

LOUISIANA PHYSICAL THERAPY BOARD

**IN THE MATTER OF: ASHLEY A. WILKINSON, PTA
 LICENSE NO. A7142
 ADMINISTRATIVE COMPLAINT NO. 2014-I-006**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Louisiana Physical Therapy Board (the “Board”) for hearing on July 22, 2015, pursuant to written notice, at which time a quorum of the Board was present, consisting of Al C. Moreau III, Danny P. Landry, Don Cassano Jr., Kristina Lounsberry, Gerald J. Leglue, Jr. M.D., and Elizabeth Austin. Ashley A. Wilkinson, the Respondent, was present and participated in the hearing. Other appearances include:

John C. Morris IV, hearing officer for the Board;

George Papale, complaint counsel for the Board;

Courtney Newton, general counsel for the Board.

Charlotte Martin, Executive Director for the Board, appearing as a witness.

BACKGROUND AND MATTERS AT ISSUE

Proceedings to adjudicate an administrative enforcement action were initiated by the filing of an Administrative Complaint on June 12, 2015. The Administrative Complaint was signed by the complaint counsel for the Board, George Papale, and set forth in numbered paragraphs a concise statement of the material facts and matters alleged to be proven at the hearing. The Respondent did not respond to the Administrative Complaint. The Administrative Complaint was docketed for hearing for July 22, 2015 at 8:00 a.m. The hearing began on that date at 10:00 a.m.

The Administrative Complaint alleged the following:

1. Respondent is, and at all times pertinent hereto, was a physical therapist assistant licensed by the Board as evidenced by license number A7142.
2. In May of 2014, Respondent entered into a Consent Order with the Board in Case Number 2014-I-006 resulting in the six month suspension of Respondent’s PTA license followed by a probationary period of five years. The agreed upon sanction was to address Respondent’s admitted taking of pain medications from a home health patient and her admitted usage [of] pain medications for which she did not have a prescription. This Consent Order is incorporated into this allegation by reference as if pleaded herein *in extenso*.

3. On January 6, 2015, the Respondent entered into a Participation Agreement with the Board's Recovering Physical Therapy Program as required by paragraph "D" of the Consent Order. This Participation Agreement is incorporated into this allegation by reference as if pleaded herein *in extenso*.
4. Pursuant to paragraphs "C," "G," and "H" of the Consent Order, Respondent was required to abstain from the use of any controlled dangerous substance as defined by Louisiana and federal laws, except with a legitimate prescription; to promptly comply with random drug testing and to be subject to further disciplinary action, including summary suspension, in the event that Respondent tested positive for any such substance.
5. Pursuant to paragraphs 8, 9 and 26 of the Participation Agreement, Respondent agreed to fully cooperate with the screening procedures and random drug and/or alcohol screens; to totally abstain from alcohol and any mood altering drugs are substances unless appropriately prescribed and that Respondent's failure to fully comply with these terms and conditions could form a basis for disciplinary action.
6. On June 8, 2014, September 27, 2014, and November 6, 2014 Respondent failed to check-in with the drug screening company as required by the Consent Order. It is further alleged that on August 21, 2014 Respondent failed to report for a scheduled drug test, in further violation of the Consent Order.
7. It is alleged that on August 4, 2014, Respondent tested positive for Tramadol, a controlled substance opioid pain medication for which Respondent did not have a legitimate prescription. On August 20, 2014, the Respondent met with the Investigated Committee of the Board in regard to the positive drug test. At that time, Respondent told the committee that her boyfriend had a valid prescription and that she'd taken the medication to alleviate soreness. It is alleged that Respondent's use of a non-proscribed controlled substance medication was a violation of the Consent Order.
8. In violation of the Consent Order and the agreed terms and conditions of the Participation Agreement, Respondent failed to report for a scheduled drug test on March 30, 2015 and on May 15, 2015 a drug screen of Respondent's specimen tested positive for significantly elevated levels of alcohol. On May 26, 2015 the Board's Executive Director communicated with Respondent about the positive urine screen. Notwithstanding Respondent's initials on the specific terms and conditions of the Participation Agreement requiring her total abstinence from the use of alcohol, Respondent stated to the Executive Director that it was her understanding that only drugs were prohibited and further acknowledged her ongoing use of alcohol during the Participation Agreement. Respondent was also scheduled for a screening test on May 27, 2015 to quantify the level of Respondent's alcohol usage.

