

LOUISIANA PHYSICAL THERAPY BOARD

IN THE MATTER OF

Confidential Complaint No. 2018-I-036

JOSE GARCIA, PTA

(LOUISIANA P.T.A. LICENSE NO. A09801)

CONSENT AGREEMENT AND BOARD ORDER

NOW COME, JOSE GARCIA (Louisiana Physical Therapist Assistant License No. A09801) (hereinafter "Respondent"), represented through undersigned counsel, Nicholas Cusimano, and the LOUISIANA PHYSICAL THERAPY BOARD (hereinafter "Board"), appearing through its Chair, Judith Halverson, who agree as follows:

1.

JOSE GARCIA was licensed on October 11, 2017, by the Board as a Physical Therapist Assistant in the State of Louisiana, pursuant to the Louisiana Physical Therapy Act, La. R.S. 37:2401-2424 et seq., as evidenced by Louisiana Physical Therapist Assistant License No. A09801.

2.

On or about December 6, 2018, in Chalmette, St. Bernard Parish, Louisiana, Respondent, Jose Garcia, also known as Jose Luis Garcia, was arrested by the St. Bernard Parish Sheriff's office and charged with violating La. R.S. 14:81, indecent behavior with juveniles, a felony.

3.

Jose Garcia's date of birth is December 26, 1982.

4.

The definition of the crime of indecent behavior with juveniles includes the following:

A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is a difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense.

5.

The juvenile victim of the alleged offense is noted in the Arrest Report (Investigative Report) to be A.H., a 15 year old. Jose Garcia was 35 years old on December 6, 2018.

6.

A.H. is the daughter of Jose Garcia's then girlfriend, Melissa Frilot, and the three (Jose Garcia, Melissa Frilot and A.H.) all resided together at 2404 Congressman Hebert in Chalmette, Louisiana.

7.

A.H. advised Deputy Winters that on December 6, 2018, "at approximately 0330 hours, she [AH] was awoken by not being able to move. She [AH] advised that when she woke up her legs were pinned to the bed and she became frightened. She stated she looked down and observed Jose [Garcia] holding her legs with one hand and had his other hand on her buttocks, while 'licking and sucking on her toes'."

8.

On or about December 8, 2018, a complaint was received by the Louisiana Physical Therapy Board, advising of Jose Garcia's December 6, 2018 arrest and the allegations made against Jose Garcia by A.H.

9.

On or about February 28, 2019, a Bill of Information was filed in Case No. 19-00164 in the Thirty-Fourth Judicial District Court, Parish of St. Bernard, State of Louisiana, in the matter entitled "State of Louisiana v. Jose Garcia", charging Jose Garcia with violation of La. R.S. 14:81A, indecent behavior with juveniles as follows

"Jose Luis Garcia on or about December 6, 2018, did, with the intention of arousing or gratifying the sexual desires of either person, commit any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, namely: a known Juvenile. A.H. (Date of Birth: 08/18/2003)."

10.

By letter dated March 28, 2019, sent to Jose Garcia, 2204 Aycock Street, Arabia, Louisiana, Jose Garcia was advised of the complaint filed with the Physical Therapy Board and the investigation. An informal conference was scheduled for April 3, 2019.

11.

Jose Garcia attended the informal conference; and thereafter on April 18, 2019, Jose Garcia signed "Agreement to Abstain From Practice As A Physical Therapist Assistant" where Jose Garcia:

(a) Admitted that he was arrested in St. Bernard Parish, State of Louisiana, on December 6, 2018, on the charge of indecent behavior with a juvenile, and

(b) Agreed “to abstain from the practice of physical therapy with female patients under the age of eighteen until the confidential investigation has been formally closed, all disciplinary matters before the Board have been resolved either by a signed order, dismissed or adjudication, and all pending criminal matters have been resolved either by dismissal, plea or conviction.”

12.

The signed agreement was considered a Letter of Concern but did not conclude the investigation or dismiss the complaint in Confidential Complaint No. 2018-I-0036.

13.

By letter dated November 14, 2019, in Confidential Complaint No. 2018-I-0036, Jose Garcia was advised that an informal conference was scheduled for December 14, 2019.

