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Ms. Charlotte F. Martin, M.P.A
Executive Director
LA Physical Therapy Board
104 Fairlane Drive
Lafayette, LA 70507

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JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

October 31, 2014

Ms. Charlotte F. Martin, M.P.A.
Executive Director
LA Physical Therapy Board
104 Fairlane Drive
Lafayette, LA 70507

Re: *David M. Conerly, PT, License No. 03966,
Admin Complaint No. 2014-1-014*

Dear Ms. Martin:

Enclosed herewith please find Findings of Fact and Conclusions of Law for David M. Conerly, PT. If you have any questions or concerns, feel free to contact me at (225) 326-6040.

With kindest personal regards, we remain

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:

Madelene S. Carbonette
MADELINE S. CARBONETTE
Assistant Attorney General

JDC:MSC:jr
Enclosures

LOUISIANA PHYSICAL THERAPY BOARD

IN THE MATTER OF: DAVID M. CONERLY, PT
LICENSE NO. 03966
ADMINISTRATIVE COMPLAINT NO. 2014-1-014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Louisiana Physical Therapy Board (the "Board") held an Administrative Hearing in the above referenced matter at the Board's Office, located at 104 Fairlane Drive in Lafayette, Louisiana, on September 25, 2014. A quorum of the Board was present and participated in the hearing. Board Members participating were Elizabeth A. Austin, Susan Bartol, Al C. Moreau III, Danny P. Landry, Don Cassano Jr., and Kristina Lounsberry. Madeline S. Carbonette, an assistant attorney general appointed to act as hearing officer was present. The case was prosecuted by George M. Papale. Respondent, David M. Conerly, was present and was represented by his attorney, Eric Johnson. Charlotte Martin, Ashley Richard and David M. Conerly, after being duly sworn, offered testimony as witnesses.

After receiving the evidence presented, including exhibits and the testimony of witnesses, the Board made the following findings of facts and conclusions of law:

1. Respondent was a physical therapist licensed by the Board as evidenced by license number 03966 and is currently 42 years of age.
2. On June 18, 2003, Respondent entered into a Consent Order with the Board in Case Number 2003 i 13, related to his arrest in Webster Parish on October 10, 2002 for driving while intoxicated, possession of methamphetamine and cocaine and resisting arrest. The Consent Order contained Respondent's acknowledgment that he had answered untruthfully to at least two of the five questions on his license renewal application dated December 31, 2002.
3. Preceding the Consent Order, Respondent attended an informal conference at which he provided information about his completion of 60 days of in-patient treatment in Dallas, Texas following which he returned to his place of employment and within one month again used controlled substances. At the time

of this Consent Order, Respondent stated that he was “prepared to commit to a serious recovery program”.

4. The Consent Order identified Respondent’s violations of the Practice Act and Board Rules relating to habitual intemperance and obtaining a license by fraud or misrepresentation and imposed a period of three years probation with provisions for drug testing and practice monitoring. Respondent’s license was on the probation until July 31, 2006.

5. The entirety of the previously alleged Consent Order is incorporated into these findings of fact by reference as this pleaded herein, *in extenso*.

6. In September of 2012, Respondent contacted the Board office by telephone to advise that he had been arrested on a pornography charge based on information which was discovered on his computer. Respondent and his attorney attended a meeting at the Board office on September 25, 2012 attended by the Board’s Executive Director and Complaint Counsel. At the meeting, Respondent stated that while his computer was in the shop for repairs, pornographic data involving juveniles was found by the computer technician who reported the information to law enforcement leading to Respondent’s arrest. Respondent asserted that he had no knowledge about how the pornographic data had been loaded into his computer, maintained his innocence, and pledged his cooperation with the Board. Respondent’s attorney stated that no formal charges have been filed, that he would be meeting with the District Attorney assigned to the case and attempt to convince him that charges should not be filed against his client. Respondent and his attorney also agreed to notify the Board in the event that formal criminal charges were filed. Neither Respondent nor his attorney made any statements concerning Respondent’s impairment or current use of controlled substances.

7. At the September 25, 2012 meeting, Respondent stated that he had voluntarily stopped working as a physical therapist and agreed to notify the Board prior to accepting work as a physical therapist. On request of the Executive Director, Respondent, on September 26, 2012, provided written confirmation of his agreement regarding his future work as a physical therapist.

8. On October 23, 2012, Respondent was formally charged by a Bill of Information filed by the Assistant District Attorney in the Twenty-Sixth Judicial District Court (Parish of Bossier) with pornography involving juveniles in violation of La. R. S. 14:81.1. Neither Respondent nor his attorney notified the Board that formal criminal charges had been filed. The Board did not receive notice of the filing of the formal charge against Respondent until July 15, 2013 when Respondent’s attorney responded to the Board’s written follow-up inquiry.

9. On November 30, 2013, the Board sent another written follow-up inquiry to Respondent’s attorney seeking information about the disposition of a pretrial motion as well as the status of Respondent’s interim employment history since the

September 25, 2012 meeting. There was no response to this inquiry.

10. On April 30, 2014, Respondent's physical therapy license expired because of his failure to timely renew.

11. On May 28, 2014, Respondent sent an e-mail to the Board's Executive Director to advise that his reinstatement application would be delayed and of his decision "to attend a substance abuse program in order to address the circumstances in my life that drove me to break my sobriety". Following the 2003 Consent Order, Respondent had provided no other notice of a substance abuse or impairment. Respondent failed to provide any information concerning the disposition of the pornography charge.

