

**BEFORE THE MINNESOTA
BOARD OF PHYSICAL THERAPY**

In the Matter of
Patrick Osei, P.T.
License No. 7018

**FINDINGS OF FACT,
CONCLUSIONS, AND
FINAL ORDER**

The above-entitled matter came on for consideration by the Minnesota Board of Physical Therapy ("Board") on November 8, 2012, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414. The Board is authorized pursuant to Minn. Stat. §§ 148.65 to 148.78 to license and regulate physical therapists and has jurisdiction in this matter.

Patrick Osei, P.T. ("Respondent"), did not appear. Bryan D. Huffman, Assistant Attorney General, appeared and presented oral argument on behalf of the Complaint Review Committee ("Committee"). As members of the Committee that initially reviewed the matter, the following Board members did not participate in deliberations and did not vote in the matter: Kathy Fleischaker, Linda Gustafson, and Barbara Liebenstein. Stephanie Lunning, Executive Director of the Board, did not participate in the deliberations. Gregory J. Schaefer, Assistant Attorney General, was present as legal advisor to the Board.

This matter came before the Board pursuant to a contested case initiated by the Committee through a Notice and Order for Prehearing Conference and Hearing ("Notice of Hearing") dated January 23, 2012. On June 19, 2012, the Committee filed a Motion for Summary Disposition based on Respondent's guilty pleas to two felonies for engaging in illegal remuneration and providing false statements to federal law enforcement. On August 21, 2012, Administrative Law Judge ("ALJ") Richard C. Luis issued an Order Granting Motion for

Summary Disposition, and Recommendations (“ALJ’s report”). (A true and accurate copy of the ALJ’s report is attached and incorporated herein as Exhibit A.)

Based upon all of the files, records, and proceedings herein, including arguments of counsel, the Board accepts and adopts the ALJ’s report and therefore makes the following:

FINDINGS OF FACT

1. Respondent was licensed to practice physical therapy in the State of Minnesota on May 16, 2002. He was the owner and operator of Advance Home Health, LLC (“Advance”), a Personal Care Provider Organization located in Brooklyn Park, Minnesota. Advance provided personal care assistance (“PCA”) services to Medicaid recipients.

2. On October 21, 2009, Respondent was indicted on federal charges of conspiring to commit healthcare fraud, aiding and abetting healthcare fraud, and illegal remuneration. On April 20, 2011, Respondent pled guilty to Count 17 (illegal remuneration) of the federal indictment, a felony. In connection with that plea, Respondent agreed to the following facts:

From on or about November 8, 2007, in the State and District of Minnesota, [Respondent] did knowingly and willfully offer and pay a kickback in the form of cash remuneration directly to another person to induce that person to refer individuals to [Respondent] for the furnishing of service, namely PCA services, for which payment may be made in whole and in part under a federal health care program, namely Medicaid.

3. Respondent offered to pay a client \$200 for each new personal care assistant (“PCA”) client he referred to Respondent. In connection with his guilty plea, Respondent agreed that he submitted, or caused to be submitted, claims to the Minnesota Department of Human Services (“DHS”) for services that were never actually rendered. The loss attributable to Respondent’s conduct was between \$200,000 and \$400,000.

4. As part of his Plea Agreement, Respondent agreed to participate in proffered interview sessions with federal law enforcement on April 29 and 30, 2010. The purpose of the

sessions was for Respondent to truthfully answer questions about the case. Specifically, Respondent agreed to fully identify all assets and make a good-faith effort to make restitution for losses his conduct caused to Medicaid.

5. During the proffer sessions, Respondent made false statements that he “mailed funds material to recovery of restitution, namely a cashier’s check in the amount of \$63,000.00 . . . when, in fact, [Respondent] was aware that the cashier’s check had not been mailed.”

6. After being charged by information with two counts of providing false statements during the proffered sessions, in violation of 18 U.S.C. § 1001, Respondent pleaded guilty to both counts of providing false information, each of which is a felony punishable by up to five years in prison.

7. On February 9, 2011, Respondent was sentenced to 57 months in federal prison for his plea of guilty regarding illegal remuneration — Medicaid Fraud — and an additional six months for providing false statements to federal law enforcement personnel.

8. Respondent submitted written exceptions and final argument to the ALJ’s report. On November 8, 2012, the Board received Respondent’s request for a continuance until suitable arrangements could be made in his schedule to participate by telephone conference.

