

**State of New Hampshire
Office of Licensed Allied Health Professionals
Physical Therapy Governing Board
Concord, New Hampshire**

In The Matter Of:
Cheryl M. Kjendal
License No.: 1855
(Application for License Reinstatement)

Docket #10-2019

DECISION AND ORDER

By the Board: Joseph Shanley, PTA, Presiding Officer, Gillian Cavezzali, PT, Greg Woodsum, PT, Lea Bruch, Public Member, Martha Aguiar, Public Member

Also present: Tina M. Kelley, Administrator to the Board

Appearances: Attorney Alexander W. Campbell
Cheryl M. Kjendal

On November 7, 2018 the New Hampshire Governing Board of Physical Therapy ("Board") received a letter from Cheryl Kjendal ("Ms. Kjendal" or "Petitioner") in which she stated that she was submitting her "Supervision Form" at the conclusion of her supervisory period without having received a Conditional License to practice under supervision. The "Supervision Form" indicated that she practiced from September 10, 2018 through November 7, 2018 without a license. The Board reviewed Ms. Kjendal's letter, "Supervision Form", application, and supporting documents at their regularly scheduled meeting held December 19, 2018. After review the Board noted that it appeared that Ms. Kjendal had been practicing as a physical therapist at Willem Verweij Physical Therapy without a license.

Background

On April 5, 2018 the Board received an "Application for Reinstatement of Licensure or Certification" from Ms. Kjendal. Ms. Kjendal signed and dated the application under the statement:

“I acknowledge that knowingly making a false statement on this application form is a misdemeanor under RSA 641:2, I. I certify that the information I have provided on all parts of the application form and in the documents that I have personally submitted to support my application is complete and accurate to the best of my knowledge and belief. I also certify that I have read the statute and the rules of the Board and promise, that if I am licensed, I will abide by them.”

The document was sworn before a Notary Public on March 29, 2018.

Ms. Kjendal submitted a “Physical Therapist and Physical Therapist Assistant Work History” form on April 16, 2018. The information provided on this form indicated that Ms. Khjendal had not practiced as a Physical Therapist since November of 1995. In accordance with Phy 403.06(b), Ms. Kjendal retook the National Examination on July 24, 2018.

On August 8, 2018 Ms. Kjendal took and passed the New Hampshire Jurisprudence Examination.

On August 22, 2018 the Board sent Ms. Kjendal a letter stating: “The Board has voted to grant you a conditional license as described in Phy 403.09. In order to grant your license you must submit a Supervision form (enclosed) with a supervisor meeting the qualification described in Phy 404.03.

Once you have submitted a completed Supervision Form your license will be issued....”

On November 7, 2018 Ms. Kjendal submitted a letter in which she stated “I am submitting my Supervision Form inadvertently at the conclusion of 320 hours. I misread the letter, and only upon filling out the form at the end of my hours, did I realize my mistake.”

Along with the letter dated November 9, 2018, Ms. Kjendal submitted a Supervision Form. The Supervision Form was signed by Willem Verweij and stated Ms. Kjendal worked as a Physical Therapist from September 10, 2018 through November 7, 2018 under his supervision.

On November 19, 2018 Willem Verveij submitted a letter to the Board, in which he requested the Board “retroactively grant her a conditional licensed and help her become a practicing Physical Therapist.” He further stated that “[Ms. Kjendal] researched the requirements, had the breakdown of hours needed and we proceeded to give her those hours.”

A hearing was commenced on March 20, 2019, the specific issues to be determined included:

- A. Whether or not, and to what extent Ms. Kjendal practiced without a license at Willem Verweij Physical Therapy from September 10, 2018 to November 7, 2018 which, if proven, would constitute grounds for discipline under RSA 328-F:23, II (c); RSA 328-F:23, II(i); RSA 328-F:23, II(j); Phy 405.01(j); Phy 405.01(k); and *APTA Code of Ethics for the Physical Therapist Principle #5A*.
- B. Whether or not, and to what extent, Ms. Kjendal has failed to demonstrate to the Board she is of good moral character as required by RSA 328-A:5, I as evidenced by her practice in the State of New Hampshire without a license.

