

**LOUISIANA PHYSICAL THERAPY BOARD**

**IN THE MATTER OF: JANE WETHERINGTON, PT  
LICENSE NO. 00439R  
ADMINISTRATIVE COMPLAINT NO. 2015-I-002**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came before the Louisiana Physical Therapy Board (the “Board”) for hearing on August 27, 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., and Kristina Lounsberry. Jane Wetherington, 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, complaint counsel for the Board;
- Dale Harvill, attorney for the Respondent;
- Charlotte Martin, Executive Director for the Board, appearing as a witness;
- Dr. Barry Lubin, appearing as a witness;
- Arneshea Roots, appearing as a witness;
- Allison Rhymes, appearing as a witness;
- Kathy Ward, appearing as a witness;
- Beth Austin, appearing as a witness;
- Lynn Sherr, 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 July 24, 2015. The Administrative Complaint was signed by the complaint counsel for the Board, Courtney Newton, 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 August 27, 2015 at 9:00 a.m. The hearing began on that date at 8:23 a.m.

The Administrative Complaint alleged the following:

1. Respondent is, and at all times pertinent hereto, was a physical therapist licensed by the Board as evidenced by license number 00439R.
2. At all times relevant to the allegations found within this Administrative Complaint, Ms. Wetherington practiced physical therapy for STAT Home Health Agency located in Shreveport, Louisiana.
3. On February 19, 2015 at 9:42 a.m., the Louisiana Physical Therapy Board received a complaint alleging violations by Ms. Wetherington of the Louisiana Physical Therapy Practice Act (“Practice Act”) and Louisiana Physical Therapy Board (“LPTB” or “Board”) Rules and Regulations (“Rules”) specifically alleging a positive alcohol test during working hours.
4. Shortly thereafter an investigative committee was formed comprised of the Board Executive Director, a Board Attorney, and a Board Member to investigate the allegations within the complaint.
5. Physical therapy records reveal that on February 2, 2015 Jane Wetherington provided home health physical therapy services to five (5) patients beginning at 9:04 a.m. and concluding at approximately 2:30 p.m.
6. At or around 3:00 p.m. on February 2, 2015, Respondent arrived at the recorded location of patient M.H. with the intent of providing home health physical therapy services.
7. Ms. Wetherington was greeted by the granddaughter of patient M.H., Ms. Arnecia Roots, who witnessed evidence of intoxication.
8. At approximately 3:10 p.m. on February 2, 2015, Ms. Roots placed a telephone call to Amy Sutton, patient care coordinator at STAT Home Health, informed her that Ms. Wetherington smelled of alcohol, and requested that Ms. Wetherington no longer treat her grandmother.
9. Ms. Sutton immediately contacted Allison Rhyme, RN Executive Director at STAT Home Health, to notify her of the complaint.
10. Upon learning such information, Allison Rhymes contacted Kathy Ward, HR Manager at STAT Home Health to schedule a drug and alcohol test for Ms. Wetherington. Ms. Ward communicated with Ms. Wetherington directly notifying her of the complaint and informing her of the scheduled drug and alcohol test.
11. At 4:05 p.m. Respondent submitted to a non-DOT Breath alcohol test at Work Care Bossier. The test result was .041, positive for alcohol.

12. At 4:22 p.m. Respondent submitted to a second non-DOT Breath alcohol test at Work Care Bossier. The second test result was .040, positive for alcohol.
13. Following the positive alcohol tests, Respondent sent a letter to STAT Home Health informing her employer that she did not consume alcohol on February 2, 2015 and that her positive alcohol tests at 4:05 p.m. and 4:22 p.m. may be the result of alcohol consumed on the evening of February 1, 2015 at a Super Bowl Party.
14. An Informal Conference was held on March 25, 2015 at which Respondent voluntarily participated and informed the Investigative Committee where she acknowledged consumption of several glass of wine on February 1, 2015 between approximately 4:30 p.m. and approximately midnight at a Super Bowl Party she hosted; but insisted that she did not consume alcoholic beverages on February 2, 2015. She also denied treating patients on February 2, 2015 while under the influence. It is alleged on information and belief that the information provided by the Respondent at the Informal Conference was false and misleading and did not provide a satisfactory explanation for the tested levels of alcohol the following afternoon. More particularly, it is further alleged, that either Respondent grossly distorted her level of alcohol consumption a the Super Bowl Party, continued to consume alcohol on February 2, 2015, or both, the result of which alcoholic consumption caused Respondent to be under the influence of alcohol throughout her treatment of patients on February 2, 2015 up to and including her arrival at Ms. Roots home as previously alleged in Paragraph 6.
15. In addition to the above, during the course of the investigation several witnesses were interviewed and documents were subpoenaed. Review of multiple subpoenaed physical therapy records reveal Respondent repeatedly failed to document measurable content relative to patient goals and treatment plan or program.

