



State of Louisiana
DEPARTMENT OF HEALTH AND HOSPITALS
Louisiana Physical Therapy Board

IN THE MATTER OF
DAVID M. CONERLY
LICENSE APPLICANT

ADMINISTRATIVE HEARING
ORDER

This matter came before the Louisiana Physical Therapy Board (“Board”) for adjudication on August 15, 2018, in accordance with La. R.S. 37:2420.B., to consider *Application for State Licensure* as a physical therapist of David Conerly (“Applicant” or “Mr. Conerly”). The adjudication was held at the Board office in Lafayette, Louisiana. A quorum of the Board was present and constituted the Hearing Panel for the adjudication. The Hearing Panel consisted of Patrick Cook, P.T.; Meredith A. Warner, M.D.; Karl Kleinpeter, P.T.; Craig Prejean, P.T.A.; and Judith Halverson, P.T. Mr. Conerly was present and represented by counsel, Claire Edwards, during the proceeding. Other appearances included:

Bobby Odinet, Hearing Officer
George M. Papale, Complaint Counsel
Courtney Papale Newton, Counsel for the Board
Charlotte Martin, Executive Director of the Board
Stephanie Boudreaux, Board Staff
Jessica Alwell, Board Staff

BACKGROUND AND MATTERS AT ISSUE

On or about October 12, 2017, Mr. Conerly, who has not practiced physical therapy since 2012, submitted an *Application for State Licensure* as a physical therapist (“Application”) with supporting documents including, but not limited to, letters of recommendation, continuing education completion certificates, and evidence of participation in Alcoholics Anonymous. (Exhibit 12) Within his Application Mr. Conerly disclosed denial of his application for license reinstatement in 2014 and 2015 by the Board; lapse of both his Louisiana and Texas Physical

Therapy licenses; revocation of his Louisiana Physical Therapy license; past substance abuse; DWI and possession of Schedule II drug in 2003; 2012 charge of possession of pornography involving a juvenile; ingestion of legally controlled substances without a valid prescription; sobriety date of March 5, 2016; and, resignation in lieu of termination from employment in 2010. Thereafter, in accordance with La. R.S. 37:2413, Mr. Conerly was asked to complete a Criminal Background Check ("CBC") with the Louisiana State Police. (Exhibit 13) On December 7, 2017 the Board received the CBC which included, in part, charges for prohibited acts – schedule II; operating a vehicle while intoxicated; aggravated flight from an officer; and pornography involving juveniles. The CBC also included a felony conviction for obstruction of justice. (Exhibit 15)

On December 11, 2017, following review of the Application and attached documents, CBC, and past disciplinary actions, the Board issued an *Intent to Deny Application for Licensure Letter* ("Intent to Deny") therein informing Mr. Conerly of the reasons he failed to meet the qualifications for licensure. The Intent to Deny letter further advised Mr. Conerly of his right to a formal hearing before the Board. Finally, the letter informed Mr. Conerly that should he avail himself of his right to hearing he would have the opportunity to present evidence proving to the Board that he possessed all qualifications for licensure as a PT found within La. R.S. 37:2401 through 37:2424 and Rule 129 and that despite his criminal record, past disciplinary action, and history of substance abuse and addiction he is of good moral character and is not a threat to public safety. (Exhibit 16) On or about December 14, 2017 Mr. Conerly sent the Board a letter requesting a formal hearing. (Exhibit 17) Thereafter, on or about January 29, 2018 the Board received notice that Mr. Conerly had retained Ms. Claire Edwards as legal counsel. (Exhibit 18) A formal notice of hearing was sent out on or about April 23, 2018 which notice docketed the evidentiary hearing on Wednesday, August 15, 2018 at 4:30 p.m. (Exhibit 22)

The adjudication convened at 4:30 p.m. on August 15, 2018 at the Board office located at 104 Fairlane Avenue, Lafayette, LA 70507 wherein the Applicant, carrying the burden of proof, was given the opportunity to present evidence and provide testimony related to his qualifications for licensure and good moral character. At the start of the hearing, Courtney Papale Newton, Counsel for the Board, addressed all procedural matters. Following discussion and inquiry, no objections were made to composition of the hearing panel or role and duties of Board Counsel. Ms. Edwards and Mr. Conerly were advised of Mr. Conerly's right to have the hearing conducted in executive session due the sensitive nature of the issues to be address. Ms. Edwards declined to have the hearing conducted in executive session. The following exhibits were introduced on the record for consideration by the hearing panel:

George M. Papale, Complaints Counsel, introduced the following:

EXHIBIT 1: 7/7/2014 Reinstatement Application

EXHIBIT 2: Hearing Transcript Case #2014-I-014 (9-25-14) including the following exhibits numbered as introduced at that hearing

B1. Notice of Administrative Complaint and Administrative Complaint

- B2. Consent Order Case #2003-I-13 (June 18, 2003) and attached Board Tracking compliance
- B3. Self Report of September 2012
- B4. June 25, 2013 letter to Eric Johnson: Johnson's July 15, 2013 letter and attached Bill of Information #196076 from the 26th JDC
- B5. November 20, 2013 letter to Johnson and attached letter
- B6. May 2014 email exchanges between Ms. Martin and Mr. Conerly
- B7. Email exchanges between Ms. Martin and Mr. Conerly and attached unsigned letter from Conerly dated May 28, 2014
- B8. Transmittal from Mr. Papale to Ms. Martin and attached court minutes of May 13, 2014 relating to Mr. Conerly's plea of guilty to the charge of obstruction of justice
- B9. Letter from Mr. Papale to court reporter and attached 18 page court transcript of May 13, 2014
- B10. Informal conference letter from Mr. Papale to Mr. Conerly
- B11. Envelope mailed to the Board by Mr. Conerly on July 18, 2014
- B12. April 9, 2014 Report of Mark Vigen, Ph.D.
- B13. January 7, 2014 letter from Keystone Center to Mr. Johnson and attached 16 page Keystone Center Discharge Summary
- B14. Treatment and evaluation records from Rayville Recovery Center (88 pages)
- B15. Letter from Mr. Conerly to Ms. Martin, letter from Dr. Turberville to Mr. Johnson with sign-in sheets from group meetings and letter from Conerly stating no physical therapist work since September, 2012
- B16. Printout of December 31, 2010 renewal
- B17. Printout of March 28, 2013 renewal
- B18. December 31, 2011 application
- C-1 September 1, 2014 letter to Board from C. Robert Critcher, Ph.D.
- C-2 Letter to Board from Pastor Darell R. Moseley
- EXHIBIT 3 October 3, 2104 Board Findings of Fact and Conclusions of Law
- EXHIBIT 4 August 10, 2105 Letter of recommendation from Karl Higginbotham, PT

- EXHIBIT 5 September 2, 2015 Reinstatement Application
- EXHIBIT 6 Letter received from Mr. Conerly regarding delayed reinstatement application
- EXHIBIT 7 October 6, 2015 recommendation letter from Roger Milam
- EXHIBIT 8 October 21, 2015 Board letter issued to Mr. Conerly concerning reinstatement application
- EXHIBIT 9 October 29, 2015 Board letter denying reinstatement application
- EXHIBIT 10 January 23, 2017 letter from Mr. Conerly
- EXHIBIT 11 January 26, 2017 Board letter to Mr. Conerly
- EXHIBIT 12 October 13, 2017 Reinstatement Application including letters of recommendation and meeting attendance verification sheets
- EXHIBIT 13 October 26, 2017 email to Mr. Conerly from Danielle Linzer concerning CBC request
- EXHIBIT 14 November 20, 2017 CBC Affidavit
- EXHIBIT 15 December 7, 2017 CBC results
- EXHIBIT 16 December 11, 2017 Board Letter of Intent to deny Application for Licensure
- EXHIBIT 17 December 18, 2017 letter request for a formal hearing
- EXHIBIT 18 Emails between Mr. Conerly and Ms. Martin concerning Board approved evaluator
- EXHIBIT 19 January 29, 2018 letter from Claire Edwards, Counsel for Mr. Conerly
- EXHIBIT 20 January 20, 2018 letter from Board issued to Ms. Edwards concerning Intent to Deny
- EXHIBIT 21 March 27, 2018 letter from Ms. Edwards for setting hearing date
- EXHIBIT 22 April 23, 2018 Board letter issued to Ms. Edwards regarding Formal Hearing Docketed

Counsel for the Applicant, David Conerly, introduced the following:

- EXHIBIT A Documents pertaining to Mr. Conerly's criminal charges, including a Minute Report showing obstruction of justice charge and a First Offender Certificate letter
- EXHIBIT B Letters of recommendation for Mr. Conerly