At the hearing the Board reviewed numerous exhibits. The following exhibits were entered into evidence:

Board Exhibits:

- Exhibit #1 – Application for Reinstatement of Licensure or Certification
- Exhibit #2 – Physical Therapist and Physical Therapist Assistant Work History
- Exhibit #3 – FSBPT National Examination Scores
- Exhibit #4 – FSBPT NHJAM Sore Report
- Exhibit #5 – A letter to Ms. Kjendal dated August 22, 2018
- Exhibit #6 – A letter from Ms. Kjendal dated November 7, 2018
- Exhibit #7 – The Office of Licensed Allied Health Professionals Supervision Form
- Exhibit #8 – A letter from Willem Verweij, PT dated November 16, 2018

Cheryl M. Kjendal's Exhibits:

- Exhibit A – Application for Reinstatement of Licensure or Certification
- Exhibit B – Physical Therapist and Physical Therapist Assistant Work History
- Exhibit C – FSBPT National Examination Scores
- Exhibit D – FSBPT NHJAM Sore Report
- Exhibit E – A letter to Ms. Kjendal dated August 22, 2018
- Exhibit F – A letter from Ms. Kjendal dated November 7, 2018
- Exhibit G – The Office of Licensed Allied Health Professionals Supervision Form
- Exhibit H – A letter from Willem Verweij, PT dated November 16, 2018
- Exhibit I – CE Course Certificates Taken through Medbridge between August 17, 2018 and March 6, 2019 totaling 60 hours

Exhibit J – Mary M. Palaima Decision and Order dated November 18, 2015

Exhibit K – Kristin K. Gokey Decision and Order dated November 18, 2015

Exhibit L – Bernadette Campbell, PT Settlement Agreement dated March 15, 2006

Exhibit M – Pauline D. Trudeau Order of Conditional Approval dated December 2, 1992.

Ms. Kjendal testified before the Board that she left the profession in 1999 to raise her children. She then returned to the profession performing the duties of a physical therapy technician at Willem Verveij Physical Therapy in order to determine if she still wanted to practice as a physical therapist. Determining that she wanted to reenter the profession she retook and passed the National Physical Therapy Examination. Ms. Kjendal acknowledged receiving a letter from the Board's office informing her that the Board voted to grant her a conditional license and what the process would be. Ms. Kjendal referred to the following section of the letter:

“The Board has voted to grant you a conditional license as described in Phy 403.09. In order to grant you a license you must submit a Supervision form (enclosed) with a supervisor meeting the qualification described in Phy 404.03. Once you have submitted a completed Supervision Form your license will be issued. The license will remain valid for no more than 26 weeks.....”

She testified that she read the letter where the first sentence was step one and the second sentence was step two. She stated she believed that she needed to submit the “Supervision Form” once she completed the supervised practice. By submitting the form she would receive her full license.

Ms. Kjendal stated that she first found out she should have submitted the “Supervision Form” before beginning to practice when she re-read the rules during a lunch with Mr. Verweij. She said that she thought she was practicing as a student. At that time Mr. Verveij brought to her attention that the “Supervision Form” should have been submitted before she began practicing.

Ms. Kjendal told the Board the reason Mr. Vervwij was not present to provide testimony was because he had been so kind to her she did not want to drag him into this any further. She acknowledged that it was her error and stated to the Board that she does not take the situation lightly. She stated that she had researched the requirements and levels of supervision and must have missed the part where it explained the hours and levels of supervision required. She testified that though this was a simple error, there were big consequences and she took full responsibility for the practicing without a license. According to Ms. Kjendal, she made a huge mistake in

interpreting what she had read. She stated that she took the supervised hours seriously and never practiced independently. Following Ms. Kjendal's testimony and a brief closing statement by her attorney, the Board closed the hearing.

