



1 (3) Did Licensee perform a self-evaluation and fail to document a plan  
2 of care for her treatment prior to commencing self-treatment?

3 (4) Did Licensee permit an aide to perform an ultrasound on Licensee  
4 without a physical therapist or physical therapist assistant having previously  
5 performed the treatment?

6 (5) Did Licensee fail to authenticate a daily note and fail to retain copies  
7 of records of treatment she performed on herself?

8 **FINDINGS OF FACT**

9 Licensee, who resides in Rogue River, Oregon, injured her back while unloading large  
10 bales of hay out of her truck. She contacted her automobile insurance carrier, SAFECO, and the  
11 claim for the injury was accepted as a motor vehicle claim.

12 Licensee stated sitting was painful so she was unable to travel to Grants Pass or Medford  
13 for physical therapy (PT) treatment. At first, Licensee attempted to treat herself for a month or  
14 so conservatively with ice, anti-inflammatory drugs, exercise and a TENS unit. Additionally, her  
15 17 year-old daughter performed several ultrasounds on Licensee.

16 Licensee's condition did not improve, so she went to see her primary care physician who  
17 ordered PT. Licensee is the only physical therapist in Rogue River, so her physician asked  
18 Licensee if she could treat herself. Licensee said she could.

19 Licensee and a licensed massage therapist (LMT) gathered the information necessary to  
20 conduct an initial evaluation. Licensee generated a hand written evaluation and daily PT notes  
21 and authenticated all but one of them. Licensee then allowed her 17 year-old daughter to  
22 perform ultrasound treatments. Licensee stated she had trained her daughter on the use of  
23 ultrasounds and allowed her to perform ultrasound treatments for the past year and a half to two  
24 years. Her daughter also removed electrical stimulation from patients and assisted with the  
25 billing. Licensee was unable to provide any documented aide training for her daughter.

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1 Licensee also had two LMTs working for her part-time as aides. She did not provide  
2 specific aide training to the LMTs. When asked to provide a copy of her documented evaluation  
3 and PT notes, Licensee said she shredded them when SAFECO would not pay for the treatment.  
4 Nevertheless, the Board received copies of these documents from a different source. The  
5 evaluation failed to document either goals or a treatment plan before treatment commenced.  
6 These records also demonstrated that the aides performed treatment, myofascial release, trigger  
7 point massage and ultrasound, to the patient (Licensee) the first time such treatment was  
8 provided.

### 9 DISCUSSION AND CONCLUSIONS OF LAW

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

19 The Board has authority to discipline licensees for violations of the  
20 statute and administrative rules. ORS 688.140(1)(a) – (i). Included within that  
21 authority is the authority to assess civil penalties, place the licensee on  
22 probation and impose other conditions, restrictions or limitations on the  
23 licensee. ORS 688.140(1)(e), (f) and (g).

24 As provided by ORS 688.160(5)(f), the Board has the authority to adopt administrative  
25 rules to regulate the practice of physical therapy. It also has the authority to discipline licensees  
26 for violating the administrative rules it adopts, as per ORS 688.140(2)(a). The Board has  
27 adopted administrative rules regarding the elements required in evaluations, chart note  
28 requirements, aide training requirements and documentation of such training. The administrative

1 rules involved in this case are as follows: OAR 848-020-0010(1)(2) (failing to meet aide  
2 eligibility standards), OAR 848-020-0040(1)(2) (failing to provide and document required training),  
3 OAR 848-020-0050(2)(c) (assigning tasks beyond aides training, experience and ability), OAR 848-  
4 040-0105(3) (delegating tasks that the aide was not legally qualified or trained to perform), OAR  
5 848-040-0145(1) (aide administering a modality without a licensee having first performed that  
6 treatment), OAR 848-040-0135(1) (plan of care required prior to initiation of treatment), OAR 848-  
7 040-0110(15) (patient records must be maintained for seven years) and OAR 848-040-0110(4) (all  
8 chart notes must be authenticated).

### 9 VIOLATIONS OF BOARD STATUTES AND RULES

10 1. Beginning in November 2008, Licensee began utilizing her daughter as a physical  
11 therapist aide (aide). During this time, the Licensee's daughter performed treatment related  
12 tasks, such as ultrasound on patients. Licensee failed to adequately train her daughter as an aide,  
13 and/or failed to adequately document the training that did occur. In addition, her daughter did  
14 not meet the minimum eligibility standards for an aide; being at least 18 years of age and having  
15 received a high school diploma or equivalent. Licensee's conduct constitutes multiple violations  
16 of ORS 688.140(2)(a) (violations of Board rules), specifically, OAR 848-020-0010(1)(2) (failing to  
17 meet aide eligibility standards), OAR 848-020-0040(1)(2) (failing to provide and document required  
18 training), OAR 848-020-0050(2)(c) (assigning tasks beyond aides training, experience and ability)  
19 and OAR 848-040-0105(3) (delegating tasks that the aide was not legally qualified or trained to  
20 perform).

21 2. Licensee failed to complete and document the Board required 40 hours of training prior  
22 to allowing two aides, who are licensed massage therapists, to perform treatment related tasks with  
23 patients. Licensee's conduct constitutes a violation of ORS 688.140(2)(a) (violations of Board  
24 rules), specifically, OAR 848-020-0040(1)(2) (failing to provide and document required training).

25 3. Licensee performed a self-evaluation, with the assistance of a physical therapy aide.  
26 Licensee failed to document a plan of care, for her treatment, prior to commencing self-treatment,

1 Licensee's conduct constitutes a violation of ORS 688.140(2)(a) (violation of Board rules)  
2 specifically and OAR 848-040-0135(1) (plan of care required prior to initiation of treatment).

3 4. Licensee permitted an aide to perform an ultrasound on Licensee, without a physical  
4 therapist or physical therapist assistant having previously administered that modality to the patient.  
5 Licensee's conduct constitutes a violation of ORS 688.140(2)(a) (violation of Board rule)  
6 specifically OAR 848-040-0145(1) (aide administering a modality without a licensee having done  
7 so first)

8 5. Licensee documented an evaluation and three daily physical therapy notes for the  
9 treatment that she provided to herself. Licensee failed to authenticate one of the daily notes and  
10 licensee failed to retain copies of these records as required. Licensee's conduct constitutes multiple  
11 violations of ORS 688.140(2)(a) (violation of Board rule), specifically, OAR 848-040-0110(15)  
12 (patient records must be maintained for seven years) and OAR 848-040-0110(4) (all chart notes  
13 must be authenticated).

#### 14 SANCTION

15 The Board has authority to discipline licensees and has the discretion to determine a  
16 reasonable sanction based on the licensee's conduct and the number of violations. Considering  
17 the record as a whole and specifically the Findings of Fact and the discussion of the violations  
18 above, the Board concludes that in this case the appropriate sanction is as follows:

19 1. Licensee is assessed a civil penalty of \$5000, which is payable within 30 days of the  
20 date this order is endorsed by the Board.

21 2. Licensee is placed on probation for two years from the date that this document is  
22 endorsed by the Board. During the probationary period, the Board reserves the right to review  
23 Licensee's practice and Licensee must comply with the following conditions:

24 1. Within 30 days of the date of this order, Licensee must provide training, as  
25 per Board rules, to all persons who work as an aide in her clinic and must  
26 provide the Board with copies of the aide training records.

