

1 (4) Did Licensee fail to practice as a physical therapist assistant with the level of care,
2 skill and treatment which is reasonable under given circumstances and conditions, which
3 constitutes a violation of OAR 848-010-0050(8)?

4 EVIDENTIARY RULINGS

5 Board Exhibits A1 through A18 and Licensee's Exhibits R3 and R4 were admitted into
6 the record.

7 FINDINGS OF FACT

8 A physical therapist is responsible for developing treatment plans and goals in response
9 to physician's orders. A physical therapist will conduct an initial evaluation of the patient and
10 coordinate treatment plans with the referring physician. Physical therapists are primarily
11 responsible for therapy-related patient care. A PTA is expected to work in conjunction with, and
12 under the supervision of, a physical therapist. PTAs provide the care outlined in the physical
13 therapist's treatment plan. (Testimony of Jaszczak, Walty and Causton.)

14 On April 1, 2001, Licensee allowed his PTA license to lapse.¹

15 On April 10, 2001, the Eugene Police Department arrested Licensee for violating a valid
16 restraining order protecting Licensee's former wife, Melissa Streeter. Licensee was charged with
17 three counts of Contempt of Court. (Ex. A4.)

18 On November 6, 2001, Licensee submitted an application to renew his PTA license. On
19 the application, Licensee answered "no" to the following question: "Since your last license
20 renewal have you ever been arrested, charged with, convicted or sentenced for any type of law
21 violation, other than a traffic ticket, by any governmental licensing agency in any state,
22 possession of the United States or foreign country?" After reviewing this application, the Board
23 renewed Licensee's PTA license. (Ex. A3.)

24 In January 2002, Licensee was working for the Tillamook County General Hospital as a
25 PTA. He participated in an extensive orientation program at the hospital. (Ex. A7.)

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¹ ORS 688.100 requires that a PTA license be renewed annually during the first quarter of the year.

1 On January 22, 2002, Licensee pled guilty to one count of Contempt of Court. He was
2 sentenced to probation. (Ex. A4.)

3 On March 25, 2002, Licensee submitted an application for annual renewal of his PTA
4 license. Licensee again denied being arrested, convicted, charged or sentenced for any violation
5 of the law during the previous licensing period. After reviewing this application, the Board
6 renewed Licensee's PTA license for another year. (Ex. A5.)

7 In April 2002, G. L.,² an 82-year old man who had undergone coronary artery bypass
8 graft surgery, was released from the hospital. The treating physician ordered in-home physical
9 therapy for G. L., including "strengthening/therapeutic exs. [exercises], active ROM³ exercises,
10 passive ROM exercises, transfer training and gait training." (Ex. A13-2.) Both the physician
11 and the supervising physical therapist ordered sternal precautions⁴ for G. L. Specifically, Angie
12 Valenti, the assigned physical therapist, ordered that there be no movement of G. L.'s shoulder
13 above 90 degrees. (Ex. A13-8.)

14 Licensee provided in-home physical therapy to G. L. The therapy included rowing
15 exercises. (Ex. A13-28.) Rowing exercises were outside of the therapy plan developed by the
16 physical therapist in response to orders from G. L.'s physician. Licensee did not monitor G. L.'s
17 blood pressure during his therapy visits. (Testimony of Jaszczak and Causton.)

18 On April 10, 2002, G. L.'s daughter reported that G. L. experienced increased pain
19 following Licensee's treatment, and that she and G. L. believed that Licensee was too aggressive.
20 The daughter said that G. L. did not want any more physical therapy, and did not want Licensee
21 to visit them again. (Ex. A13-29 and testimony of Jaszczak.)

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23 ² In the interest of confidentiality, the patients are referred to by their initials, rather than by their proper names.

³ "ROM" means range of motion.

