

**LOUISIANA BOARD OF EXAMINERS FOR
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

IN THE MATTER OF

MARY McVAY

LICENSE NO. 700

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND SANCTIONS

NUMBER 2016-08A

This matter came before the Louisiana Board of Examiners for Speech-Language Pathology and Audiology ("Board") on October 19, 2019 at or about 9:00 a.m. for a hearing on a complaint filed with the Board by Barbara Mazzanti on May 17, 2016. Board members, Glenn Waguespack, L-AUD, Erica Chatelain, L-SLP, Annette Hurley, L-AUD, Lucie LeDoux, L-AUD/SLP, and Deanna Hardy, Consumer Member, served on the hearing panel. Jerrilyn Frasier, L-AUD/SLP, Board Member, and Leigh Anne Baker, L-SLP, were unable to attend the hearing. The hearing panel unanimously agreed to the following history, findings of fact, conclusions of law and sanctions.

Complaint History

The complaint in this case originated with correspondence submitted to the Board advising that Mary McVay, Licensed Speech-Language Pathologist, and her supervisee Gabrielle Becnel, Provisional Speech-Language Pathologist at the time, performed a "swallow evaluation" only documenting Thermal Stim, with no documentation of assessing the patient orally. The complaint also claimed that Ms. Becnel was treating the patient with Deep Pharyngeal Neuromuscular Stimulation (DPNS) for multiple sessions, along with oral motor exercises, when the patient was tolerating a regular diet with no swallowing or speech deficits of any kind, which called

the use of DPNS into question. The complaint also states that the patient was treated for two diagnoses, dysphagia and dysarthria, which the patient did not have. Based on the information provided, it appeared that Ms. McVay may have failed to provide adequate supervision and training to her supervisee, Gabrielle Becnel. Questions were also raised about the standard of care and treatment provided.

STIPULATION OF FACTS

1. Ms. Mary McVay is, at all times pertinent to the facts and matters alleged herein, a Licensed Speech-Language Pathologist, as evidenced by license number 700, and subject to the jurisdiction and *Rules and Regulations* of the Louisiana Board of Examiners for Speech-Language Pathology and Audiology.
2. At all times relevant to the matters alleged herein, Ms. McVay was self-employed through Impac Rehabilitation, currently located at 4937 Hearst Street, Suite 2F, in Metairie, Louisiana.
3. At all times relevant to the matters alleged herein, Ms. McVay had entered into a Supervision Agreement with Gabrielle Becnel, Provisional Speech-Language Pathologist at the time, wherein she agreed to be responsible for the provision of all services. This Supervision Agreement Form began on September 1, 2015 and ended on June 15, 2016, when Ms. Becnel upgraded her license.

STIPULATION OF EVIDENCE

1. State Exhibit 1, Notice of Hearing.
2. State Exhibit 2, Complaint #2016-08 filed by Barbara Mazzanti.
3. State Exhibit 3, Investigation Reports completed by Tony McCoy of Statewide Surveillance & Investigations.
4. State Exhibit 4, Supervision records for the supervision of Gabrielle Becnel, as a Provisional Speech-Language Pathologist.
5. State Exhibit 5, McVay Questions and Answers/Correspondence with the Attorney General's Office.
6. State Exhibit 6, Board Invoices.

THE HEARING

The Assistant Attorney General, Candice Hillman, called Barbara Mazzanti, Complainant to the stand. Ms. Mazzanti testified that she works for the Veterans Affairs Hospital and teaches swallowing disorders at Louisiana State University Health Sciences Center in New Orleans. Ms. Mazzanti testified that she filed a complaint against Ms. Mary McVay when patient HD was treated at the Veterans Affairs Hospital. Patient HD presented with a right frontal stroke, having cognitive issues, with no dysphagia or dysarthria, and was tolerating a regular diet with thin liquids. Patient HD and his wife mentioned that he had been doing "lemon swabs" in home health treatments and was "traumatized" from the 21 sessions with the swabbing procedure.