### **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. In testing positive for alcohol at 4:05 p.m. and 4:22 p.m. on February 2, 2015, after treating five (5) home health patients beginning at 9:04 a.m., Respondent is “habitually intemperate” in violation of La. R.S. 37:2420(A)(5); as further specified by Rule 351(A)(1) which defines “habitually intemperate” as “repeated excessive use or abuse of alcohol.”

- B. By treating patients under the influence of alcohol on February 2, 2015, Respondent violated Board Rule § 373(A)(2)(a) which prohibits the practice of physical therapy “while under the influence of a mood-altering substance that compromises the professional judgment or practice or has the potential to compromise the medical judgment or practice.”
- C. By treating patients under the influence of alcohol on February 2, 2015, Respondent violated Board Rule § 345(B)(1), unprofessional conduct, by failing to conform to “the *Minimal Standards of Acceptable and Prevailing Physical Therapy Practice* in the State of Louisiana or the Code of Ethics and related documents of APTA” and committing an act “contrary to honesty, justice, good morals, patient safety or the best interest of the patient.”
- D. When informing the Investigative Committee that multiple alcoholic beverages consumed the evening of February 1, 2015 were the cause of the positive alcohol test the afternoon of February 2, 2015, Respondent intentionally provided false information to the Investigative Committee attempting to mislead in violation of Board Rule § 345(B)(1), acts “contrary to honesty” and unprofessional. When engaging in this act Respondent “departed from, and failed to conform to, the *Minimal Standards of Acceptable and Prevailing Physical Therapy Practice* in the State of Louisiana” and the APTA Code of Ethics.
- E. Respondent violated Board Rule § 341 in failing to maintain physical therapy records in accordance with required documentation standards.

### **FINDINGS OF FACT**

On August 27, 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 February 2, 2015 Respondent was an employee of STAT Home Health (“STAT”), which is a provider of home health services to patients that are home bound.

According to the STAT personnel records of Respondent, which were produced by Allison Rhymes, the executive director for STAT, and admitted into evidence without objection, the Respondent provided physical therapy services to her first patient at 9:04 a.m. on February 2, 2015.

Respondent provided physical therapy services to four other patients at their homes on February 2, 2015 at 10:05 a.m., 10:48 a.m., 12:30 p.m., and 1:50 p.m. respectively.

According to the testimony of Ms. Arneshea Roots, Respondent appeared at Ms. Roots' house at approximately 3:00 p.m. on February 2, 2015, with the intention of providing physical therapy services to M.H., Ms. Roots' grandmother. However, M.H. was not at the house, because she had recently moved. Respondent was not aware that M.H. had moved, and Ms. Roots invited Respondent in the house. After Respondent came into the house, Ms. Roots informed Respondent that M.H. was not at the house. While standing a foot or two away from Respondent, Ms. Roots smelled a strong smell of alcohol on Respondent's breath. Ms. Roots also noted that Respondent's face was flushed, and that Respondent was moving very slowly and carefully while in the house.

After Respondent left Ms. Roots house, Ms. Roots contacted STAT about her interaction with Respondent. Ms. Roots told STAT that she believed Respondent had been drinking, because she could smell alcohol on Respondent's breath. Ms. Roots informed STAT that she did not want Respondent treating M.H.

Katherine Ann Ward, the therapy manager at STAT, testified that upon receipt of Ms. Roots complaint, she contacted the Respondent and informed her that she was required to go to Work Kare Bossier to take an alcohol test.

According to the test screen results from Work Kare, which were admitted into evidence without objection, the Respondent took two breath alcohol tests on February 2, 2015. The test were taken on an Intoximeter Alcomonitor CC 002001 breathalyzer device bearing serial number 001995 (the "Alcomonitor"). The first test was administered at 4:05 p.m. on February 2, 2015 and showed a positive result for alcohol with a result of .041. The second test was administered at 4:22 p.m. on February 2, 2015 and showed a positive result for alcohol with a result of .040.

