

1 with Board staff. In October 2008, Licensee was arrested for Driving Under the Influence of
2 Intoxicants (DUII). Licensee failed to report this arrest on his 2009-2010 license renewal
3 application.

4 On his 2009-2010 license renewal application, Licensee indicated that he was being
5 treated for a "chronic condition." After further communication between the Board and the
6 Licensee, Licensee indicated that the condition was depression and that he had two treatment
7 providers.

8 On September 10, 2008 while employed by Rebound Physical Therapy, Licensee became
9 angry at a physical therapy aide, walked away from the patient he was treating, went into an
10 office with the aide, threw a chair and cursed in view of patients.

11 Based on the Licensee's failure to report an arrest and the Board's additional concerns
12 regarding Licensee's mental health condition, on July 23, 2009, the Board issued a Confidential
13 Advisory Letter requiring Licensee to provide biannual reports from his two mental health
14 providers. The reports were to document his treatment and progress. Licensee and his providers
15 failed to provide the required reports despite the Licensee being reminded to do so by the
16 Board's Executive Director.

17 On November 8, 2009, Licensee was arrested for Criminal Trespass II and Resisting
18 Arrest. Prior to the arrest, Licensee was engaged in fighting and tumultuous and threatening
19 behavior in a restaurant/lounge. Licensee attempted to head butt a security officer who
20 confronted him and he was instructed to leave and not return. Licensee was arrested as he
21 attempted to reenter the lounge. Licensee made inflammatory comments to the arresting officers
22 who had to use physical force to handcuff the Licensee. Licensee resisted entering the patrol car
23 by biting the metal door frame while growling. He was uncooperative during the entire booking
24 process. He was ordered to complete court mandated anger management classes and appear in
25 court on June 30, 2010. Licensee failed to appear, therefore, a warrant has been issued for his
26 arrest.

1 In March 2010, Licensee became angry and agitated while in a staff meeting at his place
2 of employment, Mountainview Hospital in Madras Oregon. After the incident, the Licensee
3 resigned from his job, and sent messages of a hostile nature to coworkers. The threatening
4 nature of the Licensee's communication raised concern regarding the safety of the employees
5 involved; therefore, the Madras Police were contacted.

6 On August 4, 2010, the Board ordered Licensee to undergo an independent mental health
7 evaluation by a board approved psychiatrist within 60 (sixty) days of the date of the order.
8 Licensee failed to undergo the evaluation within 60 (sixty) days, and has not as of this date
9 undergone the evaluation ordered by the Board.

10 DISCUSSION AND CONCLUSIONS OF LAW

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

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

23 On August 4, 2010, the Board ordered Licensee to undergo an independent mental health
24 evaluation by a board approved psychiatrist within 60 (sixty) days of the date of the order. The
25 examination was ordered because of the reports of Licensee's multiple instances of angry and
26 bizarre behavior as enumerated under the Findings of Fact. Licensee failed to undergo the

1 evaluation within the 60 (sixty) days, and indeed has not as of this date undergone the evaluation
2 ordered by the Board. Therefore, Licensee is subject to discipline pursuant to ORS
3 688.140(2)(a) for violating a written order of the Board.

4 **SANCTION**

5 The Board has authority to discipline licensees and has the discretion to determine a
6 reasonable sanction based on the licensee's conduct and the number of violations. Considering
7 the record as a whole and specifically the multiple instances of angry and bizarre behavior
8 coupled with the failure to undergo an evaluation, the Board has strong misgivings about
9 Licensee's ability to safely practice physical therapy. Therefore, the Board concludes that the
10 only appropriate sanction is revocation of his license to practice physical therapy pursuant to
11 ORS 688.140(1)(c).

12 **ORDER**

13 IT IS HEREBY ORDERED that Licensee's license to practice physical therapy is
14 revoked the day that this Final Order by Default is issued by the Board.

15
16 DATED this 16th day of FEBRUARY, 2011.

17 PHYSICAL THERAPIST LICENSING BOARD
18 State of Oregon

19 By: **SIGNATURE ON FILE**
20 James D. Heider
Executive Director

21 **RIGHT TO JUDICIAL REVIEW**

22 You are entitled to judicial review of this Order. Judicial review may be obtained by
23 filing a petition for review with the Oregon Court of Appeals within 60 days from the date of this
24 Final Order on Default. If you do not file a petition for judicial review within the 60 days time
25 period, you will lose your right to appeal.
26

1 provide the required reports despite the Licensee being reminded to do so by the Board's Executive
2 Director.

3 5. On November 8, 2009, Licensee was arrested for Criminal Trespass II and Resisting Arrest.
4 Prior to the arrest, Licensee was engaged in fighting and tumultuous and threatening behavior in a
5 restaurant/lounge. Licensee attempted to head butt a security officer who confronted him and he was
6 instructed to leave and not return. Licensee was arrested as he attempted to reenter the lounge.
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8 handcuff the Licensee. Licensee resisted entering the patrol car by biting the metal door frame while
9 growling. He was uncooperative during the entire booking process. He was ordered to complete
10 court mandated anger management classes and appear in court on June 30, 2010. Licensee failed to
11 appear, therefore, a warrant has been issued for his arrest.

12 6. In March 2010, Licensee became angry and agitated while in a staff meeting at his place of
13 employment, Mountainview Hospital in Madras Oregon. After the incident, the Licensee resigned
14 from his job, and sent messages of a hostile nature to coworkers. The threatening nature of the
15 Licensee's communication raised concern regarding the safety of the employees involved; therefore,
16 the Madras Police were contacted.

17 7. On August 4, 2010, the Board ordered Licensee to undergo an independent mental health
18 evaluation by a board approved psychiatrist within 60 (sixty) days of the date of the order. Licensee
19 failed to undergo the evaluation.

20 Licensee's conduct constitutes multiple violations of ORS 688.140(2)(a) (violation of written
21 orders of the Board). Pursuant to ORS 688.140(2)(d), the Board proposes to revoke Licensee's physical
22 therapy license.

23 If Licensee desires a hearing on the proposed action, Licensee has the right, if Licensee
24 requests, to have a formal contested case hearing as provided by the Administrative Procedures Act
25 (ORS chapter 183). If Licensee wishes to have a hearing regarding the proposed action, Licensee
26 must file a written request for hearing with the Board **within 30 days** from the date this notice is

1 mailed. Licensee may send a request for hearing to: Oregon Physical Therapist Licensing Board,
2 800 NE Oregon Street, Suite 407, Portland, Oregon 97232-2187.

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

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

13
14 Dated this 29th day of DECEMBER, 2010.

15 OREGON PHYSICAL THERAPIST
16 LICENSING BOARD

17
18 **SIGNATURE ON FILE**

19 James D. Heider, Executive Director
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