

LOUISIANA PHYSICAL THERAPY BOARD

IN THE MATTER OF

ADMINISTRATIVE COMPLAINT

JAMES H. NORRIS, PTA

LICENSE NO. A 1990 G

CASE NUMBER: 2007-030

DECISION AND ORDER

This matter came before the Board pursuant to an Administrative Complaint (Complaint) which charged Respondent James H. Norris, Physical Therapist Assistant (PTA), with several violations of the Physical Therapy Practice Act, R.S. 37:2401 et seq. (Practice Act) and Board Rules. The case was heard by the Board on July 22, 2010 with Dan Wood, PT; Teresa Maize, PT; Jerry Jones, Jr., PT; and Danny Landry, PTA, participating.

THE NOTICE TO RESPONDENT

The Administrative Record shows that Respondent was served with a draft of the Administrative Complaint and was given timely notice of an opportunity to show that he was in compliance with the Practice Act pursuant to R.S. 49:961C, but Respondent simply submitted a type-written response to the complaint via email which he sent to the Board's Executive Director on June 15, 2010. In his response (answer), Respondent stated that he did not see a need to attend any hearing. Subsequently, Respondent was timely served with the formal Administrative Complaint and an attached exhibit along with formal Notice of the Complaint which notified Respondent of the date, time and place of the hearing on the allegations of the Complaint.

THE COMPLAINT

The Complaint charged Respondent with being habitually intemperate as further defined by Rule §327 C (2) and abusing controlled dangerous substances as defined by federal or Louisiana

law in violation of R.S. 37:2413 A (5) (currently R.S. 37: 2420A(5)). Specifically, the Complaint charged that during 2005, 2006 and 2007 Respondent ingested or self administered medications and controlled dangerous substances affecting the central nervous system, other than in compliance with a lawful prescription, and that during those years Respondent practiced as a PTA in Louisiana while he was addicted to the use of habit-forming drugs (opiates). The Complaint also charged that the same conduct occurred in a workplace environment where Respondent was to provide services as a PTA, which constituted unprofessional conduct in violation of R.S. 37:2413A(7) (currently R.S. 37:2420A(7)), as further defined by Rule §327 in that he failed to conform to minimal standards of acceptable and prevailing physical therapy practice, including the failure to use sound professional judgment.

The Complaint further charged that Respondent repeatedly provided to the Board false and misleading information by failing to provide material facts to the Board on his PTA license renewal applications in violation of R.S. 37:2413A(2) (currently R.S. 37:2420A(2)) related to attempting or obtaining a license by fraud or misrepresentation, as further defined by Rule §327 A (1).

The Complaint charged that the revocation of Respondent's license as a Registered Nurse in the state of Tennessee violated R.S. 37:2413A(6) (currently R.S. 37:2420A(6)).

Finally, the Complaint charged Respondent with failing to cooperate with the Board's request to provide documentation for a Lortab prescription and to provide a hair sample for drug testing as authorized by Rule §129 B, which conduct violated R.S. 37:2413A(1) (currently R.S. 37:2420A(1)).

RESPONDENT'S FAILURE TO APPEAR

When the case was called for a hearing at the designated time, Respondent was not present

and the Board determined to receive evidence. Notwithstanding Respondent's failure to appear for the adjudication on the alleged violations set out above, the Board determined that the Respondent had been duly notified of the hearing, had expressed in writing his intent not to participate, and that the hearing should proceed as scheduled. Without regard to Respondent's failure to participate, the Board maintained a standard of proof by a preponderance of the evidence as a prerequisite to making any finding of fact on the evidence presented.

SUMMARY OF EVIDENCE AND FACTUAL FINDINGS

The evidence presented included the testimony of two fact witnesses: Trey Smith, PT, and Board Executive Director Cheryl Gaudin, as well as the introduction of documentary evidence. Among the documentary evidence were: Exhibit A to the Complaint (part of Board #17) and, also separately introduced as Board #9, was the "Agreed Order" which James H. Norris entered into with the Tennessee Board of Nursing on September 2, 2009, resulting in the revocation of Respondent's Tennessee nursing license; Board #8, which were additional records of the Tennessee Board of Nursing's investigation of the charges against James H. Norris, which records were received by the Board on August 20, 2009; and Board #16, the Respondent's typewritten answer to the complaint allegations. Although Board #16 was not a sworn document, the Board accepted the exhibit as such since it was introduced into evidence by the Board's Complaint Counsel. Significantly, in paragraph 1 of Board #16 Respondent states that: "Facts contained in the Administrative Complaint pertaining to my licensure as a Registered Nurse in the State of Tennessee are accurate as stated and with these facts I have no issue."