24 ⁴ Sternal precautions are common after coronary artery bypass graft surgery because of concern that sutures could
25 tear or open, thereby increasing the risk of infection and injury to the chest area. Infection in the sternal area is
26 particularly dangerous because of the proximity of the heart, and could lead to death. Sternal precautions restrict
any movement or activity that would facilitate the expansion of the chest cavity, or cause stretching or pulling along
the sternum, including pushing, pulling, lifting and rowing. Movement of the scapula (shoulder blade), which is
involved in rowing exercises, puts stress on the sternal incision and sternal union (site where the sternum is wired
together following bypass surgery). (Testimony of Jaszczak and Causton.)

1 Starting in June 2002, Janelle Jaszczak, lead physical therapist, and Sheila Walty,
2 Rehabilitation Department manager, spoke to Licensee about complaints made by his patients.
3 Other patients, in addition to G. L., complained of being very sore and having increased pain
4 following Licensee's treatments. Ms. Jaszczak and Ms. Walty also advised Licensee that some
5 staff physical therapists were concerned that Licensee was pushing his patients too hard and not
6 clearly following their care plans. (Ex. A7; testimony of Jaszczak and Walty.)

7 On August 6, 2002, Licensee met with Ms. Jaszczak about his treatment of home health
8 patients. Ms. Jaszczak cautioned Licensee to be mindful that the patients were not young
9 athletes and to be attentive to the patients' verbal complaints, concerns and body language.
10 Several physical therapists told Ms. Jaszczak that they were concerned for patients because
11 Licensee did not always follow the treatment plans as outlined. Ms. Jaszczak set up weekly
12 meetings with Licensee to address his patterns of behavior. (Ex. A7-25; testimony of Jaszczak
13 and Walty.)

14 On August 19, 2002, Licensee pled guilty to the Harassment. The charge was based on
15 illegal contact between Licensee and his former wife on June 24 and 25, 2002. (Ex. A6.)

16 In September 2002, Licensee was assigned to provide inpatient physical therapy to L. S.,
17 who had undergone hemiarthroplasty to her right shoulder.⁵ Her treating physician ordered
18 physical therapy to increase L.S.'s elbow, hand and wrist strength and range of motion. L. S.'s
19 shoulder was immobilized following her surgery. The physical therapist that made an initial
20 evaluation of L. S. noted that her shoulder was immobilized secondary to the surgery, and wrote
21 "sling – shoulder immobilized" on a Rehabilitation Services form under the category
22 "Precautions and Restrictions." (Ex. A12-6.)

23 On September 24, 2002, Licensee had L. S. perform passive range of motion exercises
24 with her right shoulder on "all planes." In the daily progress notes for L. S., Licensee wrote that
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⁵ Hemiarthroplasty is surgical replacement of a portion of a shoulder "ball and socket." This procedure involves inserting a prosthesis into the shoulder joint. Hemiarthroplasty is seen as a surgery of last resort and is not common.

1 she was “apprehensive about” passive range of motion exercises, and that her shoulder
2 movements were within normal limits without unusual or unexpected limits. (Ex. A12-7.)

3 Shortly after treating L. S., Licensee spoke with Ms. Jaszczak. He realized at that time
4 that he should not have moved L. S.’s shoulder. He asked Ms. Jaszczak if she could addend the
5 treatment plan to include the therapy that he had performed on L. S. Ms. Jaszczak advised
6 Licensee that the treatment plan would not be addended. Licensee told Ms. Jaszczak that if he
7 had read the treatment plan, he would not have moved L. S.’s shoulder. (Ex. A8-2; testimony of
8 Jaszczak.)

9 On October 3, 2002, Licensee was suspended without pay. On the Employment
10 Counseling Statement documenting the suspension, Ms. Walty wrote “Employee has failed to
11 make the necessary improvements after weekly supervision meetings have taken place to correct
12 the situation.” (Ex. A7-22.)

13 On October 9, 2002, Ms. Walty terminated Licensee’s employment at the Tillamook
14 County General Hospital. Ms. Walty listed the following reasons for the termination:

15 “1. Repeated patient complaints of pushing patients too hard and causing them
16 pain. 2. Failure to follow the [physical therapist’s] plan of care. 3. Disregard
17 for patients’ response to treatment and patient goals.” The hospital considered
18 Licensee’s treatment of G. L and L. S. in making the decision to terminate
19 Licensee. (Ex. A7-21; testimony of Walty.)

