

IN THE MATTER OF
ANDREA R. FISHER, COTA/L
Respondent

* BEFORE THE MARYLAND
BOARD OF OCCUPATIONAL
THERAPY PRACTICE

License Number: A01459

* Case Number: 2014-01

* * * * *

CONSENT ORDER

On or about December 19, 2014, the Maryland Board of Occupational Therapy Practice (the "Board") charged **ANDREA R. FISHER, COTA** (the "Respondent"), **License Number A01459** under the Maryland Occupational Therapy Practice Act (the "Act"), Md. Health Occ. Code Ann., ("H.O.") §§ 10-101 *et seq.* (2014 Re I. Vol.)

Specifically, the Board charged the Respondent's with violations of the following provisions of the Act:

**H.O. §10-315. Denials, reprimands, suspensions, and revocations
Grounds.**

Subject to the hearing provisions of § 10-316 of this subtitle, the Board may deny a license or temporary license to any applicant, reprimand any licensee or holder of a temporary license, place any licensee or holder of a temporary license on probation, or suspend or revoke the license or temporary license if the applicant, licensee, or holder:

- (2) Fraudulently or deceptively uses a license or temporary license;
- (3) Commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy;
- (5) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board;
- (10) Willfully makes or files a false report or record in the practice of occupational therapy or limited occupational therapy [and]
- (12) Submits a false statement to collect a fee[.]

The relevant provisions of Code Md. Regs ("COMAR") tit. §10.46.02.01 provide the following:

(A) The licensee shall:

- (1) Provide the highest quality services to the client;
- (11) Function with discretion and integrity in relations with other health professionals;
- (15) Comply with all applicable laws dealing with occupational therapy practice[.]

(C) The licensee may not:

- (2) Allow financial gain to be paramount to the delivery of service to the client;
- (4) Use, participate in the use of, a form of communications that contains or implies a:
 - (b) False, fraudulent, misleading, deceptive or unfair statement or claim.

On March 20, 2015, a Case Resolution Conference ("CRC") as held at the Board's office. As a resolution of this case, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Respondent initially received her license to practice as a certified occupational therapy assistant ("COTA") in the State of Maryland on March 21, 2003. Her license expired on or about June 30, 2014. The Respondent voluntarily failed to renew her license on or before June 30, 2014 and has made no efforts to have her license reinstated after expiration.

2. At all times relevant, the Respondent was a contractual employee of a skilled nursing care facility in Towson, Maryland ("Facility A"). From February 2007 until

her termination from employment on or about April 9, 2014, the Respondent provided rehabilitative occupational therapy assistant services to patients at Facility A. Beginning in July 2007, the Respondent was promoted to rehabilitation therapy manager, a position that included administrative and oversight responsibilities for other treating health care providers.

A. Complaint

3. On or about April 18, 2014, the Board received a complaint from Facility A's Director of Operations ("the Complainant") reporting that the Respondent had been terminated on April 9, 2014 for "willful violation of company billing policy"

4. The Complainant alleged that on or about March 31, 2014, the Respondent submitted inaccurate bills for treatment provided to four (4) patients and that her documentation reflected false start and end times for therapeutic services. Specifically, it was alleged that the Respondent treated 4 patients in a group setting in Facility A's gymnasium beginning at or around 9:00 a.m., but documented that she individually treated each of the four (4) patients beginning at or around 6:02 a.m. and ending at 9:52 a.m. The Complainant reported that when confronted, the Respondent admitted to billing for services not rendered, stating that she was "very" sorry for what she did and it would never happen again."

5. On or about April 18, 2014, the Board initiated an investigation of the complaint. The pertinent results of the Board's investigation are set forth *infra*.

B. Board Investigation

6. It is uncontested that on March 31, 2014, the Respondent reported to work at Facility A at approximately 9:00 a.m. and left Facility A at approximately 3:30 p.m. Prior to her arrival, the Respondent attended a medical appointment in Pennsylvania

which significantly delayed her arrival for her 10 hour shift scheduled to begin at 6:00 a.m.