Based on the content of Board Exhibits #8, #9 and Respondent's admission of facts contained in paragraph 1 of Board #16, the Board finds that the factual allegations contained in

paragraphs 4, 7, 8 and 11 of the Complaint were proved by a preponderance of the evidence. In summary, those established facts show that Respondent, while working as an R.N. at a Chattanooga hospital in January of 2006, was diverting narcotics (Fentanyl, Dilaudid, and Oxycodone), was falsifying patient records to cover his diversion, was practicing nursing while under the influence of these narcotics and was addicted to them, and also tested positive for benzodiazepines at that time.

The Board also finds that because Respondent signed a three-year monitoring agreement with the Tennessee Professional Assistance Program (Tn. PAP), the hospital did not report Respondent to the Nursing Board at that time and allowed him to continue to work at the hospital under probation with a one year narcotic restriction. However, an audit at the same hospital in April of 2007 showed that James H. Norris again was drawing above average amounts of controlled substances without physician orders and Respondent was terminated on April 30, 2007 following an inconclusive drug screen due to specimen dilution about which Respondent admitted drinking large amounts of water and coffee prior to producing the specimen. This evidence also established that Tn. PAP terminated its agreement with Respondent on June 19, 2007 following several positive drug screens and Respondent's continued non-compliance with his monitoring agreement. In November, 2007, Respondent admitted the above information to investigators for the Tennessee Nursing Board and told investigators that he was working outside the state of Tennessee but refused to divulge where he was working.

Other evidence in the case established that during the 2006-2009 time period Respondent was also working as a PTA in Louisiana. The unchallenged testimony of Trey Smith, PT, established that James Norris started working for Lincoln Healthcare ("Lincoln") in September of 2007 and that Lincoln provided contractual physical therapy services to several hospitals in the

vicinity of Ruston, Louisiana, including the Union General Hospital in Farmerville, Louisiana. Documentary evidence and the testimony of Trey Smith established that on the morning of September 25, 2007, after arriving at Union General to work as a PTA, Respondent suffered respiratory arrest which required intubation and emergency room treatment. Trey Smith participated in his treatment by restraining the Respondent when he became combative and agitated. Trey Smith also witnessed the Respondent, while still intubated, write a note to the ER staff “ took three Lortab this morning, need Narcan”. Respondent’s written notation also was documented on page 6 of the Physician Medical Record of the Union General Hospital chart introduced into evidence as Board #2. This medical record as well as a hospital record from Glenwood Regional Medical Center in West Monroe, Louisiana (Board #3), where Respondent was transferred for more definitive treatment and testing, established that Respondent’s respiratory arrest was likely caused by his ingestion of narcotics (opiates and barbiturates). Significantly, the evidence established that Respondent at Glenwood, also tested positive for phencyclidine (PCP) a schedule II controlled dangerous substance. Also, testing done at Glenwood for showed no other medical cause for Respondent’s respiratory arrest.

Respondent acknowledged in paragraph 3 of his Answer the episode of his respiratory arrest and the alleged positive test results but he questioned the validity of the drug screen results because he had not given consent to the testing and because there was no “chain of custody” to ensure that the test was performed on the correct patient. However, the great weight of other evidence in the record, including Respondent’s admitted ingestion of multiple dosing units of Lortab (which admission was documented in the hospital record) shortly before his respiratory arrest, his request for Narcan upon regaining consciousness, his addiction to narcotics which he acknowledged to the Tennessee Board

of Nursing in 2007 and the several positive drug screens resulting in Respondent's dismissal from Tn. PAP in June of 2007, show that Respondent's questioning of the September, 2007 test results is not credible.

Likewise, Respondent's explanation for his inability to provide documentation at the informal conference at the Board Office in June of 2008 to establish that the Lortab he had taken had been prescribed for him by a physician is unconvincing, particularly in light of Respondent's admitted history of diversion of narcotics while employed as a nurse in Tennessee the year before.

The evidence also showed that Respondent's applications for renewal of his PTA license, Board #10, #11, #12, and #13 for years 2006-2009, all contain questions requiring Respondent to disclose information occurring within a year of the application relating to abuse of alcohol or use of illegal drugs or controlled substances, participation in recovery or rehabilitation programs because of substance abuse or addiction or any condition related to alcohol and substance abuse problems. Respondent repeatedly answered "no" to these questions. Respondent does not deny answering "no" to these questions. Respondent's Answer in paragraph 2 of Board #16 acknowledges the negative responses on the applications submitted for the years listed within the Administrative Complaint and that he had "no issue" with that charge. Respondent provided no explanation for his failure to answer these questions truthfully.

