

**LOUISIANA STATE BOARD OF
PHYSICAL THERAPY EXAMINERS**

IN THE MATTER OF

BOARD DECISION

JOHN SCHMIDT, P.T.

LICENSE NO. 00177

NUMBER: 2005 - I - 29

STATEMENT OF THE CASE

In June, 2005 a complaint was filed with the Louisiana State Board of Physical Therapy Examiners (the Board) against John Schmidt (Respondent), a Louisiana licensed physical therapist, alleging inappropriate touching of a female patient's sexually sensitive areas as well as inappropriate remarks of an intimate nature, all during the provision of treatment for TMJ at Respondent's physical therapy clinic in Slidell. The Board member assigned to investigate the matter interviewed the Complainant and sought advice from physical therapists who specialize in providing therapy for TMJ, and found the complaint serious and credible and, given that Respondent had been before the Board for inappropriate conduct with female patients several years earlier, recommended that Respondent's license be immediately suspended and that action was taken at the June 23, 2005 meeting of the Board

Background. In April of 2002 Respondent entered into a Consent Order which placed his physical therapist license on probation until April, 2005 for unprofessional conduct which he exhibited by kissing a physical therapy client on several occasions when he was providing services to the client. Based in part on a psychological evaluation and assessment of Respondent, it was determined that Respondent should not treat female patients without the presence of an assistant in the room. This requirement was incorporated into a Second Consent Order, which he accepted in September, 2002. This agreement also required that Respondent engage in psychotherapy treatment focusing on his inappropriate and unprofessional conduct with female patients and that reports on such treatment be furnished to the Board each six months.

Respondent did not comply with the requirement for ongoing psychotherapy and those reports received were incomplete or unacceptable to the Board, resulting in a Third Consent Order which continued the prior requirement of having an assistant in the room while treating female patients, and continued the probationary status until Respondent could provide a recommendation from an acceptable expert that Respondent's professional judgment was no longer impaired by the personality dysfunction involving sexual boundaries and that he no longer presents a risk in treating female patients.

Complaint. The complaint giving rise to this hearing, brings forth the following alleged violations of the provisions of the Physical Therapy Practice Act of Louisiana (Practice Act) and the Physical Therapy Rules and Regulations (Rules):

1. By inappropriately touching a female patient (Complainant) on sexually sensitive parts of her body under the guise of physical therapy and by misrepresenting to his patient the reasons for such touching, Respondent failed to appropriately inform his patient and failed to

- conform to the minimal standards of acceptable and prevailing physical therapy practice and has thereby engaged in unprofessional conduct in violation of LA R.S. 37: 2413 (A) (7). Respondent's failure to conform to minimum standards of practice included his failure to conform to the American Physical Therapy Association Code of Ethics (Code of Ethics)with respect to Principle 2 (a physical therapist shall act in a trustworthy manner towards patients/clients, and in all other aspects of physical therapy practice), and with respect to Principle 8 (a physical therapist shall provide and make available accurate and relevant information to patients/clients about their care and to the public about physical therapy services), which failures are in violation of LA R.S. 37: 2413 (A) (1) through Rule 305 (B).
2. Respondent's previously alleged conduct constitutes a violation of the Third Consent Order which he entered with the Board on March 17, 2005 by a failure to comply in a meaningful way with paragraph B. of the Decision in that Consent Order.

Pursuant to R.S. 37:2401 and following (Practice Act), and specifically R.S. 37:2413, R.S. 49:950 and following (Louisiana Administrative Procedure Act) and Chapter 3, Subchapter D of the Board rules and regulations entitled "Disciplinary Proceedings", a formal administrative hearing was held before the Board on August 25, 2005 at the Board office in Lafayette.

Hearing Panel. Members of the Board who participated in the hearing are: Barbara Adcock, P.T., Mark Brown, P.T., and Todd Drury, M.D. Pro Tem members appointed to this disciplinary panel by the Governor and participating in the hearing are Michael Sheffield, P.T. and Dionne Francois, P.T. Investigating Board members Pat Adams, P.T., and Charles Reynolds, P.T., recused themselves based on their investigation of the complaint. Board legal counsel Glenn Ducote presided at the hearing. Also participating was George Papale, prosecuting attorney and complaint counsel for the Board.

Respondent did not appear at the hearing. By correspondence from Emily B. Gray, legal counsel to Respondent, John Schmidt voluntarily relinquished and surrendered his license to practice physical therapy, effective August 23, 2005. Respondent further waived his right to a formal hearing on the summary suspension and relinquished any right to a consent agreement with regard to the voluntary surrender.

Evidence. The prosecuting attorney introduced the following documentary evidence into the record of the hearing:

1. the three previous Consent Orders between the Board and Respondent growing out of a prior incident of inappropriate conduct with a female patient
2. the complaint filed with the Board on June 7, 2005
3. the record of an interview of Complainant by Investigating Board Member Pat Adams
4. the Order of Summary Suspension of Respondent's license dated June 23, 2005
5. the letter dated August 23, 2005 from attorney Emily B. Gray of McGlinchey Stafford, Attorneys, relinquishing and surrendering Respondent's license to practice physical therapy, and
6. the 2005 license card issued to John Schmidt by the Board.

FINDINGS OF FACT

1. Respondent was licensed to practice physical therapy in the State of Louisiana, holding license number 00177.

2. Respondent has voluntarily surrendered his license to practice physical therapy in the State of Louisiana.

3. Complainant and the information which she has presented to the Board is credible and sincere. She does not appear to have any questionable motivation in bringing her complaint to the attention of the Board.