7. The Board's investigation revealed that on Facility A's *Daily Interaction Form*, the Respondent documented her arrival time as 6:00 a.m. and her departure time as 4:00 p.m., and further documented treatment for eleven (11) patients for a total of 550 minutes of actual treatment. Although the Respondent was physically present at Facility A for 6 ½ hours, she sought payment for a 10 hour shift, with no breaks or meal periods deducted. Further, the Respondent's signature appears on the *Daily Interaction Form* attestation: "*I agree this accurately reflects all hours worked and all meal periods taken. I agree I have received all break and meal periods for which I am entitled.*"

8. The Board's investigation revealed that at approximately 9:30 a.m., an employee of Facility A ("Employee A") observed the Respondent conducting a group treatment session with four (4) patients in Facility A's gymnasium. The Respondent subsequently approached Employee A and acknowledged that group sessions were not allowed, that it was illegal to bill Medicare Part A for group therapy, that she was sorry for what had happened, and that she would "make it right".

9. On or about April 3, 2014, Employee A reported her observations and conversation with the Respondent to her Director of Operations, the Complainant. The Complainant initiated an internal investigation.

10. At approximately 9:45 a.m. on April 4, 2014, the Complainant presented the allegations and her preliminary findings to the Respondent. The Respondent admitted that she noted false start and end times for 4 patients, that she billed for individual treatment despite providing group treatment, and that her overall labor hours

were inaccurate because she worked from 9:00 a.m. to 3:30 p.m. but billed for a 10 hour shift.

11. On or about April 9, 2014, after completing her internal investigation, the Complainant formally terminated the Respondent's employment with Facility A.

12. In furtherance of its investigation, the Board issued a subpoena to Facility A for patient records for March 31, 2014. The Board's review and investigation revealed that the Respondent failed to record a start and end time for her first and second patients of the day but documented that she provided 50 minutes of individual treatment to each of those patients.

13. As to her third patient of the day ("Patient A") the Respondent documented a treatment session from 6:02-6:52 a.m. for a total of 50 minutes billed under CPT code 97530. The Respondent intended to have Facility A submit Patient A's bill to Medicare Part A, a federally funded third party payer.

14. As to her fourth patient of the day ("Patient B") the Respondent documented a treatment session from 6:52-7:42 a.m. for a total of 5 minutes billed under CPT code 97530. The Respondent intended to have Facility A submit Patient B's bill to Medicare Part A, a federally funded third party payer.

15. As to her fifth patient of the day ("Patient C") the Respondent documented a treatment session from 7:42-8:32 a.m. for a total of 50 minutes billed under CPT code 97530. The Respondent intended to have Facility A submit Patient C's bill to Medicare Part A, a federally funded third party payer.

16. As to her sixth patient of the day ("Patient D") the Respondent documented a treatment session from 8:32-9:22 a.m. for a total of 50 minutes billed

under CPT code 97530. The Respondent intended to have Facility A submit Patient D's bill to Medicare Part A, a federally funded third party payer.

17. In addition to billing for individual services not provided, the Respondent deceived Facility A, claiming that she worked a 10 hour shift while actually being present at Facility A for only 6 ½ hours. The Respondent further claimed that she provided eleven consecutive 50-minute sessions during her claimed 10 hour shift, with not one moment of down time for either patient to patient transitions, her own needs for a restroom or meal break, or simply accounting for routine delays or patient non-compliance.

18. It is highly suspect for a health care provider to provide 550 minutes of consecutive, uninterrupted patient treatment without any scheduled time for patient or health care provider delays or transitions. This is especially so when treating an elderly and ailing population, in which non-compliance and compromised adaptability to treatment, is common.

19. On or about June 13, 2014, Board staff conducted a sworn interview of the Respondent. Among other things, she admitted that on Marc 31, 2014, she attended a medical appointment in York, Pennsylvania from 7:30-8:10 a.m. and did not arrive at Facility A until 9:00 a.m. or later. The Respondent stated that at that time, she had accumulated 40-50 hours of paid leave but chose not to use any portion of that time for her medical appointment. Instead, she neither notified her supervisor that she would be late that morning, nor did she seek guidance as to how she might accommodate her 11-12 patients scheduled for individual 50 minute sessions within a 6 ½ hour time frame.

20. The Respondent conceded that she elected to conduct a group session with Patients A-D from 9:00-9:52 knowing that she could not bill them for a group session under Medicare Part A. She knowingly generated false treatment times, recording individual 50 minute therapeutic sessions on the March 31, 2014 *Daily Interaction Form*. By way of explanation, the Respondent stated that she "made a bad decision", and she felt trapped", and that she "regret[s] every day doing it."

