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BEFORE THE
PHYSICAL THERAPIST LICENSING BOARD
STATE OF OREGON

In the Matter of the License to Practice)
as a Physical Therapist Assistant of:)
LOUIS J. CONDE, PTA)
License # 7949)
Licensee.)

Case No: PT-340-4/10
OAH No: 1102543

FINAL ORDER
BY DEFAULT

HISTORY OF THE CASE

On September 2, 2011, the Physical Therapist Licensing Board (Board) issued a Notice of Proposed Disciplinary Action (Revocation of License) (Notice) that proposed to take disciplinary action against Louis J. Conde, P.T.A. (Licensee) for acts and conduct alleged to constitute violations of the statute and administrative rules applicable to the practice of physical therapy.

On September 30, 2011, Licensee timely requested a hearing. On October 3, 2011, this case was referred to the Office of Administrative Hearings (OAH) for the scheduling of a hearing.

On November 8, 2011, the Board issued Amended Notice of Proposed Disciplinary Action (Revocation of License). Both the Notice and the Amended Notice advised Licensee that failure to request a hearing or appear at any hearing would constitute waiver of the right to a contested case hearing and result in a default order. Those documents also designated the Board's file on this matter as the record for purposes of default.

A hearing was scheduled for April 18, 2012 before Administrative Law Judge Joe Allen of the OAH. Licensee failed to appear at the hearing. The Board elects in this case to designate the record of proceeding to date, which consists of Licensee's file with the Board, as the record for purposes of proving a prima facie case. After considering the Board's file relating to this matter, the Board enters the following Order.

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1 **ISSUE**

2 Did Licensee commit unprofessional conduct by failing to comply with a
3 written order of the Board and failing to report an arrest on a renewal form?

4 **FINDINGS OF FACT**

5 Licensee surrendered his license to practice as a physical therapist assistant (PTA) on
6 July 20, 1999 via a Consent Order, which contained conditions for reinstatement. Subsequently,
7 Licensee's license to practice as a PTA in California was put on probation and then revoked for
8 his failure to cooperate with the terms of probation.

9 Licensee reapplied for an Oregon PTA license June 26, 2010. At that time he had
10 satisfied the conditions of the 1999 Consent Order. On December 29, 2010, the Board and
11 Licensee entered into a Stipulated Agreement and Final Order (Stipulation) that allowed
12 Licensee to receive a probationary license with conditions. One of those conditions was that he
13 was required to complete a board approved professional boundaries course within six months of
14 the date that the Stipulation was executed by the Board and provide evidence to the Board that
15 the course was completed. Licensee failed to timely complete the boundaries course, and in
16 fact, Licensee has not provided any evidence that it was ever completed.

17 On February 2, 2011, Licensee was arrested by the Portland Police for soliciting a
18 prostitute. On March 28, 2011, Licensee renewed his license online. Question 3 on the renewal
19 form asked: "Since your last license renewal, have you been arrested, charged or convicted of
20 any type of violation of the law, including both misdemeanors or felonies, other than a traffic
21 ticket involving parking or a moving violation?" Licensee answered "NO."

22 **DISCUSSION AND CONCLUSIONS OF LAW**

23 The burden of presenting evidence to support a fact or position rests on the proponent of
24 the fact or position." ORS 183.450(2). Here, the Board has the burden of proving its allegations
25 by a preponderance of the evidence. See *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule
26 regarding allocation of burden of proof is that the burden is on the proponent of the fact or

1 position); *Cook v. Employment Div.*, 47 Or App 437, rev. den. 290 Or 157 (1980) (in the absence
2 of legislation adopting a different standard, the standard in administrative hearings is
3 preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder
4 is persuaded that the facts asserted are more likely true than false. *Riley Hill General
5 Contractors v. Tandy Corp.*, 303 Or 390 (1987).

6 The Board has the authority to discipline licensees for violations of the statute and
7 administrative rules. ORS 688.140(1)(a) – (i). Included within that authority is the authority to
8 revoke the license of a physical therapist or a PTA. ORS 688.140(1)(c).

9 Violation of Board Order

10 Licensee has a history of violations related to his practice as a PTA dating back to 1999
11 when he surrendered his license after allegations were made that he had sexual improprieties
12 with patients. If Licensee ever reapplied for a license, he was required to be evaluated by a
13 Board-approved psychologist to assist the Board in determining whether he could safely treat
14 patients. The Board approved Terrel L. Templeman, Ph.D., to evaluate Licensee, he conducted
15 the evaluation on April 26, 2010 and May 3, 2010. In his report, Dr. Templeton concluded that
16 individual's with Licensee's profile "are more resistant to treatment because they see few
17 problems in themselves." He further concluded that Licensee "does not realize that he is still at
18 risk for future relationship problems in his private and professional life."