CONCLUSIONS

1. The record establishes undisputed violations of several statutory provisions, violations which authorize the Board to impose disciplinary action of the types enumerated in Minn. Stat. § 148.75(b), such as suspension or revocation of licenses or civil penalties up to \$10,000 for each violation.

2. It is undisputed that Respondent pleaded guilty to a felony involving an element of dishonesty or fraud, in violation of Minn. Stat. § 148.75(a)(3).

3. It is undisputed that Respondent violated Minn. Stat. § 148.75(a)(14) by paying or promising to pay a commission or part of his fees to people who sent him patients or clients for treatment.

4. It is undisputed that Respondent engaged in unprofessional conduct or conduct having the potential for causing harm to the public by departing from and failing to conform with minimum standards of acceptable and prevailing practice of physical therapy. Specifically, by engaging in illegal remuneration in the form of referrals and kickbacks, Respondent conspired to deprive patients of the ability to fully and objectively consider their health care options and pressured such patients into choosing physical therapists they might not otherwise have chosen. Such conduct constitutes unprofessional conduct in violation of Minn. Stat. § 148.75(a)(6).

5. Respondent's failure to cooperate with federal law enforcement and answer questions truthfully also constitutes unprofessional conduct in violation of Minn. Stat. § 148.75(a)(6).

6. During deliberations, the Board denied Respondent's request to reschedule oral argument since Respondent had been issued appropriate notice of the date and time the Board was available to receive oral argument.

ORDER

1. NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's license as a physical therapist in the State of Minnesota is **REVOKED** effective immediately and until such time as Respondent demonstrates that he has successfully completed the terms of his prison sentence and any subsequent probation or other requirements imposed by the court and is successfully rehabilitated.

2. IT IS FURTHER ORDERED that Respondent surrender to the Board his physical therapist license. Respondent must personally deliver or mail the license to the Minnesota Board of Physical Therapy, c/o Stephanie Lunning, Executive Director, 2829 University Avenue S.E., Suite 420, Minneapolis, Minnesota 55414, within ten days of the date of service of this Order.

3. IT IS FURTHER ORDERED that Respondent may apply for relicensure no sooner than ten years from the date of this Order. Respondent must comply with all requirements for relicensure at the time of his application. Respondent may be required to meet with a Complaint Review Committee to review his application. Upon demonstration of satisfaction of all the requirements of criminal probation, following ten years from the date of this Order, Respondent must demonstrate by a preponderance of the evidence that he is fit to return to physical therapy practice in a fit, competent, and ethical manner.

4. IT IS FURTHER ORDERED that prior to or upon application for relicensure, Respondent must pay a \$10,000 CIVIL PENALTY to the Board.

Dated: Nov. 29, 2012

MINNESOTA BOARD
OF PHYSICAL THERAPY

SIGNATURE ON FILE

SANDRA MARDEN-LOKKEN, P.T.
Vice President

AG: #3071966-v1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF PHYSICAL THERAPY

In the Matter of Patrick Osei

**ORDER GRANTING MOTION FOR
SUMMARY DISPOSITION,
AND RECOMMENDATIONS**

This matter is before Administrative Law Judge (ALJ) Richard C. Luis on a Motion for Summary Disposition by counsel for the Complaint Review Committee (Committee) of the Board of Physical Therapy (Board). Bryan D. Huffman, Assistant Attorney General, represents the Board of Physical Therapy. Patrick Osei, Physical Therapist, (Respondent) represents himself, without the benefit of counsel.

The Committee filed its Motion for Summary Disposition on June 19, 2012. The Respondent filed a Reply on June 25, 2012. Counsel for the Committee requested leave from the Administrative Law Judge to file a Reply Brief, which leave was granted, and the Committee's Reply Brief was filed July 16, 2012. Mr. Osei's Response to the Committee's Reply Brief was filed July 23, 2012. The record on this Motion closed on that date.

Based on the filings and record in this matter, and for the reasons noted in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATIONS

IT IS RECOMMENDED that the Board of Physical Therapy issue an **ORDER GRANTING** the Complaint Review Committee's Motion for Summary Disposition.

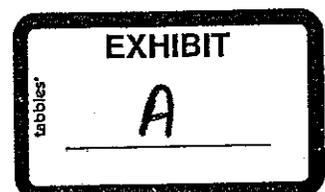
IT IS RECOMMENDED FURTHER that the Board of Physical Therapy take appropriate disciplinary action against the Physical Therapist License of Patrick Osei.

