



State of Louisiana
Department of Health and Hospitals
Louisiana Physical Therapy Board
104 Fairlane Drive, Lafayette, Louisiana 70507

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IN THE MATTER OF

BOARD DECISION

JOHAN SMITH, P.T.

LICENSE NO. 04541R

NUMBER: 2009 - I - 039

STATEMENT OF THE CASE

Based upon a complaint filed with the Louisiana Physical Therapy Board (Board) against Johan Smith (Respondent), a Louisiana licensed physical therapist, a formal Administrative Complaint was initiated by the Board alleging that Respondent violated provisions of the Physical Therapy Practice Act (Practice Act), the Board's rules, and the American Physical Therapy Association's (APTA) Code of Ethics which are incorporated into Board rules by reference, and failed to conform to minimum standards of acceptable and prevailing physical therapy practice and thereby engaged in unprofessional conduct.

The specific factual allegations arose during a brief period of employment of Respondent at Minden Medical Center (MMC) beginning June 1, 2009 and ending June 11, 2009. The allegations of facts indicating violations are:

1. On June 1, 2009, Respondent was employed at MMC to provide physical therapy services to acute care patients within the hospital. Following two days of hospital orientation, Respondent received additional orientation to the acute care setting from MMC's acute-care physical therapist ("acute-care PT"). During the acute-care orientation, Respondent verbally assured the acute-care PT of his ability to handle the physical therapy needs of acute-care patients.
2. Notwithstanding the assurances given by Respondent, the hospital's acute-care PT observed Respondent's handling of patient G. C. on June 8, 2009, during which she noted serious deficiencies in Respondent's handling of the patient, requiring her intervention to protect the patient.
3. More particularly, it is alleged that Respondent was at the bedside of patient G. C. (an 87-year-old male patient on anticoagulant therapy with a diagnosis of congestive heart failure and vertigo to be evaluated for a history of falling) when the acute-care PT observed that Respondent had applied the gait belt to the patient incorrectly and was attempting to transfer the patient. The acute-care PT corrected Respondent and instructed him on the correct application of the gait belt. The acute-care PT continued to observe Respondent who began to attempt to ambulate the patient when she noticed the line for the Foley catheter stretched across the patient's bed and the patient becoming

entangled in the O2 line. At that time, the acute-care PT again intervened and instructed Respondent on safe technique for clearing lines (Foley, O2 and IV) prior to attempting to move the patient. The acute-care PT also observed that the chair was across the room and instructed Respondent on chair placement proximate to the bed until an assessment of the patient's ability to stand and walk had been made. It is alleged that Respondent replied that it was his plan to walk the patient to the door. When the acute-care PT stated that the patient's ability to walk had not yet been assessed, Respondent replied that he knew the patient could walk.

4. As a result of the incident described in the previous allegation, the acute-care PT determined that Respondent's handling and evaluation of patient, G. C. was below the minimal standards of acceptable and prevailing physical therapy practice and could have exposed the patient to the risk of serious harm. The acute-care PT determined that allowing Respondent to continue to treat acute care patients in their room, where he would not be observed by other MMC personnel, could place the safety of MMC patients in jeopardy. The acute-care PT met with the MMC Clinical Outpatient Rehab Manager ("Clinical Manager") to request a transfer of Respondent.
5. It is alleged that on June 8, 2009, the Clinical Manager transferred Respondent to the rehab setting where his treatment of patients would be under the guidance of Clinical Manager/PT and other multidisciplinary therapists. Although MMC rehab has a large gym with equipment specifically designed for rehab patients, Respondent resisted the team approach and continued to attempt to treat the rehab patients either in their rooms or in the hall. It is specifically alleged that such treatments are not considered within the standards and objectives of intensive inpatient rehabilitation and Respondent was instructed on the correct practices and the appropriate settings for inpatient rehabilitation. Notwithstanding this instruction, Respondent was observed on several occasions verbalizing an education program with the patient sitting in the wheelchair the entire treatment time. Other members of the rehab team observed that the Respondent was not performing any therapeutic interventions calculated to improve patient mobility or to provide clinical information for the completion of competency checklists. It is further alleged that two patients complained that they were not performing any physical therapy when under Respondent's care.
6. Is also alleged that more often than not Respondent would not follow the posted schedule in the rehab department which practice compromised the patients' access to scheduled treatments from other members of the rehab team. On one occasion, Respondent began treating patients at 7 a.m. (during breakfast) when the patients were scheduled for treatments at another time.
7. On the afternoon of June 11, 2009 (Thursday), Respondent, without regard to the patients scheduled for physical therapy the next day, told the MMC Clinical Manager that he was taking the next day off and going out of town. When Respondent was asked if he had scheduled the time off he replied no. The Clinical Manager counseled Respondent on the appropriate way to request time off and the occurrence was documented. At that time, the Clinical Manager asked Respondent if he would be returning on Monday, June 15, 2009 and Respondent replied in the affirmative. Notwithstanding this response, Respondent failed to return to work on Monday, June 15 without notifying Clinical Manager that he would not be at work to treat his patients. At approximately 10:30 a.m. Respondent went to the outpatient waiting room and requested the office manager/rehab tech to give him his "lab coat" which he had left on a chair in the staffing office. The office manager/rehab tech asked Respondent if he wanted to see the Clinical Manager to which Respondent replied "no just give me my lab coat".

