrictions or limitations," and imposing "any other appropriate sanction." ORS  
11 688.140(1)(c), (g) and (i). Based on Licensee's past disciplinary history and the seriousness of the  
12 current violations, the Board hereby finds that the appropriate sanction is for Licensee's license to  
13 be revoked.

14 **ORDER**

15 IT IS HEREBY ORDERED that Licensee's license to practice as a physical therapist is  
16 revoked effective the date this Final Order By Default is executed.

17  
18 DATED this 16<sup>th</sup> day of AUGUST, 2012.

19 PHYSICAL THERAPIST LICENSING BOARD  
20 State of Oregon

21 **SIGNATURE ON FILE**

22 By: James D. Heider  
23 Executive Director

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**RIGHT TO JUDICIAL REVIEW**

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**NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days from the date of this Final Order on Default. If you do not file a petition for judicial review within the 60 days time period, you will lose your right to appeal.