4. In informal conference with Respondent he did not deny that he had conducted himself in the manner described by Complainant. However, he disagrees with her on the propriety of his actions as it relates to treatment of TMJ.

5. Respondent voluntarily failed to appear and waived his right to a formal hearing on the administrative complaint filed against him. He submitted no documentary or testimonial evidence to counter the information put forth in the complaint.

6. Respondent's conduct in treatment of Complainant for TMJ was inappropriate and unprofessional and did not conform to the standards of practice of physical therapy in the State of Louisiana.

7. This complaint, taken with prior consent orders and his own admission of other inappropriate intimate contact with female patients in his care indicates persistent sexual boundary issues which have not been effectively treated, if there is an effective treatment for such a pattern of conduct.

8. Respondent's conduct as outlined in the complaint constitutes unprofessional conduct and is in conflict with the *Code of Ethics* and *Guide for Professional Conduct* of the American Physical Therapy Association.

9. By turning out the lights in the treatment room and allowing his required female staff assistant to attend to other duties, read, or face away from the treatment area while he provided hands-on treatment to a female patient, Respondent rendered the staff member's presence in the room meaningless and ineffective and thereby breached the requirements of his Third Consent Order entered February 17, 2005.

10. Although the voluntary surrender of a license in the course of disciplinary proceedings by the Board based on a complaint of serious misconduct is not explicitly addressed by Board rules, surrender of a license under those circumstances is considered to be in the nature of a license revocation.

LAW

In reaching its decision, the Board considered and relied upon the following law, rules and codes:

1. La. R.S. 37:2401, et seq. (the Practice Act) provides, in pertinent part, as follows:

Sec. 2413 Refusal, suspension, or revocation of license

A. The board after due notice and hearing may refuse to license any applicant, or may refuse to renew the license of any person, or may suspend or revoke any license upon proof that the person:

(1) Practices physical therapy in violation of the provisions of this Chapter and any rules and regulations promulgated thereto

(7) Has been found guilty of unprofessional conduct. Unprofessional conduct shall include departure from, or failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice, in which proceeding actual injury to a patient need not be established.

2. Rule 327E (6):

E. As used in R.S. 37:2413A(7) of the Physical Therapy Practice Act, the term "unprofessional conduct" means:

....
(6) abuse or exploitation of the physical therapy provider patient relationship for the purpose of securing personal compensation, gratification, or benefit unrelated to the provision of physical therapy services.

3. Rule 349:

A. Application for reinstatement of a revoked license must be made in accordance with the requirements of initial licensure in Louisiana.

....
C. Prior to reinstatement of a license previously revoked or suspended (except for non-payment of fees), a hearing is held before the Board to afford the applicant with the opportunity to present evidence that the cause for the revocation or suspension no longer exists and to provide an opportunity for the Board to evaluate changes in the person and/or conditions.

4. American Physical Therapy Association Code of Ethics:

Principle 2: A physical therapist shall act in a trustworthy manner towards patients/clients, and in all other aspects of physical therapy practice.

Principle 8: A physical therapist shall provide and make available accurate and relevant information to patients/clients about their care and to the public about physical therapy services.

CONCLUSIONS OF LAW

- A. In treating Complainant, Respondent massaged and palpated sexually sensitive areas of his female patient's body which were inappropriate and unnecessary for the treatment of TMJ and his treatment notes did not correspond with the actual treatment provided to the patient, which constituted unprofessional conduct as defined in La. R.S. 37 2413A(7).
- B. Respondent's comments to Complainant in the course of treating her for TMJ were inappropriate and suggestive rather than helpful to his patient in dealing with the massage and palpation of sexually sensitive areas of her body. Further, his failure to communicate fully in advance of physical contact with the patient's sexually sensitive areas the reason for such contact, the nature and extent of such contact, and to request specific consent for such contact also constituted unprofessional conduct as defined in La. R.S. 37:2413A(7).
- C. By treating his patients without adequate ambient lighting and allowing his female staff assistant to direct her attention away from the treatment area, Respondent rendered meaningless the presence of that staff person in the treatment room, in violation of provision B of his Third Consent Order.
- D. Pursuant to Board Rules 305 B and 331, the Minimal Standards of acceptable and prevailing physical therapy practice include the American Physical Therapy Association Code of Ethics. And, the interpretive principles of the APTA *Code of Ethics*, which are contained in the APTA *Guide for Professional Conduct*, apply to all practicing physical therapists. Respondent's conduct as described in paragraphs A, B and C above is in conflict with Principles 2 and 8 of the *Code of Ethics* and the corresponding interpretive provisions of the *Guide for Professional Conduct*.

DECISION

1. The voluntary surrender of physical therapist license 00177 by John Schmidt is accepted.
2. The voluntary surrender of a license issued by this Board during the pendency of disciplinary proceedings against a licensee which are based on a credible complaint is determined to be the equivalent of a license revocation under the terms of Board Rule 349.
3. Immediate notification of the action taken in this proceeding shall be provided to the Health Integrity and Protection Data Bank (HIPDB) and to any other Louisiana licensing board which may have issued a license to Respondent.

Thus done and signed this 20th day of October, 2005 at Lafayette, Louisiana.

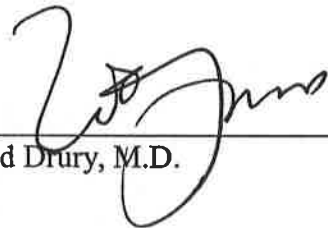
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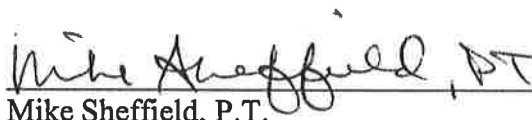
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