20 During the fall of 2002, the Board started its investigation of Licensee. During the
21 investigation, the Board discovered Licensee’s arrests and convictions. Sherri Paru and Frank
22 Mussell conducted the investigation. Ms. Paru is a clinical advisor for the Board. On
23 December 11 and 19, 2002, Mr. Mussell and Ms. Paru interviewed Licensee. During the
24 interview, Licensee explained that he had not disclosed his prior arrests and convictions because
25 he did not think that he had been treated fairly by the courts, and because he believed that the
26 arrest had occurred more than one year before he completed the application. Licensee also told
the investigators that his treatment of L. S. was done to correct the positioning of a sling, and to
teach L. S. how to properly “don and doff” the sling. Licensee denied performing any range of

1 motion exercises on L. S.'s shoulder during the therapy session in question. Licensee also
2 explained that he had G. L. perform rowing exercises with sternal precautions. Licensee denied
3 that these exercises posed any threat to G. L. or that they were contrary to his understanding of
4 sternal precautions. (Exs. A10 and A11; testimony of Paru.)

5 Jane Cedar is the program director for the PTA program at Mt. Hood Community
6 College. Ms. Cedar has an advanced master's degree in physical therapy and has worked for
7 many years in that field. In her role as the director of the PTA program, Ms. Cedar ensures that
8 her students understand the statutes and rules concerning the roles of PTAs and physical
9 therapists. She stresses that PTAs must follow the plan of care outlined by the therapists.
10 Ms. Cedar reviewed the medical records for G. L. and L. S., and in particular, Licensee's
11 treatment notes. Ms. Cedar was concerned that Licensee did not appear to realize that his
12 treatment was outside of the prescribed treatment plans for these patients. Ms. Cedar determined
13 that Licensee was making decisions and working contrary to the physicians' and physical
14 therapists' plans for G. L. and L. S. (Testimony of Cedar.)

15 Licensee admitted during hearing that he did not read L. S.'s treatment plan or chart
16 before he started therapy on her shoulder. He also admitted that he had not taken the time to
17 review charts before treating other patients, but that "this is the case that got me." Licensee
18 further admitted to lying about his criminal history on the applications because he did not think
19 that he would be allowed to work in Oregon if he told the truth. (Testimony of Licensee.)

20 CONCLUSIONS OF LAW

- 21 (1) Licensee engaged in acts of moral turpitude in violation of OAR 848-010-0050(1)(f).
22 (2) License failed to cooperate with the Board in violation of OAR 848-010-0050(1)(n).
23 (3) License failed to comply with the rules and regulations of the Board in violation of
24 OAR 848-010-0050(1)(o).

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1 (4) Licensee failed to practice physical therapy with the level of care, skill and treatment
2 which is reasonable under given circumstances and conditions, in violation of
3 OAR 848-010-0050(8).

4 OPINION

5 In the Notice, the Board proposed to revoke Licensee's PTA license based on Licensee's
6 "egregious conduct." During the hearing, the Board presented evidence on each of the five
7 issues raised in its Notice. Licensee offered explanations for some of the alleged violations and
8 argued that his conduct did not merit revocation of his license.

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

18 The Board is authorized to suspend or revoke the license of any physical therapist or PTA
19 under certain circumstances. ORS 688.140(1)(c).⁶ Subsection (2) of this statute provides, in
20 part, as follows:

21 Grounds exist for the imposition of sanctions as specified in subsection (1) of
22 this section when a person: * * * (d) In the judgment of the board and pursuant
23 to ethical and professional standards adopted by rule of the board, is guilty of
24 unethical or unprofessional conduct. * * * (j) Has obtained or attempted to
25 obtain a license or permit * * * by fraud or material misrepresentation.

26 ⁶ ORS 688.140(1) provides, in part, as follows:

(1) The Physical Therapist Licensing Board, after notice of and hearing afforded such person
as provided in ORS 688.145, may impose any or all of the following sanctions upon any of the
grounds specified in subsection (2) of this section: * * * (c) Suspend or revoke the license of
any physical therapist or physical therapist assistant * * *.