9. On May 27, 2015, the Executive Director reported the findings of the positive screen for Respondent's ongoing alcohol use and her claimed misunderstanding of the Participation Agreement. Following its receipt of this information, the Board issued an order of summary suspension of Respondent's PTA license.
10. On June 5, 2015 the results of the May 27, 2015 screen on a specimen provided by Respondent confirmed the Respondent's ongoing use of alcohol, as she had reported to the Executive Director.

VIOLATIONS ALLEGED

Based on the factual allegations set forth in the Administrative Complaint, the Administrative Complaint alleged that the Respondent violated the provisions of the Louisiana Physical Therapy Practice Act, the Physical Therapy Rules and Regulations (Rules) as follows:

- A. By here non-prescription use of Tramadol, Respondent has violated La. R.S. 37:2420(A)(5) of the Louisiana Physical Therapy Practice Act ("Practice Act") by abusing a controlled dangerous substance, as further defined by Board Rule § 351(A)(2) and such conduct is also a basis for disciplinary action for Respondent's failure to comply with the terms and conditions of a Board Order, as specified in Board Rule § 343(C).
- B. By failing to check-in and to appear for drug screening and testing as required by the Consent Order, Respondent has violated Board Rule § 345(B)(12) and such conduct is also a basis for disciplinary action for Respondent's failure to comply with the terms and conditions of a Board Order, as specified in Board Rule § 343(C).
- C. By failing to appear for a drug testing as required by the Participation Agreement, Respondent has violated Board Rule § 345(B)(12) and such conduct is a basis for disciplinary action for failure to fully comply with the terms of the Participation Agreement as specified therein.
- D. By Respondent's ongoing use of alcohol, notwithstanding her agreement to totally abstain from the use of alcohol by the terms and conditions of the Participation Agreement, Respondent is subject to disciplinary action by the terms of the Agreement and Respondent has engaged in a level of conduct as to constitute unprofessional conduct under the discretion afforded the Board under Board Rule § 345(C).

FINDINGS OF FACT

On July 22, 2015, Complaint counsel and Respondent presented evidence on the issues of fact; argument on the applicable law and policy; called, examined, and cross-examined witnesses, and were given an opportunity to offer and introduce documentary evidence and any

other exhibit needed for a full and true disclosure of the facts. The Board made the following findings of fact:

On May 21, 2014, the Respondent entered into a Consent Order with the Board in Case Number 2014-I-006, a copy of which was introduced by Complaint counsel and admitted into evidence.

The Consent Order was entered to settle allegations related to the Respondent's admitted taking of pain medications from a home health patient and her admitted usage of pain medications for which she did not have a prescription.

Under the Consent Order, the Respondent's license was suspended for six months and the Respondent was placed on probation for five (5) years following the suspension.

The Consent Order required that, during the suspension and probation period, the Respondent refrain from the use of and ingestion by any means of any controlled dangerous substance without a prescription.

The Consent Order further required that, during the suspension and probation period, the Respondent comply with Board requests for random drug tests arranged by the Board.

If any drug test of the Respondent resulted in a positive finding for any controlled dangerous substance for which the Respondent did not have a legitimate prescription, the Consent Order authorizes the Board to take further disciplinary action against the Respondent.

The Consent Order additionally required the Respondent to participate in the Recovering Physical Therapy Program (RPTP) and to enter into an RPTP Participation Agreement (the "Participation Agreement").

The Participation Agreement, a copy of which was introduced by Complaint counsel and admitted into evidence, was entered into by the Respondent and the Board on January 6, 2015.

