

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD)
OF PHYSICAL THERAPY PRACTICE,)
)
Petitioner,)
)
vs.) Case No. 01-2928PL
)
RAYMOND CRALLE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 28, 2001, by video teleconference at sites in West Palm Beach and Tallahassee, Florida, by Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mary Denise O'Brien, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Building Three
Tallahassee, Florida 32308

For Respondent: Richard Willits, Esquire
2290 10th Avenue North, Suite 404
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STATEMENT OF THE ISSUE

Whether the allegations in the Amended Administrative Complaint have been proven by clear and convincing evidence and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Amended Administrative Complaint dated May 8, 2001, Petitioner, Department of Health, Board of Physical Therapy Practice, alleged that Respondent, Raymond Cralle, violated Rule 64B17-6.001(3)(c), Florida Administrative Code, which prohibits delegating activities that require the special knowledge and judgment of the physical therapist; Rule 64B17-6.001(5)(d), Florida Administrative Code, which prohibits delegating portions of the skilled physical therapy functions to lesser trained health personnel; Rule 64B17-6.007(5)(b)(2), Florida Administrative Code, which prohibits delegating either evaluation or reevaluation of patients; and Rule 64B17-6.007(6)(c), Florida Administrative Code, which prohibits allowing unlicensed personnel to document progress notes other than tasks and activities of a patient.

The Amended Administrative Complaint did not specifically charge a violation of Rule 64B17-6.007(6)(b)(2), Florida Administrative Code, which prohibits delegating the assessment of the progress of the patient in relationship to the plan of care; however, this issue was tried by consent.

The allegation pertaining to Rule 64B17.6.007(5)(b)(2), Florida Administrative Code, was dismissed prior to the hearing.

At the hearing, the Petitioner presented the testimony of Helen Mesa and Linda Nash. Petitioner offered two exhibits into evidence.

Respondent testified in his own behalf and also presented the testimony of Alvin Ponce De Leon, Kenneth Amsler, and Laurie Poloskey. Respondent offered two exhibits into evidence.

A transcript of the hearing was filed on October 12, 2001. Proposed Recommended Orders were timely filed on November 15, 2001, and have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Department of Health, Board of Physical Therapy Practice, (Petitioner or Board) is the state agency that licenses and has regulatory jurisdiction of physical therapists.

2. At the time of the hearing, Respondent Raymond Cralle (Cralle) had practiced physical therapy for three decades and was known to colleagues as a competent and innovative professional. He holds licenses in Florida, Virginia, Iowa, and other states by reciprocity, and also holds a specialized certification in physical therapy for persons suffering from injuries to the brain and spinal cord.

3. Cralle received his academic training from the University of Iowa's School of Allied Health. Upon graduation, he began a hospital based practice at Good Samaritan Hospital in

West Palm Beach, Florida, and thereafter built a large and successful private practice in the Greater West Palm Beach area.

4. Over the years, Cralle was also active in professional activities. In addition to speaking, writing and consulting, Cralle was heavily involved in legislative advocacy work on behalf of his profession. Throughout his career, his clinics have usually had some type of formal or informal relationship with schools of physical therapy, offering opportunities for students to intern or to perform other types of work.

5. By 1992, Cralle was operating 13 clinics. That year, he sold some of his practice to HealthSouth and the rest to Novacare, two publicly traded companies.

6. Not ready to retire, Cralle opened another private practice in Delray Beach, Florida.

7. At the time of the events giving rise to the charges against Cralle, his clinic had space to treat eight patients at a time. In addition to Cralle, three physical therapists, one occupational therapist, and one physical therapy intern were working regularly on the premises.

8. In addition, aides were employed to perform non-professional chores such as setting up equipment, assisting patients in making their way to treatment rooms, draping patients, and the like.

9. For approximately three months in the year 2000, the precise dates of which are not reflected in the record, physical therapy student Helen Mesa (Mesa) was employed as an aide in Cralle's clinic.

10. When treating patients, Cralle was frequently accompanied by a colleague, either an aide or a more highly trained staffer, who would be asked to enter notes on the patient's chart. The notes were dictated by Cralle. Cralle used staff this way to avoid having to interrupt treatment in order to document treatment.

11. When accompanied by student interns or aides such as Mesa, the dictation served a teaching function as well.

12. Mesa's brief tenure at Cralle's clinic is consistent with her pattern of unstable employment. Since she left Cralle's employ, she has worked in at least three jobs, including one in a supermarket and two involving physical therapy, and each of these jobs lasted roughly three months.

13. Mesa's instability is further evidenced by the fact that initially she resigned from Cralle's clinic, saying she could not handle the stress of the job and single motherhood. Cralle hired a replacement while Mesa worked out her notice. Then, Mesa changed her mind and asked to stay. Cralle, having promised her job to another, said no.

14. The circumstances surrounding her departure may or may not be the cause of Mesa's hostility toward Cralle, but the hostility was unmistakable during her testimony in this case. Her demeanor under oath was prosecutorial. She would volunteer information and argue with defense counsel about what questions he should be asking her.

15. As a student, Mesa was taught a method of documenting patient progress known as SOAP notes. The acronym stands for Subjective-Objective-Assessment-Plan.

16. Under the SOAP methodology, the "S(ubjective)" portion includes everything that the patient says about how he feels. The "O(bjective)" portion states what was done with the patient. The "A(ssessment)" portion states what progress the patient is making toward short or long-term goals. The "P(lan)" portion reflects what is expected by or at the next treatment.

17. Cralle does not like the SOAP form of note-taking and generally does not use it in his practice. No law or rule requires the use of the SOAP format in documenting, or "charting" patient progress.

18. However, when assisted by Mesa, Cralle often used the SOAP format when dictating notes, because it was familiar to Mesa from her studies.