Lynn Sherrer, the manager of the drug and alcohol technicians at Work Kare, provided testimony and documentation from Work Kare regarding the validity of the breathalyzer test, the use of Alcomonitor, and the training of the employees at Work Kare. As stated previously, the results for the Respondent's tests on February 2, 2015 were .041 and .040 respectively. After each test, an accuracy test was performed on the Alcomonitor, and the Alcomonitor passed each accuracy test. Additionally, the Alcomonitor is tested for accuracy twice each month. According to Work Kare's Alcomonitor Calibration Log Book, the Alcomonitor was tested for accuracy once on January 2 and twice on January 6 of 2015, and the Alcomonitor passed the accuracy test on each occasion. Additionally, according to Work Kare's Intoxilyzer Activity Log, which was admitted into evidence. The Alcomonitor was used in twenty-three (23) breathalyzer tests from January 26, 2015 to February 2, 2015 prior to the Respondent's test on February 2, 2015. In all of those tests, the results were all negative for alcohol with each having a .000 result. Ms. Sherrer testified that Alcomonitor breathalyzers are sent in for preventative maintenance every two to three years, and that the Alcomonitor used in Respondent's test was sent in for preventative maintenance in July of 2012 and recertified at the Intoximeter Factory in July of 2012. Ms. Sherrer also testified that in her twenty-three (23) years of experience, she has never had an issue with an Intoxilyzer Alcomonitor not performing appropriately.

William Vines was the employee at Work Kare performing the breathalyzer tests on Respondent. On October 9, 2014 Mr. Vines obtained certificates that he successfully completed

course study, practical examination, and written examination to qualify as a DOT Breath Alcohol Screen Collector and a DOT Drug Screen Collector.

Based on the testimony of Work Kare employee, Lynn Sherrer, and the documentary evidence from Work Kare, the breathalyzer test performed on Respondent on February 2, 2015 was properly performed and the Alcomonitor used in the test was functioning properly. No evidence was offered that would indicate that the Alcomonitor was not functioning properly or that the breathalyzer test was improperly performed.

After the positive test result for alcohol was transmitted to STAT, Ms. Ward notified Respondent of the test results. Ms. Ward further notified Respondent that her employment with STAT was being terminated, in accordance with STAT's no tolerance policy regarding alcohol.

According to Ms. Ward, the Respondent told her that she could not explain the positive results, other than to say that she had multiple drinks the night before at a Super Bowl party at her house. Ms. Ward stated that it was Respondent's belief that the results were residual from the night before.

Additionally, Respondent drafted a letter to the branch manager for STAT, a copy of which was admitted into evidence, where she again stated that she believed that the positive breathalyzer test result for alcohol was residual from her alcohol consumption the night before at a Super Bowl party. In the letter, the Respondent affirmatively stated that she did not drink on the day of February 2, 2015.

Charlotte Martin, the Executive Director of the Board, testified as to conversations had with Respondent at an informal conference held on March 20, 2015. At the informal conference, Respondent told Ms. Martin that she drank about six glasses of wine at a Super Bowl party held at her residence, which began at about 4:30 p.m. on February 1, 2015 and ended at about midnight. Respondent maintained that she did not consume alcohol during working hours on February 2, 2015 and that all the drinking happened the night prior to February 2, 2015.

In her testimony at the hearing, Respondent maintained that she did not drink anything on the day of February 2, 2015. Respondent again stated that she drank the night before at the Super Bowl party.

Dr. Barry H. Lubin, M.D. provided expert witness testimony as an expert in the field of addiction medicine and a certified medical review officer, based on his qualifications, education, and experience evidenced in his CV, which was admitted into evidence. Dr. Lubin testified that a person showing a positive result of .041 and .040 for alcohol on a breathalyzer test indicates that that person had consumed alcohol. Dr. Lubin further testified that a majority of alcohol is excreted by the lungs, which is why people are able to smell alcohol on the breath. Dr. Lubin stated that Ms. Roots' testimony that she smelled alcohol on Respondent's breath is significant, in his opinion. Dr. Lubin testified that a person that had only six drinks, or glasses of wine, prior to midnight the night before, could not possibly have had a positive breathalyzer test result of .04 at approximately 4:00 p.m. the following day. Rather, Dr. Lubin stated that the he would expect

someone drinking that amount of alcohol the previous night to have a test result of .005 to .009 by 4:00 p.m. the following day.

Dr. Lubin stated that Respondent would have to have drunk a lot more or for a more extended period of time in order to have a test result of .04 on a breathalyzer test at 4:00 p.m. the following day. Dr. Lubin stated that, if Respondent's story is true that she stopped drinking at midnight on February 1, 2015 and had no other drinks on the day of February 2, 2015, then she would have had to have been intoxicated when she treated patients on the morning of February 2, 2015 in order to have had a positive alcohol breathalyzer test result of .04 at 4:00 p.m. in the afternoon on February 2, 2015. Dr. Lubin stated that, assuming the Respondent's position was true, he could not imagine any other scenario other than the Respondent was under the influence of alcohol when she treated patients on the morning of February 2, 2015.