19 Based on Dr. Templeton's evaluation, the Board had concerns whether Licensee would
20 have sexual boundary issues with patients in the future. As a result, the Board was only willing
21 to grant Licensee a probationary license, and only grant the probationary license if Licensee
22 agreed to complete a Board approved in-person boundary course.

23 The Board and Licensee entered into a Stipulation that was executed by the Board on
24 December 29, 2010. Through the Stipulation, Licensee was required to complete the boundaries
25 course within six months of December 29, 2010. Licensee failed to timely complete the course,
26 and in fact has never provided evidence that he has completed the course. Therefore, Licensee

1 violated ORS 688.140(2)(a) (violating a written order of the Board). This violation alone is
2 sufficient to warrant revocation of Licensee's license because the Board would not have granted
3 him the probationary license if he had not agreed to complete the Board approved boundary
4 course.

5 Obtain Renewal License by Misrepresentation

6 On March 28, 2011, Licensee renewed his license online. Question 3 on the renewal
7 form asked: "Since your last license renewal, have you been arrested, charged or convicted of
8 any type of violation of the law, including both misdemeanors or felonies, other than a traffic
9 ticket involving parking or a moving violation?" Licensee answered "NO." That statement was
10 a misrepresentation because on February 2, 2011, Licensee was arrested by the Portland Police
11 for soliciting a prostitute. Licensee's failure to disclose the arrest constituted a violation of ORS
12 688.140(2)(c) (obtaining a renewal license by misrepresentation).

13 **SANCTION**

14 The Board has authority to discipline licensees and has the discretion to determine a
15 reasonable sanction based on the licensee's conduct and the number of violations. Considering
16 the record as a whole and specifically the fact that the Board would not have granted Licensee a
17 probationary license without his express promise to complete a Board-approved boundary
18 course, the Board has strong misgivings about Licensee's ability to safely practice physical
19 therapy. Additionally, the fact that Licensee solicited a prostitute demonstrates to the Board that
20 Licensee continues to have boundary issues. Lastly, Licensee's failure to disclose the arrest
21 shows that Licensee does not have the ethical character needed to act as a PTA. Therefore, the
22 Board concludes that the only appropriate sanction is revocation of Licensee's license to practice
23 as a PTA pursuant to ORS 688.140(1)(c).

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1 **ORDER**

2 IT IS HEREBY ORDERED that Licensee's license to practice as a PTA is revoked the
3 day that this Final Order by Default is issued by the Board.

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5 DATED this 9th day of MAY, 2012.

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7 PHYSICAL THERAPIST LICENSING BOARD
8 State of Oregon

9 **SIGNATURE ON FILE**

10 By: ~~James D. Heider~~
Executive Director

11 **RIGHT TO JUDICIAL REVIEW**

12 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by
13 filing a petition for review with the Oregon Court of Appeals within 60 days from the date of this
14 Final Order by Default. If you do not file a petition for judicial review within the 60 days time
15 period, you will lose your right to appeal.
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1 At its meeting on November 4, 2011, the Board voted to issue this Amended Notice of
2 Proposed Disciplinary action for the follow reasons:

- 3 1. On February 2, 2011, Licensee was arrested for the crime of Unlawful Prostitution
4 Procurement Activities in Portland, Oregon and
- 5 2. Licensee failed to report this arrest when he renewed his PTA license on March 28, 2011.

6 Licensee's conduct constitutes grounds for discipline pursuant to ORS 688.140(2)(a) for
7 failing to comply with a written order of the Board and ORS 688.140(2)(c)(obtains a renewal
8 license by misrepresentation). Pursuant to ORS 688.140(1)(c), the Board proposes to revoke
9 Licensee's PTA license.

10 If Licensee desires a hearing on the proposed action, Licensee has the right, if Licensee
11 requests, to have a formal contested case hearing as provided by the Administrative Procedures
12 Act (ORS chapter 183). If Licensee wishes to have a hearing regarding the proposed action,
13 Licensee must file a written request for hearing with the Board **within 30 days** from the date this
14 notice is mailed. Licensee may send or deliver a request for hearing to: Oregon Physical
15 Therapist Licensing Board, 800 NE Oregon Street, Suite 407, Portland, Oregon 97232-2187.

