

**BEFORE THE STATE OF NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:

**MICHAEL ANGELO PIRRO
AKA MIKE PIRRO,
License No. PTA-0401,**

Case No. PT-16-10-COM

Respondent.

FINAL DECISION AND ORDER

This matter came before a quorum of the New Mexico Physical Therapy Board (“Board”) on December 29, 2020 in a virtual meeting utilizing Cisco Webex, (hosted in Santa Fe, New Mexico) for a decision and order pursuant to the Physical Therapy Act, NMSA 1978, §§ 61-12D-1 through 61-12D-29 (1997, as amended 2015) and the Uniform Licensing Act (“ULA”), NMSA 1978, §§ 61-1-1 through 61-1-34 (1957, as amended through 2017).

The proceedings in this matter were presided over by Robert Romero, as Hearing Officer. The allegations in the Notice of Contemplated Action (“NCA”) were heard on October 13, 2020 and November 10, 2020 in a virtual hearing utilizing Cisco Webex (hosted in Santa Fe, New Mexico). Respondent Michael Angelo Pirro appeared and was represented by C. Barry Crutchfield. Victoria Amada, Assistant Attorney General, appeared as the Administrative Prosecutor. The Hearing Officer’s Report was filed with the Board on December 7, 2020 and on December 9, 2020 the preparation of the record was complete.

On December 29, 2020, a quorum of the Board having familiarized themselves with the record, including the Hearing Officer’s report, hearing recording and exhibits, participated in the deliberation and decision of this matter. By an affirmative vote of 3-0, with two Board Members

absent, the Board renders the following Decision and Order.

I. ADDITIONAL FINDINGS OF FACT

1. It is not credible to believe Respondent describe his interactions with a nursing home occupant, (“Ms. C”) when Ms. C’s speech therapist (who filed the complaint with the Board) observed Respondent and Ms. C sitting close to each other, with the patient in her bed and Respondent sitting close at the head of the bed with the privacy curtain drawn. The speech therapist Ms. Rall was a credible witness, while Respondent provided testimony that was self-serving about the incident where Ms. Rall observed Respondent and Ms. C alone in her room.
 - a. Of particular import is that Ms. C is unable to physically move the curtain or to communicate effectively verbally or physically to consent or to refuse Respondent’s attention. Hearing Officer Report ¶ 10, p. 5
 - b. In particular, Respondent stated in his response to the complaint that he spent time in the Ms. C’s room but he was never alone with her as her roommate was always present (Exhibit #1, p.8) Respondent also testified that whenever he visited the patient in her room, he would sit on the bed and the patient would sit in her wheelchair with distance between them. Hearing Officer’s Report ¶ 21, p. 8. These statements were self-serving to benefit Respondent and not credible.
2. During the hearing, Respondent testified during cross-examination that he would assist with Ms. C’s restorative care with the Restorative Aide to assist with physical therapy exercises because the nursing home employed one Restorative Aide. Respondent’s statement is credible.
 - a. Due to Ms. C requiring the maximum level of assistance, two persons were required to assist with her restorative care exercises, Respondent testified that he would get his work done early and so that he could assist the Restorative Aide with Ms. C’s exercises. Hearing Officer’s Report ¶ 28, p. 10.
3. Respondent’s testimony that he finished up work early to assist with Ms. C, who was not assigned to Respondent’s caseload, is credible. However, it is not appropriate behavior for a physical therapist assistant to complete assigned tasks and then pursue non-assigned tasks. Respondent appears to have utilized his employment to undertake personal interests and he was not engaged in employer-directed tasks and duties when assisting with Ms. C’s restorative care exercises, as she is not on his assigned caseload.

II. CONCLUSIONS OF LAW

1. Respondent is licensed as a physical therapy assistant subject to the Physical Therapy Act and therefore subject to the jurisdiction of the New Mexico Physical Therapy Board. NMSA 1978, §§ 61-12D-2, 61-12D-5 and 61-12D-8.
2. The Board has the authority to grant, deny, review, suspend and revoke licenses, as well as to censure, reprimand, fine and issuing a restricted license to physical therapists and physical therapist assistants, in accordance with the Uniform Licensing Act for any cause stated in the Physical Therapy Act. NMSA 1978, §§ 61-12D-5(B) and 61-12D-15.

