

1 NOW THEREFORE, after considering the Board's file relating to this matter, the Board
2 enters the following Order.

3 **ISSUES**

4 (1) Did Licensee knowingly make false entries in patient records,
5 exploit patients by obtaining compensation for physical therapy services that
6 were not provided and /or bill for treatment not provided?

7 (2) Did Licensee fail to respond fully and truthfully to questions from
8 the Board, and did she attempt to deceive the Board?

9 **FINDINGS OF FACT**

10 **1. Prior disciplinary action involving dishonesty and falsification of records.**

11 The Board, pursuant to ORS 688.090, originally issued Licensee a license to practice as a
12 physical therapist (PT) in Oregon on April 13, 1978. She was also licensed in the state of North
13 Carolina. On July 5, 1997, Licensee's surrendered her North Carolina License for six months
14 because she falsified documents of treatment by overstating the amount of time she spent treating
15 patients. Licensee also told the North Carolina Board that she was not licensed to practice
16 physical therapy in any other jurisdiction, which was untrue because she was licensed in Oregon.

17 Licensee's Oregon PT license was indefinitely suspended by the Board on April 14,
18 1999, due to the violations which occurred in North Carolina and Licensee's willful
19 misrepresentation to the North Carolina board regarding her Oregon licensure. Licensee's
20 license was reinstated without conditions by the Oregon Board on April 14, 2001.

21 **2. Licensee knowingly made false entries in patient record; exploited patients by obtaining**
22 **compensation for PT services not provided; billed for treatment not provided; and engaged**
23 **in acts involving moral turpitude.**

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⁶ renumbered to OAR 848-045-0020(2)(u)(A).

⁷ renumbered to OAR 848-045-0020(2)((u)(E).

1 **Patient K.K.**

2 While Licensee was employed by Generations Home Care (Generations), she
3 documented that she provided fifteen (15) PT treatments to patient K. K. at Hearthstone At
4 Murrayhill (Hearthstone) from February 3, 2005 through April 1, 2005. As a result of Licensee's
5 documentation, Generations billed Medicare for the 15 physical therapy treatments.

6 Subsequently, Licensee reported to the Board that she provided all 15 treatments to patient K.K.

7 The Board finds that Licensee did not provide the PT treatment to K.K. because of the following:

8 1. K.K.'s wife denied that the physical therapy treatment was provided to K.K.

9 2. K.K.'s facility chart did not contain any mention of his having received physical
10 therapy.

11 3. The documentation of a care conference on March 3, 2005, mentioned that K.K.'s
12 extremities were stiff and that he should receive range of motion. The care conference note did
13 not indicate that physical therapy was being provided.

14 4. K.K.'s regular caregivers did not recall ever seeing a physical therapist working with
15 him, which contradicted Licensee's statement that on several occasions she provided training to
16 the caregivers.

17 5. The facility head nurse had no knowledge of K.K. having received physical therapy
18 and did not recognize Licensee.

19 6. Information Licensee provided in K.K.'s admission and discharge OASIS State of
20 Care forms was inaccurate as follows:

21 a. On the admission form dated February 3, 2005, Licensee stated that the patient
22 weighed 189 pounds, when in fact his recorded weight three days earlier was 133
23 pounds.

24 b. Licensee indicated on the OASIS form that the patient was not incontinent; however,
25 the patient has been incontinent since he was admitted to Hearthstone.

1 7. In her documentation dated March 4, 2005, Licensee stated that K.K. requested that
2 the physical therapy be placed on hold for the week of March 6, 2005. However, K.K. was not
3 capable of verbally expressing such a request because he suffers from Alzheimer's disease and
4 dementia.

