

State of New Hampshire
Board of Medicine
Concord, New Hampshire

In the Matter of:
Gayle M. Spelman, PA
License Number 0214
(Adjudicatory/Disciplinary Proceeding)

Docket No. 19-02

FINAL DECISION AND ORDER

By the Board: Gilbert Fanciullo, MD, Presiding Officer

Board Members:
Emily R. Baker, MD, President
Daniel P. Potenza, MD, Vice President
David C. Conway, MD, Board Member
Jonathan M. Ballard, MD, MPH, Board Member
Susan M. Finerty, PA, Board Member
Nina C. Gardner, Public Member
Donald L. Lebrun, Public Member

Not Participating: Michael Barr, MD, Board Member
John Wheeler, DO, Board Member

Appearances: Jason D. Gregoire, Esquire
Sheehan Phinney
Counsel for Respondent

Laura Lombardi, Esquire
Department of Justice
Counsel for Board of Medicine

Hearing Counsel: John F. Brown, Esquire
Administrative Prosecutions Unit
Consumer Protection and Antitrust Bureau

Hearing Counsel Witnesses: Penny Taylor, Administrator
Board of Medicine

Respondent Witnesses: Gayle M. Spelman, PA, Respondent

Background Information

The New Hampshire Board of Medicine (“Board”) first granted a license to Gayle M. Spelman, PA (“Respondent”) to practice as a Physician Assistant in the State of New Hampshire on February 2, 2004. Respondent holds license number 0214. Respondent currently practices under the supervision of a Registered Supervisory Physician (“RSP”) and an Alternate Registered Supervisory Physician (“ARSP”).

On September 11, 2017, the Board issued a Final Decision and Order (“2017 Final Order”), finding, after an adjudicatory hearing, that Respondent committed professional misconduct under a number of provisions of the Physician Assistant Practice Act and Board rules. Specifically, Respondent failed to report employment termination and change in supervision to the Board, failed to notify the Board of a change in business address, practiced without a valid license and misrepresented her license status to an employer.

On September 5, 2018, the Board conducted an adjudicatory/disciplinary hearing to resolve allegations that Respondent failed to comply with the terms of the 2017 Final Order. The 2017 Final Order imposed continuing education and supervision requirements with specific deadlines.

Specifically, at issue in the September 5, 2018 hearing was whether Respondent failed to complete continuing education requirements as required by the 2017 Final Order, whether Respondent failed to obtain a RSP and ARSP as required by the 2017 Final Order, and whether Respondent provided the Board with inaccurate information on her most recent license renewal application.

As a result of the September 5, 2018 hearing, the Board issued a Final Decision and Order on September 19, 2018 (“2018 Final Order”). Respondent was reprimanded. The Board further ordered that “...Respondent’s RSP and ARSP shall submit quarterly reports to the

Board which include information regarding Respondent's clinical skills, beginning ninety (90) days from the effective date of this Order, continuing indefinitely." Ninety (90) days from the date of the 2018 Final Order was December 18, 2018.

Board records indicate that the Board did not receive a quarterly report from Respondent's ARSP by December 18, 2018. The Board commenced an investigation pursuant to RSA 329:18 to determine whether Respondent committed professional misconduct pursuant to RSA 328-D:6.

Based upon the information gathered during the investigation, the Board found that there was a reasonable basis for commencing an adjudicatory/disciplinary proceeding against Respondent pursuant to RSA 329:17, I; RSA 329:18-a; and New Hampshire Administrative Rules, Med 206. A Notice of Hearing was issued on February 8, 2019, and a hearing was conducted on March 6, 2019.

The specific issue to be determined in this proceeding was the following:

- A. Whether on or about December 18, 2018, Respondent engaged in professional misconduct by failing to comply with an order of the Board issued on September 19, 2018, in violation of RSA 328-D:6, IV; and/or
- B. If any of the above allegations are proven, whether and to what extent Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 329:17, VII and RSA 328-D:7.

Hearing Testimony and Exhibits

An adjudicatory hearing was held on March 6, 2019. The Board accepted the following exhibits from Hearing Counsel:

1. Final Decision and Order dated September 19, 2018; and
2. Letter dated December 10, 2018, from Administrator Penny Taylor to Respondent.