3. Boards and hearing officers may utilize their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them. NMSA 1978, § 61-1-11(B).
4. In a civil case, unless a state statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden or persuasion, which remains on the party who had it originally. Rule 11-301 NMRA.
5. The Board may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, § 61-1-3.
6. It is a violation of the Physical Therapy Act for a physical therapist assistant to engage in sexual conduct, which includes solicitation of a sexual relationship with a patient, whether consensual or nonconsensual while a physical therapist-assistant relationship existed. NMSA 1978, § 61-12D-13(J).
7. It is a violation of the Physical Therapy Board Rules for a physical therapist assistant to engage in a conflict of interest that would impact negatively on a patient's care during the winter of 2015 through spring 2016 at the nursing home. § 16.20.1.14(C) NMAC.
8. It is a violation of the Physical Therapy Board Rules for a physical therapist assistant to lack integrity in dealings with patients, pursuant to § 16.20.1.14(D) NMAC.
9. The provided testimony and evidence did not establish that a physical therapist assistant engaged in sexual misconduct, which includes solicitation of a sexual relationship with a patient, whether consensual or nonconsensual while a physical therapist-assistant relationship existed. Therefore, there is no violation of the Physical Therapy Act pursuant to NMSA 1978, § 61-12D-13(J).
10. The provided testimony and evidence did not demonstrate a physical therapist assistant engaged in a conflict of interest that would impact negatively on a patient's care during the winter of 2015 through the spring of 2016 at the nursing home. Therefore, there is no violation of the Physical Therapy Board Rules pursuant to § 16.20.1.14(C) NMAC.
11. Substantial evidence supports a finding that Respondent lacked integrity in his dealings with a patient while employed at the nursing home from winter 2015 through spring of 2016 in violation of § 16.20.1.14(D) NMAC.
12. Licensees shall bear all costs of disciplinary proceedings unless they are excused by the Board from paying all or part of the fees or if they prevail at the hearing and an action specified in NMSA 1978, §§ 61-1-3, 61-1-4(G).

III. ORDER

Upon consideration of all the facts and circumstances the Board **ORDERS:**

- A. Respondent shall complete ten (10) hours of continuing education focused on maintaining

appropriate interpersonal boundaries with patients within 30 days after this Order is signed by the Board: due on Monday, March 1, 2021. These ten (10) hours of continuing education courses must first be approved by the Board through its Board Administrator before Respondent enrolls and attends the required continuing education courses.

B. Every 90 days for six (6) months, Respondent is required to obtain a letter from his employer to inform the Board about Respondent's interactions with patients describing whether Respondent demonstrates integrity and ethical behavior with particular focus on Respondent's ability to maintain appropriate physical therapist assistant-patient boundaries with patients. Respondent must submit the letter from his employer to the Board on two (2) occasions: 90 days after this Order is signed: due on Wednesday, April 28, 2021 and 180 days after this Order is signed: due on Tuesday, July 27, 2021. The duration of this provision is for six (6) months or 180 days after the signing of this Order.

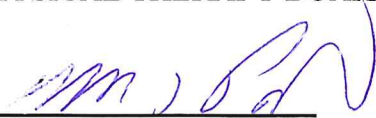
C. There are no costs associated with the disciplinary proceedings.

NOTICE: Pursuant to Section 61-1-17 of the Uniform Licensing Act and NMSA 1978 Section 39-3-1.1, a person aggrieved by an adverse decision of the Board issued after a hearing may obtain a review of the decision in the district court of Santa Fe County or in the district court of any county in which a hearing on the matter was conducted. To obtain such review, a notice of appeal must be filed in the proper district court within thirty (30) days after the date of the Board's decision. Failure to file a notice of appeal within the time stated herein shall operate as a waiver of judicial review and shall result in the decision of the Board becoming final. The procedures for filing an appeal from the Board to the district court are governed by Rule 1-074 of the Rules of Civil Procedure for the District Courts.

Robert Pattillo, the Board's Chair is designated to sign this Decision and Order. A copy of the Decision and Order shall be filed and served upon Respondent in accordance with the law.

Date: January 29, 2021

FOR THE NEW MEXICO
PHYSICAL THERAPY BOARD



Robert Pattillo, CHAIR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Decision and Order was mailed to Respondent's Attorney, C. Barry Crutchfield, 113 East Washington Avenue, Lovington, NM 88260, by USPS Certified Mail Number _____, on _____.

Compliance Liaison