

**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:
Rachael A. Banks, PT
License No.: 3853
(Adjudicatory/Disciplinary Proceeding)

Docket #06-2019

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: Rachael A. Banks, PT 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 to Rachael A. Banks, PT (“Ms. Banks” or “Respondent”) on December 10, 2012. Respondent allowed her license to lapse for non-renewal on December 31, 2016; her license was reinstated by the Board on May 23, 2017. Respondent holds license number 3853.

Background

Ms. Banks renewed her license to practice electronically. As part of her renewal application, she listed 14 activities completed during the biennium beginning January 1, 2017 and ending December 31, 2018.

- Lymphedema Management of the Orthopedic Patient completed 12/29/18 for 3 hours;

- Examination and Treatment of Ataxia Following Care completed 12/9/18 for 2 hours;
- Positioning of the Head completed 12/9/18 for 2 hours;
- Positioning of the Pelvis completed 11/12/18 for 2 hours;
- Cancer Rehabilitation Core Concepts completed 11/12/18 for 2 hours;
- Foundations for School Readiness Sensory Regularity completed 11/1/18 for 1 hour;
- PTs and Patient Non Compliance completed 11/1/18 for 2 hours;
- Intro to Autism Spectrum Disorders completed 11/1/18 for 2 hours;
- Bioethics for PT completed 11/1/18 for 3 hours;
- Five Strategies to Help Students with Autism completed 11/1/18 for 2 hours;
- OT and PT Support for Literacy in Schools completed 10/16/18 for 1 hour;
- Making Sense of Meltdowns completed 10/15/18 for 2 hours;
- Filling Your Toolbox with Techniques: ADHD completed 10/15/18 for 2 hours; and
- Population Health, Best Practice and Employee Health completed 12/13/18 for 1.75 hours.

On or about February 4, 2019, the Board sent Ms. Banks a letter through regular mail, informing her that the Continuing Education she had claimed on her 2018 renewal application from was being audited. The letter instructed her to complete the “2018 Continuing Education Audit Information Form” and attach supporting documentation of completion for each activity 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 Ms. Banks, by both regular and certified mail, informing her 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 return receipt was signed by Ms. Banks. Ms. Banks did not respond to either request to submit proof of completion of her continuing education earned between January 1, 2017 and December 31, 2019.

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

- A. Whether 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(k) and subject the Respondent to discipline pursuant to RSA 328-F:23, II (a) and/or (j) and *Standards of Ethical Conduct for the Physical Therapist Assistant: Standard 5A.*; and/or
- B. Whether 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 subject the Respondent to discipline pursuant to RSA 328-F:23, II (a) and/or (j); and/or

- C. Whether Respondent failed to complete the continuing education listed on her 2018 electronic renewal form 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), Phy 405.01(k) Phy 406.01(a), and the *Standards of Ethical Conduct for the Physical Therapist Assistant: Standard 5A.*; and
- D. If any of the above allegations were 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:

Administrative Prosecutor Exhibits:

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

Exhibit #2 – The Audit letter sent to Ms. Banks on February 4, 2019

Exhibit #3 – 2018 Continuing Education Audit Information Form

Exhibit #4 – A letter to Ms. Banks dated April 3, 2019

Exhibit #5 – A copy certified mail return receipt bearing Ms. Banks signature

Ms. Banks Exhibits:

Exhibit A – A letter from Ms. Banks to the Board

Exhibit 1 through 13 – Copies of certificates showing completing of continuing education earned between January 1, 2017 and December 31, 2019

Exhibit 14-A – 14-M – Copies of course outlines for continuing education earned between December 1, 2017 and December 31, 2019

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 Ms. Banks

informing her that the continuing education she claimed on his renewal for the biennium ending December 31, 2018 was being audited and providing instructions to Ms. Banks on how to provide the required documents. In addition, she testified that she had not heard from Ms. Banks and no documents were received as a result of the audit letters.

Ms. Banks testified on her own behalf and did not dispute the evidence presented. She stated she had received all the documents presented as evidence and knew that her continuing education claimed on the electronic renewal for the biennium ending December 31, 2019 was being audited. She testified that she had a difficult year dealing with her son's medical issues. Her life got busy with his medical appointments and all the situations surrounding those issues. She acknowledged she should have responded but because of what she was dealing with, she put the audit aside. She testified that pulling the documents together took her about an hour. She and her family are working on rearranging schedules to ensure her son's needs are met and allowing her to meet her obligations in other areas. In addition, she is planning on asking others for help to manage all aspects of the changes her life is going through based on her son's recent diagnosis. She stated apologized to the Board and stated she will accept the Board's decision.

At the end of the testimony from both parties 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:12, II (a):

Misconduct sufficient to support disciplinary proceedings shall include:

- (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 a license or certification, renewal of a license or certification, or reinstatement of a license or certification.

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 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 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 Ms. Banks knowingly or negligently provided inaccurate material information to the Board or failed to provide complete and truthful material information during the renewal process, finds that Ms. Banks did not commit misconduct pursuant to Phy 405.01(a) during the renewal process.
- Based on the exhibits provided by Ms. Banks at the hearing the Board finds that Ms. Banks completed all continuing education she claimed for the biennium ending December 31, 2018.

Based on the findings of facts and rulings of law the Board finds sufficient evidence that Ms. Banks is in violation of the laws and rules of the State of New Hampshire by failing to respond to the Board during the audit process. In determining whether and to what extent it should impose disciplinary sanctions, the Board followed the process mandated by its administrative rules, Phy 405.04 and Phy 405.05. Specifically, the Board considered all the evidence admitted at the hearing and has taken the following into consideration:

- The Board finds Ms. Kelley's testimony credible and supported by the evidence presented.
- The Board finds Ms. Banks testimony credible. She presented evidence of completion of the required continuing education, showed genuine remorse for not responding to continuing education audit, and accepted full responsibility for her actions explaining articulately the circumstances surrounding her non response.

THEREFORE, IT IS ORDERED, that within 120 days of this Decision and Order, Ms. Banks shall pay a fine of \$250.00. 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 fifteen (15) days of the effective date of this Decision and Order, Ms. Banks 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. Banks is presently affiliated.

IT IS FURTHER ORDERED, that Ms. Banks furnish a copy of this Decision and Order to any employer for whom he performs services as a physical therapist and to agency or authority with which Banks 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. Banks 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. Banks 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