16 If the request for hearing is not received within this 30-day period, Licensee's right to a
17 hearing shall be considered waived. If Licensee requests a hearing, Licensee will be notified of
18 the time and place of the hearing. Before the commencement of the hearing, Licensee will be
19 given information on the procedure, right of representation and other rights of parties relating to
20 the conduct of the hearing.

21 If Licensee does not request a hearing within 30 days, or if Licensee withdraws a request
22 for hearing request, or notifies the Board or Administrative Law Judge that Licensee will not
23 appear, or fails to appear at a scheduled hearing, the Board may issue a final order by default. If
24 the Board issues a final order by default, it designates its file on this matter as the record for the
25 purpose of proving a *prima facie* case. ORS 183.415(6).

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1 Dated this 8th day of NOVEMBER, 2011.

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3 OREGON PHYSICAL THERAPIST
4 LICENSING BOARD
5 **SIGNATURE ON FILE**
6 _____
7 James D. Heider, Executive Director
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1 Licensee's conduct constitutes grounds for discipline pursuant to ORS 688.140(2)(a) for
2 failing to comply with a written order of the Board. Pursuant to ORS 688.140(1)(c), the Board
3 proposes to revoke Licensee's PTA license.

4 If Licensee desires a hearing on the proposed action, Licensee has the right, if Licensee
5 requests, to have a formal contested case hearing as provided by the Administrative Procedures
6 Act (ORS chapter 183). If Licensee wishes to have a hearing regarding the proposed action,
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16 for hearing request, or notifies the Board or Administrative Law Judge that Licensee will not
17 appear, or fails to appear at a scheduled hearing, the Board may issue a final order by default. If
18 the Board issues a final order by default, it designates its file on this matter as the record for the
19 purpose of proving a *prima facie* case. ORS 183.415(6).

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21 Dated this 2nd day of SEPTEMBER, 2011.

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OREGON PHYSICAL THERAPIST
LICENSING BOARD
SIGNATURE ON FILE

James D. Heider, Executive Director

DEC 27 2010

BEFORE THE PHYSICAL THERAPIST LICENSING BOARD
OF THE STATE OF OREGON

In the Matter of the)	Case No.: PT 340-4/10
Physical Therapist Assistant Application of)	
)	
LOUIS CONDE)	
Former License # 7949)	
)	
Applicant)	STIPULATED AGREEMENT AND FINAL ORDER

The Oregon Physical Therapist Licensing Board (Board) is the state agency responsible for licensing and disciplining physical therapists and physical therapist assistants pursuant to ORS 688.140 and 688.160. Louis Conde (Applicant) is applying for a license to practice as a physical therapist assistant (PTA) in Oregon.

GROUND FOR DENIAL OF APPLICATION

Applicant previously held a PTA license in Oregon which he surrendered via a Consent Order on July 20, 1999. The Consent Order, which is incorporated herein, included conditions of reinstatement, to which Applicant has complied. Based on the Oregon Consent Order, Applicant's license to practice in California was placed on probation and subsequently revoked for failure to cooperate with the terms of probation. In addition, at the time of his PTA application in Oregon, Applicant held a PTA license in Washington which was the subject of an investigation and Applicant failed to disclose this investigation to the Board.

For violation of 848-010-0044 (3) and (7) and pursuant to ORS 688.140 (2)(c) and (2)(j), the Board has grounds to deny licensure to Applicant for prior disciplinary actions in Oregon and California and for attempting to obtain a license by misrepresentation. However, the Board agrees to grant a license to Applicant and the Board and Applicant agree to resolve the issues through this Stipulated Agreement and Final Order as follows:

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STIPULATIONS

1. The Board agrees to grant Applicant a license to practice as a physical therapist assistant in Oregon.
2. Applicant agrees that his license is placed on probation for three years with the following restrictions.
 - a) During the period of probation, Applicant's practice setting is restricted to a Skilled Nursing or Long Term Care Facility. Applicant must notify the Board of any changes in employment within 30 days of the change.
 - b) During the period of probation, Applicant must practice with onsite supervision of a physical therapist or rehab director.
 - c) Applicant agrees to provide a copy of this Stipulated Agreement to all employers during the probationary period and he further agrees to provide evidence of such to the Board.
3. Applicant stipulates that he will complete a Board approved course on professional boundaries, at his own expense within 6 months of the date that this Stipulated Agreement is executed by the Board. The course must be attended in person and can not be a home study or online course.
4. The Board assesses and Applicant stipulates to the assessment of a civil penalty of \$250 for the Applicant's failure to disclose the fact that he was under investigation by the State of Washington, Department of Health at the time of his PTA Application in Oregon.
5. Applicant is aware of his right to notice, to be represented by counsel, to a hearing where he could call witnesses and cross-examine witnesses called by the Board, and the Applicant hereby waives these rights and agrees to entry of this Stipulated Agreement and Final Order.