Considering the positive breathalyzer test results from the afternoon of February 2, 2015, the Respondent's repeated assertion that she did not consume alcohol on the date of February 2, 2015, and the expert testimony of Dr. Lubin, this Board finds that the Respondent was under the influence of alcohol when she treated patients on the morning of February 2, 2015.

Additional evidence was submitted regarding the Respondent's maintenance of physical therapy records. Respondent's personnel records from STAT were admitted into evidence without objection. On page 511 of the records, it was stated that patient N.G. did not stand or attempt to stand during the evaluation visit; however, there no notes showing any assessment of the patient, although goals were evidenced in the notes. According to the testimony of Elizabeth Austin, who was qualified as an expert in the field of physical therapy and patient diagnoses, the Respondent set goals for patient N.G. without performing any real assessment of the patient, which is not customary practice. Additionally, Ms. Austin testified that throughout the Respondent's notes, Respondent used very generic language in assessing patients without speaking to any specifics or objective measurements. On page 278 of the records, the Respondent states that patient N.G. has gait, balance, endurance deficits that need to be addressed; however, according to Respondent's notes, the only thing performed was therex. Throughout the notes of Respondent, there were statements made about the range of motion for patients; however, there are no measurements taken. According to Ms. Austin, it was important to have a starting point measurement to determine the goals proper treatment for the patients. According to Ms. Austin, there is a lack of objective data and a lack of specifics for each patient treated by Respondent. Respondent used only generic statements throughout her notes concerning her patients.

### **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 treating patients under the influence of alcohol on February 2, 2015, Respondent violated Board Rule § 373(A)(2)(a), which prohibits the practice of physical therapy "while under the influence of a mood-altering substance that compromises the

professional judgment or practice or has the potential to compromise the medical judgment or practice.”

- B. By treating patients under the influence of alcohol on February 2, 2015, Respondent violated Board Rule § 345(B)(1), unprofessional conduct, by failing to conform to “the *Minimal Standards of Acceptable and Prevailing Physical Therapy Practice* in the State of Louisiana or the Code of Ethics and related documents of APTA” and committing an act “contrary to honesty, justice, good morals, patient safety or the best interest of the patient.”
- C. When informing the Investigative Committee that she consumed only four to six alcoholic beverages on the evening of February 1, 2015, which were the cause of the positive alcohol test the afternoon of February 2, 2015, Respondent intentionally provided false information to the Investigative Committee attempting to mislead in violation of Board Rule § 345(B)(1), acts “contrary to honesty” and unprofessional. When engaging in this act Respondent departed from, and failed to conform to, *the Minimal Standards of Acceptable and Prevailing Physical Therapy Practice* in the State of Louisiana and the APTA Code of Ethics.
- D. Respondent violated Board Rule § 341 in failing to maintain physical therapy records in accordance with required documentation standards.

### SANCTIONS

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

**IT IS ORDERED** that the license of Respondent, Jane Wetherington, to engage in the practice of a Physical Therapist, is hereby placed **on probation** immediately, for a period of three (3) years, and it shall remain on probation 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. Respondent shall refrain from the practice of home health until she complies with this section and receives approval from the Board based on the recommendations of the evaluators.
- B. 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.

- 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 and the Board Rules. This essay shall be submitted to the Executive Director no later than 30 days from the receipt of this Order.
- E. During the probationary period, Respondent shall promptly comply, as directed, with Board requests for random drug and/or alcohol tests arranged by the Board, and Respondent shall pay for or reimburse the Board for the expense of such tests.
- F. 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.
- 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.
- I. The probationary period shall be extended for any period of time in which the Respondent is not employed as a Physical Therapist 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 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 within the State of Louisiana, she shall notify the Executive Director in writing within ten (10) days of her return to practice.
- J. During the probationary period, Respondent shall provide a copy of this Order to her employer(s) and immediate supervisor before providing services to that employer and shall have the employer(s) and the immediate supervisor 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/manager during the probationary period.

- K. 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 and shall update the Executive Director in writing within five (5) days of any and all changes in such arrangements.
- L. Within one (1) year of receipt of this Order, Respondent shall attend eight (8) hours of continuing education, approved advance by the Executive Director of the Board on the documentation standards required for the maintenance of physical therapy records. These hours shall be in addition to any other hours of continuing education Respondent is required to obtain in order to maintain her license, and Respondent shall provide proof of completion of these continuing education hours to the Executive Director of the Board.

Signed this 7<sup>th</sup> day of October 2015.

  
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Al C. Moreau III  
Chairman