



1 **FINDINGS OF FACT**

2 On April 24, 2008, Licensee performed manual traction on patient L.A. After the  
3 treatment, the patient complained of sudden bilateral hearing loss. Despite, the patient's  
4 complaint, Licensee proceeded to perform traction a second time, using a different traction device.  
5 She also issued the patient a home traction unit. Subsequently, Licensee referred the patient to an  
6 urgent care clinic, but she failed to contact the medical provider who referred this patient for  
7 treatment. Licensee's conduct of performing traction a second time and sending the patient home  
8 with a traction unit after the patient reported an adverse reaction constitutes substandard care.  
9 Additionally, her failure to notify the referring physician of the adverse reaction constitutes  
10 another act of substandard care.

11 **DISCUSSION AND CONCLUSIONS OF LAW**

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

21 Here, the Board's investigation revealed that the patient reported a sudden hearing loss  
22 after Licensee performed the modality of physical traction. It is unknown whether the hearing  
23 loss was caused by the physical traction. Nevertheless, when the patient complained of the  
24 adverse reaction, Licensee should have ceased providing physical traction until the patient was  
25 adequately assessed to determine whether the modality caused the hearing loss. Instead,  
26 Licensee performed the physical traction a second time and sent the patient home with a traction



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**RIGHT TO JUDICIAL REVIEW**

**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.