ORDER

IT IS HEREBY ORDERED:

1. The Applicant's application for a license as a physical therapist assistant in Oregon is granted and Applicant is placed on probation for three years with above stated restrictions.

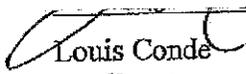
2. The applicant is assessed a civil penalty of \$250 payable within 30 days of the execution of this document by the Board Executive Director.
3. Within 6 months of the date this document is executed by the Board, the applicant is to complete a Board approved course on professional boundaries, at his own expense and provide the Board with evidence of completion.

DATED this 29th day of ^{December JDH} ~~SEPTEMBER~~, 2010.

OREGON PHYSICAL THERAPIST
LICENSING BOARD
SIGNATURE ON FILE
James D. Heider
Executive Director

I hereby certify that I have read and understand the Stipulation and Final Order. I agree to the Board entering this final order.

12.12.10
Date

SIGNATURE ON FILE

Louis Conde
Applicant

BEFORE THE PHYSICAL THERAPIST LICENSING BOARD
OF THE STATE OF OREGON

In the Matter of)

LOUIS CONDE, P.T.A.,)

Licensee.)

) CONSENT ORDER

WHEREAS, the Oregon Physical Therapist Licensing Board (Board) issued a license to Louis Conde (licensee) to practice as a physical therapist assistant; and

WHEREAS, the Board has received a complaint, has conducted an investigation and is prepared to issue a Notice of Proposed Disciplinary Action alleging that the licensee has engaged in sexual improprieties with patients; and

WHEREAS, the licensee is aware of his right to a formal notice of the allegations against him, of his right to a hearing at which he may be represented by counsel, of his right to testify and present other evidence and to cross-examine witnesses and of his right to judicial review of any adverse Board decision; and

WHEREAS, the licensee knowingly and voluntarily waives these rights and agrees to the provisions of this Consent Order; and

WHEREAS, the Board and the licensee are desirous of resolving these matters without further proceedings thereon; and

WHEREAS, the licensee tenders the resignation of his physical therapist assistant license to be effective upon acceptance pursuant to this Consent Order; and

WHEREAS, by agreeing to the entry of this Consent Order the licensee does not admit any of the allegations arising out of the complaint or the Board's investigation; and

WHEREAS, the licensee and the Board agree that at such time as the licensee seeks reinstatement of his license he shall at his own expense obtain an evaluation by a Board approved evaluator; the Board's approval of the evaluator shall be obtained in writing prior to the evaluation; and upon completion of the evaluation the evaluator shall provide a written report to the Board describing the evaluation and describing any treatment recommendations; and

WHEREAS, the licensee agrees that at such time as the licensee seeks reinstatement of his license he shall demonstrate that he is otherwise qualified for relicensure pursuant to statute and Board rules; and

WHEREAS, the licensee agrees to comply with all treatment recommendations of the evaluator and such further restrictions on his license as the Board reasonably determines to be necessary in the interest of the public health, safety and welfare based on the evaluator's report:

NOWHEREFORE IT IS HEREBY ORDERED:

1. The Board hereby accepts the resignation of the licensee's physical therapist assistant license, effective immediately.
2. At such time as the licensee seeks reinstatement of his license he shall at his own expense obtain an evaluation by a

Board approved evaluator; the Board's approval of the evaluator shall be obtained in writing prior to the evaluation; and upon completion of the evaluation the evaluator shall provide a written report to the Board describing the evaluation and describing any treatment recommendations.

3. At such time as the licensee seeks reinstatement of his license he shall demonstrate to the Board that he is otherwise qualified for relicensure pursuant to statute and Board rules.

4. At such time as the licensee seeks reinstatement of his license he shall comply with all treatment recommendations of the evaluator and he shall comply with such further restrictions on his license as the Board reasonably determines to be necessary in the interest of the public health, safety and welfare based on the evaluator's report.

5. This Consent Order shall become effective when signed by the President of the Board.

DATED this 10 day of July, 1999.

PHYSICAL THERAPIST LICENSING BOARD
FOR THE STATE OF OREGON

SIGNATURE ON FILE

By: [Signature]
Board President

CONSENT

I hereby certify that I have read and understand the provisions of the foregoing Consent Order. I agree to the Board entering the Consent Order as its Order.

7-16-99
Date

SIGNATURE ON FILE

[Signature]
Louis Conde, PTA
Licensee