

BEFORE THE PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERNEST SLUDER, PT

**Physical Therapy License
No. 20795,**

Respondent.

**PTBC Case Nos.
1D 2008 66674 and
1D 2010-68256**

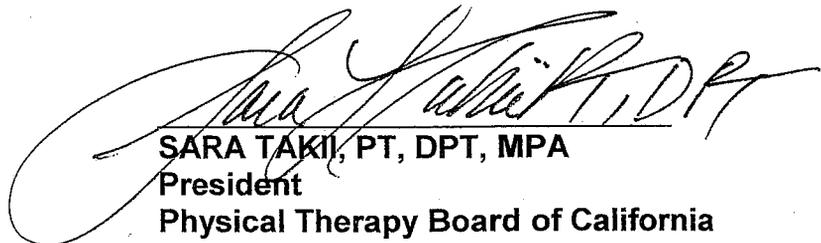
OAH No. 2010060591

DECISION and ORDER

Pursuant to Government Code section 11517 (c)(2)(B), the attached Proposed Decision of the Administrative Law Judge, with the reduction in penalty noted, is hereby adopted by the Physical Therapy Board of California as its Decision in the above-entitled matter. Specifically, the Order is modified to remove term and condition of probation number 26, regarding direct billing.

This decision shall become effective on March 10th, 2011.

IT IS SO ORDERED this 8th day of February, 2011.


SARA TAKLI, PT, DPT, MPA
President
Physical Therapy Board of California

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Respondent.

Case No. 1D-2008-66674 and
1D-2010-68256

OAH No. 2010060591

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 19, 2010, in San Diego, California.

Beth Faber Jacobs, Deputy Attorney General, represented complainant Steven K. Hartzell, Executive Officer, Physical Therapy Board of California, Department of Consumer Affairs.

Respondent Ernest Sluder represented himself and was present throughout the hearing.

The matter was submitted on October 19, 2010.

FACTUAL FINDINGS

1. On May 10, 2010, complainant Steven K. Hartzell, Executive Officer, Physical Therapy Board of California, signed the first amended accusation in his official capacity. On the same date, the first amended accusation and other required jurisdictional documents were served on respondent by certified mail. On August 30, 2010, a notice of hearing was served on respondent.¹

2. On October 19, 2010, the administrative record was opened, jurisdictional documents were received, sworn testimony was given, documentary

¹ Previously, on April 17, 2010, respondent had signed and thereafter submitted a Notice of Defense in response to the original accusation in this matter.

evidence was introduced, closing arguments were presented, the record was closed, and the matter was submitted.

3. On June 1, 1995, the board issued to respondent physical therapist license PT 20795.

4. On April 6, 2007, while driving his vehicle, respondent rear-ended another vehicle and fled the scene. Respondent's 10-year-old daughter was in his car at the time. Police officers were subsequently able to determine that it was respondent who was involved in this incident. On November 28, 2007, Costa Mesa Police Department officers went to respondent's home. Respondent admitted that he had rear-ended the other vehicle and fled the scene because he did not have a driver's license. Respondent was arrested.

On March 7, 2008, a complaint was filed against respondent in connection with the April 6, 2007, incident, an arraignment was calendared for April 2, 2008, and an arraignment letter was sent to respondent. Respondent failed to appear at the April 2, 2008, arraignment. On April 3, 2008, a hearing was held on respondent's failure to appear, with respondent appearing in pro per. A new arraignment date was set for May 15, 2008. Respondent was ordered to appear on the new date and was released on his own recognizance. At the May 15, 2008, arraignment, respondent again failed to appear; six days later a warrant was issued. The warrant was served on respondent on July 9, 2008, and respondent was arrested at that time. The arraignment was reset for August 21, 2008. Respondent was present at the arraignment and pled not guilty to all counts. The matter was set for pretrial on September 5, 2008.

On September 5, 2008, respondent pled guilty and was convicted of one count each of violating Vehicle Code section 2002, subdivision (a) (hit and run driving with property damage) and Vehicle Code section 12500, subdivision (a) (driving without a valid driver's license), both misdemeanors. Respondent was placed on informal probation for three years. The terms of probation included 20 days in jail (to be served by completing 20 days Cal Trans community service), various fines and penalties, and restitution to the victim.

