BEFORE THE PHYSICAL THERAPIST LICENSING BOARD
OF THE STATE OF OREGON

In the Matter of	)	
	)	
JOHN BONICA, P.T.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION AND ORDER**
	)	
Licensee	)	

This matter came before the Board on March 3, 1996 for consideration of the Proposed Findings of Fact, Conclusions of Law, Opinion and Recommended Order issued by the Board's hearings officer on January 10, 1996 and the licensee's written exceptions filed herein. The licensee appeared personally and with his attorney, Dean Heiling. The Board was represented by Assistant Attorney General Frank T. Mussell. Board Chair Barbara Beardsley recused herself and did not participate in the deliberations or decision in this case.

NATURE OF PROCEEDINGS

On May 17, 1995 the Board issued a Notice of Proposed Disciplinary Action to Licensee seeking to take disciplinary action against Licensee under ORS 688.140(1)[1] because:

1. Licensee employed an aide, Dawn Crompton, to provide patient care beginning on June 3, 1994 which was nearly two months prior to the date the Board's rules authorized the use of aides to provide direct patient care. The foregoing was alleged as a violation of OAR 848-10-050(1)(m)[2], which is grounds for discipline under ORS 688.140(2)(d)[3];

2. Licensee employed an aide, Jennifer Olson, to provide direct patient care beginning on July 1, 1994 which was nearly

one month prior to the date the Board's rules authorized the use of aides to provide direct patient care. The foregoing was alleged as a violation of 848-10-050(1)(m), which is grounds for discipline pursuant to ORS 688.140(2)(d);

3. Licensee employed an aide, Lisa Randall, to provide direct patient care beginning on July 20, 1994 which was nine days prior to the date the Board's rules authorized the use of aides to provide direct patient care. The foregoing was alleged as a violation of OAR 848-10-050(1)(m), which is grounds for discipline pursuant to ORS 688.140(2)(d);

4. The Board, at the time of hearing, withdrew allegation Number 4.

5. By letter dated December 1, 1994, the Board requested Licensee to provide the Board with the complete original patient records of [redacted]. Following the receipt of the Board's letter Licensee reviewed the [redacted] patient record and realized that Licensee had failed to countersign the July 5, 1994 documentation. Licensee then countersigned the July 5, 1994 entry. Licensee failed to identify Licensee's belated chart entry which it was alleged is a violation of OAR 848-40-000(2)(c),[4] which is grounds for discipline pursuant to ORS 688.140(2)(d);

6. Licensee did not bring the matter of his having belatedly countersigned the July 5, 1994 [redacted] patient chart entry to the Board's attention when he delivered the patient record to the Board on December 9, 1994. In countersigning the

July 5 chart entry at some time between December 1 and December 9, 1994 Licensee falsified the record in violation of OAR 848-10-050(1)(j)[5] and the Board alleged that breached Licensee's duty of cooperation with the Board in violation of OAR 848-10-050(1)(n),[6] which is grounds for discipline pursuant to ORS 688.140(2)(d).

7. Licensee did not countersign the August 8, 1994 documentation by temporary permit holder Chris Childs in the patient chart of [redacted]. The foregoing was alleged as a violation of OAR 848-10-005(1)[7] and OAR 848-40-000(2)(e)[8], which is grounds for discipline pursuant to ORS 688.140(2)(d) and OAR 848-10-050(1)(o)[9].

8. By letter dated December 1, 1994 the Board requested Licensee to provide the Board with the complete original patient records of [redacted]. Following the receipt of the Board's letter Licensee reviewed the [redacted] patient record and realized that he had failed to countersign the August 8, 1994 documentation. Licensee then countersigned the August 8 entry. Licensee did not identify his belated chart entry and the Board alleged as a violation of OAR 848-40-000(2)(c), which is grounds for discipline pursuant to ORS 688.140(2)(d).