The Board reopened the Hearing on April 17, 2019 at 1:50 p.m. The purpose of reopening the hearing was to accept a letter from Attorney Campbell submitted on Ms. Kjendal's behalf. This letter stated that Ms. Kjendal failed to complete her last 1.75 hours of the required 320 supervised hours. This shortfall occurred because she ceased to practice once she found out she did not hold a valid license. The letter was accepted into evidence and marked Exhibit N. The Hearing was closed at 1:52 pm.

Cheryl M. Kjendal's Additional Exhibits:

Exhibit N – A letter from Attorney Campbell to the Board dated April 8, 2019.

Applicable Laws:

RSA 328-A:5, I (a):

An applicant for a license as a physical therapist who has been educated in the United States shall:

- (a) Be of good moral character

RSA 328-A:12, I:

I. It is unlawful for any person to practice or in any manner to represent, imply, or claim to practice physical therapy or use any word or designation that implies that the person is a physical therapist unless that person is licensed pursuant to this chapter. An unlicensed person who engages in an activity requiring a license pursuant to this chapter or uses any title, letters, or any description of services that incorporates one or more of the terms, designations, or abbreviations in violation of RSA 328-A:10 that implies that the person is licensed to engage in the practice of physical therapy is guilty of a misdemeanor.

RSA 328-F:23, II (c):

Misconduct sufficient to support disciplinary proceedings shall include:

- (c) Violation of the ethical standards adopted by the governing board.

RSA 328-F:23, II (i):

Misconduct sufficient to support disciplinary proceedings shall include:

- (i) Practice without a currently valid license.

RSA 328-F:23, II (j):

Misconduct sufficient to support disciplinary proceedings shall include:

Violation of any provision of this chapter, of any governing board's practice act or rule adopted pursuant to RSA 541-A, or of any state or federal law reasonably related to the licensee's authority to practice or ability to practice safely.

Phy 307.08(b):

The board shall extend a conditional license for an additional period of no more than 26 weeks when:

...

(b) The conditional licensee (1) Is unable to complete the required supervised practice because of loss of employment for any reason other than being terminated for cause or terminated during probationary employment because of incompetence; or (2) Is unable to submit the required supervisory approval letter for a reason unrelated to the supervisor's belief that the licensee is not ready to practice under full licensure.

Phy 403.06(a):

Conditional Reinstatement of Lapsed Licenses:

(a) The board shall conditionally, rather than fully, reinstate licenses when they have been lapsed for 4 years or more without the reinstatement applicants' having been active in the profession as defined in Phy 401.01 for the just preceding 4 years if the applicants.

Phy 405.01(j):

Misconduct shall be:

(j) Practice without a currently valid license; and

Phy 405.01(k):

Misconduct shall be:

(k) Violation of:

- (1) Any provision of RSA 328-F;
- (2) Any provision of RSA 328-A;
- (3) Any rule adopted by the board; or

(4) Any state or federal law reasonably related to the licensee's authority to practice or the licensee's ability to practice safely.

APTA Code of Ethics for the Physical Therapist Principle #5A.:

Physical Therapists shall fulfill their legal and professional obligations.

5A. Physical therapists shall comply with applicable local, state and federal laws and regulations.