5 **Double billing Generations and First Call Home Health**

6 During the time that Licensee was employed by Generations, she was also employed by
7 First Call Home Health (First Call). Licensee engaged in double-billing practices between
8 Generations and First Call as evidenced by the fact that she submitted timesheets and patient
9 billings where the dates and times overlapped as follows: Between January 1, 2005 and May
10 31, 2005 on at least 24 different days, including but not limited to January 6 and 13; February 8,
11 15 and 21; March 15, 16, 17, 23 and 30; April 6, 8, 11, 18, 20, 25, 27, 28 and 29; and May 4, 9,
12 11, 18 and 19. The patients reside in different locations; therefore, Licensee could not have
13 provided such treatment for the dates, times and locations charted. (Attachment A with specific
14 dates and times is hereby incorporated within this Order.)

15 **3. Licensee failed to respond fully and truthfully to questions from the Board and**
16 **attempted to deceive the Board.**

17 Licensee was untruthful with Board staff when she was interviewed on November 15,
18 2005 as follows.

19 1. Licensee was untruthful in claiming that she provided physical therapy to K.K.

20 2. Licensee was untruthful with the Board when she stated that the billing times
21 submitted to Generations were accurate, and she claimed that she used a watch to determine
22 the times that were recorded on her "daily time and activity report." Licensee attempted to
23 cover up the untruthful statements when she was later presented with conflicting evidence
24 proving that her times were inaccurate. At that point in the interview, she changed her
25 statement stating the times on the records were "estimates."

26 3. Licensee responded untruthfully when asked if she had ever been counseled by
any employer for issues related to falsification of time spent with patients, and Licensee said

1 that she had not.

2 4. Licensee was untruthful when she told staff that she did not know Joanne Olson.
3 In fact, Ms. Olson was Licensee's direct supervisor at First Call. Ms. Olson counseled
4 Licensee regarding her inaccurate documentation, ineffective case management and patient
5 complaints of brief and ineffective treatment. Licensee signed the form acknowledging such
6 counseling.

7 DISCUSSION AND CONCLUSIONS OF LAW

8 The burden of presenting evidence to support a fact or position rests on the proponent of
9 the fact or position." ORS 183.450(2). Here, the Board has the burden of proving its allegations
10 by a preponderance of the evidence. See *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule
11 regarding allocation of burden of proof is that the burden is on the proponent of the fact or
12 position); *Cook v. Employment Div.*, 47 Or App 437, *rev. den.* 290 Or 157 (1980) (in the absence
13 of legislation adopting a different standard, the standard in administrative hearings is
14 preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder
15 is persuaded that the facts asserted are more likely true than false. *Riley Hill General*
16 *Contractors v. Tandy Corp.*, 303 Or 390, 402 (1987).

17 The Board is authorized to suspend or revoke the license of any physical therapist under
18 certain circumstances. ORS 688.140(1)(c).⁸ Subsection (2) of this statute provides, in part, as
19 follows:

20 Grounds exist for the imposition of sanctions as specified in subsection (1) of
21 this section when a person: * * * (d) In the judgment of the board and pursuant
22 to ethical and professional standards adopted by rule of the board, is guilty of
23 unethical or unprofessional conduct. * * *⁹ (f) in the judgment of the board, is
24 guilty of gross negligence in practice as a physical therapist***.¹⁰

24 ⁸ ORS 688.140(1) provides, in part, as follows:

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

⁹ renumbered ORS 688.140(2)(a) (2005).

¹⁰ (2003).

1 As provided by ORS 688.140(2)(d) (2003), the Board adopted rules defining unethical or
2 unprofessional conduct. OAR 848-045-0020. Those standards include: 1) multiple acts of
3 negligence;¹¹ 2) engaging in any act involving moral turpitude;¹² 3) obtains or attempts to obtain
4 fee by fraud or misrepresentation;¹³ 4) exploitation of a patient by obtaining compensation for PT
5 services not provided;¹⁴ 5) knowingly makes a false entry in a patient record;¹⁵ 6) failing to
6 respond truthfully to the Board;¹⁶ and 7) deceiving the Board.¹⁷