Ms. Mazzanti testified that the normal standard of care would be to complete a bedside swallow evaluation and then follow up with a Modified Barium Swallow Study (MBSS) if needed. The medical records did not record an assessment of the swallow, but reflected that the patient was swabbed with lemon swabs to assess the delay in swallowing. Ms. Mazzanti stated that it is customary in all cases to receive records for each patient related to their previous medical care.

Ms. Mazzanti testified that the use of Deep Pharyngeal Neuromuscular Stimulation (DPNS) is an older therapy dating back to the 1980s and 1990s, and research has since come out against the use of DPNS. The idea of DPNS was to trigger the stimulation of a swallow, but Ms. Mazzanti testified that this is not an effective way to treat this, as it creates a reflex, but is not a therapy.

Ms. Mazzanti also testified that patient HD did not have dysphagia, but was treated for dysphagia by Ms. Gabrielle Becnel, who was under the supervision of Ms.

Mary McVay. Ms. Mazzanti testified that while patient HD presented with cognitive deficits, he was treated for dysphagia, although that diagnosis was never listed in the medical records and there were no goals established for the dysphagia. Patient HD was also given oral motor exercises although he also did not have dysarthria. Upon review of the medical records, the discharge plan of care listed goals relating to cognitive/linguistics, but none relating to dysphagia or dysarthria. Ms. Mazzanti testified that patient HD was treated for dysphagia and dysarthria, but had neither diagnosis.

The Assistant Attorney General, Candice Hillman, called Mary McVay to the stand. Ms. McVay testified that she has practiced as a Speech-Language Pathologist for 44 years, working in various settings, including hospital, school, rehabilitation, nursing homes, and private practice. Ms. McVay owns Impac Rehabilitation, a private practice in Metairie, which consists of primarily home health and private pay patients. Ms. McVay estimates that she has supervised 12 individuals for licensure purposes, although she is currently not supervising anyone.

Ms. McVay testified that she became DPNS certified in 2000, but stated that she does not use the standard DPNS procedures where 100 stimulations are required on each patient. Ms. McVay testified that she uses a “watered down version” and gets excellent results using 18 swabs.

Ms. McVay testified that she was not present at patient HD’s evaluation, so she cannot say for sure that Ms. Gabrielle Becnel, the Provisional Speech-Language Pathologist she agreed to supervise, did what she was supposed to do for the bedside evaluation. Ms. Becnel noted in the medical records that patient HD had a swallow delay of 3 to 4 seconds and noted this as a Level 4 or moderate to severe delay.

Ms. McVay calls her version of DPNS, "Thermal Gustatory Stimulation" or "Thermal Stim". Ms. McVay says that this method of treatment is extremely effective for dementia patients because they do not have to have their cognitive abilities. Ms. McVay testified that she spoke to the individual who created DPNS and she did not like that Ms. McVay altered the original method, but did not say she could not do so. Ms. McVay testified that the use of DPNS is used worldwide, except in the United States; however, Ms. McVay also testified that her method, "Thermal Stim", is not used worldwide.

Ms. McVay testified that the medical records for patient HD were requested but never received. Ms. McVay stated that they have to go to the patient's house first to get a medical records release signed by the patient or their family to be able to get the records. Ms. McVay stated that she did not see in the medical records that Ms. Becnel requested a medical records release to be signed for patient HD. Ms. McVay testified that Ms. Becnel should have been trained to do this.

Ms. McVay stated that Ms. Becnel did not indicate that she performed DPNS, she did Thermal Stim. Ms. McVay testified that her direction to Ms. Becnel was to try to do a modified DPNS with some patients and if she saw improvement, continue the treatment.

Ms. McVay testified that standard protocol with a bedside swallow evaluation is to have the patient drink or eat something. Ms. McVay testified that a patient with a delay over three seconds, would be considered to have dysphagia. In the investigator's report (entered into evidence as State Exhibit 3), Ms. Becnel told the investigator that

anything over a two second delay, there is a chance they can improve a patient's swallow.

Ms. McVay testified that a bedside evaluation tests oral motor movements and the ability to swallow liquids and foods. Ms. McVay testified that she assumes Ms. Becnel did not have patient HD drink or eat anything during his bedside evaluation. The evaluation notes that patient HD was deficient in swallowing, but he was only "tested" with lemon swabs using the modified DPNS technique. Ms. McVay testified that patient HD should have been documented at level 2. Ms. McVay testified that the evaluation technique was DPNS which was the reason for swallowing treatment.