The Participation Agreement required that the Respondent completely abstain from the use of alcohol or any mood altering drugs or substances, unless appropriately prescribed. The Participation Agreement also required that the Respondent fully cooperate with the drug and alcohol screening procedures.

Under the Participation Agreement, the Respondent's failure to abide by the terms of the Participation Agreement could form the basis for disciplinary action.

According to a Compliance Report, introduced by Complaint counsel and admitted into evidence, from Affinity, the drug screening company used by the Board, the Respondent failed to check in on June 8, 2014, September 27, 2014, and November 6, 2014. The Compliance Report also states that the Respondent failed to report for a scheduled drug and/or alcohol screening on August 21, 2014 and March 30, 2015.

In her testimony, the Respondent did not deny that she failed to check in as stated in the Compliance Report. The Respondent admitted to missing the scheduled screenings on August 21, 2014 and March 30, 2015. The Respondent stated that she was out of town for one of the drug screenings, and that she did not call in to take the screening at a location near her. She claimed that for another screening she had her children with her and was told that she could not bring her children in with her.

On August 4, 2014, the Respondent appeared for a drug screening/test. According to the Drug Test Result Details, which was introduced by Complaint counsel and admitted into evidence, the Respondent tested positive for the drug Tramadol. According to an email from Dr. Barry Lubin, which was introduced by Complaint counsel and admitted into evidence without objection, the positive result for Tramadol indicates the use of prescription medication tramadol which is an opioid analgesic. The email further stated that the level does not indicate how much or for how long this was used. According to her testimony, the Respondent admitted to taking Tramadol once without a prescription for muscle pain. The Respondent stated that her boyfriend had a prescription for Tramadol.

On May 15, 2015, the Respondent appeared for a drug and alcohol screening. According to the Drug Test Result Details, which was introduced by Complaint counsel and admitted into evidence, the Respondent tested positive for elevated levels of Ethyl Glucuronide ("EtG") at 4610 ng/ml and Ethyl Sulfate ("EtS") at 461 ng/ml. According to an email from Dr. Barry Lubin, which was introduced by Complaint counsel and admitted into evidence without objection, EtG and EtS are metabolites of ethyl alcohol which can be detected in the urine for up to 72-96 hours after someone has consumed ethyl alcohol. According to Dr. Lubin, the level of elevation from the May 15, 2015 test is very compatible with the ingestion of alcohol within the 72-96 hour period preceding the test.

On May 27, 2015, the Respondent appeared for a screening to quantify the level of the Respondent's alcohol usage. According to the Drug Test Result Detail, which was introduced by Complaint counsel and admitted into evidence, the Respondent tested positive for elevated levels of Phosphatidylethanol ("PEth") at 40 ng/ml. According to an email from Dr. Barry Lubin, which was introduced by Complaint counsel and admitted into evidence without objection, the only known explanation for the elevated result is the consumption of a minimum of seven (7) ounces of alcohol within the 14-17 days prior to the blood being drawn.

According to the Respondent's testimony, the Respondent said that she could not explain the alcohol levels for either the May 15 or the May 27 test. The Respondent stated that she only drank more than five days prior to the May 15 test, and that she did not understand how the May 15 test would have shown any of that. She claimed that she did not drink excessively; however, she admitted that she drank alcohol socially throughout the suspension and probationary period. Although the Participation Agreement required the Respondent to refrain from the use of any alcohol, the Respondent stated that she did not realize the Participation Agreement required her to refrain from the use of alcohol until she was told so in a telephone conversation with Charlotte Martin, the Executive Director of the Board, on May 26, 2015. Ms. Martin testified and confirmed the May 26, 2015 conversation.