On May 19, 2009, respondent's probation was revoked based on his failure to complete his community service, and a warrant was issued.

5. On July 11, 2008, respondent was stopped by a peace officer while driving his vehicle. The officer ran a records check on the vehicle and determined that the registration had expired in 2007, even though the vehicle displayed a 2009 registration expiration date. Respondent told the officer that he had taken the sticker from his other vehicle and placed it on the vehicle he was then driving, i.e., the vehicle with the expired registration. It was also determined that respondent had an outstanding warrant, so he was arrested and issued a citation for unlawful display of registration in violation of Vehicle Code section 4462.5.

During a follow up investigation, the police department determined that the 2009 registration tab found on respondent's vehicle actually came from a vehicle that was registered not to respondent but to a third party. The third party stated that she did not know respondent and did not give him permission to use her registration tab.

On August 25, 2008, a criminal complaint was filed against respondent in connection with these matters. Arraignment was calendared for October 16, 2008, and an arraignment letter was sent to respondent. Respondent failed to appear at the arraignment. On December 31, 2008, a warrant was issued. On January 17, 2009, a peace officer stopped respondent for making an unsafe lane change. Respondent was arrested on the warrant, cited and released. On January 27, 2009, an arraignment date was set for March 4, 2009, with regard to the October 16, 2008, failure to appear, and a letter was subsequently mailed to respondent to indicate the corrected court date. That letter was later returned as undeliverable. Respondent failed to appear at the March 4, 2009, arraignment, and another bench warrant was issued. The bench warrant was served on respondent on January 14, 2010. Respondent was cited and released on his own recognizance on January 25, 2010, with a notice to appear on March 3, 2010. Respondent again failed to appear on March 3, 2010 and another bench warrant was issued.

6. On October 15, 2010, respondent went to court and took care of all outstanding citations and failures to appear. All warrants were recalled. The court found respondent not to be in violation of his probation. His probation was modified. He was assessed fines in the collective amount of about \$3,500, and was ordered to serve 20 days in jail, to be served on weekends.

7. Respondent testified that he works on Catalina Island. For the past six months, he has worked at the Catalina Island Medical Center. His employment has been through a registry.

Respondent testified that he sees between three and ten patients per day.

8. Respondent testified that he has been married for three years. He has two children, 11 and 12 years of age. The former is a step-child. The latter, respondent's natural child, lives with her mother. Respondent lives on Lido Island with his wife and step-daughter. He goes to Catalina for the (four-day) work week. Respondent's long-term goal is to remain in Catalina, where his wife and step-daughter will join him at the end of the present school year.

9. Respondent testified that Catalina is a small, underserved, largely impoverished community, and is a good fit for him. Most of its residents are Spanish speaking, and respondent is fluent in that language. The only other physical therapist on Catalina is 75 years old and retired; she cannot provide care at this time.

10. Respondent was asked on cross examination why he continued to drive without a license. He stated that he tries to avoid driving, but on a few occasions, he felt he needed to drive for safety reasons, e.g., another individual was tired or had been drinking. Since he bikes to work while in Catalina, he does not need to drive on a regular basis. He drives only when there appear to him to be "major safety issues." He last drove a car about a year before the hearing.

11. Respondent testified that he volunteers at the SPCA. He also tries to find something appropriate to give (out of his own pocket) to each of his patients to help them with their recovery, e.g., a balance board, a basketball, a Swiss ball. He makes the balance boards himself, and sometimes paints them with a theme that relates to the patient in some personal way.

12. Respondent testified concerning his failures to appear, explaining that he had moved to Yosemite, had some personal issues to deal with, and that his inability to drive and the remoteness of his residence "insulated" him from his responsibility to appear in court on these several occasions. He added that due to the isolation of his location and his inability to get mail, he had very limited means of communication. He did not notify anyone that he would not appear in court on the dates in question.

13. During his closing argument, respondent apologized for his actions. He stated that he was 100% certain that he would abide by any terms of probation that were imposed on him, and that he is very motivated to comply. He did concede during his testimony that due to the location of his practice he could not comply with a condition of probation that required another physical therapist to supervise him. His direct supervisor is the director of all clinical services at the hospital.