The Board accepted the following exhibits from Respondent:

- A. Undated letter from Robert Soucy, DO to Administrator Penny Taylor, received on March 1, 2019;
- B. Text message dated December 12, 2018, from Respondent to Robert Soucy, DO;
- C. Text message dated December 14, 2018, from Respondent to Robert Soucy, DO;
- D. Text message dated December 14, 2018, from Robert Soucy, DO to Respondent and response to text message from Respondent;
- E. Text messages dated December 18, 2018, and December 21, 2018, from Respondent to Robert Soucy, DO;
- F. Text messages dated January 4, 2019, January 9, 2019, and January 22, 2019, from Respondent to Robert Soucy, DO; and
- G. Report of Detail of Voice Usage from Respondent's cellular telephone.

Hearing Counsel called Penny Taylor as a witness, and she was sworn in. Ms. Taylor testified that she is the Administrator for the Board of Medicine and that her duties include issuing Orders to Respondents on behalf of the Board and keeping track of deadlines set forth in those Orders, which she tracks with her calendar. Ms. Taylor testified that she knows Respondent and that Respondent is a Physician Assistant. Ms. Taylor testified that Respondent had a disciplinary hearing before the Board on September 5, 2018. Ms. Taylor identified Exhibit 1 as a Final Decision and Order issued to Respondent on September 19, 2018 ("2018 Final Order"), as a result of the disciplinary hearing held on September 5, 2018. Ms. Taylor read aloud from page 5 of the 2018 Final Order as follows: "...Respondent's RSP and ARSP shall submit quarterly reports to the Board which include information regarding Respondent's clinical skills, beginning ninety (90) days from the effective date of this Order, continuing indefinitely." Ms. Taylor testified that the deadline for the first quarterly reports was December 18, 2018.

Ms. Taylor testified that she sent a letter to Respondent on December 10, 2018, which she identified as Exhibit 2 and which she read aloud at the hearing, which reminded Respondent that the quarterly report from her ARSP, Robert Soucy, DO, was due on or before December 18, 2018. On December 12, 2018, Ms. Taylor received a telephone call from Respondent. Respondent said that she did not work with Dr. Soucy very much and that her RSP, Dr. Rodney Felgate, had issued a quarterly report. Ms. Taylor testified that she informed Respondent that Dr. Soucy, as her ARSP, also had to submit a quarterly report. Respondent said that she felt the Board was making it difficult for her. Ms. Taylor further testified that Respondent did not request any extension during that telephone conversation. The quarterly report from Dr. Soucy was not received by the Board until the first week of March, 2019. No questions were asked by Respondent's Counsel. Hearing Counsel rested his case.

Respondent's Counsel called Gayle Spelman as a witness and she was sworn in by the Presiding Officer. Respondent testified that she is a Physician Assistant in Lincoln, NH and works for her RSP, Dr. Rodney Felgate. Respondent testified that she was the subject of discipline and identified Exhibit 1 as the 2018 Final Order, which set forth requirements ordered by the Board, including quarterly reports to be submitted by her RSP and ARSP. Ms. Spelman testified that she had an ARSP until October of 2018, but that he stopped being her ARSP because he did not want to submit quarterly reports. A colleague referred her to Dr. Robert Soucy, who is located in Colebrook, NH. Sometime in October, she met with Dr. Soucy and he agreed to become her ARSP. She emailed him a copy of the 2018 Final Order and he told her he had no issues with submitting quarterly reports.

After receiving Ms. Taylor's letter dated December 10, 2018, which she identified as Exhibit 2, Respondent testified that she called Ms. Taylor by telephone on December 12, 2018. Respondent testified that she assumed the quarterly report would be due 90 days from

the date Dr. Soucy signed on as her ARSP, not 90 days from the date of the 2018 Final Order. Respondent testified that, although she did not make a formal request for an extension during that telephone conversation, she did ask if there was a way the deadline could be pushed back a bit and that she was told “no” by Ms. Taylor. Respondent testified that she never said that the Board was making it difficult for her, as Ms. Taylor had previously testified.

Respondent reached out to Dr. Soucy in a text message to his personal cell phone on December 12, 2018, identified as Exhibit B, advising him that the Board needed a letter from him now, rather than later. She did not get a response and followed up with another text message to Dr. Soucy on December 14, 2018, identified as Exhibit C. Respondent testified that she had communicated with Dr. Soucy in the past by text message to his personal cell phone and had no reason to believe that he had not received the text messages she sent. Dr. Soucy, in a text message to Respondent on December 14, 2018, identified as Exhibit D, asked “what does the letter need to say?” Respondent answered him in the same text message. Respondent heard nothing more from Dr. Soucy and she texted him again on December 18, 2018, and December 21, 2018, identified as Exhibit E, asking him if he had any luck getting the letter to the Board.