Ms. McVay testified that Ms. Becnel said that the patient agreed to have the Thermal Stim or modified DPNS done. Ms. McVay stated that she was not there to know if the patient was discharged from the hospital tolerating a regular diet. Ms. McVay testified that many patients say that their swallowing is ok and she tells them that her standards are higher. Ms. McVay testified that there is no difference in reimbursement based on therapies provided, and that she does not think that she is doing anything that does not benefit the patient, although she could not answer if it was medically necessary. Ms. McVay testified that even if an evaluation was sent with the patient's medical records, she would still complete her own evaluation.

Ms. McVay indicated that she was not on-site for any sessions with patient HD, but she did read the evaluation report. Ms. Becnel told her that she followed the procedures that she was trained to do. Ms. McVay testified that upon review of patient HD's evaluation, after it was submitted to the company, she indicated to Ms. Becnel that she should have completed the evaluation process by using food and drink, and told her

to reevaluate patient HD. Ms. McVay acknowledged that Ms. Becnel failed to reevaluate patient HD and yet she allowed Ms. Becnel to continue treatment.

Ms. McVay testified that Ms. Becnel came to her multiple times for guidance on patient HD and she told Ms. Becnel, Provisional Speech-Language Pathologist, that it was Ms. Becnel's decision, and if she felt like the treatment was helping, she should continue.

In Ms. McVay's closing arguments, she admitted that what she does "is different", but most of her patients appreciate that.

FINDINGS OF FACT RELATED TO THE STANDARD OF CARE

The Board finds that Ms. McVay deviated from the standard of practice, which is indicated by the following:

1. A clinical beside evaluation was not completed properly for patient, HD. Ms. Becnel failed to re-evaluate HD using food and drink to evaluate swallowing, even after Ms. McVay realized that the evaluation was not done properly initially, yet Ms. McVay, allowed the treatment to continue to be provided without an appropriately performed or documented evaluation.
2. The Board finds that Ms. McVay's standard protocol, Deep Pharyngeal Neuromuscular Stimulation (DPNS), is not evidence-based for evaluation or treatment of dysphagia.
3. The Board finds that Ms. McVay never used a generally acceptable evaluation technique, she typically modified the protocol.
4. The Board finds that the patient, HD, expressed to complainant, Barbara Mazzanti that he was "traumatized" from his previous speech therapy, which was done by Impac Rehabilitation, Ms. McVay's company.
5. The Board finds that no oral motor evaluation or notation of oral motor was completed for patient HD. The treatment notes provided treatment goals for oral motor, but with no diagnosis or evaluation for dysarthria.

FINDINGS OF FACT RELATED TO SUPERVISION

1. The Board finds that Ms. McVay failed to supervise Ms. Becnel appropriately and allowed the Provisional Speech-Language Pathologist to practice independently.
2. The Board finds that based on Ms. McVay's testimony, that she read the report completed by Ms. Becnel for patient HD and noted that Ms. Becnel did not complete the bedside evaluation properly. While Ms. McVay instructed Ms. Becnel to complete a re-evaluation, Ms. Becnel failed to do so, and Ms. McVay allowed her to continue to treat patient HD without a proper evaluation.
3. The Board finds that Ms. McVay failed to properly supervise Ms. Becnel when Ms. Becnel inquired if she should continue treatment on this particular patient, HD, Ms. McVay told Ms. Becnel that it was her decision and that if she felt the treatment was effective, she should continue the treatment. As the supervisor on record, Ms. McVay was ethically responsible for the care given to patients.
4. The Board finds that Ms. McVay taught and allowed Ms. Becnel to perform DPNS, albeit a modified version, while Ms. Becnel was not certified or properly trained to do so.

CONCLUSIONS OF LAW

The Findings of Fact led the Board to conclude that Mary McVay's conduct rises to the level of violations of the Board's Practice Act and the Rules and Regulations.