9. Licensee did not bring the matter of him having belatedly countersigned the August 8, 1994 [redacted] patient chart entry to the Board's attention when he delivered the patient record to the Board on December 9, 1994. In countersigning the August 8 chart entry at some time between December 1 and December 9, 1994 the Board alleged that the Licensee falsified the record

in violation of OAR 848-10-050(1)(j) and breached his duty of cooperation with the Board in violation of OAR 848-10-050(1)(n), which is grounds for discipline.

The Board's Notice goes on to state that Licensee is subject to revocation or suspension of his license, the imposition of a civil penalty in the amount of $1,000 for each violation, he may be placed on probation with limitations or restrictions on his license or the Board may reprimand Licensee all pursuant to ORS 688.140.

In summary, Licensee's response to the Board's notice is:

1. He was not adequately informed, despite his best efforts to be so informed, as to when the Board's rules became effective regarding the use of aides. Therefore, Licensee's use of aides prior to July 29, 1994 was inadvertent as opposed to willful and thus merely a technical violation which caused no harm to the public health, safety, or welfare;

2. Licensee, in countersigning the [redacted] and [redacted] patient charts between December 1 and December 9, 1994, did not intend to falsify the records or violate the Board's rule. Licensee believed that he was merely completing the record. He did not intend to mislead the Board about when his countersignature was actually added. He was not aware that a countersignature represented a "chart entry" which needed to be dated.

3. Licensee maintains that the violations alleged by the Board are "trivial" and not matters of important public

health safety, or welfare concerns which warrant discipline of any kind, let alone substantial fines, probation or other action which would blemish his good record with the Board and be a public embarrassment to Licensee.

4. Lastly, Licensee maintains that the Board is merely "out to get him" and that is the real reason for those disciplinary proceedings.

Pursuant to notice, a hearing was held in the above matter on December 12, 1995 at the Physical Therapist Licensing Board, State Office Building, Conference Room 410, 800 NE Oregon Avenue, Portland, Oregon. The Board was represented by Assistant Attorney General Frank T. Mussell. Licensee, John Bonica, was present along with his attorney Dean Heiling. The proceedings were recorded by Kathy Marshall, Official Court Reporter. Mark Braverman served as the Hearings Officer. Exhibits 1 through 13 were admitted at hearing. Exhibits 4 and 5 were admitted over the objection of Licensee. Exhibit 14 was admitted post hearing. Witnesses testified.

Based upon a Preponderance of the Evidence, the Board makes the following Findings of Fact, Conclusions of Law, Opinion and Order:

FINDINGS OF FACT

1. Licensee has been licensed with this Board since approximately 1980.

2. Licensee has not been the subject of disciplinary action by this board prior to the current proceedings. However,

the Board did conduct an investigation of Licensee's office practices in 1980's. That matter is relevant here only because of the issues raised by Licensee and the evidence he has submitted, but does not bear upon the merits of this case or the sanctions under consideration by the Board.

3. The Board, after following appropriate rule making procedures under ORS Chapter 183 and under its statutory authority found in ORS 688.160, promulgated new rules under OAR Chapter 848, Divisions 20 and 40, to allow for the use of physical therapist aides in direct patient care and establishing minimum standards for physical therapy practice records all of which was effective July 29, 1994.

4. Prior to the effective date of these rules, on July 29, 1994, Licensee:

(a) Employed an aide, Dawn Crompton, to provide direct patient care beginning on June 3, 1994 which was nearly two (2) months prior to the date the Board's rules authorized the use of aides to provide direct patient care;

(b) Employed an aide, Jennifer Olson, to provide direct patient care beginning July 1, 1994 which was nearly one (1) month prior to the date the Board's rules authorized the use of aides to provide direct patient care;

(c) Employed an aide, Lisa Randall, to provide direct patient care beginning on July 20, 1994, which was nine (9) days prior to the date the Board's rules authorized the use of aides to provide direct patient care.