EXHIBIT C Psychological evaluation provided by Goebel, Vigen, Lobrano, Visconte, Russell & Hanis dated June 12, 2018

EXHIBIT D Patient progress notes and drug screening records provided by Shreveport Behavioral Health dated August 19, 2016-February 7, 2018

EXHIBIT E Certificates of Completion for the Online Jurisprudence Continuing Education Course; Post-Traumatic Stress Disorder, PT Course; Ethics, Louisiana Physical Therapy Course; Alzheimer's Disease, PT Course; Alcoholism, PT Course; and Home Health Rehab Course

EXHIBIT F Mr. Conerly's A.A. attendance sheets from August 2014-January 2018

EXHIBIT G Mr. Conerly's Koala Club, Inc. hours of community service

EXHIBIT H Mr. Conerly's Certificate of Birth

EXHIBIT I Photocopy of Mr. Conerly's driver's license and SSN

EXHIBIT J Certificate for Louisiana State Board of Physical Therapy Examiners Physical Therapy License for Mr. Conerly dated August 26, 1998

EXHIBIT K Mr. Conerly's A.A. attendance sheets from January 2018-April 2018.

EXHIBIT L Patient progress notes and drug screening records provided by Shreveport Behavioral Health dated March 6, 2018-July 12, 2018

Ms. Edwards, on behalf of Mr. Conerly, delivered an opening statement to the Hearing Panel during which she stated that Mr. Conerly possessed all qualifications for licensure required by Board rule § 129, Qualification for License, had achieved and will continue to maintain sobriety, and is able to work safely with physical therapy clients. Thereafter Mr. Papale made an opening statement informing the hearing panel that Mr. Conerly's first Consent Order for illegal use of drugs, habitual intemperance, and fraudulently answering questions on his application for license renewal was in 2003. Mr. Papale then addressed Mr. Conerly's participation in an adjudication hearing regarding his plea to obstruction of justice, a felony, in 2014 following criminal charges for possession of child pornography. Mr. Papale explained to the Hearing Panel that the adjudication resulted in an Order denying Mr. Conerly's license reinstatement application. Thereafter, Mr. Papale highlighting the procedural issues that occurred surrounding the 2014 hearing which included, but were not limited to, the self-report from Mr. Conerly regarding a charge for child pornography, Mr. Conerly's felony obstruction of justice plea, hearing panel consideration of evaluation reports required as a part of probation guidelines, and the lapse of Mr. Conerly's physical therapy license. Finally, Mr. Papale recommended that the hearing panel consider how events that have occurred within the last several months mitigate any issues that the Board previously reviewed that were the basis of previous Board decisions to deny Mr. Conerly's application for licensure.

As part of her case in chief, Ms. Edwards called Mr. Conerly as the first witness. Ms. Edwards questioned Mr. Conerly extensively regarding his criminal history, disciplinary history

with the Board, medical and psychological history, sobriety, and present life circumstances. Ms. Edwards highlighted Mr. Conerly's involvement in Alcoholics Anonymous, community service, spiritual principles, and present support system. Thereafter, Ms. Edwards called Ainsley H [REDACTED], sister of Mr. Conerly, and Major Dorene Racouillat, a friend of Mr. Conerly met through Alcoholics Anonymous ("AA") participation. Both witnesses testified as to Mr. Conerly's good moral character, recovery and sobriety.

Following direct and cross examination of both witness, Mr. Papale conducted his cross examination of Mr. Conerly as previously agreed upon by both Ms. Edwards and Mr. Papale. Mr. Papale crossed Mr. Conerly on a letter written by Mr. Conerly's probation officer, Roger Milam (Exhibit 7) wherein Officer Milam writes, in part, "It is my belief that [Mr. Conerly] needs to complete his business with the court system prior to petitioning the Board of Physical Therapy to reinstate his license." Mr. Papale also questioned Mr. Conerly on the status of his probation and reports from Shreveport Behavioral Health Clinic which state the Mr. Conerly's "history suggests that despite lengthy periods of sobriety, he remains vulnerable to relapse" and that "risk of relapse is lower when [Mr. Conerly] has structured supervision and monitoring." Finally, Mr. Papale questioned Mr. Conerly on his work history and instructed that Mr. Conerly to submit to a drug test at a specified location within approximately twenty-two (22) hours at the expense of the Board as authorized by under Rule § 153-B. Mr. Conerly agreed to comply with the request in the manner requested. Upon conclusion of cross examination, the hearing panel members were afforded the opportunity to question Mr. Conerly and closing statements were made by both Ms. Edwards and Mr. Papale