12. Following the receipt of the e-mail, an additional Board inquiry to the Court disclosed that on May 13, 2014, Respondent had pled guilty to a felony (Obstruction of Justice) as a result of an amended Bill of Information to the criminal charge of pornography involving juveniles. Respondent's conviction of a felony by his guilty plea constitutes a violation of the Practice Act, La. R.S. 37:2420 (A)(4) and Respondent failed to report this violation to the Board in violation of Board Rule §377.

13. The Court transcript of Respondent's Guilty Plea and Sentencing, obtained by the Investigative Committee, referenced reports submitted by Respondent's attorney to the Assistant District Attorney as part of those proceedings. In the transcript Respondent's attorney also acknowledged that Respondent has "a substance abuse issue". Based on the previously alleged information and Respondent's representation in his May 28, 2014 e-mail to the Board that he was in the admission process at the Rayville Recovery Center in Rayville, Louisiana ("Rayville"), the Investigative Committee notified Respondent of the Board-initiated complaint, scheduled an Informal Conference for July 24, 2014 and requested that Respondent provide copies of the evaluations and reports referred to in the Court transcript (Mark Vigen, Ph.D. and Keystone Center Extended Care Unit, Chester, Pennsylvania) and the records from Respondent's treatment at Rayville. Respondent provided copies of the requested records and attended the Informal Conference represented by legal counsel.

14. The records submitted by Respondent to the Investigative Committee disclosed Respondent's acknowledgment and admissions of additional violations of the Practice Act and Board Rules.

15. Respondent admitted to downloading pornography involving children.

16. Respondent has been employed as a physical therapist from 1998 until 2012. During the period of 2006-2010, Respondent typically worked 12 hours a day.

17. Respondent admitted that he has a significant poly substance abuse history

which includes alcohol, prescription medications, controlled dangerous substances including "street drugs" and other addictive substances; using cocaine at age 13, snorting or smoking \$40 worth a month; began heavy marijuana usage at age 14, smoking at least one joint a week, with last admitted usage on November 21, 2013; intermittent usage of IV heroin beginning at age 40, including usage as recent as November of 2013; methamphetamines (Respondent's drug of choice) with usage as recent as May 30, 2014; intermittent use of Lortab as recently as October, 2013 and ongoing use of amyl nitrate; and using Ecstasy and acid three to four times a year, inhaling computer duster on a regular basis, huffing one can three to four times a week.

18. Respondent admitted that in 2010, when he was terminated from Synergy Care, he began drinking and abusing cocaine again and later that year began using methamphetamines smoking or snorting 2 g per week; in 2012, he was admitted to Narc Anon in Denham Springs, Louisiana for 90 days and on the day of discharge immediately began abusing methamphetamines and alcohol again; he continued to abuse alcohol, methamphetamines and cocaine until he left to attend the six weeks program at Keystone in November of 2013; on the day of his arrival at Keystone he had used crystal meth, Adderall and several other substances and surrendered a quantity of crystal meth, Klonopin, Subaxone, a strip of Subutex, and a bag of syringes; and two weeks following his return from Keystone in January of 2014, he relapsed, nearly overdosed on methamphetamines and underwent detoxification at Willis Knighton.

19. Respondent admitted that he arrived at Rayville for the drug treatment program on May 30, 2014 with a history of using alcohol, methamphetamines and benzodiazepine that same day.

20. Respondent admitted he has a considerable gambling problem dating back to 1998.

21. Respondent, when submitting renewal applications for his physical therapy license on December 31, 2010, December 31, 2011 and March 28, 2013 provided a negative response to the following question: "Within the last year have you engaged in the abuse of alcohol or used any illegal drug or controlled dangerous substances? Respondent's negative response to this question was untruthful on each application.

22. Respondent told the staff at Keystone that while he does not have any formal sanctions against him, he contacted the Louisiana Physical Therapy Board and that they have a "gentleman's agreement" that he will keep them apprised of his legal situation. (Exhibit B-13, page 2 of 16).

23. Respondent violated La. R.S. 37:2420(A)(1) by the practice of physical therapy in violation of the Practice Act, Rules or standards of practice.

24. Respondent violated La. R.S. 37:2420(A)(2) by obtaining a license by fraud or misrepresentation, as further defined by Rule §347 (A)(1) and (2), by providing untruthful answers on applications for license renewals to questions relating to the abuse of alcohol and usage of illegal drugs or controlled substances.

25. Respondent violated La. R.S. 37:2420(A)(4) by being convicted of a felony.

26. Respondent violated La. R.S. 37:2420(A)(5), as further specified by Rule §351 (A) and (B), by repeated and ongoing excessive use and abuse of alcohol, the ingestion, self administration or other use of legally controlled substances as well as the abuse of controlled dangerous substances.

27. Respondent violated La. R.S. 37:2420(A)(7) by engaging in unprofessional conduct as specified by Rule §345(B)(1) by the commission of any act contrary to the honesty, justice good morals, patient safety or best interest of the patient by downloading to his computer pornographic images involving juveniles.

28. Respondent violated Board Rule §377 by failing to report to the Board significant violations of the practice act, board rules of those set forth in the Code of Ethics and related documents of the APTA relating to his ongoing and repeated substance abuse and habitual intemperance and by his refusal to allow other persons knowledgeable about his condition to report to the Board and by his failure to report his felony conviction.

After making the findings of facts and conclusions of law listed above, the Board voted that Respondent violated La. R.S. 37:2420(A)(1), La. R.S. 37:2420(A)(2), La. R.S. 37:2420(A)(4), La. R.S. 37:2420(A)(5), La. R.S. 37:2420(A)(7), and Board Rule §377 and denying David M. Conerly's application for reinstatement of his license to practice physical therapy in the State of Louisiana.

Signed this 3rd day of October, 2014 at Baton Rouge, Louisiana.

Madelene S. Carbonette

MADELINE S. CARBONETTE
HEARING OFFICER