5. In the summer of 1994 Licensee knew that he could not lawfully use aides to provide direct patient care until the Board adopted a rule authorizing their use. Without knowing whether such a rule change had become effective (and, in fact, prior to the time that the rule became effective) Licensee used aides to provide direct patient care.

6. After the date of December 1, 1994, the date the Board requested Licensee to provide it with the "complete original" patient records (originally made on July 5, 1994) of [redacted], Licensee countersigned the entry rather than countersign it on the date the documentation (the patient chart) was actually completed.

7. Licensee failed to timely notify the Board of his belated countersigning of the [redacted] patient chart which Licensee actually countersigned sometime between December 1 and December 9, 1994.

8. After the date of December 1, 1994, the date the Board requested Licensee to provide it with the "complete original" patient records (originally made on August 8, 1994) of [redacted] Licensee countersigned the entry rather than countersign it on the date other documentation (the patient chart) was actually completed.

9. Licensee failed to timely notify the Board of his belated countersigning of the [redacted] patient chart which Licensee actually countersigned sometime between December 1 and December 9, 1994.

10. At all relevant times to the issues in this case, Licensee did not contemporaneously countersign the patient records of [redacted] or [redacted], he subsequently signed those two records sometime between December 1 and December 9, 1994, he failed to note his late signing on the chart and he intentionally failed to disclose the late entries to the Board.

11. Licensee did not contemporaneously countersign the August 8, 1994 documentation by temporary permit holder Chris Childs in the patient chart of [redacted].

12. There is no evidence in the record of any actual harm to patients as a result of Licensee's conduct as noted above. There was, however, potential harm to patients.

13. The record fails to demonstrate that these disciplinary proceedings were initiated by the Board because the Board is "out to get" Licensee. All matters have been handled objectively and routinely in accordance with the Board's regulatory authority based upon the record in these proceedings. The Board is not "out to get" Licensee.

ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW

1. Licensee employed an aide, Dawn Crompton, to provide direct patient care beginning on June 3, 1994 which was nearly two (2) months prior to the date the Board's rules authorized the use of aides to provide direct patient care. The foregoing is a

violation of OAR 848-10-050(1)(m), which is a basis for discipline under ORS 688.140(2)(d);

2. Licensee employed an aide, Jennifer Olson, to provide direct patient care beginning July 1, 1994 which was nearly one (1) month prior to the date the Board's rules authorized the use of aides to provide direct patient care. The foregoing is a violation of OAR 848-10-050(1)(m), which is a basis for discipline under ORS 688.140(2)(d);

3. Licensee employed an aide, Lisa Randall, to provide direct patient care beginning on July 20, 1994 which was nine (9) days prior to the Board's rules authorized the use of aides to provide direct patient care. The foregoing is a violation of OAR 848-10-050(1)(m), which is grounds for discipline pursuant to ORS 688.140(2)(d);

4. By letter dated December 1, 1994, the Board requested Licensee to provide the Board with the complete original patient records of [redacted]. Following the receipt of the Board's letter, Licensee reviewed the [redacted] patient record and realized that Licensee had failed to countersign the July 5, 1994 documentation. Licensee then countersigned the July 5, 1994 entry. Licensee failed to identify Licensee's belated chart entry which is a violation of OAR 848-40-000(2)(c) and is grounds for discipline;

5. Licensee did not bring the matter of his having belatedly countersigned the July 5, 1994 [redacted] patient chart entry to the Board's attention when he delivered the patient

record to the Board on December 9, 1994. In countersigning the July 5 chart entry sometime between December 1 and December 9, 1994 Licensee violated OAR 848-10-050(1)(j) and that breached Licensee's duty of cooperation with the Board in violation of OAR 848-10-050(1)(n) which is grounds for discipline.

6. Licensee did not countersign the August 8, 1994 documentation by temporary permit holder Chris Childs in the patient chart of [redacted]. The foregoing is a violation of OAR 848-40-005(1) and OAR 848-40-000(2)(e), which is grounds for discipline pursuant to ORS 688.140(2)(d) and OAR 848-10-050(1)(o).