14. In an October 18, 2010, letter, Nancy Mattis, RN, Chief of Patient Care Services, Catalina Island Medical Center, wrote that respondent had been working for the center for the past six months as a temporary contractor, and that he "has made such a significant contribution we have asked him to stay permanently." She described him as a "compassionate, caring individual, who has become very popular with patients and staff alike." She noted further, "He provides excellent physical therapy services, inspiring his patients to maintain their therapy program while they complete their healing. On his time off, he also volunteers in the community, and makes extra gifts for his patients." In conclusion, "We feel very fortunate to have Ernest as part of our staff. He is an asset to the medical center and to our community."

Respondent testified that Mattis is director of all clinical services at the facility and is his direct supervisor.

15. Complainant's counsel submitted a declaration in support of a request for cost recovery. The declaration stated, and it is found, that total charges billed by

the Department of Justice to the board were in the amount of \$4,947.50, representing 29.75 hours of attorney work at \$170 per hour and 4.75 hours of legal analyst work at \$120 per hour. Complainant's counsel was well prepared, litigated this matter with skill and effectiveness, and conducted herself in a thoroughly professional manner. Complainant's claimed expenses were reasonably incurred.

LEGAL CONCLUSIONS

1. "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code § 115.) The burden of proof in this proceeding is thus on complainant.

3. The standard of proof to be applied in disciplinary proceedings against professional licenses is "clear and convincing evidence standard to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856-857; *Furman v. State Bar* (1938) 12 Cal.2d 212, 229; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

4. "The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence." (*People v. Mabini* (2001) 92 Cal. App. 4th 654, 662.)

5. Business and Professions Code section 2660 provides that the board may impose discipline against a license on the basis of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

a. the conviction of a crime that is substantially related to the qualifications, functions, and duties of a physical therapist. (Bus. & Prof. Code, § 2660, subd. (d).) California Code of Regulations title 16, section 1399.20 defines a substantially-related crime or act² as one that to a substantial degree evidences present or potential unfitness of a person to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

² The precise relationship between the statute, which references only the *conviction* of a crime, and the regulation, which references both a crime and an *act*, is not clear.

b. the violation or attempted violation of any provision of the Physical Therapy Practice Act or the Medical Practice Act (Bus. & Prof. Code, § 2660, subd. (h).) General unprofessional conduct under section 2660 is thus necessarily also a violation more specifically of subdivision (h).

c. the commission of a fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist. (Bus. & Prof. Code, § 2660, subd. (k).)

6. The board has issued disciplinary guidelines, which, *inter alia*, set forth recommended disciplinary actions for particular violations. For conviction of a substantially-related crime, the guidelines prescribe a minimum discipline of a public reproof and a maximum discipline of revocation. For general unprofessional conduct pursuant to section 2600 and subdivision (h),³ the guidelines do not appear to provide recommended levels of discipline. For fraudulent and dishonest acts, the guidelines prescribe a minimum discipline of revocation, stayed, five days suspension, and three years probation, and a maximum discipline of revocation.⁴

7. By reason of Factual Findings 1 through 15, and Legal Conclusions 1 through 6, legal grounds exist to impose discipline on respondent's license as follows:

a. Respondent was convicted of a crime that was substantially related to the qualifications, functions, and duties of a physical therapist, so that discipline may be imposed on respondent's license pursuant to Business and Professions Code section 2660, subdivision (d). Respondent's Vehicle Code sections 20002 and 4462.5 convictions both involved substantial dishonesty and reflect a lack of integrity on respondent's part. They thus substantially evidence a present or potential unfitness to practice physical therapy. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771-772.)

b. Respondent engaged in general unprofessional conduct, so that discipline may be imposed on respondent's license pursuant to Business and Professions Code section 2660 and subdivision (h) thereof. Respondent's leaving the scene of a traffic accident and his repeated failures to appear in court collectively constituted highly irresponsible conduct that substantially evidences a present or potential unfitness to practice physical therapy and, in addition, are unbecoming of a

³ Particular discipline is prescribed for certain specific kinds of subdivision (h) conduct (e.g., aiding and abetting unlicensed practice), but not for the kind of conduct involved here.