7 In this case, Licensee has a long history, predating 1997, of falsifying documents and
8 making untruthful statements to licensing boards. Licensee's first discipline occurred in 1997
9 when her North Carolina PT license was suspended for six months for falsifying records. At that
10 time, she misrepresented to the North Carolina Board that she was not licensed in any other state,
11 which was untrue because she was licensed in Oregon. The Oregon Board suspended her license
12 indefinitely based on the combination of conduct: falsifying documents and lying to the North
13 Carolina Board. Two boards, therefore, found Licensee's conduct constituted falsifying
14 documents regarding the amount of time spent with patients, and the Boards determined that the
15 violations were sufficiently egregious to justify suspension of her license. In addition, Oregon
16 determined that Licensee had been deceitful in misrepresenting her licensure history to a
17 licensing authority. Based on the combined conduct of falsifying documents and making
18 misrepresentations to a licensing authority, the Oregon Board determined that an indefinite
19 suspension of her license was warranted.

20 Licensee had the opportunity to change her behavior when Oregon reinstated her license;
21 therefore providing her with a second chance to pursue her profession. The discipline imposed
22 by the North Carolina and Oregon Boards placed Licensee on notice that her past practices were
23 inappropriate and in violation of the practice act and would not be tolerated in the future. Yet,

24 ¹¹ OAR 848-045-0020(2)(e) (2005).

¹² OAR 848-045-0020(2)(j) (2005) renumbered (2)(i).

25 ¹³ OAR 848-045-0020(2)(o) (2005) renumbered (2)(n).

¹⁴ OAR 848-045-0020(2)(p)(B) (2005) renumbered (2)(o)(b).

26 ¹⁵ OAR 848-045-0020(2)(q) (2005) renumbered (2)(p).

¹⁶ OAR 848-045-0020(2)(v)(A) (2005) renumbered (2)(u)(A).

¹⁷ OAR 848-045-0020(2)(v)(E) (2005) renumbered (2)(u)(E).

1 Licensee has continued to prove that she has not been rehabilitated. If not earlier, at least by
2 early 2005, Licensee's old behavior resurfaced.

3 **1. Licensee falsified records and billed for services not provided**

4 **Double billing Generations and First Call**

5 Licensee provided physical therapy to home health care patients who are located in
6 multiple locations, including private homes and care facilities while she was employed by two
7 employers simultaneously: Generations and First Call. Based on the Findings of Fact and record
8 as a whole, the Board finds that between January 1, 2005 and May 31, 2005 on at least 24
9 different days, including but not limited to January 6 and 13; February 8, 15 and 21; March 15,
10 16, 17, 23 and 30; April 6, 8, 11, 18, 20, 25, 27, 28 and 29; and May 4, 9, 11, 18 and 19,
11 Licensee documented and billed for treatment with overlapping times. The patients, reside in
12 different locations, therefore, Licensee could not have provided such treatment for the dates,
13 times and locations charted. (See Attachment A for specific dates and patients.) Therefore, the
14 Board finds that Licensee falsified records and billed for services not provided. Licensee's
15 conduct of falsifying records and billing for services not provided constitutes in excess of 24
16 violations of: gross negligence which is a violation of ORS 688.140(2)(f) (2003); multiple acts
17 of negligence which is a violation of OAR 848-045-0020(2)(e) (2005); engaging in an act
18 involving moral turpitude which is a violation of ORS 848-045-0020(2)(j)¹⁸ (2005); and
19 obtaining or attempting to obtain a fee by fraud or misrepresentation which is a violation of OAR
20 848-045-0020(2)(o)¹⁹ (2005).

21 In addition, on January 20, 2006, February 10, 2006 and April 7, 2006 Licensee
22 documented on her time sheet for Generations that she participated via telephone in a "patient
23 care conference." On those same dates, Licensee also documented and billed for physical therapy
24 treatments provided to First Call patients during the same time periods. Licensee could not have
25 participated in the "patient care conferences," and provide patient care simultaneously. The

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¹⁸ renumbered OAR 848-045-0020(2)(i).