1 As provided by ORS 688.140(2)(d), the Board adopted rules defining unethical or
2 unprofessional conduct. OAR 848-010-0050. Those standards include: 1) engaging in any act
3 involving moral turpitude;⁷ 2) failure to cooperate with the Board or fails to make timely
4 responses to Board communication;⁸ 3) fails to comply with the rules and regulations of the
5 Board;⁹ and 4) fails to practice as a PTA with the level of care, skill and treatment that was
6 reasonable.¹⁰

7 The Board relied on the rules set out above when it proposed to revoke Licensee's
8 license. Additionally, the Board relied on OAR 848-010-0050(8), which provides that "[e]ach
9 physical therapist, physical therapist assistant and physical therapist aide shall practice physical
10 therapy with that level of care, skill, and treatment which is reasonable under the given
11 conditions and circumstances." Each of the bases for revoking Licensee's license is addressed
12 separately below.

13 *Moral turpitude.* The Board's rules do not define "moral turpitude." The meaning of
14 that term, however, is well known. Black's Law Dictionary defines moral turpitude as
15 "[c]onduct that is contrary to justice, honesty, or morality."¹¹ The American Heritage College
16 Dictionary defines "moral" as "[o]f or concerned with the judgment of the goodness or badness
17 of human action and character; ethical."¹² Turpitude is defined as "[d]epravity; baseness."¹³

18 The Board finds that Licensee committed acts of moral turpitude when he asked
19 Ms. Jaszczak to addend L. S.'s medical records and treatment plan following his therapy session.
20 Based on his own testimony, Licensee read the therapy plan for L. S. for the first time after he
21 manipulated her shoulder. Licensee recognized at that time that he had acted in direct
22 contravention to the physician's and physical therapist's instructions concerning L. S.'s shoulder.

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24 ⁷ OAR 848-010-0050(1)(f).

25 ⁸ OAR 848-010-0050(1)(n).

26 ⁹ OAR 848-010-0050(1)(o).

¹⁰ OAR 848-010-0050(8).

¹¹ Black's Law Dictionary 1016 (7 ed 1999).

¹² American Heritage College Dictionary 887 (3 ed 1997).

¹³ American Heritage College Dictionary 1458 (3 ed 1997).

1 He asked Ms. Jaszczak to change the physical therapy plan to include the treatment he had given
2 L. S. The Board therefore finds that this conduct amounts to an act of moral turpitude.

3 It is evident that Licensee was concerned about his failure to read L. S.'s chart prior to
4 treating her, and that he wanted to avoid responsibility and liability for his improper treatment by
5 having the treatment plan changed to encompass what he had done. Further, Licensee lied to the
6 Board's investigators by telling them that he moved L. S.'s shoulder while instructing her how to
7 "don and doff" a sling.

8 The Licensee also lied about the extent of the treatment he provided to G. L. Licensee
9 testified at hearing that he was simply adjusting G. L.'s walker, which he thought was too high
10 and causing G. L. chest pain. During the investigation, however, Licensee explained that he
11 performed passive range of motion exercises with G. L. by holding and moving his walker, while
12 G. L. held on to it. Licensee also testified at hearing, and explained to the Board's investigators,
13 that he had G. L. perform rowing exercises with sternal precautions. At hearing, Licensee
14 continued to maintain that his treatment of G. L. was proper. This claim, however, was rebutted
15 by the testimony of Ms. Causton and Ms. Jaszczak, who as PTs possess a higher level of training
16 and experience. They testified that rowing necessarily involves sternal pulling and pushing,
17 which is specifically prohibited by sternal precautions.

18 The record establishes that Licensee was not truthful about the extent of the treatment he
19 provided to G. L. His conduct exposed G. L. and L. S. to further injury. Dishonesty is an act of
20 moral turpitude. Licensee's dishonesty constituted moral turpitude pursuant to OAR 848-010-
21 0050(f). Moral turpitude is grounds for discipline pursuant to the rules promulgated under ORS
22 688.140(2)(d).