14.

On or about February 5, 2020, following the December, 2019 informal conference, Jose Garcia signed an Interim Consent Agreement and Board Order, which was adopted and made Order of the Board on February 20, 2020.

15.

Pursuant to the Interim Consent Agreement and Board Order, the physical therapist assistant license of Jose Garcia (PTA License No. A09801) was indefinitely restricted to preclude Jose Garcia from practicing physical therapy with female patients under the age of eighteen; and the Interim Consent Agreement and Board Order further provided that, before Jose Garcia could apply to remove that restriction from his license, the following conditions must be satisfied:

(1) The criminal case against JOSE GARCIA in St. Bernard Parish resulting from the December 6, 2018 arrest for indecent behavior with juveniles must be concluded (This condition has been satisfied);

(2) JOSE GARCIA must have no criminal charges pending against him in any jurisdiction (No criminal charges are pending);

(3) JOSE GARCIA must have served the entire sentence, if any, arising from the pending criminal case, including probation, parole and/or supervised release (These conditions have been satisfied);

(4) The matter before the Board under investigation in Complaint No. 2018-I-036 must be concluded (That is the purpose of this Consent Order);

(5) JOSE GARCIA must undergo an inpatient psychosexual evaluation and sexual addiction evaluation at a facility approved by the Board (Jose Garcia underwent the required evaluation at Pine Grove in Hattiesburg, Mississippi);

(6) JOSE GARCIA must authorize and cause a written report of said evaluations to be submitted to the Board, to include the entire evaluation reports including diagnosis, course of treatment, prescribed or recommended treatment, prognosis, and professional opinion as to JOSE GARCIA'S capability of practicing as a physical therapist with reasonable skill and safety to patients (The report has been received by the Board);

(7) JOSE GARCIA must have submitted all pages of this Interim Consent Agreement and Order to the evaluators prior to the start of the evaluations in order for the evaluations to be deemed valid (This condition has been satisfied);

(8) Upon receipt of an evaluation report, JOSE GARCIA must immediately submit to all recommendations thereafter of the evaluators and cause to have submitted to the Board evidence of continued compliance with all recommendations by the evaluators (Jose Garcia has refrained from practice as a physical therapist assistant and has submitted to further evaluation by Brandon Romano, as recommended by the Pine Grove evaluation); and

(9) If the evaluations give any treatment recommendations or findings to warrant concern for patient safety, JOSE GARCIA must meet with Board Member on the Investigative Committee and demonstrate to the satisfaction of the Investigatory Committee Board Member that JOSE GARCIA poses no danger to the practice as a Physical Therapist or to the public and that JOSE GARCIA can safely and competently perform the duties of a physical therapist, including without unprofessional conduct or sexual misconduct toward any patient. (The Board has reviewed and relied on Dr. Romano's report in this regard.)

16.

On or about November 24, 2020, in the criminal case in St. Bernard Parish, Case No. 19-00164, the State reduced the charge against Jose Garcia to a charge of Misdemeanor Sexual Battery, in violation of La. R.S. 14:43.1.1.A.

17.

On or about November 24, 2020, in the criminal case with the reduced charge of Misdemeanor Sexual Battery, Jose Garcia through his attorney withdrew his former plea and entered a plea of GUILTY to the amended charge. All parties signed the misdemeanor guilty plea form which was filed into the criminal court record. Jose Garcia was duly sworn, boykinized and advised of his rights by the court. The State and Jose Garcia stipulated to the factual basis of the offense. The Court found the plea to be freely, voluntarily, knowingly and intelligently made, and found a factual basis for same. Jose Garcia waived delays for sentencing. The Court sentenced Jose Garcia to serve 60 days in parish prison, with Jose Garcia to serve 30 of those days in parish prison with credit for two days served. Jose Garcia was sentenced to serve the next 30 days in home incarceration. Jose Garcia was ordered to report on January 2, 2021 by 10 am to serve his 30 days. The Court ordered a protective order issued restraining Jose Garcia from committing

further acts of abuse or threats of abuse, stalking or sexual assault of A.H. The protective order was of perpetual duration but can be revisited upon Jose Garcia's request after AH reaches the age of majority. The protective order found that Jose Garcia represents a credible threat or danger to the physical safety of AH, thus Jose Garcia is prohibited from possessing a firearm.