In addition to text messages, Respondent testified that she attempted several times to contact Dr. Soucy at his home and at his work, as well as leaving several voicemails, but got no response from him. Respondent attempted to contact Dr. Soucy by text message on January 4, 2019, January 9, 2019, and January 22, 2019, identified as Exhibit F. Respondent did not get any response from Dr. Soucy.

On cross-examination by Hearing Counsel, Respondent acknowledged that her assumption that the quarterly report would be due 90 days from the date that Dr. Soucy signed on as her ARSP was incorrect and contrary to what was stated in the 2018 Final Order.

Respondent also testified that she never directly requested an extension from Ms. Taylor. Counsel for Respondent had no further witnesses and rested his case.

In response to a question from the Board, Respondent testified that, although she heard nothing from Dr. Soucy in response to her text messages, she did not know that he had not submitted the quarterly report to the Board until she received a Notice of Hearing dated February 8, 2019. Respondent testified that she heard from Dr. Soucy sometime in late February, after she texted him that she might lose her license. Dr. Soucy said that he was extremely busy and had no time to file the quarterly report. He sent a letter to the Board, which was received on March 1, 2019, identified as Exhibit A. He apologized and indicated that it was entirely his fault for not submitting the quarterly report in a timely manner.

In response to a question from the Board as to whether Respondent ever consulted with Dr. Soucy in his role as an ARSP, Respondent testified that she did have a couple telephone conversations with him about patients but that she had a better relationship with her RSP, Dr. Felgate, and that she thought she only had to talk to Dr. Soucy if Dr. Felgate was on vacation.

In response to further questions from the Board regarding Respondent's lack of communication with the Board after December 12, 2018, and the fact that this was not the first time she had been before the Board on similar issues regarding her failure to respond to deadlines appropriately, Respondent testified that she felt she had done everything she could to get Dr. Soucy to submit the quarterly report. Respondent testified that she had thought about driving to Dr. Soucy's office in Colebrook, NH to confront him but that it was not "economically feasible" for her to do so. Respondent testified that she never would go to the Board for assistance because she believes the Board is only there to punish her, not help her in any way. She further testified that she never got any help from Ms. Taylor whenever she

spoke with her, and that Ms. Taylor would only give “yes” or “no” answers or tell her to speak to the Board. Respondent testified that she found it hard to request assistance from anyone and acknowledged that she cannot do it all herself but that she believes she was diligent and made every effort to get Dr. Soucy to submit the quarterly report.

After a brief closing argument from Respondent’s counsel, the Board asked four people in the audience to identify themselves and make a statement if they wished. All four of them were present to support Respondent. All of them indicated that Respondent was a great asset as a PA in the North Country and that she cared about her patients, as well as keeping her license.

Findings of Fact

The Board took into consideration all of the testimony and exhibits. The exhibits presented showed the fact that Respondent was reprimanded in September of 2017 for committing professional misconduct under a number of provisions of the Physician Assistant Practice Act and Board rules. The 2017 Final Order imposed continuing education and supervision requirements to be completed within a specific time frame. The exhibits presented show that, almost exactly one year later, on September 5, 2018, the Board conducted an adjudicatory/disciplinary hearing to resolve allegations that Respondent failed to comply with the terms of the 2017 Final Order.

As a result of the September 5, 2018 hearing, the Board issued the 2018 Final Order. Respondent was reprimanded. The Board further ordered that “...Respondent’s RSP and ARSP shall submit quarterly reports to the Board which include information regarding Respondent’s clinical skills, beginning ninety (90) days from the effective date of this Order, continuing indefinitely.” Ninety (90) days from the date of the 2018 Final Order was December 18, 2018.

The 2018 Final Order specified that "...the violation of any of the requirements set forth in this Order shall be a separate basis for disciplinary action by the Board and will result in revocation of her New Hampshire license."

The Board found Ms. Taylor's testimony to be credible. The letter dated December 10, 2018, Exhibit 1, advised Respondent that the quarterly report from Dr. Soucy, her ARSP, was due on or before December 18, 2018. Ms. Taylor confirmed that date with Respondent in the subsequent telephone conversation of December 12, 2018. The Board did not find Respondent to be credible with her assumption that the quarterly report was due ninety (90) days from the date that Dr. Soucy signed on as her ARSP, and Respondent acknowledged in her testimony that her assumption was incorrect. The Board further found that Respondent never requested an extension of the December 18, 2018 deadline and had no communication with the Board until the date of the hearing, March 6, 2019.