¹⁹ renumbered OAR 848-045-0020(2)(n).

1 Board, therefore, finds that these are additional acts of falsifying records and billing for services
2 not provided. Licensee's conduct of falsifying records and billing for services not provided
3 constitutes violations of: gross negligence which is a violation of ORS 688.140(2)(f) (2003);
4 multiple acts of negligence which is a violation of OAR 848-045-0020(2)(e) (2005); engaging in
5 acts involving moral turpitude which is a violation of ORS 848-045-0020(2)(j)²⁰ (2005); and
6 obtaining or attempting to obtain a fee by fraud or misrepresentation which is a violation of OAR
7 848-045-0020(2)(o)²¹ (2005).

8 **Treatment of patient K.K.**

9 Licensee documented that she provided physical therapy to patient K.K. at Hearthstone
10 between February 3, 2005 and April 1, 2005. When K.K.'s wife received a billing statement
11 from Medicare for physical therapy treatment provided to her husband, she contacted
12 Generations with a concern that her husband never received the physical therapy. Generations
13 investigated her concern, and although Licensee claimed to have provided the treatment,
14 Generations did not believe her and refunded to Medicare the cost of the 15 physical therapy
15 treatments.

16 This Board likewise does not find Licensee's statements credible and does not believe
17 that she provided the treatment based on the following reasons. First, the facility records did not
18 contain documentation of the provision of physical therapy. K.K.'s patient facility chart did not
19 contain any mention of him having received physical therapy. Additionally, the documentation
20 of a care conference on March 3, 2005, mentioned that K.K.'s extremities were stiff, and it
21 contained the notation that passive range of motion would be added to daily lotion routine.
22 There was no mention of physical therapy in this care conference note either.

23 The second reason for the Board's finding was that there were inconsistent statements
24 between Licensee and others involved in the care of K.K. Although Licensee on several
25 occasions documented that she provided caregivers with training, none of the regular caregivers

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²⁰ renumbered OAR 848-045-0020(2)(i).

²¹ renumbered OAR 848-045-0020(2)(n).

1 that worked with K.K. at Hearthstone recalled ever seeing a physical therapist working with the
2 patient. In addition, the facility head nurse had no knowledge of the patient having received
3 physical therapy and did not recognize Licensee.

4 The third reason for the Board's finding was that there was inaccurate information on the
5 patient's admission and discharge OASIS State of Care forms. On the admission form dated
6 February 3, 2005, Licensee stated that K.K. weighed 189 pounds, when in fact his recorded
7 weight three days earlier was 133 pounds. In addition, Licensee indicated on the OASIS form
8 that K.K. was not incontinent; however, he had been incontinent since he was admitted to
9 Hearthstone.

10 The final reason for the Board's findings was that Licensee indicated in her
11 documentation dated March 4, 2005, that K.K. requested to place physical therapy on hold for
12 the week of March 6, 2005. K.K., however, was not capable of verbally expressing such a
13 request because he suffers from severe Alzheimer's disease and dementia. Licensee did not treat
14 any patients or bill any hours for Generations or First Call during the week of March 6, 2005.
15 The Board believes that licensee took a vacation that week, which is the reason that she
16 documented that K.K. requested to place his therapy on hold.

17 Based on the Findings of Fact and the above discussion, the Board concludes that
18 Licensee did not provide all physical therapy treatments to patient K.K. Licensee's conduct in
19 documenting and billing for physical therapy treatment that she did not provide constitutes the
20 following violations: engaging in an act involving moral turpitude which violated OAR 848-
21 045-0020(2)(j) (2005);²² exploitation of a patient by obtaining compensation for physical therapy
22 services not provided which violates OAR 848-045-0020(2)(p)(B) (2005);²³ and knowingly
23 making a false statement in a patient record which violates OAR 848-045-0020(2)(q) (2005).²⁴

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26 ²² Renumbered OAR 848-045-0020(2)(i).