18.

By letter dated November 25, 2020, Jose Garcia, through his attorney Nicholas Cusimano, informed the Physical Therapy Board that Jose Garcia had, on November 24, 2020, pled guilty to the crime of misdemeanor sexual battery, in violation of La. R.S. 14:43.1.1.

19.

Misdemeanor sexual battery is defined in La. R.S. 14:43.1.1 as:

“the intentional touching of the breast or buttocks of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the intentional touching of the breast or buttocks of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when the offender acts without the consent of the victim.”

20.

By letter dated December 4, 2020, Jose Garcia was informed that an informal conference would be held in Complaint No. 2018-I-036, via Zoom. Jose Garcia was advised that his guilty plea to the charge of misdemeanor sexual battery was also being considered in Confidential Complaint No. 2018-I-036.

21.

On or about December 18, 2020, an informal conference was held via Zoom in Confidential Complaint No. 19-00164.

22.

From June 9, 2021, through June 11, 2021, Jose Garcia submitted to an inpatient behavioral health comprehensive psychosexual evaluation at Pine Grove Behavioral Health & Addiction Services in Hattiesburg, Mississippi, a facility approved by the Louisiana Physical Therapy Board.

23.

At the conclusion of the 37 page Pine Grove Evaluation Report, the following recommendations were made:

RECOMMENDATIONS

In the opinion of the Pine Grove evaluation team, we have concerns about Mr. Garcia's fitness to practice with reasonable skill and safety, given the concerns noted above and in the final evaluation report. We believe that he should complete the evaluation process described below prior to returning to work. This statement is made with reasonable clinical certainty and based upon the information we have available at this time. This evaluation did not assess clinical skills and, as such, this safety assessment is limited only to safety as it pertains to the boundary related, mental health, behavioral, and substance-related concerns discussed above and in the final report.

1. Prior to returning to practice, Mr. Garcia should undergo a forensic sexual offender evaluation with a provider approved by LAPTБ and follow all recommendations from that evaluation. Providers in his area include (but are not limited to): Dr. Darrel B. Turner (Turner Forensic Psychology & Consultation); Brandon P. Romano, Psy.D. & Associates, LLC. We recommend that if a course of treatment is recommended, the treating provider can determine whether Mr. Garcia's current license restriction can be removed in the future.
2. Should that evaluation (and/or subsequent treatment process) render Mr. Garcia fit to practice, we would recommend ongoing monitoring with the LAPTБ. Typical monitoring parameters for someone with a similar history include a chaperone policy, workplace monitoring, and quarterly polygraphs. We recommend a minimum of five years of monitoring but defer to LAPTБ regarding the parameters of their agreement.
3. We recommend a repeat polygraph examination be conducted in his subsequent evaluation or treatment process, to ensure all boundary issues have been disclosed and processed.
4. Mr. Garcia should arrange for a copy of his evaluation report to be delivered to the evaluation and treatment program he chooses, in order to facilitate an efficient and comprehensive evaluation and treatment process.

24.

By letter dated July 12, 2021, Jose Garcia was advised that an informal conference would be held on July 21, 2021, in Complaint No. 2018-I-036, which complaint now also included the guilty plea to the charge of misdemeanor sexual battery. The informal conference was conducted via ZOOM on July 21, 2021.

25.

By letter dated July 23, 2021, Jose Garcia was reminded that, in the Interim Consent Agreement and Board Order, he had agreed to submit to all recommendations of the evaluator, and

the letter inquired when Jose Garcia was to undergo the forensic sexual offender evaluation recommended in the Pine Grove evaluation report.

26.

By email dated July 28, 2021, Jose Garcia advised the Board Complaint Counsel, Celia R. Cangelosi, that he was unable to financially afford the recommended evaluation.

27.