Pursuant to La. R.S. 37:2401 and following (Practice Act), and specifically La. R.S. 37:2420 and La. R.S. 49:950 and following, the Louisiana Administrative Procedures Act, and

Chapter 3, Subchapter D, of the Board rules, a formal administrative hearing was held before the Board on July 21, 2011.

Board members participating in the hearing were: Danny Landry, PTA, Lake Charles; Donna "Dee" Cochran, PT, Shreveport; Teresa Maize, PT, Baton Rouge, Board Secretary-Treasurer and acting Chair; Gerald LeGlue, MD, Alexandria; and Al Moreau, III, PT, Baton Rouge. Board Member Dan Wood, PT, Bastrop, was absent. Jerry Jones, PT, Natchitoches, PT, as case manager for this case was recused and did not participate in the hearing. Board legal counsel Glenn Ducote presided at the hearing and George Papale served as complaint counsel for the Board. Respondent Johan Smith appeared without counsel.

After completion of the hearing the matter was taken under advisement by the Board. Having considered the law, evidence and argument of counsel, the Board has reached the following findings of fact and conclusions of law and come to the following decision.

FINDINGS OF FACT

1. Respondent is a physical therapist licensed to practice in Louisiana under license No. 04541R.
2. From June 1, 2009 to June 11, 2009 Respondent was employed by Minden Medical Center in Minden, Louisiana.
3. On June 8, 2009, Respondent was called upon to provide physical therapy to patient "G.C." while under the supervision and observation of Elizabeth Chambers, PT.
4. In observing Respondent treating patient G.C., PT Chambers became concerned regarding the patient's safety in Respondent's application of a gait belt, in securing lines connected to the patient and in locating a chair.
5. Ms. Chambers concluded that Respondent was not suited to treat acute care patients.
6. The MMC rehab director, Janet Crawford, PT, transferred Respondent to treating in-patient rehab patients where he could be observed, monitored and assisted in providing patient care.
7. In treating in-patient rehab patients Respondent was not compliant with facility policies and protocols for those patients but no pattern of conduct was demonstrated.
8. The testimony of the witnesses from the Minden Medical Center and of the Respondent indicated clearly that there were significant differences in attitude, style and sensitivity between the staff at MMC and Respondent. Mr. Smith described the work environment as "hostile".
9. Respondent terminated his employment at MMC after 10 days without providing any notice to his employer, creating the possibility that patients scheduled for treatment by him in the upcoming week would not receive adequate care.

DISCUSSION

Respondent was initially hired to provide physical therapy services to acute care patients at MMC, but in his first day of providing supervised care to acute care patients, his supervisor concluded that he ignored several patient safety issues and that he was not suited to treating acute care patients with profound health concerns.

He was then transferred to treating in-patient rehab patients where he would be working under observation of other physical therapists and rehab personnel. While working in in-

patient rehab, Respondent was not compliant with facility protocols on treatment scheduling and the location for providing treatment.

Respondent sought to take leave on the Friday of his first week of patient care and it is disputed whether he provided adequate notice for that leave request. He returned to MMC on the following Monday only to retrieve his lab coat and drop off a letter of resignation to the MMC human resources office, never having advised his supervisor that he was resigning.

Mr. Smith likely was stressed as he sought to demonstrate his skills under the watchful eye of Ms. Chambers during his first patient encounters. He indicated that he was unsure if Ms. Chambers was there to co-treat the patients or if he was the sole provider of care.

There was also understandable stress for Mr. Smith as he worked under the watchful eye of a new supervisor in a facility where he had never worked before, with patients he had not met before, with an all-female PT staff who had their own protocols, habits and practices for addressing routine issues in patient care. There are numerous ways to approach the same issue and it is clear that Mr. Smith was not yet schooled in the approach which the acute-care staff preferred.

