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BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SHLOMIT BERCOVICH 18930 Sherman Way, #22 Reseda, California 91335 Physical Therapist License No.: PT 27509, Respondent.	Case No. 1D 2002 63222 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Steven K. Hartzell ("Complainant") brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California ("Board"), Department of Consumer Affairs.

2. On or about August 2, 2002, the Board issued Physical Therapist License number PT 27509 to Shlomit Bercovich ("Respondent"). This license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following sections of the Business and Professions Code ("Code"):

4. Section 2609 of the Code states:

"The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter [chapter 5.7, commencing with section 2600]."

5. Section 2660 of the Code states:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

". . .

"(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. . . ."

6. California Code of Regulations, Title 16, section 1399.20, states:

"For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under the Physical Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a person to perform the functions authorized by the license or approval in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act."

7. Section 2661.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of

the investigation and prosecution of the case."

FIRST CAUSE FOR DISCIPLINE

(Commission of Corrupt Act)

8. Respondent is subject to disciplinary action under section 2660, subdivision (l) of the Business and Professions Code, in conjunction with section 1399.20, subdivisions (a) and (c) of Title 16 of the California Code of Regulations, in that she committed corrupt acts substantially related to the qualifications, functions, or duties of a physical therapist. The facts circumstances are as follows:

A. Respondent took and failed the National Physical Therapist Examination ("NPTE") on February 21, 2002, and on April 18, 2002. She took and passed the NPTE on July 27, 2002. On August 7, 2002, Respondent posted/published 25 questions she remembered from the July 27, 2002, examination, on the Internet site of the International Educational Resources ("IER") in the Student Discussion Forum.

B. On July 10, 2003, the Federation of State Boards of Physical Therapy ("FSBPT") filed a civil lawsuit in the United States District Court for the Central District of California, case number CV 03-4921 (RGK) (Mcx) against Respondent alleging that she published on the IER's website questions actually utilized in the National Physical Therapy Examination, thereby infringing the copyright of the FSBPT, and in violation of the Copyright Act of 1976, the California Uniform Trade Secrets Act (section 3426.1 et seq. of the Civil Code) and the terms of her contract with the FSBPT. On October 30, 2003, Respondent signed and executed "Consent Order for Final Judgment" wherein she stipulated that "she performed the acts set forth in the Complaint" and further admitted that her actions "compromised the integrity of the National Physical Therapy Examination and constitute[d] an infringement of FSBPT's copyrights."

C. As alleged by FSBPT in the federal lawsuit referenced in the preceding paragraph, Respondent's conduct deprived FSBPT of the benefits of its copyright in/to at least 25 questions, and caused FSBPT to develop replacement questions at its expense, thereby injuring FSBPT's good will and relations with the member Boards.

Respondent agreed and acknowledged, each time she took the examination, that "no part of ... [the] examination may be copied, reproduced in part or whole by any means whatsoever ... unless previously authorized by the FSBPT." Respondent's actions were not authorized by FSBPT and were corrupt in nature. These actions/acts substantially relate to the qualifications, functions and duties of a physical therapist, because they evidence either a totally non-existent or a diminished capacity to: fulfill commitments undertaken; comply with laws and legal obligations; respect the rights of others; act in a trustworthy manner; to exercise sound judgment; and to be cognizant of concerns for the welfare of others.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 27509 issued to Respondent;

2. Ordering Respondent to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: March 1, 2005

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
State of California

Complainant

Bercovich Accusation.wpd