On or about November 17, 2021, Jose Garcia underwent a Psychological Evaluation conducted by Brandon Romano, Psy.D., as recommended by the Pine Grove Evaluation.

28.

The report of Brandon Romano concluded with the following CLINICAL IMPRESSIONS, RECOMMENDATIONS, and PROGNOSIS.

CLINICAL IMPRESSIONS

1. There appears to be no gross psychopathology or sexual deviancy that would preclude Mr. Garcia from complying with conditions set forth by LPTB; practicing with reasonable skill and safety from a mental and behavioral health perspective; being effectively managed within the community; or participating in psychotherapeutic services.
2. His risk estimate would be higher than non-offenders, but lower than typical offenders. It is expected that offenders in his category would have some criminogenic needs, but these life problems would be few and transient.
3. Mr. Garcia does not require mental health or substance use hospitalization at this time.
4. He does not appear to require psychotropic medication management at this time.
5. Mr. Garcia's recommendations can be run concurrent with his duties as a physical therapist assistant.

RECOMMENDATIONS

1. Mr. Garcia is recommended for individual counseling with a board-approved provider with experience in working with those in safety-sensitive positions to address the sex-offense-specific allegations; personal and professional boundaries; and to aid in reducing his risk for recidivism.
2. Mr. Garcia is recommended for a minimum of one year of professional monitoring, which includes no unsupervised contact with females under the age of eighteen.

PROGNOSIS

Mr. Garcia's prognosis is estimated as fair to good.

29.

Jose Garcia's guilty plea to the charge of misdemeanor sexual battery constitutes an admission of the commission of any act contrary to honesty, justice, good morals, patient safety, or the best interest of the patient, whether committed in the course of the licensee's practice or otherwise; and thus constitutes professional misconduct, in violation of La. R.S. 37:2420A(7) and LAC 46:LIV § 345B(1).

30.

The crime to which Jose Garcia pled guilty is an admission of behavior which could put the person or property of patients at risk of harm from a treating licensee, and thus constitutes professional misconduct in violation of La. R.S. 37:2420A(7) and LAC 46:LIV § 345B(7).

31.

The conduct leading to the December 6, 2018 arrest of Jose Garcia resulted in an arrest and the initiation of a criminal prosecution, and can be verified, and constitutes behavior which could put the person or property of a patient at risk of harm from a treating licensee, and thus constitutes professional misconduct in violation of La. R.S. 37:2420A(7) and LAC 46:LIV § 345B(8).

CONCLUSIONS OF LAW

Respondent's conduct described above and otherwise reviewed in this action is subject to and/or in violation of the following provisions of law regarding Jose Garcia's practice as a physical therapist assistant. Respondent's conduct described above and otherwise reviewed in this action is subject to and/or in violation of the following provisions of law and Board Rules regarding his practice of physical therapy:

1. La. R.S. 37:2420(A)(7) Been found guilty of unprofessional conduct or sexual misconduct, including but not limited to 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. LAC 46:LIV §345B(1), (7) and (8) regarding unprofessional conduct... conviction of any criminal charge, and arrests:

§345. Unprofessional Conduct

* * *

B. As used in R.S. 37:2420(A)(7) of the Practice Act and in these rules, the term unprofessional conduct does not require actual injury to a patient, and includes, but is not limited to, the following:

(1) the commission of any act contrary to honesty, justice, good morals, patient safety or the best interest of the patient, whether committed in the course of the licensee's practice or otherwise, regardless of whether actual injury to a patient results therefrom, including, but not limited to:...

* * *

(7) conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or related to the practice of physical therapy or which constitutes behavior which could put the person or property of patients at risk of harm from a treating licensee, or failing to notify the board of the same within seven days of conviction or entry of a plea of guilty or nolo contendere; and

(8) engaging in conduct which results in an arrest and the initiation of criminal prosecution, even if criminal charges are eventually lessened or dropped, when the conduct leading to the arrest can be verified and constitutes behavior which could put the person or property of patients at risk of harm from a treating licensee.