⁴ In citation cases, the discipline to be imposed is limited to fines. The present matter is not a citation, and the misconduct at issue here could not adequately be addressed by a mere fine.

member of his profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

c. Respondent committed fraudulent and dishonest acts that are substantially related to the qualifications, functions, and duties of a physical therapist, so that discipline may be imposed on respondent's license pursuant to Business and Professions Code section 2660, subdivision (k). As noted, respondent's Vehicle Code violations involved substantial dishonesty and evidence a present or potential unfitness to practice physical therapy.

8. By reason of Factual Findings 1 to 15 and Legal Conclusions 1 to 7, cause exists to impose discipline on respondent's license, but not to revoke respondent's license.

On the one hand, any conduct involving dishonesty is always a serious concern in the context of a health care professional and the trust that patients and society must necessarily repose in him. Further, respondent's several failures to appear,⁵ his probation violation, and some of respondent's statements at the hearing suggest a certain failure to appreciate the importance of abiding by not only the law in general, but by court orders in particular. A concern thus arises as to whether or not respondent can be depended on to comply with the terms of a probationary order.

On the other hand, respondent's desire and ability to provide care to an underserved community is commendable, he seems to care genuinely for his patients, and his present employer speaks very highly of him.

Based on the entirety of the record, it is concluded that straight revocation of respondent's license is not required for the protection of the public, but that instead the imposition of a substantial period of probation on appropriate terms and conditions is consistent with the health, safety, and welfare of respondent's patients and the general public.

Respondent is strongly urged, however, to take the terms of his probation with the utmost seriousness, and not to presume that he will be accorded any leniency should he violate his probation in any material respect.

9. Business and Professions Code section 125.3 provides in pertinent part:

“(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a

⁵ The evidence established that respondent had personal, actual knowledge of at least two of these.

violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

* * *

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). . . .”

10. As previously found, the total costs of investigation and enforcement reasonably incurred in this action were \$4,947.50. Cause exists to issue an order requiring respondent to pay the full amount of these costs.

Accordingly, there is hereby issued the following:

ORDER

Respondent Ernest Sluder’s physical therapist license number PT 20795 is revoked; but that revocation is stayed for a period of three years, and a probationary license is issued to respondent, under the following terms and conditions of probation:⁶

1. License Revocation, stayed

The respondent’s license shall be revoked, with the revocation stayed.

2. Cost Recovery

The respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$4,947.50. The Board may set up a monthly payment plan

⁶ Optional conditions of probation E, T, and W are excluded from the order. Condition E is excluded because: (i) as a practical matter, respondent’s compliance with it is not possible, since no other physical therapists are available to work on the same shift as respondent, and (ii) the absence of another physical therapist on duty would not jeopardize the health, safety, or welfare of any patient or the general public. Condition T is excluded because the basis for the probationary order is not related to drug or alcohol abuse. Condition W is excluded because the record does not reflect any basis for ordering a psychiatric evaluation of respondent. Optional condition of probation A is included, but has been modified to permit supervision by either a licensed physical therapist or by respondent’s direct supervisor at Catalina Island Medical Center. This modification is made for similar reasons as the exclusion of condition E.

for these costs and shall determine the time within which such costs are to be paid. Failure to pay the ordered reimbursement constitutes a violation of the probation order. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board. If respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board. Failure to fulfill the obligation could also result in attachment to Department of Motor Vehicle registrations, license renewals, or both.

3. Obey All Laws

Respondent shall obey all federal, state and local laws, the statutes and regulations governing the practice of physical therapy and remain in full compliance with any court ordered criminal probation. This condition applies to any jurisdiction with authority over respondent, whether it is inside or outside of California.

Further, respondent shall, within five days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

4. Compliance with Orders of a Court

The respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order is a violation of probation.

5. Compliance with Criminal Probation and Payment of Restitution

Respondent shall not violate any terms or conditions of criminal probation and shall be in compliance with any restitution ordered, payments or other orders.

6. Quarterly Reports

Respondent shall submit quarterly reports under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

7. Probation Monitoring Program Compliance

Respondent shall comply with the Board's probation monitoring program.