FINDINGS OF FACT

In accordance with La. R.S. 27:2401.A., the purpose of the board is "protecting the public health, safety, and welfare , and to provide for state administrative control, supervision, licensing, and regulation of the practice of physical therapy in Louisiana." Following consideration of this purpose and review of all of the evidence presented, the hearing panel unanimously voted to deny Mr. Conerly's application for licensure and bar him from any and all future application for licensure. The reasons the Hearing Panel determined that Mr. Conerly failed to present sufficient evidence to prove beyond a preponderance that he meets the qualifications for licensure, including, but not limited to good moral character, a minimum requirement for licensure found within La. R.S. 37:2411, and is safe to interact with the public as a licensed physical are as follows:

A. Witnesses Lack Credibility

While Mr. Conerly, Ainsley H [REDACTED], and Major Dorene Racouillat all testified that Mr. Conerly was successfully maintaining sobriety, was not a danger to the public, and would be an asset to the practice of physical therapy, it was the finding of the Hearing Panel that all witnesses lacked credibility and that the testimony provided was unreliable.

1. Ainsley H [REDACTED]

Ms. H [REDACTED] is Mr. Conerly's sister. In her testimony Ms. H [REDACTED] addressed family of origin, mental health diagnosis, her relationship with her brother, and the changes she witnessed with regard to her brother's sobriety and participation in Alcoholics Anonymous. Ms. H [REDACTED] also testified that while she lives 180 miles from Mr. Conerly and is only able to visit him a couple of times per year, she communicates with him by telephone daily. However, when asked about her brother's condition in the fall of 2015 through March of 2016, a time period during which Mr. Conerly was abusing illegal drugs, she stated that Mr. Conerly was simply depressed and down. This testimony established that Ms. H [REDACTED] was unaware of Mr. Conerly's drug use during the time in question and that her testimony is unreliable regarding Mr. Conerly's sobriety. In addition, due to distance between residences and her own personal issues, it is the finding of the Hearing Panel that Ms. H [REDACTED] is unable to provide sufficient support to Mr. Conerly to assist with maintenance of sobriety and assure appropriate action requisite for public safety should Mr. Conerly be granted a physical therapy license and relapse.

2. Major Dorene Racouillat

Major Racouillat a retired army nurse, met Mr. Conerly at the Koala Club, a recovery club through Alcoholics Anonymous, in 2016. Major Racouillat testified that Mr. Conerly has been attending Alcoholics Anonymous meetings regularly and has acted selflessly, a key to maintaining sobriety, as evidenced by Mr. Conerly ensuring that newcomers to Alcoholics Anonymous have a meeting schedules, driving her home from meetings when she was unable to do so, and assisting her in her recovery following shoulder surgery. Notwithstanding her evident admiration of Mr. Conerly's successes and appreciation for all Mr. Conerly has done for her, Major Racouillat was unable to testify as to the particulars of Mr. Conerly's addiction history evidencing a lapse of knowledge of the extent of Mr. Conerly's history of addiction. It is the finding of the Hearing Panel that Major Racouillat's lack of knowledge and awareness of Mr. Conerly's history nullifies her credibility and reliability as a witness regarding Mr. Conerly's good moral character and ability to safely interact with the public.

3. Mr. David Conerly, Applicant

The Hearing Panel finds Mr. Conerly to be neither credible nor reliable in his testimony. This finding is due, in part, to his past dealings with the Board during which he repeatedly mislead the Board by failing to disclose his felony conviction on his application as testified to at the September 2014 Board adjudication, and his claims to being changed and committed to recovery in both 2003 and 2014 following which relapse and criminal behavior occurred. In addition, Mr. Conerly has repeatedly failed to disclose significant drug use and addiction treatment while licensed as a physical therapist; repeatedly practiced physical therapy while under the influence of alcohol and illegal drugs; violated his previous order to abstain from drugs or alcohol; and provided inconsistent information during mental health evaluations.