ORDER

Pursuant to the Factual Basis for Consent Order and Violations Related to Respondent's Conduct, and, in order to avoid further administrative and judicial proceedings, Respondent and the Board, by vote of quorum, agree as follows:

1. Respondent's license shall be on probation for a minimum of three years. Respondent shall submit to the Board Executive Director in writing not less than thirty calendar days prior to completion of probationary period a request for a letter from the Board formally acknowledging the close of the probationary period. Respondent's probationary period concludes upon receipt by respondent of the Board a letter acknowledging the close of the probationary period and final exit interview with the Board to be scheduled by the Board Executive Director;
2. During the probationary period, Respondent shall undergo individual counseling with a board-approved provider, with consideration given to recommendations for the provider to be used made by Brandon Romano, Psy.D., such provider having experience in with those in safety sensitive positions to address sex offender specific allegations, personal and professional boundaries; and to aid in reducing the risk for recidivism. The counselor shall provide reports to the Board of the counseling sessions, with the time between each session and the duration of the session to be determined initially by the chosen counselor;
3. During the probationary period, Respondent shall have no contact with physical therapy patients under the age of 18.
4. During the probationary period, Respondent shall fully cooperate with the Board representatives making random unannounced monitoring visits to his work sites and shall provide complete access to his place of employment, employment and/or business records, patient treatment and billing records, and all other documentation necessary for a full legal

compliance review. Respondent shall reimburse the Board \$150.00 for each such monitoring visit;

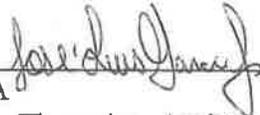
5. During the probationary period, Respondent shall provide a copy of this Consent Order to his employer(s), direct supervisor(s), and any physical therapist(s), physical therapist assistant(s), or physical therapy technician(s) who are supervised by, work for, work with, or contract with Respondent at any business, including, but not limited to, any business(es) Respondent owns, operates or manages before providing physical therapy services and shall have such person(s) notify the Board's Executive Director in writing that he has received and reviewed a copy of this Consent Order prior to Respondent providing physical therapy services. Respondent shall do this also with any new or subsequent employer(s), direct supervisor(s), physical therapist(s), physical therapist assistant(s), or physical therapy technician(s) during the probationary period;
6. The three year probation period shall be extended for any period of time in which Respondent is not employed as a physical therapist assistant within the State of Louisiana and regularly working at least an aggregate over the month that is at *least 20* hours per week. If Respondent ceases to be regularly employed as a physical therapist assistant in Louisiana, he shall notify the Board's Executive Director in writing within *ten calendar days* of the last date he has practiced as a physical therapist assistant in Louisiana. Likewise, if Respondent returns to work as a physical therapist assistant within the State of Louisiana, he shall notify the Executive Director in writing within *ten calendar days* of his return to practice;
7. Respondent shall pay the Board the sum of \$17,208.19 in partial reimbursement for legal and administrative expenses incurred in this matter, this amount may be paid in a lump sum, or monthly installments, if arranged in writing in advance with the Board's Executive Director, over the three years of his probation. In the event that the Respondent reimburses the Board in monthly installments, payment shall be submitted to the Board's Executive Director no later than the 15th day of the month. The payment set forth in this paragraph shall survive and shall not be extinguished in the event Respondent files for and is granted a judgment of bankruptcy by a court of competent jurisdiction. Failure to provide payment by the 15th day of the month three times is also a basis for further disciplinary action by the Board;
8. Respondent shall comply with La R.S. 37:2415.B. and notify the Executive Director of the Louisiana Physical Therapy Board in writing and prior to a change of residence to another country, state, or jurisdiction. Upon relocation, all provisions of this Consent Order, except Paragraph "7" pertaining to reimbursement of legal and administrative expenses, are suspended until Respondent again resides within Louisiana, notifies the Board's Executive Director of his Louisiana residence, and receives written confirmation from the Board's Executive Director;
9. Respondent shall meet with the Board, or with the Board's representative, whenever requested during the probationary period, and shall fully cooperate in providing information and documents requested in such meetings;
10. Respondent shall have reliable access to a computer, internet, and telephone. In accordance with Board Rule §385 Respondent shall provide to the executive director their preferred

telephone number and/or email address in writing for expedited communications regarding compliance with board order within 48 hours of signing the Consent Order. Respondent shall reply to Board emails and telephone calls within four hours of such communication. Respondent shall notify the Executive Director in writing of any change to their preferred telephone number and/or email address immediately upon change;