Dated: August 21, 2012

SIGNATURE ON FILE

RICHARD C. LUIS
Administrative Law Judge

Reported: Submitted on Briefs



NOTICE

This report is a recommendation, not a final decision. The Board of Physical Therapy will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Board shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact Stephanie Lunning, Executive Director, Minnesota Board of Physical Therapy, 2829 University Avenue SE, Suite 420, Minneapolis, MN 55414-3245, (612) 627-5406, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Administrative Law Judge agrees with the Committee that there are no genuine issues of material fact to be determined at a hearing. Therefore, it is not necessary to convene a hearing to resolve this matter.

The Committee's Request for Summary Disposition should be granted. The undisputed facts in this record establish that Mr. Osei violated the Minnesota Physical Therapy Practice Act by pleading guilty to two felonies, by engaging in illegal remuneration, and by providing false statements to federal law enforcement authorities. The Respondent's conduct violates Minn. Stat. §§ 148.75(a)(1), (a)(3), (a)(6), and (a)(14).

The undisputed evidence in the record demonstrates multiple violations of the Minnesota Physical Therapy Practice Act – one of the felonies to which the Respondent pleaded guilty involved dishonesty or fraud, he provided illegal remuneration to individuals who referred patients to him, he engaged in conduct that fails to conform to the minimum standards of acceptable and prevailing practice, and he was in violation of federal and state statutes.

Undisputed Facts

Patrick Osei was licensed to practice physical therapy in Minnesota on May 16, 2002. He was the owner and operator of Advance Home Health, LLC (Advance) a personal care provider organization in Brooklyn Park, Minnesota. Advance provided personal care assistance (PCA) services to Medicaid recipients.

On October 21, 2009, Mr. Osei was indicted on federal charges of conspiring to commit health care fraud, aiding and abetting health care fraud, and illegal remuneration. On April 20, 2011, Respondent pleaded guilty to Count 17 (illegal remuneration) of the federal indictment, a felony. In connection with that plea, he agreed to the following facts:

From on or about November 8, 2007, in the State and District of Minnesota, [Respondent] did knowingly and willfully offer and pay a kickback in the form of cash remuneration directly to another person to induce that person to refer individuals to [Respondent] for the furnishing of service, namely PCA Services, for which payment may be made in whole and in part under a federal health program, namely Medicaid.

Mr. Osei had offered to pay a client \$200.00 for each new PCA (personal care assistance) client referred to the Respondent. In connection with his guilty plea, the Respondent agreed that he submitted, or caused to be submitted, claims to the Minnesota Department of Human Services (DHS) for services that were never actually rendered.¹ The loss attributable to Mr. Osei's conduct is between \$200,000 and \$400,000.00.²

As part of his Plea Agreement, the Respondent agreed to participate in proffered interview sessions with federal law enforcement on April 29 and 30, 2010. The purpose of the sessions was for Respondent to truthfully answer questions about the case. Specifically, the Respondent was to identify fully all assets involved and make a good-faith effort to make restitution for losses that his conduct caused to Medicaid.

During the proffer sessions, Mr. Osei made false statements that he "mailed funds material to recovery of restitution, namely a cashier's check in the amount \$63,000.00, when in fact he was aware that the cashier's check had not been mailed."³

After being charged by information with two counts of providing false statements during proffer sessions, in violation of 18 U.S.C. § 1001, the Respondent pleaded guilty to both counts of providing false information, each of which is a felony punishable by up to five years in prison.⁴

¹ In Minnesota, Medicaid is administered by the Minnesota Department of Human Services.

² Plea Agreement, ¶3. (Huffman Affidavit, Ex. C.)

³ Information issued by United States Attorney, May 20, 2010. (Huffman Affidavit, Ex. B, ¶¶ 5, 7.)

⁴ Plea Agreement and Sentencing Stipulations, Huffman Affidavit, Ex. D, ¶4, (May 28, 2010).

On February 9, 2011, Mr. Osei was sentenced to 57 months in federal prison for his plea of guilty regarding illegal remuneration (Medicaid Fraud) and an additional six months for providing false statements to federal law enforcement personnel. He is presently incarcerated at the federal prison camp in Duluth, Minnesota.