8. Interview with the Board or its Designee

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals.

9. Notification of Probationer Status to Employers

The respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Initial Probationary License, Statement of Issues, Accusation and the Decision and Order, or Stipulated Settlement to the employer, and submit written employer confirmation of receipt to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

10. Notification of Change of Name or Address

The respondent shall notify the Board, in writing, of any and all of name and/or address changes within ten days.

11. Restriction of Practice—Temporary Service Agencies

The respondent's work for a temporary services agency or registry shall be limited as follows:

- 1) Respondent shall be limited to work for one temporary service agency or registry.
- 2) This work must be approved by the probation monitor.
- 3) Respondent must disclose this disciplinary proceeding as described above in Condition 9 to the temporary service agency or registry.
- 4) Respondent must disclose this disciplinary proceeding, as described above in Condition 9 to the supervisor at the facility where physical therapy care is being performed.

Respondent must notify his/her probation monitor or Board's designee, in writing, of any change in registry or temporary service. The Respondent must have written approval by the probation monitor prior to commencing work at a new registry or temporary service agency.

12. Restriction of Practice - Clinical Instructor of Physical Therapy Student Interns or Foreign Educated Physical Therapist License Applicants Prohibited.

Respondent shall not supervise any physical therapy student interns, foreign educated physical therapist license applicants or other individuals accumulating hours or experience in a learning capacity in physical

therapy during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this probation.

13. Prohibited Use of Aliases

Respondent shall not use aliases and shall be prohibited from using any name which is not his/her legally-recognized name or based upon a legal change of name.

14. Intermittent Work

If the respondent works less than 192 hours as a physical therapist or a physical therapist assistant in the physical therapy profession in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent is required to immediately notify the probation monitor or his or her designee if he/she works less than 192 hours in a three-month period.

15. Tolling of Probation

The period of probation shall run only during the time respondent is practicing or performing physical therapy within California. If, during probation, respondent does not practice or perform within California, respondent is required to immediately notify the probation monitor in writing of the date that respondent is practicing or performing physical therapy out of state, and the date of return, if any. Practicing or performing physical therapy by the respondent in California prior to notification to the Board of the respondent's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

16. Violation of Probation

Failure to fully comply with any component of any of the probationary terms and conditions is a violation of probation.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. Request to Surrender License Due to Retirement, Health or Other Reasons

Following the effective date of this probation, if respondent ceases practicing or performing physical therapy due to retirement, health or other reasons or is otherwise unable to satisfy the terms and conditions of probation respondent may request to surrender his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable; the respondent makes application for the renewal of the tendered license or makes application for a new license.

18. Completion of Probation

Respondent shall comply with all financial obligations required by this Order (e.g., cost recovery, restitution, probation costs) not later than 180 calendar days prior to completion of probation unless otherwise specified in Order. Upon successful completion of probation, respondent's license shall be fully restored.

19. California Law Examination - Written Exam on the Laws and Regulations Governing the Practice or Performance of Physical Therapy

Within 90 Days of the effective date of this decision, respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed. Respondent shall pay the costs of all examinations.

20. Practice or Performance of Physical Therapy While on Probation

It is not contrary to the public interest for the respondent to practice and/or perform physical therapy under the probationary conditions specified in the disciplinary order. Accordingly, it is not the intent of the Board that this order, the fact that the respondent has been disciplined, or that the respondent is on probation, shall be used as the sole basis for any third party payor to remove respondent from any list of approved providers.

21. Probation Monitoring Costs

Respondent shall reimburse all costs incurred by the Board for probation monitoring during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical Therapy Board of California and sent directly to the Physical Therapy Board of California. Failure to make ordered reimbursement within 60 days of the billing shall constitute a violation of the probation order.

22. Restriction of Practice - Supervision Required

Respondent shall only practice physical therapy under the supervision of: (i) a physical therapist who holds a valid unrestricted license, and who is responsible for the care rendered; or (ii) his direct supervisor at Catalina Island Medical Center.

After one year of full compliance of probation, respondent may request in writing for the approval by the Board or its designee, to remove this condition entirely or modify the requirement.

23. Restriction of Practice - Home Care

The respondent shall not provide physical therapy services in a patient's home.

