

IN AND BEFORE THE OKLAHOMA STATE BOARD  
OF MEDICAL LICENSURE AND SUPERVISION  
STATE OF OKLAHOMA

**FILED**

JUL 27 2006

STATE OF OKLAHOMA )  
EX REL. THE OKLAHOMA BOARD )  
OF MEDICAL LICENSURE )  
AND SUPERVISION, )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Plaintiff, )

v. )

Case No. 06-02-3071

ELIO LUIS FRANCO, PTA, )  
LICENSE NO. TA1119 )

Defendant. )

**FINAL ORDER OF SUSPENSION**

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on July 20, 2006, at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Elizabeth A. Scott, Assistant Attorney General, appeared for the plaintiff and defendant appeared in person and pro se.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, and being fully advised in the premises, found that there is clear and convincing evidence to support the following Findings of Fact, Conclusions of Law and Orders:

***Findings of Fact***

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of Physical Therapy Assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §887.1 *et seq.*

2. The Board has jurisdiction over this matter, and notice has been given in all respects in accordance with law and the rules of the Board.

3. Defendant, Elio Luis Franco, PTA, holds Oklahoma license no. TA1119, and is authorized to practice as a physical therapy assistant in the State of Oklahoma.

4. In January 2006, Defendant was working as a physical therapy assistant at Wilkins Nursing Center in Duncan, Oklahoma. During this time, he was assigned to perform physical therapy on Patient CHD. According to the billing records, patient chart and documentation submitted to his employer, Rehabworks, he performed physical therapy on Patient CHD on January 9, 10, 12, 17, 17, 19, 25, 27 and 28, 2006. However, on or around February 2, 2006, Patient CHD complained that she had not received any physical therapy. When confronted by Rehabworks and staff at Wilkins Nursing Center, Defendant admitted that he had not performed the physical therapy and that he had in fact falsified the patient's chart and billing records. Defendant subsequently resigned his position at Rehabworks.

5. Based on the allegations stated above, Defendant is guilty of unprofessional conduct as follows:

- A. Is guilty of conduct unbecoming a person licensed as a physical therapist or physical therapy assistant or guilty of conduct detrimental to the best interests of the public or his profession in violation of 59 O.S. §887.13(9).
- B. Is guilty of any act in conflict with the ethics of the profession of physical therapy in violation of 59 O.S. §887.13(10).
- C. Has engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of 435:20-5-8(b)(5).
- D. Has participated in fraud, abuse and/or violation of state or federal laws in violation of 435:20-5-8(b)(8).
- E. Has engaged in conduct which potentially or actually jeopardizes a patient's life, health or safety in violation of 435:20-5-8(b)(9).
- F. Has engaged in fraudulent billing practices and/or violation of Medicare and Medicaid laws or abusive billing practices in violation of 435:20-5-8(b)(15).
- G. Has engaged in improper management of medical records, inaccurate recording, falsifying or altering of patient records in violation of 435:20-5-8(b)(16).
- H. Has violated any provision of the Physical Therapy Practice Act or the rules and regulations of the board or of an action, stipulation, agreement or order of the Board in violation of 435:20-5-8(b)(31).

### *Conclusions of Law*

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, the Oklahoma Physical Therapy Practice Act, and their applicable regulations. The Board is authorized to enforce the acts as necessary to protect the public health, safety and welfare.

2. Defendant is guilty of unprofessional conduct in that he:

- A. Is guilty of conduct unbecoming a person licensed as a physical therapist or physical therapy assistant or guilty of conduct detrimental to the best interests of the public or his profession in violation of 59 O.S. §887.13(9).
- B. Is guilty of any act in conflict with the ethics of the profession of physical therapy in violation of 59 O.S. §887.13(10).
- C. Has engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of 435:20-5-8(b)(5).
- D. Has participated in fraud, abuse and/or violation of state or federal laws in violation of 435:20-5-8(b)(8).
- E. Has engaged in conduct which potentially or actually jeopardizes a patient's life, health or safety in violation of 435:20-5-8(b)(9).
- F. Has engaged in fraudulent billing practices and/or violation of Medicare and Medicaid laws or abusive billing practices in violation of 435:20-5-8(b)(15).
- G. Has engaged in improper management of medical records, inaccurate recording, falsifying or altering of patient records in violation of 435:20-5-8(b)(16).
- H. Has violated any provision of the Physical Therapy Practice Act or the rules and regulations of the board or of an action, stipulation, agreement or order of the Board in violation of 435:20-5-8(b)(31).

3. The Board further found that the Defendant's license should be suspended based upon any or all of the violations of the unprofessional conduct provisions of 59 Okla. Stat. §887.13 (9) and (10) and OAC 435:20-5-8(b)(5), (8), (9), (15), (16) and (31).

### *Order*

IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The license of Defendant, Elio Luis Franco, PTA, Oklahoma license no. TA1119, is hereby **SUSPENDED** as of the date of this hearing, July 20, 2006 for **THREE (3) MONTHS**.

2. Defendant shall be placed on **PROBATION** for a period of one (1) year following his suspension under the following terms and conditions:

A. Defendant will conduct Defendant's practice in compliance with the Oklahoma Physical Therapy Practice Act as interpreted by the Board. Any question of interpretation regarding the Act or this Order shall be submitted in writing to the Board, and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Board.

B. Defendant will furnish a copy of this agreement to each and every state in which he holds licensure and to each and every hospital, clinic or other facility in which he holds or anticipates holding any form of staff privileges.

C. Defendant will practice under direct clinical on-site supervision as defined in OAC 435:20-7-1 during the entire term of probation.

D. Defendant will keep the Board informed of his current address.

E. Defendant will keep current payment of all assessments by the Board for the investigation and monitoring of his case.

F. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

G. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.


H. Defendant shall submit any required reports and forms on a timely basis to the Compliance Coordinator or designee.

I. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

3. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.


4. Defendant's suspension will be lifted, and his license will be reinstated only upon payment in full of all costs and expenses incurred by the State of Oklahoma prior to July 22, 2006.

Dated this 27 day of July, 2006.

  
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Gerald C. Zumwalt, M.D., Secretary  
Oklahoma State Board of  
Medical Licensure and Supervision

**CERTIFICATE OF SERVICE**

I certify that on the 28 day of July, 2006, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Elio Franco, 1119 N.W. 74<sup>th</sup> Street, Lawton, OK 73505.

  
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Janet Swindle