

LOUISIANA PHYSICAL THERAPY BOARD

IN THE MATTER OF

MARSHALL PEAK, APPLICATION FOR
LICENSURE AS PHYSICAL THERAPIST ASSISTANT

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
BOARD ORDER

The Louisiana Physical Therapy Board held a hearing on December 12, 2019, In the Matter of Marshall Peak, Application For Licensing As A Physical Therapist Assistant.

A quorum of the Board was present including Julie Harris, Karl Kleinpeter, Judith Halverson, Philip Page and Kathryn Brittain.

Also present were:

Alicia Edmond Wheeler, Assistant Attorney General, serving as Hearing Officer;

James R. Raines, Board prosecutor; and

Celia R. Cangelosi, acting as Board advisor.

Marshall Peak, License Applicant, was not present.

Testimony and other evidence were received by the Board. The hearing concluded on December 12, 2019.

In open session, a motion was made by Judith Halverson and seconded by Kathryn Brittain to DENY the physical therapist assistant license application of Marshall Peak and to DENY Marshall Peak the right to sit for licensing examination as a physical therapist assistant under La. R.S. 37:2420A(5) for habitual intemperance or abuse of controlled dangerous substance as defined by state or federal law. The motion passed after unanimous vote in the affirmative.

This matter came before the Board again on January 16, 2020, for adoption of findings of fact and conclusion of law.

Board members present were: Karl Kleinpeter, Judith Halverson, Kathryn Brittain, Phillip Page, and Meredith A. Warner.

Dr. Meredith Warner had read the transcript of the December 12, 2019 hearing.

A motion was made by Judith Halverson and seconded by Kathryn Brittain to adopt the following findings of fact and conclusions of law. The motion passed after a unanimous vote in the affirmative.

FINDINGS OF FACT

1. On or about April 2, 2019, Marshall Peak signed, dated and had notarized his signature on an application for physical therapist assistant license in Louisiana.
2. The Louisiana Physical Therapy Board received the application, and on or about April 15, 2019, the Louisiana Physical Therapy Board office noticed some inaccuracies in the application and asked Marshall Peak to correct the inaccuracies and resubmit the application.
3. Marshall Peak corrected the application as requested and resubmitted the application to the Physical Therapy Board office. However, Marshall Peak did not again appear before a notary public to sign or have his signature notarized of the resubmitted and corrected application. The resubmitted and corrected application still contained an April 2, 2019 signature made before a notary public.
4. Of concern on the application were Marshall Peak's answers of "Yes" to the following questions:
 12. Have you ever been cited for, arrested for, charged with, convicted of or pled guilty or nolo contendere, to any violation in any state or federal court, whether or not sentence has been imposed, suspended or pardoned other than a case that was resolved in juvenile court.
 16. Have you ever been cited for, arrested for, charged with, or convicted of or pled nolo contendere to any moving traffic violations? (Omit parking violations)
 2. Have you ever been dropped, expelled, fined, warned, placed on scholastic or disciplinary probation, restriction, suspension, revocation, modification, requested to resign, allowed to resign, requested to leave temporarily or permanently or otherwise been acted against or subjected to discipline by any college, university, professional or training program, post-secondary education program, or requested or advised by such institution to discontinue your studies at such facility.

5. Investigation revealed the following arrests and/or convictions:
- a. A 1998 arrest for possession of Schedule I, marijuana; possession of drug paraphernalia; possession of Schedule II, cocaine; and a charge relating to headlights;
 - b. An April of 2003 arrest for DWI, no taillight, and expired license plate;
 - c. A 2011 arrest for expired MVI;
 - d. A 2014 arrest for stop sign, yield sign, turn movement, and required signal violation; for operating a vehicle with a suspended license; for operating a vehicle while intoxicated; and for reckless operation of a vehicle.

6. By letter dated April 10, 2019, Marshall Peak was asked to provide the Board office with additional information regarding arrests and convictions.

7. By correspondence received in the Board office on June 3, 2019, additional information was provided by Marshall Peak as follows:

a. For the 1998 arrest, Marshall Peak explained that this had occurred 21 years ago, when he was hanging out with an older neighbor, a "bad influence" who was into drugs. Mr. Peak admitted that he and the neighbor had been smoking pot together in a car. When pulled over for having a taillight out, Mr. Peak allowed a search of the vehicle whereupon marijuana, a pipe, and his neighbor's cocaine were found in the glove box. Mr. Peak said he "took all of the drug charges" to protect the neighbor. Mr. Peak says he only spent the night in jail, and that there never were any court proceedings for the case.

b. In 2003, Marshall Peak, was arrested for DWI, reckless driving, improper equipment and expired license plate tag. Mr. Peak admitted drinking "four beers". He says he passed a field sobriety test. However, on the Breathalyzer (with a limit of 0.1), Mr. Peak's blood alcohol level was 0.102, over the limit. Mr. Peak says he served a year of supervised probation with a monthly random drug test. He claims to have participated in an intensive outpatient rehabilitation program and paid fines.