23 *Failure to cooperate with Board.* The Board further found that Licensee failed to
24 cooperate by lying to the Board's investigators, in violation of OAR 848-010-0050(1)(n).
25 Licensee admitted at hearing that he lied to the investigators about reading L. S.'s chart before
26 treating her. Licensee argued, however, that he is now more accountable because he has

1 completed domestic violence counseling. Nevertheless, he is not absolved of responsibility for
2 his actions. Further, Licensee admitted at hearing and to the Board's investigators that he lied in
3 his applications for license renewal. Licensee attempted to justify his actions by explaining that
4 he lied because he was afraid that he would be denied the opportunity to work in Oregon.
5 Nevertheless, the Board concludes that Licensee failed to cooperate with the Board by lying on
6 applications, which is a violation of OAR 848-010-0050(1)(n). In addition to establishing that
7 Licensee failed to cooperate with the Board, Licensee's admitted dishonesty is further evidence
8 of Licensee's unethical and unprofessional conduct.

9 *Failure to comply with rules and regulations of the Board.* OAR 848-010-0050(1)(o)
10 provides the Board with the authority to discipline Licensees for violations of Board rules. The
11 Board determined that Licensee violated OAR 848-010-0045(1)(c) (failing to perform routine
12 treatment procedures in accordance with a planned program).

13 Licensee's treatment of L. S. and G. L. support the Board's determination. As discussed
14 above, Licensee did not follow the treatment plans for either patient. This is prima facie
15 evidence that Licensee violated OAR 848-010-0045(1)(c), which requires PTAs to perform
16 "routine treatment procedures in accordance with the planned programs." Licensee
17 acknowledged that his treatment of L. S. was outside of the treatment plan for that patient. This
18 record establishes that Licensee violated a rule of the Board with the specific rule being OAR
19 848-010-0045(1)(c).

20 *Practice as a PTA with level of care, skill and treatment that is reasonable.* OAR 848-
21 010-0050(8) provides the Board with the authority to discipline a PTA for failing to use the level
22 of care, skill and treatment that is reasonable for the given circumstances. The Board has proven
23 that Licensee's conduct fell below the level of care, skill and treatment that was reasonable to
24 expect. Specifically, the Board proved that Licensee treated L. S. without first reading her
25 treatment plan, and that he had G. L. perform exercises that were prohibited by the treatment
26 plan. The PTs who testified reviewed the medical records for L. S. and G. L. and concluded that

1 Licensee made decisions and worked outside of the established treatment plans for these patients.
2 Moreover, Licensee admitted that he treated L. S. before he read her treatment plan. Thus,
3 Licensee's violation of OAR 848-010-0050(8) is well supported by the record.

4 **SANCTION**

5 The Board is authorized to "suspend or revoke" the license of a PTA. ORS
6 688.140(1)(c). The Board has established several grounds that authorize it to revoke Licensee's
7 license:

- 8 (1) Licensee lied on his applications for license renewal.
- 9 (2) Licensee did not cooperate with the Board's investigation.
- 10 (3) Licensee failed to comply with the rules and regulations of the Board.
- 11 (4) Licensee did not practice with the level of care, skill and treatment that was
12 reasonable.

13 Based on the above facts and analysis and the egregious nature of Licensee's conduct, the only
14 appropriate sanction is revocation of Licensee's PTA license.

15 **ORDER**

16 IT IS HEREBY ORDERED that Licensee's license to practice as a physical therapist
17 assistant is hereby revoked.

18 DATED this 21st day of April, 2004.

19 PHYSICAL THERAPIST LICENSING BOARD
20 State of **SIGNATURE ON FILE**

21 By:
22 James Reider
Executive Director

23 **RIGHT TO JUDICIAL REVIEW**

24 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by
25 filing a petition for review with the Oregon Court of Appeals within 60 days after the final order
26 is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of
service is the day it was mailed, not the day you received it. If you do not file a petition for
judicial review within the 60 days time period, you will lose your right to appeal.