11. Respondent declares that, before signing this Consent Order, he is of sound mind has carefully read this document, understands the contents, and freely consents to it as valid and binding upon him. He is aware of his right to a notice of hearing, to a formal administrative hearing and to judicial review of an administrative finding, and freely waives those rights. As is his right, he has been represented by legal counsel;
12. Respondent acknowledges that his failure to comply with any term of this Consent Order is a basis for immediate summary suspension of his license and for further disciplinary action by the Board;
13. Respondent acknowledges that this Consent Order only addresses the specific violations outlined above;
14. Respondent authorizes the Investigating Board Member, Phillip Page, and legal counsel assisting the Investigating Board Member, to present this Consent Order to the full Board for its consideration and to fully disclose and discuss with the Board the nature and results of the investigation. Respondent waives any objection to such disclosures under La. R.S. 49:960 and expressly acknowledges that the disclosure of such information to the Board shall be without prejudice to the Board's authority to hear and decide a formal Administrative Complaint against him, or to the Board's capacity to adjudicate such Complaint, should the Board decline to approve this Consent Order. Should the Board decline to approve this Consent Order, Respondent retains all rights to due process including, but not limited to, his right to have notice of any allegations or charges against him, to administrative adjudication of such allegations or charges, and to a subsequent final decision rendered upon written findings of fact and conclusions of law;
15. Respondent acknowledges that presentation to and consideration by the Board of this Consent Agreement, including presented documentary evidence and information, shall not unfairly or illegally prejudice or preclude the Board, or any of its members, from further participation in hearings or resolution to these proceedings; and
16. Respondent acknowledges that this Consent Order becomes effective only upon signature by the Board Chair; and
17. Respondent acknowledges that all communication regarding compliance with and/or fulfillment of the requirements of this Consent Order shall be in writing between Respondent and the Board's Executive Director. No verbal communication shall be considered proof of compliance or commitment. Respondent acknowledges that it is the responsibility of the Respondent to fully comply with the Consent Order and proactively communicate with the Board's Executive Director.

I, JOSE GARCIA, understand that this Consent Agreement and Board Order is effective upon affirmative vote by the Board at formal meeting. It is also understood that should the Board not approve the Consent Agreement and Board Order, my agreement thereon does not preclude the Board from requiring a formal hearing of my case. I further understand that should this Consent Agreement and Board Order not be accepted by the Board, the presentation to and consideration by the Board of this Consent Agreement and Board Order, including presented documentary evidence and information, shall not unfairly or illegally prejudice or preclude the Board or any of its members from further participation in hearings or resolution of these proceedings.

SIGNED, AGREED TO AND ENTERED on this 11 day of December, 2021.



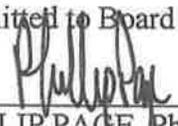
JOSE GARCIA
(La. Physical Therapist Assistant License No. A09801)



NICHOLAS CUSIMANO
2114 Paris Rd
Chalmette LA, 70043

Attorney for Jose Garcia

Submitted to Board for Approval By:

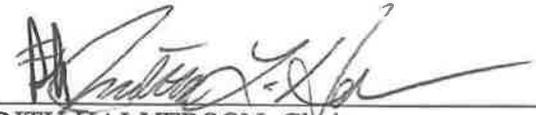


PHILLIP PAGE, PhD, PT, ATC, CSCS, FACSM
Investigatory Committee Board Member

BOARD ORDER
and
ACCEPTANCE OF THE CONSENT AGREEMENT AND BOARD ORDER
BY THE LOUISIANA PHYSICAL THERAPY BOARD:

By a majority vote of the Board members voting in favor of the foregoing Consent Agreement and Board Order at the Board meeting on December __, 2021, the Board hereby adopts said Consent Agreement and Board Order, and makes it an Order of this Board.

FOR THE BOARD:



JUDITH HALVERSON, Chair