As previously noted, the records from the Tennessee Board of Nursing establish that Respondent has suffered from addiction to narcotics at least since January of 2006 and that he was still addicted in 2007 when his Tennessee monitoring contract was terminated following non-compliance and several positive drug tests. In addition, Respondent provided information to this Board in December of 2007 for his 2008 renewal (Board #12) in which he stated "In January

2005 I underwent outpatient treatment for depression and opiate addiction". Notwithstanding this later-supplied information, the information which Respondent provided to the Board renewal application in 2005 makes no mention of this opiate addiction or treatment. Further, in December of 2007 Respondent stated in his application that he had been successful in his recovery despite the fact that he had been dismissed from Tn. PAP for noncompliance and had several positive drug screens earlier that year.

The evidence in the record supports a board finding that Respondent was suffering from opiate addiction in 2005, 2006 and 2007. Following termination of his monitoring agreement in Tennessee in 2007 he suffered a respiratory arrest while at work as a PTA in Louisiana in September of 2007. There is no evidence in the record that Respondent has ever successfully addressed his addiction to narcotics. The board also notes that Respondent had a clear opportunity to appear at the hearing and present evidence of recovery or any current treatment efforts but Respondent failed to do so.

The Board finds that James H. Norris has practiced in Louisiana as a PTA while he was suffering from drug abuse and addiction and at least one instance in which he became incapacitated at work because of his ingestion of a controlled dangerous substance as well as non-prescribed opiate analgesics. Furthermore, the Board finds that Respondent was provided a telephone message from Ms. Gaudin with instructions to submit to a hair follicle drug test in October, 2009 but Respondent did not present for that test. The Board makes this finding notwithstanding Respondent's answer in which he claims not to have received the message. Based upon the testimony of Ms. Gaudin, supported by her contemporaneous memorandum (Board #15), James Norris had been contracted through Tara Therapy to provide services as a PTA in 2010 for the

Bernice Nursing and Rehabilitation Center in Bernice, Louisiana, and the message was left for him at his workplace.

CONCLUSIONS OF LAW

Based on the preceding factual findings, the Board comes to the following conclusions of law:

1. Respondent, during 2005, 2006 and 2007, while addicted to the use of habit-forming drugs (opiates) and self-administered controlled dangerous substances affecting the central nervous system, has been habitually intemperate or abused control dangerous substances as defined by federal or Louisiana law in violation of R.S. 37:2413(A)(5) (currently R.S. 37:2420(A)(5)) of the Practice Act, as further defined by Rule §327 (C) (2).
2. By ingesting and self- administering medications affecting the central nervous system without a lawful prescription and by the ingesting or self-administering controlled dangerous substances affecting the central nervous system, while in a workplace environment where Respondent was to provide services as a PTA, Respondent engaged in unprofessional conduct in violation of R.S. 37:2413(A)(7) (currently R.S.37:2420(A)(7))of the Practice Act as further defined by Rule §327 and failed to conform to the minimal standards of acceptable and prevailing physical therapy practice in the state of Louisiana, including but not limited to Respondent's failure to use sound professional judgment.
3. By repeatedly providing to the Board false and misleading information and by omitting to state facts and matters material to applications for PTA license renewals, Respondent violated R.S. 37:2413(A)(2) (currently R.S. 37:2420(A)(2)) of the Practice Act relative to attempting or obtaining a license by fraud or misrepresentation as further defined by Rule

§327(A)(1).

4. By having disciplinary action by the state of Tennessee against Respondent's R.N. license, which action resulted in revocation of that license, Respondent violated R.S.37:2413(A)(6) (currently R.S. 37:2420(A)(6)) of the Practice Act.
5. By failing to cooperate with the Board's request to provide prescription documentation for Lortab and the Lortab container and to provide a hair sample for drug testing as authorized by Board Rule §129(B) and by virtue of Respondent's application for a license, Respondent has refused to cooperate with the Board and thus violated the Board Rule, which Rule violation constitutes a violation of R.S. 37:2413(A)(1) (currently R.S. 37:2420(A)(1)) of the Practice Act, as further specified in Rule § 325.
6. The Board is authorized by R.S. 37:2413(A) (currently R.S. 37:2420(A)) to suspend or revoke any license which it has issued when it finds that the licensee is guilty of the conduct described in paragraphs 1-4 above.

Based upon the preceding findings of fact and conclusions of law, we impose the following sanction:

**The license of James H. Norris to practice as a physical therapist assistant is
REVOKED.**

Lafayette, Louisiana this 23 day of September, 2010.

LOUISIANA PHYSICAL THERAPY BOARD



BY: DAN WOOD, PT, BOARD CHAIR