24. Restriction of Practice - Solo Practice

The respondent shall be prohibited from engaging in the solo practice of physical therapy. However, he shall be allowed to practice physical therapy at Catalina Medical Center notwithstanding the fact that no other physical therapists are on staff as long as he is supervised, as set forth in condition 22.

25. Restriction of Practice - Prohibition of Self-Employment or Ownership

Respondent shall not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. Respondent shall not be a Board member or an officer or have a majority interest in any corporation that offers or provides physical therapy services.

26. Restriction of Practice - Prohibition of Direct Billing of Third-Party Payers

Respondent shall not have final approval over any physical therapy billings submitted to any third-party payers in any employment.

27. Restriction of Practice - Monitoring

Within thirty (30) days of the effective date of this decision, the respondent shall select a licensed physical therapist to serve as the professional practice monitor during the period of probation and submit the name of the licensed physical therapist selected for approval by the Board or its designee. The professional practice monitor shall be selected from an established pool of physical therapists licensed to practice in the State of California who are currently serving as trained expert consultants to the Board. If there is no practice monitor available from the pool of physical therapists, the respondent may provide the probation monitor with the name and license number of a physical therapist for approval if deemed appropriate. The professional practice monitor shall not be someone with a conflict of interest in reviewing the licensee's practice. A conflict of interest is one that may interfere with the ability to fairly assess the licensee's practice and provide the probation monitor with a non-biased report. This includes, but is not limited to, a business partner or family member of the licensee.

After the professional practice monitor has been approved by the Board, the professional practice monitor in conference with the Board's probation monitor will establish the schedule upon which clinical visits will be made to respondent's place of employment to review respondent's current practice and respondent's adherence to the terms of probation. The professional practice monitor shall report to the Board's probation monitor on compliance with the terms and conditions of the respondent's probation after each clinical visit. The report shall indicate whether respondent's practices are within the standards of practice of physical therapy and/or billing, and whether respondent is practicing physical therapy safely, and/or billing appropriately.

Should the professional practice monitor resign or no longer be available, the Respondent shall within 15 days submit for approval by the Board another physical therapist from the pool of expert consultants or provide the name and license number of a physical therapist for approval.

Respondent shall pay all monitoring costs, including the cost of the professional practice monitor within a time frame agreed upon by the professional practice monitor, but shall not exceed more than 15 days of being billed.

Respondent shall make all patient records available for immediate inspection by the professional practice monitor at all times, or for copying on premises, and shall retain all records for the entire term of probation.

Respondent shall make all appropriate records available for immediate inspection by the Board's probation monitor at all times, or for copying on premises, and shall retain all records for the entire term of probation.

28. Notification to Patients

The respondent shall notify each patient, in writing, that his or her license is on probation and that a professional practice monitor will be reviewing patient records.

Such notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by the respondent. A copy of such notification shall be maintained in the patient's record. Respondent shall offer the patient a copy of the acknowledgement.

The notification shall include the following language unless the Board or its designee agrees, in writing, to a modification:

The Physical Therapy Board of California (PTBC) has placed physical therapist license number PT20795, issued to Ernest Sluder, on probation.

As a condition of probation, the above-named physical therapist must notify patients that a professional practice monitor will be reviewing patient records. In addition, the physical therapist is required to notify and obtain written acknowledgement from each patient of this condition. A copy of the acknowledgement shall be offered to the patient and placed in the patient's record.

Information regarding PTBC license disciplinary actions may be accessed online at www.ptbc.ca.gov.

29. Notification of Probationer Status to Employees

If respondent is an employer of other physical therapist or physical therapist assistants, respondent shall, notify all present or future employees of the reason for and terms and conditions of the probation. Respondent shall do so by providing a copy of the Initial Probationary License, Statement of Issues, Accusation, and Decision and Order to each employee and submit confirmation of employee receipt to the Board within 10 days. The confirmation(s) provided to the Board shall include the name, address and phone number of the employees.

30. **Community Services**

The respondent shall be required to provide community service without compensation within the State of California as part of the probation. The respondent shall submit for prior approval a community service program to the Board or its designee.

DATED: November 10, 2010



DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings