

**State of New Hampshire
Office of Licensed Allied Health Professionals
Physical Therapy Governing Board
Philbrook Building, 121 South Fruit Street, Suite 303
Concord, New Hampshire 03301**

In The Matter Of:
John A. Rufo, PTA
License No.: 0841
(Adjudicatory/Disciplinary Proceeding)

Docket #05-2019

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: John A. Rufo, PTA appeared *pro se*
Attorney Thomas Broderick, Administrative Prosecutor

The New Hampshire Physical Therapy Governing Board (“Board”) first granted a license to practice as a Physical Therapist Assistant to John A. Rufo, PTA (“Mr. Rufo” or “Respondent”) on October 27, 2004. Respondent holds license number 0841.

Background

Mr. Rufo renewed his license to practice electronically. As part of his renewal application, he listed 8 activities completed during the biennium beginning January 1, 2017 and ending December 31, 2018:

- Physical Agent Modalities Documentation completed 1/31/17 for 3 hours;
- Stroke Recovery completed 5/17/17 for 3 hours;

- Pain Management completed 9/20/17 for 3 hours;
- Post Op Hip and Knee Therapy completed 2/13/18 for 4 hours;
- Contracture Management completed 6/19/18 for 3.50 hours;
- Chronic Heart Failure in Rehab completed 10/23/18 for 3.50 hours;
- Fall Prevention completed 4/18/18 for 2 hours; and
- Optimizing Function and Restore Mobility completed 12/23/17 for 2 hours.

On or about February 4, 2019, the Board sent Mr. Rufo a letter through regular mail, informing him that the Continuing Education he claimed on his renewal form for the Biennium Ending December 31, 2018 was being audited. The letter instructed Mr. Rufo to complete the “2018 Continuing Education Audit Information Form” and attach supporting documentation of completion of each course listed. Documentation requirements are described in the Board’s administrative rules at Phy 407. The letter stated “All information required to complete the continuing education audit must be received in this office no later than March 8, 2019”.

On April 3, 2019, the Board sent a second letter to Mr. Rufo by regular and certified mail, informing him that the Board had not received the requested documentation. A second deadline of April 18, 2019 was set. This letter stated the following:

“If you fail to provide the documents as directed this matter will be brought before the Board for further action. Be advised that late responses and non-responses to requests made by the Board is a violation of the Rules and Laws that govern your profession”.

The letter sent by certified mail was returned to the Board’s office marked “Return to Sender Unclaimed Unable to Forward”. The letter sent by regular mail was not returned to the Board’s office.

A hearing was commenced on September 18, 2019, the specific issues to be determined included:

- A. Whether or not and to what extent the Respondent failed to provide the Board with documentation of completion of continuing education during the audit process in violation of Phy 402.11(b), which, if proven, would constitute misconduct pursuant to Phy 405.01(a), Phy 405.01(k), and Standards of Ethical Conduct for the Physical Therapist Assistant: Standard 5A. and subject the Respondent to discipline pursuant to RSA 328-F:23, II (a) and/or (j); and/or
- B. Whether or not and to what extent the Respondent knowingly or negligently provided inaccurate material information to the Board or failed to provide complete and truthful material information upon inquiry by the Board, during the process of license renewal, which, if proven, would constitute misconduct pursuant to Phy 405.01(a) and Standards of Ethical Conduct for the Physical Therapist Assistant: Standard 5A. and subject the Respondent to discipline pursuant to RSA 328-F:23, II (a) and/or (j); and/or
- C. Whether or not and to what extent the Respondent failed to complete the continuing education listed on his 2018 electronic renewal form in violation of Phy 406.01(a), which if proven, would constitute misconduct pursuant to Phy 405.01(k) and subject the Respondent to discipline pursuant to RSA 328-F:23, II (a) and/or (j); and
- D. 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 328-F:23, IV.

The Hearing

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

Board Exhibits:

Exhibit #1 – A copy of the renewal listing the continuing education claimed to have been taken.

Exhibit #2 – The Audit letter sent to Mr. Rufo on February 4, 2019

Exhibit #3 – 2018 Continuing Education Audit Information Form

Exhibit #4 – A letter to Mr. Rufo dated April 3, 2019

Exhibit #5 – A copy of the envelope showing that it was “Returned to Sender Unclaimed Unable to Forward

Mr. Rufo did not submit any exhibits.

Attorney Broderick presented the State’s case calling one witness, Tina M. Kelley, Board Administrator. Ms. Kelley testified that she had sent letters and instructions to Mr. Rufo informing him that the continuing education he claimed on his renewal for the biennium ending December 31, 2018 was being audited and providing instructions to Mr. Rufo on how to provide those documents. In addition, she testified that she had not heard from Mr. Rufo and no documents were received as a result of the audit letter. Mr. Rufo challenged Ms. Kelley’s testimony that she had not heard from him regarding the audit. Ms. Kelley conceded that it was possible Mr. Rufo had called and spoken with her and/or her staff, but she did not recall any phone conversation(s).

Mr. Rufo testified on his own behalf and did not dispute the evidence presented. He stated he had received all the documents presented as evidence and knew that his continuing education claimed on the electronic renewal for the biennium ending December 31, 2018 was being audited. He stated the reason he did not provide the documentation was because his son threw up on the documents. He testified that he contacted ACP (Accelerated Care Plus) and that they told him they don’t keep copies of any documents because all the training he took was done in house and they don’t maintain records of who attended those courses. According to Mr. Rufo, there

was nothing he could do and he had nothing to send in, because he had to throw all the documents showing he completed the continuing education in the trash. He testified that he had contacted the Board's office and was told he was supposed to keep his documents for 3 years per the Board's administrative rules and there was nothing he could do with regards to the audit. He stated he did not send a letter because he thought that a phone call was better. The Board asked if he checked with his facility to see if he could obtain sign-in sheets from them and he said they didn't have anything either.

Mr. Rufo's wife also presented to the Board. She stated her 2-year-old son projectile vomited all over the table where all the documentation of continuing education was located. When asked by Lea Bruch, Public Board member, that if there were something else of value such as a title to a car if she would not have wiped it off and at least taken a photo of it with her phone to maintain the record and she stated that she did not do that because she thought he could replace the documents. Based on the implication that she threw the documents away Board Member Bruch asked who threw out the paperwork. Mr. Rufo stated he did.

At the end of the testimony the Board Chair asked if there were any objections to the exhibits. No objections were presented. The Board Chair then accepted all exhibits into evidence.

Applicable Laws:

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 (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 402.11(b):
Audit Procedure:

(b) Audited renewal applicants who reported on the renewal application form that they completed maintenance of continuing competence before December thirty-first of the renewal year shall:

- (1) Submit proof in the form of the documents described in Phy 407; and
- (2) Do so no later than February 28, of the year following the renewal year.

Phy 405.01(a):
Misconduct shall be:

(a) Knowingly or negligently providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of applying for licensure, license renewal, or license reinstatement;

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.

Phy 406.01(a):
Maintenance of Continuing Competence Requirements.

(a) Individuals licensed as a physical therapists or physical therapist assistants wishing to renew their licenses either fully or conditionally shall maintain continuing competence by completing 24 hours of continuing professional education in each 2-year renewal cycle.

APTA Code of Ethics for the Physical Therapist Assistants Principle #5A.:
Physical Therapist Assistants shall fulfill their legal and professional obligations.

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

Findings of Fact and Rulings of Law

- The Board finds the Respondent failed to provide the Board with documentation of completion of continuing education during the audit process in violation of Phy 401.11(b) which constitutes misconduct pursuant to RSA 328-F:23, II (c); RSA 328-F:23, II(j); Phy 405.01(a); Phy 405.01(k); and *APTA Standards of Ethical Conduct for the Physical Therapist Assistant #5A*.
- The Board finding no evidence that Mr. Rufo completed any of the continuing education claimed on his electronic renewal form finds that Mr. Rufo knowingly provided false information to the Board during the process of renewing his license which constitutes misconduct pursuant to RSA 328-F:23, II (c); RSA 328-F:23, II(j); Phy 405.01(a); Phy 405.01(k); Phy406.01(a); and *APTA Standards of Ethical Conduct for the Physical Therapist Assistant #5A*.
- The Board finds no evidence that Mr. Rufo completed any continuing during the biennium ending December 31, 2018 which constitutes misconduct sufficient to support imposing disciplinary action pursuant to RSA 328-F:23, II (c); Phy 405.01(a); Phy 405.01(k); Phy 406.01(a); and *APTA Standards of Ethical Conduct for the Physical Therapist Assistant #5A*.

Based on the findings of facts and rulings of law the Board finds sufficient evidence that Mr. Rufo is in violation of the laws and rules of the State of New Hampshire by failing to complete required continuing education, falsely reporting completion of continuing education, and failing to respond to the Board during the audit process. In making its decision the Board has considered all the evidence and has taken the following into consideration:

- The Board finds Ms. Kelley's testimony credible and supported by the evidence presented.
- The Board does not find Mr. Rufo's testimony credible. He presented no evidence from ACP stating they did not maintain records of those who took courses through their company. He presented no evidence that he attended any of the courses he listed

beyond his own testimony. Further, Mr. Rufo's demeanor was hostile and defiant; he showed no understanding of the gravity of the situation, was uncooperative with the Board's investigation, and did not acknowledge fault.

- The Board did not find Mr. Rufo's wife's testimony to be credible as it seemed evasive and Mr. Rufo seemingly contradicted her testimony.

In determining whether and to what extent the Board should impose disciplinary sanctions, the Board followed the process mandated by its administrative rules, Phy 405.04 and Phy 405.05.

THEREFORE IT IS ORDERED, Mr. Rufo's license to be SUSPENDED until he completes all required continuing education as outlined in this Decision and Order, the Board has reviewed all continuing education documents, and the Board issues an Order lifting the Suspension;

IT IS FURTHER ORDERED, that within 120 days of this Decision and Order, Mr. Rufo shall pay a fine of \$500.00. The payment shall be made by Certified Check or Money Order and made payable to the "Treasurer, State of NH";

IT IS FURTHER ORDERED, that within 120 days of the effective date of this Decision and Order, Mr. Rufo shall submit to the Board evidence of completion of 24 hours of continuing education. The required continuing education shall meet the requirements set forth in Phy 406 and the documentation provided to the Board proving completion shall be in compliance with Phy 407;

IT IS FURTHER ORDERED, that Mr. Rufo's continuing education hours shall be audited the next two renewal cycles;

IT IS FURTHER ORDERED, that any communication regarding the requirements set forth in this Decision and Order shall be in writing and submitted to the Board's office;

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

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

IT IS FURTHER ORDERED that Mr. Rufo'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 Mr. Rufo'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: October 16, 2019



Joseph Shanley, PTA, Chair
Authorized Representative of the
Physical Therapy Governing Board