19. Mesa is the only complaining witness. At hearing her claims about Cralle's charting practices went well outside the

boundaries of the amended administrative complaint. She claimed that she worked on patients with no supervision and that some of "her" patients did not have an evaluation sheet in their chart, although such sheets are the most basic tool of physical therapy practice.

20. Mesa also provided the only testimony in support of the Board's primary charge, which is that she wrote entire SOAP notes on charts without any input, let alone dictation, from Cralle or other qualified personnel.

21. In addition, Mesa claimed that none of the patient files in which she wrote notes had been signed by Cralle the next time she worked with that patient. Yet, it is undisputed that of the 103 partial patient charts reviewed by the parties during discovery, all but about 15 percent of the patient entries in Mesa's handwriting had been signed off on by Cralle.

22. Of 17 unsigned notes placed in evidence, at least some reflect a degree of technical knowledge and vocabulary that Mesa did not have. Her claim to have written each of them, entirely on her own, is not credited.

23. There was no evidence as to whether, or under what circumstances, a physical therapist is required to initial patient notes, and none of the allegations of the Amended Administrative Complaint allege errors or omissions with respect to Cralle's signature, initials, or lack thereof.

24. There was no evidence that any or all of the alleged charting deficiencies compromised patient care or safety in any way.

25. Rather, as Petitioner's attorney stated during the questioning of its only other witness, physical therapy expert Linda Nash (Nash), "As you know, this case is about what duties a physical therapist can delegate to unlicensed personnel . . . what are [a] physical therapist's responsibilities as far as the record keeping itself?"

26. Nash's answer was instructive. She replied:

Well, we have a responsibility to document everything and, and document it in a form be it SOAP or narrative or any way that demonstrates that that patient, where they were the moment that they came in and how they were continuing to progress. For several reasons. Number one, for your own benefit because if you have to defend yourself in a case you have, you know, notes that are documented as to what went on and what you did for insurance purposes. Insurance companies don't like to pay if they're, if the patient is not making progress. And you need to be able to document those kinds of things in the notes.

27. After revealing that her primary interest in good documentation is as a means of covering herself in malpractice litigation or to obtain insurance reimbursement, a theme which would recur again on her cross-examination (in her words, "so that I covered my tail"), Nash eventually turned her attention to issues pertinent to the state's interest in protecting the

public's health and safety, but provided no testimony indicating that any or all of Cralle's charts constituted a danger to any patient.

28. Nash acknowledged that in her years of experience, she has never seen a "perfect chart."

29. Nash, as well as the experts who testified on behalf of Cralle, agreed that it would be improper to delegate to an unlicensed aide the task of assessing the patient and determining the content of a plan of care. The most that could properly be delegated is the documentation of tasks and activities performed by patients in the presence of the unlicensed person.

30. It was also undisputed among the experts that there is nothing improper about dictating notes to an unlicensed aide.

31. The uncorroborated testimony of Mesa that she was delegated tasks which may be lawfully performed only by a physical therapist is not worthy of belief when evaluated in the context of Cralle's 30 years as a successful and well-regarded physical therapist.

32. Cralle had a number of associates and employees of long standing whose qualifications were entirely appropriate for all aspects of patient care and record keeping. It is illogical to assume that Cralle would delegate vital functions to a brand

new employee with no experience, and there is no credible evidence that he did.

33. Petitioner's expert Nash realized that because the state's entire case rested upon Mesa's credibility, it would be important ". . . to insure that no misrepresentations [were] provided, the office manager as well as the current PT techs and PTs are interviewed for accuracy." Petitioner did not follow-up on that recommendation.

34. Had those individuals been interviewed, and additional office records been examined, the true circumstances surrounding Cralle's record keeping practices could have been ascertained. In the absence of such evidence and witnesses, there is no clear and convincing evidence of the Rule violations alleged.

35. Mesa claimed that two physical therapists working in Cralle's clinic instructed Mesa not to write in the charts of their patients, and, further, that these therapists complained to Cralle about his practice of permitting Mesa to write in his charts. Petitioner offered no corroboration for these claims, even though one of the physical therapists to whom Mesa's testimony on this matter referred was present and testifying on behalf of Cralle.

36. A number of notes in Mesa's handwriting included frequent use of phrases such as "patient tolerated treatment well due to no complaints" and "continue with plan of care."

These are not models of informative note writing, but neither are they clear and convincing evidence of improper delegation when viewed in light of the entire record.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.57, Florida Statutes.

38. Rule 64B17-6.007, Florida Administrative Code, states:

(6) The physical therapist shall not delegate:

* * *

(b) Those activities that require the special knowledge, judgment, and skills of the physical therapist assistant, which include:

* * *

2. Assessment of the progress of the patient in relationship to the plan of the case.

* * *

(c) Patient progress notes. The unlicensed personnel may document tasks and activities of patients during the patient treatment.

39. Rule 64B17-6.001, Florida Administrative Code, states:

(3) Physical Therapist Responsibilities.

* * *

(c) The physical therapist shall not delegate any function or task which requires

the skill, knowledge, and judgment of the physical therapist.

40. Rule 64B17-6.001, Florida Administrative Code, states:

(5) Physical Therapist - Physical Therapist Assistant Responsibilities and Supervisory Relationships.

* * *

(d) The physical therapist shall not delegate portions of the skilled physical therapy functions or tasks to any lesser trained health personnel than the physical therapist assistant.

41. Petitioner has the burden of proving by clear and convincing evidence that Cralle has violated any or all of the Rules charged. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1st DCA 1987). As to each violation charged, Petitioner has failed to meet that burden.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Physical Therapy Practice enter a final order dismissing the Amended Administrative Complaint against Raymond Cralle.

DONE AND ENTERED this 27th day of November, 2001, in
Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of November, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.