21. The Respondent described her understanding of fraudulent billing as, "billing inappropriately one--or billing, it would be billing when you didn't see a patient or billing incorrectly when you saw a patient and that's not really what you saw them [for]."

C. Summary

22. Respondent fraudulently used her license and committed an act of misconduct in the practice of limited occupational therapy. She willfully filed false reports and submitted deceptive and false statements to collect a fee. She further violated the code of ethics by failing to provide the highest quality of services to her patients and allowing financial gain to be paramount to the delivery of care. Lastly, she billed for services not rendered and compromised her integrity in relations with other health care professionals.

23. **The Respondent's conduct, as described *supra*, constitutes a violation of H.O. § 10-315:** (2) fraudulently or deceptively uses a license or temporary license; (3) commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy; (5) violates any rule or regulation of the Board, including any code of ethics adopted by the Board; (10) willfully makes or files a false report or record in the practice of occupational therapy or limited occupational therapy; and (12) submits a false statement to collect a fee.

24. The Respondent's conduct violates the applicable Code of Ethics as set forth in COMAR §10.46.02.01 (A)(1) Provide the highest quality services to the client; (11) Function with discretion and integrity in relations with other health professionals; (15) Comply with all applicable laws dealing with occupational therapy practice; (C) The licensee may not: (3) Allow financial gain to be paramount to the delivery of service to the client; and (4) Use, participate in the use of, a form of communications that contains or implies a:(b)False, fraudulent, misleading, deceptive, or unfair statement or claim.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions, as described above, constitute violations of the provisions of the Act and the associated regulations cited above.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the Board, hereby:

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent shall pay to the Board, due within 30 days of the effective date of this Consent Order, a fine in the amount of \$1000 (one thousand dollars); and it is further

ORDERED that the Respondent shall, within six (6) months of the effective date of this Consent Order, and at her own expense, successfully complete a Board-approved course focusing on ethics in occupational therapy and shall submit written verification that satisfies the Board of the successful completion of the course within 30 days of completion of the course; and it is further

ORDERED that if the Respondent fails to comply with any terms or condition of this Consent Order or of probation, after an opportunity to be heard at a show cause hearing, the Board may impose a further sanction, including reprimand, additional probationary terms and conditions, the suspension or revocation of his license, and/or additional fine; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., General Provisions, § 4-101 through 4-601 (2014).

April 24, 2015
Date

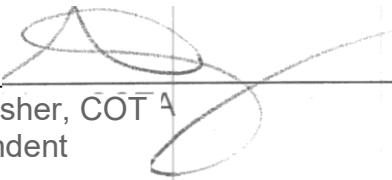
Kamala Stevenson, MS, OTR/L
Kamala Stevenson, MS, OTR/L
Board Chairperson
Board of Occupational Therapy

CONSENT

I, Andrea R. Fisher, COTA, acknowledge that I have had an opportunity to consult with counsel at this and all stages of this matter. I understand that this Consent Order will resolve the Charges issued against me in the above referenced case. By this Consent, I agree and accept to be bound by the foregoing Consent Order and its conditions. I acknowledge that for all purposes relevant to licensure in Maryland, the Findings of Fact and the Conclusions of Law contained in this Consent Order will be treated as if proven and/or as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these Findings of Fact and Conclusions of Law. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and

enforce this Consent Order. I affirm that I waive my right to any appeal in this matter. I affirm that I have asked and received satisfactory answers to all my questions regarding the language, meaning, and terms of this Consent Order. I sign this Consent Order, voluntarily and without reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order.

4/17/15
Date


Andrea K. Fisher, COTA
The Respondent

NOTARY

STATE OF PENNSYLVANIA

CITY/COUNTY OF YORK

I HEREBY CERTIFY that on this 17th day of April, 2015 before me, a Notary Public of the foregoing State and City/County personally appeared Andrea R. Fisher, COTA, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Notary Public

My commission expires:

NOTARIAL SEAL
THOMAS S. PHARO, NOTARY PUBLIC
SPRINGETTSBURY TWP., YORK COUNTY
MY COMMISSION EXPIRES JUNE 25, 2018