c. In 2003, after the DWI, Mr. Peak pled guilty to driving under suspension.

d. In 2014, Mr. Peak was charged with DWI, failure to signal, reckless driving, no driver's license, and failure to stop at a stop sign. He refused the breath test. He says he completed all sentences of fines, unsupervised probation, and driving classes. He claims that this was his first DWI offense, contending the earlier DWI "had gone through" Article 893.

e. In 2017, Mr. Peak was arrested for speeding, expired inspection sticker,

expired driver's license plate, and driving under suspension. He says he later received a valid driver's license and renewed his paperwork and license; and that all charges were dropped.

8. Mr. Peak was interviewed on July 20, 2019, by Kathy Pullman, the manager of the Physical Therapy Board Recovering Physical Therapist Program. Her concern was whether Mr. Peak currently had an alcohol or substance abuse issue that should be monitored by the board and whether he was fit for practice with safety to the public.

9. Mr. Peak told Ms. Pullman on July 20, 2019 that he did not use any drugs and only drank occasionally. When asked to submit to testing, Mr. Peak admitted that he last used alcohol about two to three weeks before when tubing and drinking the whole way down the river.

10. By letter dated July 30, 2019, the Physical Therapy Board office requested Marshall Peak submit to a drug test on July 31, 2019. Mr. Peak was tested, with a positive PETH test result, an indication of binge drinking or frequent daily drinking.

11. The board medical review officer, Dr. Barry Lubin, with Spectrum Compliance, a drug testing third party, opined that within two or three weeks prior to the test Marshall Peak must have consumed a very significant amount of alcohol, at least three to four ounces daily or several major binges of eight to 12 ounces each, not an indication of social drinking.

12. At the board office request, Marshall Peak went to Palmetto Recovery Center for an inpatient evaluation on August 19-22, 2019. The evaluation revealed that Mr. Peak had a moderate alcohol use disorder, mild to moderate cocaine use disorder, and mild antisocial personality features.

13. Palmetto reported that Mr. Peak's alcohol use as often as weekly and occasionally drinking in a binge pattern of more than four drinks per session, all in stark contrast to what Mr. Peak had said in his interview with Ms. Pullman.

14. While Mr. Peak told Ms. Pullman that he did not do drugs, he told Palmetto that he snorts cocaine when available and that he last used cocaine in mid-July 2019.

15. The Palmetto evaluation recommended:

1. Sign and follow a five year Louisiana Recovering Physical Therapy Program monitoring contract. Any violations of contract or positive drug or alcohol screens should result in further inpatient evaluation.
2. Complete an RPTP approved Inpatient Treatment Program experienced in the treatment of chemically dependent professionals.
3. Marshall is not ready to practice his profession with skill and safety until he has completed treatment, has a continuing care

plan in place, has signed an RPTP agreement and has met with his treating addictionist following treatment to determine fitness to return to duty.

16. The board committee considering Mr. Peak's license application recommended that the matter be presented to the Board for a board decision on licensing.

17. Marshall Peak was sent letters dated September 24, 2019 and October 7, 2019, notifying him that a hearing would be held on December 12, 2019 regarding his licensure. The September 24, 2019 letter was received by Marshall Peak on October 2, 2019. The October 7, 2019 letter advised that the intent to deny licensure was based on a history of habitual intemperance.

18. Mr. Peak was sent a subsequent letter dated November 5, 2019, advising of the time for the December 12, 2019 hearing.

19. Mr. Peak indicated that he would request a hearing continuance but never did so.

20. No further communication was received from Marshall Peak.

21. Marshall Peak did not appear at the December 12, 2019 hearing.

CONCLUSION OF LAW

Physical Therapist Assistant License Applicant Marshall Peak is found to be in violation of the following statutes and regulations:

La. R.S. 37:2420A(5) - Been habitually intemperate or abused controlled dangerous substances as defined by federal or Louisiana law;

LAC 46:LIV §351A(2) and (3) - A. As used in R.S. 37:2420A(5) of the Practice Act, "habitually intemperate" means:

* * *

(2) the ingestion, self-administration, or other use of legally controlled substances or medications which affect the central nervous system, other than pursuant to and used in accordance with a lawful prescription and/or medical advice; and

(3) repeated excessive use or abuse of any mood altering or mind altering substance that may negatively impact the ability of a licensee to safely practice physical therapy.

* * *

BOARD ORDER

IT IS ORDERED, ADJUDGED AND DECREED that the application for physical therapist

assistant license and request to sit for physical therapist assistant licensure examination of Marshall Peak are DENIED.

ORDER RENDERED on December 12, 2019; ORDER READ AND SIGNED on January 16, 2020.

Karl Klyntus, PT, DPT
BOARD CHAIR