²³ renumbered OAR 848-045-0020(2)(o)(B).

²⁴ renumbered OAR 848-045-0020(2)(p).

1 **2. Licensee failed to respond fully and truthfully to questions from the Board and**
2 **attempted to deceive the Board.**

3 The Board interviewed Licensee in the Board office on November 15, 2005. During the
4 interview, Licensee was asked about the billing times she had submitted to Generations. She
5 stated that she was sure the times were accurate because she used a watch to determine the times
6 that were recorded on her “daily time and activity report.” When she was later presented with
7 conflicting evidence proving that the times were inaccurate, Licensee changed her statement
8 stating that the times were only estimates.

9 During the interview, Licensee was also questioned regarding the issue of whether any of
10 her employers had discussed her billing practices with her. Licensee denied that the issue had
11 even been raised by any employer. She also denied knowing a Joanne Olson even though Ms.
12 Olson was her direct supervisor at First Call. Contrary to Licensee’s denial, she had been
13 counseled by Ms. Olson regarding her inaccurate documentation, ineffective case management
14 and patient complaints of brief and ineffective treatment. The form concluded with the state that
15 if “purposeful over-billing or under-billing is determined in the future, immediate termination
16 will occur.” Licensee signed the form acknowledging that she was so counseled.

17 Lastly, during the interview, Licensee insisted that she provided the disputed physical
18 therapy treatments to patient K.K. Based on the Findings of Fact and the discussion above, the
19 Board concludes that Licensee did not provide the disputed treatment and she was dishonest and
20 deceitful with the Board in her interview

21 Based on the Findings of Fact and the above discussion, the Board concludes that
22 Licensee made multiple misrepresentations to the Board during the interview. Licensee’s conduct
23 constitutes multiple violations of: failing to respond truthfully to the Board which violates OAR
24 848-045-0020(2)(v)(A)²⁵ (2005); and attempting to deceive the Board which violates OAR 848-
25 045-0020(2)(v)(E)²⁶ (2005).

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²⁵ renumbered to OAR 848-045-0020(2)(u)(A).

²⁶ renumbered to OAR 848-045-0020(2)((u)(E).

1 **SANCTION**

2 Licensee's misrepresentations to the Board constitute multiple violations of OAR 848-
3 045-0020(2)(v)(A)²⁷ (E) (failing to respond truthfully to the Board) (2005) and OAR 848-045-
4 0020(2)(v) (E)²⁸ (deceiving the Board) (2005). Licensee's history of making material
5 misrepresentations or lying to licensing Boards makes Licensee's conduct more egregious.

6 The above referenced facts and violations are grounds for discipline pursuant to
7 ORS 688.140 (2)(d)²⁹ and (f) (2003). Based on the alleged facts and violations the appropriate
8 sanction is revocation of the Licensee's license.

9 **ORDER**

10 IT IS HEREBY ORDERED that Licensee's license to practice as a physical therapist is
11 hereby revoked.

12 DATED this 23rd day of May, 2006.

13 PHYSICAL THERAPIST LICENSING BOARD
14 Stat **SIGNATURE ON FILE**

15 By: ~~James D. Heider~~
16 ~~Executive Director~~

17 **RIGHT TO JUDICIAL REVIEW**

18 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by
19 filing a petition for review with the Oregon Court of Appeals within 60 days from the date of this
20 Final Order By Default. If you do not file a petition for judicial review within the 60 days time
21 period, you will lose your right to appeal.
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26 ²⁷ renumbered OAR 848-045-0020(2)(u)(A).
²⁸ renumbered OAR 848-045-0020(2)(u)(E).
²⁹ renumbered ORS 688.140(2)(a).