In addition, the Hearing Panel finds that Mr. Conerly has a lack of self-awareness which prevents him from being credible or reliable as a witness. At the hearing Mr. Conerly stated that he requires structure for sobriety. However, when questioned regarding the type of work he

would like to do if granted a license to practice physical therapy he replied that he would like to work in the home health setting. This statement indicates a lack of awareness as the home health setting is the least structured setting within which to practice physical therapy and is the most likely setting for relapse as a physical therapist works in a patient's home with access to the patient's prescription medications and/or alcoholic beverages kept in the patient's home. In addition, when questioned Mr. Conerly was unable to articulate how he would handle the stressors of patient interaction in the home health setting where there are no other medical service professionals to assist or provide assistance with patients or treatments. Finally, as highlighted by the Hearing Panel, in Mr. Conerly's therapy notes, marked as Exhibit D, Mr. Conerly states "I've been thinking . . . about going back to school and doing something different with medical billing and coding", a profession differing greatly in responsibility, patient interaction, and structure from home health.

Another example of Mr. Conerly's lack of self-awareness, as determined by the Hearing Panel, is evident in Mr. Conerly testimony regarding how he displays honesty, justice, and good morals. When first asked Mr. Conerly addressed patient safety and returning a patient to his or her prior level of function. When questioned again by the hearing panel Mr. Conerly responded simply that he does not steal, tries to be honest, tries to be a good neighbor, and tries not to be self-centered. No further testimony was provided. The hearing panel found Mr. Conerly's explanation lacking and ability to clearly articulate the issue concerning.

In addition to the above, Mr. Conerly's testimony clearly shows a lack of awareness of his vulnerability regarding relapse and true commitment to Alcoholics Anonymous. Mr. Conerly stated that he does not feel vulnerable at all given the amount of therapy he has received and questioned why Dr. Vigen and Dr. Russell, both mental health professionals, would state that he is vulnerable to relapse in evaluation reports. This testimony highlights Mr. Conerly's lack of acknowledgment of the seriousness of his addictions. In addition, it is the opinion of the Hearing Panel that the fact that Mr. Conerly places no importance or significance to the opinion of mental health professionals calls into question Mr. Conerly's judgement and ability to completely comprehend the seriousness of his situation. Finally, this testimony shows a marked departure from the teaching of Alcoholics Anonymous that "once an addict, always an addict", the program which Mr. Conerly testifies that he is committed to following.

Finally, Mr. Conerly testifies that he is mentally fit and ready to return to the practice of physical therapy. However, medical records reviewed by the Hearing Panel indicate that Mr. Conerly struggles greatly with depression and while he is being prescribed medication to treat a recent mental health diagnosis, his doctors continue to monitor and alter his medication regime in an effort to remedy his symptoms. Again, Mr. Conerly's self-awareness as demonstrated through his testimony is dissociated with reality.

B. The Evidence Presented Regarding Mr. Conerly's History of Addiction and Potential for Relapse Significantly Outweighs Evidence Pertaining to the Likelihood of Continued Sobriety, moral choices, and public safety.

1. Mr. Conerly history of abuse and addiction is significant.

The evidence presented regarding Mr. Conerly's history of addiction which includes addiction and/or use of alcohol; drugs, including, but not limited to, cocaine and methamphetamines; sex, including child pornography; and gambling significantly outweighs the evidence presented regarding Mr. Conerly's sobriety, the likelihood of continued sobriety and future moral choices. According to evaluation reports reviewed by the Hearing Panel, Mr. Conerly first utilized illegal drugs in 1985 and participated in his first drug rehabilitation program as a teenager. Thereafter, Mr. Conerly underwent rehabilitation and/or detox in 2001, 2002, 2012 and 2014. Between 1985 and March 2016, Mr. Conerly's reported last use of intravenous methamphetamines, Mr. Conerly engaged, in part, to drinking alcohol regularly, gambling between \$200 and \$1500 per day, intravenous Cocaine, transporting steroids from Mexico to the United States, and downloading child pornography.