7. By letter dated December 1, 1994 the Board requested Licensee to provide the Board with the complete original patient records of [redacted]. Following the receipt of the Board's letter Licensee reviewed the [redacted] patient record and realized that he had failed to countersign the August 8, 1994 documentation. Licensee then countersigned the August 8 entry. Licensee did not identify his belated chart entry in violation of OAR 848-40-000(2)(c) which is grounds for discipline.

8. Licensee did not bring the matter of his having belatedly countersigned the August 8, 1994 [redacted] patient chart entry to the Board's attention when he delivered the patient record to the Board on December 9, 1994. In countersigning the August 8 chart entry at some time between December 1 and December 9, 1994 Licensee violated OAR 848-10-050(1)(j) and breached his

duty of cooperation with the Board in violation of OAR 848-10-050(1)(n), which are grounds for discipline.

9. Licensee is subject to discipline by the Board under ORS 688.140 for the aforementioned violations of the Board's administrative rules.

OPINION/DISCUSSION

The evidence in this case and Licensee's statements during his appearance before the Board pursuade the Board that he has not assumed responsibility for his actions. Licensee employed three aides in direct patient care before the Board's rules became effective on July 29, 1994. There is no dispute about that fact. Licensee's used these aides without assuring that such use was legally authorized. He did so, he maintains, based upon his inability to secure information about when the Board's rules would be operative and effective. However, Licensee looked to inappropriate sources and adopted inappropriate methods to secure information about the legal use of aides rather than look to the Board's rules and the proper procedure undertaken by the Board for passage of those rules or when the clear date the rules would become effective, July 29, 1994.

Licensee's position that he did not get the notice of rule making proceedings as to Division 10, 20, 30 and 40 of Chapter 848 sent to all licensees by the Board on or about May 26, 1994 is not supported by the overall evidence. The Board timely sent notice of rule making to all of its licensees at the last known address. No evidence has been produced showing that Licensee,

John Bonica, was not on the Board's mailing list. Licensee spoke to Barbara Beardsley, then Board President, on May 5, 1994 to inquire about the proposed rules for use of aides in direct patient care. Licensee maintains that he came away from that conversation with the idea that it was okay to use the aides, although the rules allowing for their use had not yet been adopted by the Board.

Licensee's evidence is not persuasive to support his contention that he was not routinely informed, as were all other licensees, of the Board's process for adopting rules allowing for the use of aides. There is no evidence of any wholesale lack of failure of the Board to notify each of its licensees including Licensee, John Bonica. Further, it was incumbent upon Licensee, to make certain that he was on the Board's mailing list if there was any question about his having not received mail for the Board previously. Licensee readily knew that important administrative rules were about to be adopted regarding the use of aides in direct patient care. The question remained, however, as to when they could be used and in exactly what manner they could be used. The Licensee implemented the use of aides in direct patient care without the answers to either of those questions.

The next violation concerns the countersigning by Licensee of two patients' charts with Licensee's failure to note that his entry was made between December 1 and December 8, 1994. There is no dispute that Licensee's countersignature was placed into the patients records after the date the original records were made

and without notation by Licensee of the late entry. The overall evidence in this case shows first that the Licensee failed to countersign one chart entry and, when production of the the records was requested by the Board, he belatedly made two chart entries which he did not identify as late entries in order to avoid being found in violation by the Board. By doing so, he intended to mislead the Board. Licensee's assertion that a countersignature is not a "chart entry" is not persuasive.

It is obvious that when looking at the appropriate rule, a signature or countersignature is part of the chart and thus a "chart entry". This also leads to the conclusion that Licensee failed to familiarize himself with the Board's rules regarding charting, Division 40, before December 8, 1994.

Licensee testified that he was surprised to learn that a countersignature is a chart entry and that he violated the Board's rule in adding his signature to the charts after they were created without any notation. His surprise is self created, however.