The board feels that the issues of the gait belt, chair location and oxygen lines detailed in Factual Allegations 3 and 4 are commonplace, minor problems which present little risk to patients and which are easily and quickly remedied. There was no patient harm; no incident report was created. These concerns, taken together, do not support a conclusion that the Respondent lacked competence in providing patient care.

With regard to Respondent treating rehab patients in their rooms or in the halls in conflict with facility policies as detailed in Factual Allegations 5 and 6, it is felt that there was not adequate evidence to conclude that there was a pattern of violations of facility policies on such practices by Mr. Smith during the few days that he treated rehab patients. There was conflicting evidence on the frequency and seriousness of changes in scheduled treatment times for patients. The therapist must respond to many variables in patient readiness, bowel and bladder management, equipment availability and patient cooperation and adjustments must sometimes be made on the fly to accomplish treatment objectives. However, Respondent's conduct in terminating his employment, as detailed in Factual Allegation 7, without adequate notice and without communicating clearly to his supervisor his intent to resign was unprofessional and irresponsible. There is no excuse for Respondent's failure to provide adequate notice of his intent to resign so that appropriate staffing could be arranged without disrupting patient care and the schedules of other PT staff members. His appearance to retrieve his lab coat, but not to communicate with Ms. Crawford, the supervisor who hired him and who sat a few feet away, indicates an attitude of pettiness and vindictiveness inappropriate in a professional environment.

LAW

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

La. R.S. 37:2420. Disciplinary Actions

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

(1) Practiced physical therapy in violation of the provisions of this Chapter, the rules of the board, or standards of practice. . . .

(3) Committed repeated acts of negligence or incompetence in the practice of physical therapy.

...

(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.

Rule 327E(1)(a) and (b):

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

1. departure from, or failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice in the state of Louisiana, regardless of whether actual injury to a patient results therefrom, including, but not limited to:
 - a. failure to use sound professional judgment;
 - b. performing procedures for which the physical therapist is not competent

The American Physical Therapy Association Code of Ethics, Principles 2, 3, 4 and 5:

2. Physical Therapists shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.
3. Physical Therapists shall be accountable for making sound professional judgments.
4. Physical Therapists shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, research participants, other health care providers, employers, payers and the public.
5. Physical Therapists shall fulfill their legal and professional obligations.

CONCLUSIONS OF LAW

In response to the violations alleged in paragraphs 8, 9 and 10 of the Administrative Complaint, the Board has reached these Conclusions of Law:

1. Respondent's handling patients in acute care and in-patient rehab demonstrated some lack of attention to detail, but did not constitute incompetence or unprofessional conduct.
2. Respondent's conduct in terminating his employment without notice to his supervisor or his employer constituted unprofessional conduct in violation of Rule 327E(1)(a) and APTA Code of Ethics Principles 3, 4 and 5.

DECISION

Considering the law and the Board's findings of fact and conclusions of law, it is the unanimous decision of the Board that:

1. Respondent's license is placed on probation for three years, beginning September 1, 2011, with random monitoring visits by board representatives to his practice during that probationary period;
2. The three-year probationary period shall be extended for any period of time in which Respondent is not employed as a physical therapist within Louisiana and regularly working at least twenty hours per week as such. If Respondent ceases to be regularly

- employed as a physical therapist in Louisiana, he shall notify the Executive Director in writing within ten days of the last date Respondent has practiced physical therapy in Louisiana. Likewise, if Respondent returns to work as a physical therapist within the State of Louisiana, he shall notify the Executive Director in writing within ten days of his return to practice.
3. Respondent shall write an essay of no less than 750 words explaining how his conduct violated the Practice Act and Board rules and what he has learned as a result of this disciplinary process. This essay shall be submitted to the Board Executive Director no later than October 15, 2011.
 4. Respondent shall notify the Executive Director in writing of all employment and/or contractual service arrangements which he has to work as a physical therapist and shall update the Executive Director in writing within five days of any and all changes in such arrangements.
 5. Respondent shall provide a copy of this Decision to his employer(s) before providing services to that employer and shall have the employer(s) notify the Executive Director in writing that she/he has received and reviewed a copy of this Decision; Respondent shall do this also with any new or subsequent employer(s) during his probationary period.
 6. During his license probation, Respondent shall successfully complete a continuing education course on professional ethics which has been approved in advance by the Board Executive Director and which shall be in addition to the usual continuing education required to maintain licensure.


THUS DONE and signed this 25TH day of August, 2011, at Lafayette, Louisiana.



Danny Landry, PTA, Board Member




Teresa Maize, Acting Board Chair



Gerald LeGlue, M.D, Board Member



Donna "Dee" Cochran, Board Member



A.C. Moreau, III, PT, Board Member