When asked why she continued to drink alcohol after entering into the Participation Agreement, the Respondent admitted that she did not read the Participation Agreement. She testified that she signed the Participation Agreement, because she had to and thought it only covered illegal drug use. She further testified that she has been regularly attending Alcoholic Anonymous and Narcotics Anonymous meetings; however, she stated that she did not really think that drinking alcohol was a problem for her. The Respondent stated that her sponsor did tell her that it was not okay to drink alcohol; however, she insisted that alcohol is not a problem for her and that she only drinks socially. Despite her past use of illegal mood-altering drugs, and her agreement to completely abstain from the use of alcohol in the Participation Agreement, the Respondent continued to assert that she did not have a dependency issue with alcohol.

CONCLUSIONS OF LAW

Based on the preceding findings of fact, the Board concludes that the Respondent's actions constitute violations of the following:

- A. By her non-prescription use of Tramadol, the Respondent has violated La. R.S. 37:2420(A)(5) of the Louisiana Physical Therapy Practice Act, by being habitually intemperate and/or abusing a controlled dangerous substance, as further defined by Board Rule § 351.
- B. By her non-prescription use of Tramadol, the Respondent has violated the terms of the Board Consent Order, which conduct is a basis for disciplinary action under Board Rule § 343(C).
- C. By failing to check-in and to appear for drug screening and testing as required by the Board Consent Order, the Respondent has violated Board Rule § 345(B)(12), and such conduct is also a basis for disciplinary action for Respondent's failure to comply with the terms and conditions of a Board Order, as specified in Board Rule § 343(C).
- D. By failing to appear for drug testing as required by the Participation Agreement, Respondent has violated Board Rule § 345(B)(12) and such conduct is a basis for disciplinary action for failure to fully comply with the terms of the Participation Agreement.
- E. By Respondent's ongoing use of alcohol, the Respondent has violated the terms and conditions of the Participation Agreement, for which the Respondent is subject to further disciplinary action in accordance with the terms of the Participation Agreement and the Consent Order.
- F. By Respondent's actions, the Respondent has engaged in a level of conduct as to constitute unprofessional conduct under the discretion afforded to the Board under Board Rule § 345(C).

SANCTIONS

In view of the foregoing findings, the following sanctions are imposed:

IT IS ORDERED that the license of Respondent, Ashley A. Wilkinson, to engage in the practice of a Physical Therapist Assistant, is hereby suspended immediately, for a period of not less than six (6) months, and it shall remain suspended until reinstated by an Order of the Board, based upon her compliance with the following terms and conditions:

- A. Respondent shall undergo an evaluation by a qualified substance abuse and psychological evaluator approved by the Board and the Board shall receive the recommendations of the qualified substance abuse and psychological evaluator performing the evaluation, the expense of which shall be paid by the Respondent.
- B. During the suspension period, the Respondent shall abstain from the use of and ingestion by any means of any controlled dangerous substance, as defined by Louisiana and federal laws, including, but not limited to alcohol. If Respondent is prescribed a medication by a treating physician which is a controlled dangerous substance, she shall within three (3) days of obtaining such prescription provide documentation of the prescription, the condition for which the medication is prescribed and contact information for the prescribing physician. She will provide to the Board the names and contact information for all physicians who are treating her during the probationary period and a listing of all medication she is prescribed for any medical condition.
- C. Respondent shall regularly attend meetings of Alcoholics Anonymous and/or Narcotic Anonymous, attending and documenting at least ninety (90) meetings within the ninety (90) days following the Respondent's receipt of this Order, and the Respondent shall provide to the Board, through its Executive Director, proof that she attended such meetings by means of a signed statement by any supervisor or person acting in a supervisory capacity of said meetings.
- D. Respondent shall write an essay of no fewer than 750 words explaining how her conduct violated the Louisiana Physical Therapy Practice Act, Board Rules, the Consent Order, and the Participation Agreement. This essay shall be submitted to the Executive Director no later than 30 days from the receipt of this Order.
- E. During the suspension period, Respondent shall promptly comply, as directed, with Board requests for random drug tests arranged by the Board, Respondent shall pay for or reimburse the Board for the expense of such tests.
- F. During the suspension period, if any drug or alcohol screening/test of Respondent results in a positive finding for any controlled dangerous substance, including, but not limited to alcohol, for which Respondent does not have a legitimate prescription, Respondent's license shall be subject to further disciplinary action.
- G. Respondent shall cooperate with the Board, its agents, and her Monitor in providing full access to any and all records and information contained in records kept by any person or entity regarding her treatment and recovery from substance abuse. Respondent shall

authorize her treating professionals to fully and candidly discuss her condition, attitude and treatment status with her Monitor and with the Board's agent.


