

1 **FINDINGS OF FACT**

2 Licensee's continuing education (CE) compliance was audited as part of a random audit.
3 The Board mailed Licensee a standard form letter on August 1, 2012 requesting proof of
4 compliance by August 30, 2012. Licensee did not respond to the Board's request. A second letter
5 was mailed to the licensee on September 5, 2012 requesting a response by September 14, 2012.
6 Licensee did not respond to the Board's second request. A courtesy email was sent to the licensee
7 on September 24, 2012. Licensee responded via email by providing a new address and stated that
8 he was on an out of state assignment and did not have access to his CE certificates. On September
9 28, 2012, a third request letter was sent via email and certified mail to the new address provided by
10 the licensee. The letter requested a response by October 10, 2012. Licensee did not respond and
11 did not provide evidence of completion of the required CE.

12 Licensee advised the Board, via email, that he had a new address. Nevertheless, Licensee
13 failed to provide the effective date of the address change, even when he was specifically asked to
14 do so by Board staff.

15 **DISCUSSION AND CONCLUSIONS OF LAW**

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

25 Physical therapists are required to complete 24 hours of continuing education relating to
26 the delivery or provision of physical therapy services within each certification period.

1 ORS 688.160(6)(g); OAR 848-035-0020(1). The Board requested that Licensee provide
2 evidence that he completed the required CE for the two year period ending March 31, 2012.
3 Despite several requests for the information, Licensee failed to provide evidence that he
4 completed the required CE. Thus, unless and until such evidence is provided, the Board has
5 determined that Licensee failed to complete the required CE in violation of OAR 848-035-
6 0020(10). Additionally, Licensee's failure to respond to the Board's request for proof of CE
7 constitutes a violation of Board rule, in violation of ORS 688.140(2)(a) and is a basis for
8 discipline pursuant to OAR 848-045-0020(2)(u)(B) for failure to cooperate with the Board.

9 Licensees who change their home address, employer or place of business, contact
10 telephone number, electronic mail address or their mailing address, are required to notify the
11 Board of the change within 30 days. OAR 848-005-0030(7). Licensee advised the Board that he
12 changed his address, but he failed to provide the effective date of the address change when
13 requested to do so by the Board. Licensee's failure to report the effective date of the address
14 change constitutes a violation of Board rule, in violation of ORS 688.140(2)(a) and is a basis for
15 discipline pursuant to OAR 848-045-0020(2)(z) for failure to notify the Board of a change in
16 address.

17 SANCTION

18 The Board's sanction authority includes suspending or revoking a license, imposing a civil
19 penalty not to exceed \$5,000 and imposing "any other appropriate sanction." ORS 688.140(1)(c),
20 (d), and (i). Based on Licensee's blatant failure to respond to the Board's requests for proof of CE
21 and the failure to provide proof of completion of CE, the Board hereby finds that the appropriate
22 sanction is as follows:

- 23 1. Licensee is assessed a civil penalty in the amount of \$550;
- 24 2. Licensee's license to practice physical therapy in Oregon is suspended until
25 Licensee provides evidence of completion of the CE, which satisfies the Board, and
26 pays the civil penalty.

1 **ORDER**

2 IT IS HEREBY ORDERED that Licensee's license to practice as a physical therapist is
3 suspended effective the date this Final Order By Default is executed and remains suspended until
4 Licensee provides evidence, which satisfies the Board, of completion of 24 hours of CE and pays
5 the assessed civil penalty of \$550.

6
7 DATED this 17th day of January, 2013.

8 PHYSICAL THERAPIST LICENSING BOARD
9 State of Oregon

10 **SIGNATURE ON FILE**

11 By: _____
12 James D. Heider
13 Executive Director

14 **RIGHT TO JUDICIAL REVIEW**

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