Standard of Review

An Administrative Law Judge may recommend a summary disposition of a case or any part thereof where there is no genuine issue as to a material fact.⁵ Summary Disposition is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. No genuine issue of material fact exists "where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party."⁶

The Committee, as the moving party, has the initial burden of demonstrating the absence of genuine issues of material fact which would entitle it to judgment as a matter of law. If that burden is met, the Respondent, Mr. Osei, has the burden to show the specific facts are in dispute that would have a bearing on the outcome of the case, in order to avoid summary disposition.⁷

The evidence must be viewed in the light most favorable to the non-moving party (Mr. Osei).⁸ However, a Respondent may not offer mere denials, general assertions, or speculation in attempting to defeat summary disposition.⁹

Mr. Osei's Reply and Response filings make the general argument that material facts are in dispute. In each filing, the Respondent states that "specific facts or providing specific facts in an on-going case can jeopardize the case and its outcome." He alleges also that there are ongoing investigations, that he cannot elaborate on because it is an active case, and requests that this licensing matter be delayed until a decision is made on the appeal of his sentence. After that, Mr. Osei alleges that the genuine issues and specific facts he disputes in this case that would affect the outcome of the licensing matter brought before an Administrative Law Judge.¹⁰

As noted in the Reply Brief of Counsel for the Committee, in order to successfully oppose a Motion for Summary Disposition a party cannot rely upon mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence that create a genuine issue for hearing.¹¹ Counsel cites Minn. R. Civ. P. 56.05 which provides:

⁵ Minn. Rule 1400.5500.

⁶ *ELH, Inc. v. U.S.S.*, 66 N.W.2d 60, 69 (Minn. 1997).

⁷ *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).

⁸ *Grondahl v. Bullock*, 318 N.W.2d 240, 242 (Minn. 1982).

⁹ *Gutbrod v. County of Hennepin*, 529 N.W.2d 720, 723 (Minn. Ct. App. 1995).

¹⁰ Osei filings, June 21, 12 and July 23, 2012.

¹¹ *Hunt v. IBM, supra*.

When a Motion for Summary Judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of his pleading but must present specific facts showing that there is a genuine issue for trial. If he does not so respond, Summary Judgment, if appropriate, shall be entered against him.

Mr. Osei has failed to present specific facts showing that there are genuine issues for trial. He has not presented specific facts questioning the validity and existence of the fact that he pled guilty to the felonies of illegal remuneration and providing false statements to law enforcement authorities. He also has not disputed the Committee's expert opinion that the felonies constitute unprofessional conduct and violate laws that the Board is empowered to enforce, summary disposition is proper.¹²

Mr. Osei's contention that the Committee's Motion should be denied because he intends to appeal his convictions does not change the undisputed fact that he pled guilty to the offenses noted above. The Physical Therapy Practice Act authorizes the Board to discipline licensees who plead guilty to felonies or other crimes involving dishonesty or fraud.¹³

Statutory Violations, Grounds for Discipline

The record in this matter establishes undisputed violation of several statutory provision, violations of which authorize the Board to impose disciplinary action of the types enumerated at Minn. Stat. § 148.75(b), such as suspension or revocation of licenses, or civil penalties up to \$10,000 for each violation.

It is undisputed that the Respondent pleaded guilty to a felony involving an element of dishonesty or fraud, which violates Minn. Stat. § 148.75(a)(3).

It is undisputed that the Respondent has violated Minn. Stat. § 148.75(a)(14) by paying or promising to pay a commission or part of his fees to people who sent him patients for treatment.

It is undisputed that the Respondent engaged in unprofessional conduct or conduct having the potential for causing harm to the public by departing from and failing to conform with minimum standards of acceptable and prevailing practice of physical therapy. Specifically, by engaging in illegal remuneration in the form of referrals and kickbacks, Respondent conspired to deprive patients of the ability to fully and objectively consider their health care options and pressured such patients into choosing physical therapists they might not otherwise have chosen. The Administrative Law Judge agrees with the Board that such conduct constitutes unprofessional conduct within the meaning of the Physical Therapy Practice Act.

The Respondent's failure to cooperate with federal law enforcement and answer questions truthfully also constitutes unprofessional conduct in violation of Minn. Stat. §

¹² Minn. Stat. §§ 148.75(a)(1), (a)(3), (a)(6), and (a)(14).

¹³ Minn. Stat. § 148.75(a)(3).

148.75(a)(6). The Respondent has not challenged the Committee's argument that physical therapists are expected to cooperate fully with investigations involving patient care, including those surrounding health care fraud, and the facts contained in the record establish without question that Mr. Osei fell short of that standard.

The Administrative Law Judge concludes, based on the record before him and for the reasons noted in this Memorandum, that it is appropriate to order Summary Disposition in this matter, and to recommend that the Board take appropriate disciplinary action against Patrick Osei's Physical Therapist License.

R. C. L.