Findings of Fact and Rulings of Law:

- The Board finds that the Petitioner applied for reinstatement of licensure as a Physical Therapist in the State of New Hampshire
- The Board concludes that the Petitioner practiced without a license at Willem Verweij Physical Therapy from September 10, 2018 to November 7, 2018 which constitutes misconduct sufficient to support imposing discipline pursuant to RSA 328-F:23, II (c); RSA 328-F:23, II(i); RSA 328-F:23, II(j); Phy 405.01(j); Phy 405.01(k); and *APTA Code of Ethics for the Physical Therapist Principle #5A*.
- The Board finds that the Petitioner's materials lack a Supervisory Approval Letter in accordance with Phy 307.07 and therefore the Board is unable to determine whether the Petitioner's unlicensed practice was appropriately supervised.
- The Boards finds the November 16, 2018 letter submitted by Mr. Verweij does not provide the necessary determinations required by Phy 307.12 regarding whether and to what extent the Petitioner has the requisite skills detailed in Phy 307.12.
- As a result, the Board is unable to conclude the Petitioner has the requisite skills and ability to practice under full, unrestricted licensure.
- The Board finds that, under traditional circumstances, when a supervisory letter is unavailable, the appropriate course of action is for the Board to extend a conditional licensure period pursuant to Phy 307.08
- The Board finds the Petitioner also took a professional ethics course, self-reported that she practiced without a license, took full responsibility, showed remorse, and clearly communicated her mistake.
- Taking the above facts into consideration, the Board concludes that the Petitioner has satisfactorily demonstrated to the satisfaction of the Board demonstrated she is of good moral character as required by RSA 328-A:5.

Based on the findings of facts and rulings of law the Board finds sufficient evidence that Ms. Kjendal was in violation of the laws and rules of the State of New Hampshire by practicing without a license. In making its decision the Board has considered all the evidence and has taken the following into consideration:

- Ms. Kjendal had been out of the practice of physical therapy since September of 1999, approximately 19 years before being approved for a conditional license in 2018. In order to ensure public safety it is crucial for an individual who has been out of the practice for an extended period of time to have proper supervision to ensure that they are properly trained to practice independently.
- Ms. Kjendal's testimony indicated that she had read some of the rules describing practice under a conditional license but not all of those rules;
- Ms. Kjendal did not have any proof that she held a valid New Hampshire license;
- Ms. Kjendal was determined to be credible when she testified that she was unclear in her reading of the Board letter dated August 22, 2018 and that she thought she was required to submit the "Supervision Form" at the end of the supervisory period and not in order to obtain the conditional license.

THEREFORE IT IS ORDERED, that Ms. Kjendal submit a completed supervision form as required by Phy 307.05. Once a satisfactory completed Supervision form is received by the Board, Ms. Kjendal shall be issued a conditional license pursuant to RSA 328-F:18. The conditional license shall be of a nature described in Phy 307.01.

IT IS FURTHER ORDERED, that to achieve full licensure, Ms. Kjendal must practice under supervision as described in Phy 307.04 for a total of 320 hours.

IT IS FURTHER ORDERED, that upon successfully meeting the requirements of Phy 307.02, the Board shall issue Ms. Kjendal a full license.

IT IS FURTHER ORDERED, that within fifteen (15) days of the effective date of this Decision and Order, Ms. Kjendal shall furnish a copy of this Decision and Order to any current employer for whom she performs services as a physical therapist and to any agency or authority which licenses, certifies, or credentials physical therapists with which Ms. Kjendal is presently affiliated.

IT IS FURTHER ORDERED, that Ms. Kjendal furnish a copy of this Decision and Order to any employer for whom she performs services as a physical therapist and to agency or authority with which Ms. Kjendal is affiliated which licenses, certifies, or credentials physical therapists for one year from the effective date of this Decision and Order.

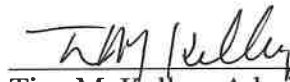
IT IS FURTHER ORDERED that Ms. Kjendal's breach of any terms or conditions of this Decision and Order shall constitute unprofessional conduct pursuant to RSA 328-F:23, II.

IT IS FURTHER ORDERED that this Decision and Order shall become a permanent part of Ms. Kjendal's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that this Decision and Order shall take effect as a final Order of the Board on the date it is signed by an authorized representative of the Board.

BY ORDER OF THE BOARD

Date: April 25, 2019



Tina M. Kelley, Administrator
Authorized Representative of the
Physical Therapy Governing Board