The Board found that, although Dr. Soucy failed to submit the quarterly report until the first week of March, 2019, it was ultimately Respondent's responsibility to insure that the quarterly report was received by the Board on or before December 18, 2018, since the 2018 Final Order was imposed upon Respondent, not Dr. Soucy, and it was Respondent's license that is at stake. The Board did not find Respondent's testimony to be credible that she did everything she could to get Dr. Soucy to submit the quarterly report and that driving to his office in Colebrook, NH was not economically feasible. The Board further found that Respondent should have contacted the Board or Ms. Taylor prior to March 9, 2019, to seek assistance from them. The Board did not find Respondent's testimony to be credible or persuasive that she believed the Board and Ms. Taylor would never assist her and only wanted to punish her.

Rulings of Law

Applicable Laws:

RSA 328-D:1, III states in pertinent part:

"Physician assistant" or "P.A." means a person qualified ... to provide patient services under the supervision and direction of a licensed physician in a variety of medical care settings.

RSA 328-D:6, IV states:

Grounds for Discipline ... The board, after hearing, may take action against any person licensed under this chapter upon finding that the licensee ... Has engaged in dishonest or unprofessional conduct or has been grossly or repeatedly negligent in practicing his or her profession or in performing activities ancillary to the practice of his or her profession or any particular aspect or specialty thereof, or has intentionally injured a patient while practicing his or her profession or performing such ancillary activities.

Rulings:

The Board makes the following findings by a preponderance of the evidence:

On December 18, 2018, Respondent engaged in professional misconduct by failing to submit to the Board a quarterly report from her ARSP, Dr. Robert Soucy, as required by the Board Order dated September 19, 2018, in violation of RSA 328-D:6, IV.

Analysis and Conclusion

After making its Findings of Fact and Rulings of Law, the Board deliberated on the appropriate disciplinary sanctions authorized by RSA 329:17, VII and RSA 328-D:7.

Although the Board concluded that Dr. Soucy failed to submit the quarterly report by December 18, 2018, and that he did not submit the report until the first week of March, 2019, it was Respondent's license that is the subject of the 2018 Final Order and consequently, that it is up to the Respondent to insure that all requirements of the 2018 Final Order are met. The Board concluded that Respondent has a disregard for deadlines the Board has placed upon her

and that there is every reason to believe that this behavior will be repeated in the future, as a clear pattern of disregard for deadlines has already been demonstrated since 2017.

The Board concluded that, although it is clear that Respondent has very good clinical skills, her failure to understand the importance of meeting deadlines and complying with the law and the rules is very serious. Respondent appears to “freeze” over deadlines and during the hearing she became angry and defensive with the Board, as if it was the Board’s responsibility to comply with the deadlines, not hers. The Board expressed concern that any sanction imposed would not prevent Respondent from appearing before the Board in the future, unless she takes measures to understand the significance of complying with Board deadlines, laws and rules.

The Board further concluded that Respondent should have taken further measures to insure that the quarterly report was submitted to the Board by December 18, 2018, and that it took a Notice of Hearing to actually get the Respondent to finally communicate with the Board.

THEREFORE, IT IS ORDERED that Respondent is required to submit to an evaluation from the New Hampshire Professionals’ Health Program (“NH PHP”) and follow all of the recommendations of the evaluation.

IT IS FURTHER ORDERED that Sally Garhart, MD, Medical Director of the NH PHP, shall report to the Board her findings from the evaluation within thirty (30) days from the effective date of this Final Decision and Order.

IT IS FURTHER ORDERED that Respondent shall furnish a copy of this Final Decision and Order to any employer, any state licensing, certification or credentialing authority to which she may apply for employment and/or privileges or to any current

employer or credentialing authority, within thirty (30) days from the effective date of this Final Decision and Order, and continue for as long as she holds a New Hampshire license.


IT IS FURTHER ORDERED that Respondent's violation of any of the requirements set forth in this Final Decision and Order shall be a separate and sufficient basis for disciplinary action by the Board against Respondent and will result in revocation of her New Hampshire license.

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

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an order of the Board on the date that an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Dated: May 10, 2019



Sheri J. Walsh, Esquire
Authorized Representative of
The New Hampshire Board of Medicine