- H. Respondent shall reimburse the Board for all costs associated with the administrative hearing and investigative expenses.

IT IS FURTHER ORDERED that upon satisfaction of the preceding terms, and Order by the Board, Respondent, Ashley A. Wilkinson's license to practice as a Physical Therapist Assistant shall be reinstated **on probation**, subject to the strict compliance with the following terms and conditions:

- A. Following suspension of license, Respondent's license will be placed on probation for a period of five (5) years ("probationary period") beginning with the date of the Board's reinstatement of Respondent's PTA license.
- B. The probationary period shall be extended for any period of time in which the Respondent is not employed as a Physical Therapist Assistant within the State of Louisiana and regularly working at least twenty (20) hours each week as such. If Respondent ceases to be regularly employed as a Physical Therapist Assistant in Louisiana, she shall notify the Executive Director in writing within ten (10) days of the last day she has practiced physical therapy in Louisiana. Likewise, if Respondent returns to work as a Physical Therapist Assistant within the State of Louisiana, she shall notify the Executive Director in writing within ten (10) days of her return to practice.
- C. During the probationary period, the Respondent shall abstain from the use of and ingestion by any means of any controlled dangerous substance, as defined by Louisiana and federal laws, including, but not limited to alcohol. If Respondent is prescribed a medication by a treating physician which is a controlled dangerous substance, she shall within three (3) days of obtaining such prescription provide documentation of the prescription, the condition for which the medication is prescribed and contact information for the prescribing physician. She will provide to the Board the names and contact information for all physicians who are treating her during the probationary period and a listing of all medication she is prescribed for any medical condition.
- D. During the probationary period, Respondent will participate in the Recovering Physical Therapy Program (RPTP). This participation includes Respondent's submission to psychological and substance abuse evaluation and testing to be performed by an appropriate professional designated by the Board. Respondent will reimburse the Board for the expense of such testing and evaluation on the schedule agreed to with the Executive Director.
- E. Respondent shall remain subject to the terms and conditions of the Participation Agreement entered into with the Board on January 6, 2015, and the terms of the Participation Agreement shall be in effect for the duration of the probationary period.

- F. 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.
- G. During the probationary period, Respondent shall promptly comply, as directed, with Board requests for random drug tests arranged by the Board. Respondent shall pay for or reimburse the Board for the expense of such tests. During the probationary period, Respondent shall also authorize and direct her employer and any recovery treatment program in which she participates to furnish to the Board copies of results for all drug tests conducted by those entities.
- H. During the probationary period, if any drug or alcohol screening/test of Respondent results in a positive finding for any controlled dangerous substance, including, but not limited to alcohol, for which Respondent does not have a legitimate prescription, Respondent's license shall be subject to further disciplinary action.
- I. During the probationary period, Respondent shall provide a copy of this Order to her employer(s) and supervising physical therapist before providing services to that employer and shall have the employer(s) and the supervising physical therapist notify the Executive Director in writing that they have received and reviewed a copy of this Order. Respondent shall do this also with any new or subsequent employer(s)/supervising physical therapist during the probationary period.
- J. During the probationary period, Respondent shall not seek or accept work in a setting that has not been approved in advance by the Executive Director and shall notify the Executive Director in writing of all employment and/or contractual service arrangements which she has to work as a Physical Therapist Assistant and shall update the Executive Director in writing within five (5) days of any and all changes in such arrangements.

Signed this 31st day of August 2015.


A/C. Moreau III
Chairman