Even if the Licensee has not acted intentionally, he displays serious signs of naivety about his need to comply with the letter of all the Board's administrative rules. Based on the position he has taken in this case, it appears he has the mistaken belief that as long as he states he is acting in good faith his violations somehow do not count, and therefore he is not accountable and no discipline should be undertaken against

him. Licensee needs to read and follow the Board's rules and not simply claim to have acted with good intentions.

Next, Licensee's contention that the Board is "out to get him" has been considered, but this contention is not born out by the evidence in this case and is groundless. Nothing done by this Board regarding the violations in these proceedings is out to the ordinary or a deviation from standard regulatory practices exercised by the Board. The facts are objectively established and the violations are objectively established.

Licensee's history in 1988 with the Board (different members constituting the Board) and his inability to obtain records regarding an investigation of his professional practice at that time, is not only out of context with the current disciplinary proceedings, it has no relevance to current disciplinary proceedings by the current Board.

ORDER

It is hereby ORDERED:

1. that the Licensee pay a civil penalty to the Board in the amount of $1,000, to be paid within thirty days of the effective date of the order;

2. that the Licensee be placed on probation for a period of one year under the following conditions:

a. that the Licensee's record keeping conform to the standards for record keeping as required by the Board's rules;

b. that upon the Board's request the Licensee make available for inspection records of patients for whom he is currently providing services;

c. that the Licensee document all aide training by creating a contemporaneous training record that includes the topic of training, a narrative description of the content of the training, the date of the training, the hours of training, the name of the trainer, and the date and signatures of the aide and the trainer attesting to the accuracy of the information recorded in the training record and that the Licensee make these training records available to the Board upon request;

d. that within six months from the effective date of this order the Licensee attend and successfully complete a professional course of instruction, approved in advance by the Board, regarding the practical and ethical aspects of patient recordkeeping;

e. that the Licensee timely pay the civil penalty;

f. that the Licensee comply with the provisions of ORS 688.010 to 688.220 and the rules of the Board;

g. that violation of the foregoing conditions may, after notice and hearing, result in further disciplinary action including license revocation.

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3. the Licensee is reprimanded.

DATED this 12th day of July, 1996.

PHYSICAL THERAPIST LICENSING BOARD

Signature On File

Georgia Spence
Executive Officer

NOTICE

You may appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.480. To appeal, you must file a petition for judicial review within sixty (60) days from the day this Order is served on you.

FOOTNOTES

1. **ORS 688.140:** Authorizes the Board to impose appropriate sanctions when grounds exist including unethical or unprofessional conduct.

2. **OAR 848-10-050(1)(m):** Provides that the Board may suspend or revoke the license of a physical therapist or impose other sanctions including a civil penalty not to exceed $1,000, impose probation, restrict a license or issue letters of reprimand to a physical therapist: who employees, aides, abets or permits any unlicensed personnel to practice physical therapy.

3. **ORS 688.140(2)(d):** Specifically authorizes discipline for unethical or unprofessional conduct by licensees.

4. **OAR 848-40-000(2)(c):** Provides that all late [chart] entries or additions to entries shall be documented when the omission is discovered with the following written at the beginning of the entry: "late entry for (date)" or "addendum for (date)".

5. **OAR 848-10-050-(1)(j):** Provides that appropriate discipline may be imposed if patient records are inaccurately kept, falsified or otherwise altered.

6. **OAR 848-10-050(1)(n):** Provides that appropriate discipline may be imposed for the failure to cooperate with the Board or the failure to make timely responses to Board communications.

7. **OAR 848-10-005(1):** Generally provides that appropriate sanctions may be imposed for unethical or unprofessional conduct as specified, in part, in subsections (a) - (o).

8. **OAR 848-40-000(2)(e):** Provides that documentation by students or temporary permit holders shall be countersigned by the licensed physical therapist.

9. **OAR 848-10-050(1)(o):** Provides that sanctions may be imposed if a licensee fails to comply with the rules and regulations of the Board.