2. Mr. Conerly is at great risk for relapse.

The evaluation report submitted into evidence by Mr. Conerly as Exhibit C, page 14, states that "Mr. Conerly's risk of relapse is lower when he has structured supervision and monitoring (e.g. inpatient treatment, supervised probation); however, in the absence of such structure, his risk for relapse with regard to substance use would increase quickly and dramatically based on his history." In addition, in the evaluation report it is recommended that "Mr. Conerly continue[s] mental health treatment, including psychotropic medication management, individual counseling, group AA meetings, and individual meetings with his AA sponsor. The recommendations for maintenance of sobriety are onerous and life is typically unpredictable and challenging. In light of these facts the Hearing Panel opines that Mr. Conerly is at great risk for relapse. The Physical Therapy Board neither has the ability nor the resources to put into place all necessary safeguards required to ensure Mr. Conerly's sobriety and public safety.

3. Mr. Conerly's admission to use of child pornography and that fact that he is not required to register as a sex is a direct threat to public safety.

Though Mr. Conerly was not convicted of possession of child pornography, he admitted to downloading and viewing child pornography. The Hearing Panel was not provided with sufficient evidence to conclude that Mr. Conerly was not a risk for future use of child pornography and/or victimization of children. To the contrary, Mr. Conerly was very dismissive of his child pornography use and criminal charge. While he did receive treatment for sexual addiction in January 7, 2014, his participation was due to his getting "caught" and criminal charges. He received no further significant treatment for this issue. In addition, the June 12, 2018 evaluation submitted by Mr. Conerly indicated that he was in the 3rd risk category, with

23% of individuals in the category committing a sexual offense within 7 years. This opinion is based upon total sobriety as an individual's judgement is significantly impacted and inhibitions lessen when under the influence. As stated above, Mr. Conerly's continued sobriety is not assured and so the likelihood of repeat victimization is significantly increased.

Another factor considered by the Hearing Panel with regard to public safety is that it is impossible for the Board to adequately monitor Mr. Conerly to ensure that he is abstaining from child pornography and that there are no unforeseen negative consequences or behaviors that occur while Mr. Conerly is maintaining his recovery. Use of pornography and sexual crimes are extremely difficult, if not impossible, to monitor because of the private nature of the acts. Because Mr. Conerly was not convicted of possession of child pornography, he is not required to register as a sex offender, a system based on the realization that the state or a state entity is unable to adequately protect the public from child predators and provides the public with the knowledge required to protect themselves and their children. As with the issue of use of drugs and alcohol, it is impossible for the Board to provide sufficient safeguards to ensure that the public is protected and there is no guarantee that the behavior will not repeat or worsen.

Finally, Mr. Conerly failed to provide any substantial testimony regarding his use of child pornography or the harm caused by his actions. The Hearing Panel finds that Mr. Conerly's failure to significantly address his use of child pornography is indicative of a lack of understanding of the severity of his actions, a lack of empathy for the suffering of others, and a lack of respect for the rights of others. The fact that the individuals impacted by Mr. Conerly through Mr. Conerly's use of child pornography were children as young as seven (7) years old makes his lapse even more concerning.

4. Mr. Conerly's drug screen dated October 2, 2017 is unreliable.

Mr. Conerly introduced a urine drug screen dated October 2, 2017 as evidence of his sobriety. Review of the drug test reveals positive values for two substances. It is important to note that multiple substances tested were positive but did not reach the assay cut-off point to be considered a "true-positive". Based upon this assessment, Mr. Conerly tested positive for two anti-psychotic metabolites that were not listed in the prescribed medications. It is the finding of the Hearing Panel that the results of the test are inconsistent and that the urine drug test does not provide evidence of continued sobriety.

5. Mr. Conerly failed to provide sufficient evidence proving that he has changed his life in such a manner as to increase the likelihood of sobriety and moral choices since the Board's denial of his license in 2014.

The information presented to establish that Mr. Conerly has changed to ensure a life of sobriety and morality is unconvincing. First, Mr. Conerly relapsed after the Board order in 2014 and did not stop utilizing intravenous methamphetamines until January 2016 according to one evaluation report and March 2016 according to Mr. Conerly's disclosure on his license application. Second, by his own admission of intravenous methamphetamine use, Mr. Conerly was utilizing illegal drugs in violation of the terms of his probation which violation, based upon the information received by the Hearing Panel, was not reported to his Parole Officer. Third, Mr.