Based on the Findings of Fact, the Board concludes:

1. Licensee, as proven by her testimony, has violated her ethical and professional duty as set forth in:
 - a. La R.S. 37:2662.A. (4) by demonstrating a willful or careless disregard for the welfare or safety of a consumer.
 - b. La R.S. 37:2662.A. (5) by engaging in unprofessional conduct as defined by the rules established by the board, or has violated the code of ethics adopted and published by the board, by failing to provide the appropriate level of care.
 - c. La R.S. 37:2662.A. (6) by violating any lawful order, rule or regulation rendered or adopted by the board.
 - d. La R.S. 37:2662.A. (8) by violating any provisions of this Chapter.
 - e. And as defined by the rules established by the Board, is a violation of the code of ethics adopted and published by the board as identified in:
 - i. 701 E(1) which states that licensees shall honor their responsibility to hold paramount the welfare of persons they serve... The licensee shall take all reasonable precautions to avoid harm to the individual served professionally, by failing to hold paramount the welfare of the individual served by allowing treatment after knowing an appropriate evaluation was not performed. By signing the Supervision Agreement Form, the supervisor acknowledges that

she is responsible for the provision of all services to the clients served.

- ii. 701(E)(2)(d) which states the individuals shall provide appropriate supervision and assume full responsibility for services delegated to all supervisees, including assistants or aides. Individuals shall not delegate any service requiring professional competence to persons unqualified.
- iii. 701(E)(2)(e) which states that individuals shall not...require or permit their professional staff to provide services or conduct research activities that exceed the staff member's competence, level of education, training, or experience, by training Ms. Becnel to do her own version of DPNS, called Thermal Stim.
- iv. 701(E)(4) which provides that individuals shall...accept the professions' self-imposed standards, by failing to accept the professions' self-imposed evaluation and treatment standard, based on Ms. McVay's testimony.
- v. 701(E)(4)(a) which provides that individuals shall prohibit anyone under their supervision from engaging in any practice that violates the code of ethics.
- vi. 701(E)(4)(j) which provides that individuals shall not violate these principles and rules, nor attempt to circumvent them.

SANCTIONS

It is ordered that:

1. Mary McVay's license #700 is suspended for six (6) months from the date of this decision.
2. Mary McVay shall not provide dysphagia therapy or treatment for six (6) months, which time frame will begin on the date that the suspension is lifted by the Board.
3. Mary McVay shall not be allowed to supervise for licensure purposes for five (5) years after returning to the practice of speech-language pathology.
4. Within ninety (90) days of the date of this decision, Mary McVay, shall successfully complete an open book examination on the Louisiana Speech-Language Pathology and Audiology Practice Act, the Rules and Regulations, and Ethical Questions and Situations, Parts I and II.
5. Within ninety (90) days of the date of this decision, Mary McVay, shall pay half of the costs of investigation (total cost \$2,358.60) in the amount of \$1,179.30.
6. Within nine (9) months of the date of this decision, completion of thirty (30) hours of continuing education in evaluation and treatment of dysphagia. A 3-4 hour university course will qualify to meet the 30 hour requirement. Continuing education courses shall be submitted to the board for pre-approval.
7. Within one (1) year of the date of this decision, Mary McVay, shall reimburse the Board for attorney's fees in the amount of \$3,150.02, court reporter \$1,200, hotel lodging for three board members in the amount of \$318.
8. Within three (3) years of the date of this decision, Mary McVay, must pay a fine in the amount of \$10,000; quarterly payments shall begin within one year of the date of this decision.

9. This decision is a matter of public record and Licensee is hereby publicly reprimanded for the above violations of La. R.S. 37:2650 et seq. and the Rules and Regulations of the Board; such public reprimand shall include publication of such by the Board, notification to the Louisiana Speech-Language Hearing Association (LSHA), American Speech-Language-Hearing Association (ASHA), the National Practitioner Data Bank, as well as all entities with which Licensee contracted with.

10. Failure to comply with the terms of this decision in a timely manner shall result in further SUSPENSION or REVOCATION of her license without further notice.

Glenn M. Waguespack
Glenn M. Waguespack, L-AUD
Chairperson/Hearing Officer

10/30/2019
Date