Conerly started Alcoholics Anonymous in 2014 but continued utilizing methamphetamines while participating in the program. This information is evidence that Mr. Conerly's participation in Alcoholics Anonymous does not provide any assurance that Mr. Conerly is or will remain sober. Fourth, Mr. Conerly has been unable to maintain employment and instead of seeking to volunteer or give back to the community in an effort at restitution for the harm caused by his choices, he chose to volunteer at Alcoholics Anonymous making coffee and assisting with chair arrangements. While volunteering in any capacity is admirable, the Hearing Panel finds that the level of effort and service put forth by Mr. Conerly is insufficient to prove that he possesses the requisite abilities and qualifications required for licensure as a physical therapist. Finally, Mr. Conerly's testimony assuring the Hearing Panel that he has changed and is not a threat to the public is a repeat of the testimony provided at the 2014 formal adjudication before the Board and is, therefore, unreliable. At the 2014 hearing Mr. Conerly testified, in part, that "things are different for me this time. I have a complete and total change" only to relapse with alcohol and methamphetamines shortly thereafter. Mr. Conerly's assurance alone does not provide any evidentiary support towards his burden of establishing that he meets the qualifications for licensure and does not pose a threat to the public.

C. The Practice of physical therapy mandates additional safeguards.

The practice of physical therapy requires that a physical therapist and/or physical therapist assistant be in close proximity with their patients when providing treatment. In addition, physical therapy treatment may involve touching areas surrounding genitalia, the buttocks, and/or breasts. As a result, an essential consideration for the Hearing Panel when determining whether an individual is of good moral character and safe to practice physical therapy is whether the individual can engage in the type of touch required of physical therapists and physical therapist assistants without posing a danger to the public. Those individuals who have engaged in criminal behavior that is sexual in nature are a greater risk to physical therapy patients because of the type of touch involved. The type of touching and closeness required during physical therapy treatment in combination with the fact that physical therapy patients are a vulnerable part of the population which includes, but is not limited to, the elderly, children, and the disabled provides the Board with a sufficient basis to deny the license application of all individuals convicted of sexual crimes in the absence of acceptable documentation and evidence of successful rehabilitation over a lengthy period of time and a commitment to recovery.

Physical therapy patients depend upon physical therapy treatments to maintain and/or improve their quality of life. These vulnerable patients greatly rely on a licensee's integrity when they grant a licensee access to their lives and, in some cases, their homes. If the Louisiana Physical Therapy Board were to ever grant Mr. Conerly a license, they would be assuring Louisiana physical therapy patients that Mr. Conerly is of good moral character, is sober, and is not a threat to the public. The Hearing Panel concludes that based on his significant history of lack of honesty, addiction, victimization of children, and criminal behavior, Mr. Conerly is unable to prove now, or at any point in the future, that he meets the qualifications for licensure and is safe to practice as a physical therapist.

CONCLUSIONS OF LAW

Qualifications for licensure as a physical therapist and physical therapist assistant are set forth in La. R.S. 37:2409 – 2412. In addition to other criteria, all laws mandate that in order to be licensed an individual must “be of good moral character.” Board Rule § 123 defines “good moral character” as “the aggregate of qualities evidenced by past conduct, social relations, or life habits, which actually provide persons acquainted with the applicant or licensee a basis to form a favorable opinion regarding his ethics and responsibility to duty.” In addition, La. R.S. 37:2420.A.(4) authorizes the Board to refuse to license any applicant, refuse to renew the license of any person, or revoke any license upon proof that an individual has been convicted of a felony. When determining whether an individual possesses sufficient good moral character to meet the qualifications for licensure, the Hearing Panel considers, in part, honesty, fairness, reliability, integrity, candor, trustworthiness, professionalism, respect for the rights of others, community ties, and criminal history. In instances where an applicant has a criminal history, the Hearing Panel also considers, in part, such factors as the applicant’s age at the time of the conduct, the recency of the conduct, the seriousness of the conduct, evidence of successful rehabilitation and/or treatment, and the applicant’s candor in the licensure process. Based on the preceding findings of fact, the Hearing Panel concludes that the Respondent has failed to prove beyond a preponderance the following:

1. satisfaction of all qualifications for licensure as specified in La. R.S. 37:2411, specifically good moral character; and
2. that the Applicant is not a threat to the public despite his significant history of abuse, use of child pornography, and criminal history which includes a felony conviction

ORDER

In view of the foregoing findings:

IT IS ORDERED THAT:

1. The *Application for State Licensure* as a physical therapist of David Conerly is denied; and
2. The Applicant is barred from all future application for a physical therapy license.

Signed this 13 day of September 2018.



Patrick Cook, PT
Chairman