

IN THE MATTER OF)	BEFORE THE STATE
)	
YOLANDA ROMERO, O.T.,)	BOARD OF OCCUPATIONAL
RESPONDENT)	
)	THERAPY PRACTICE
<u>LICENSE NUMBER: 01559</u>)	

FINAL DECISION AND ORDER

On October 17, 2002 the Board of Occupational Therapy Practice ("Board") charged Yolanda Romero, License Number 01559 ("Respondent"), with violating provisions of the Maryland Occupational Therapy Act ("Act"), Md. Health Occupations, Code Ann. ("H.O.") §§ 10-101 *et seq.* (2000 Repl. Vol. & 2002 Supp.) Specifically, the Board charged Respondent with violating H.O § 10-315(3), (5), (10) and (12):

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

(3) Commits any act of gross negligence, incompetence, or misconduct in the practice of 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 ...

(12) Submits a false statement to collect a fee.

The Board identified those Board regulations that Respondent was charged with violating as COMAR 10.46.01.04A, which states:

An occupational therapist shall exercise sound judgment and provide adequate care in the performance of duties as provided in nationally recognized standards of practice.

In addition, the Board charged Respondent with violating the following provisions of the Board's Code of Ethics, COMAR 10.46.02.01A & C, which provide as follows:

A. The licensee shall:

(2) Provide the highest quality services to the client; [and]

(15) Comply with all applicable laws dealing with occupational therapy practice.

B. The licensee may not:

(2) Allow financial gain to be paramount to the delivery of service to the client;

(4) Use, or participate in the use of, a form of communication that contains or implies a:

(b) False, fraudulent, misleading, deceptive, or unfair statement or claim.

Accompanying the charges was a notice containing a schedule of dates for a Case Resolution Conference (January 17, 2003), a telephonic prehearing conference (March 19, 2003) and a hearing (May 16, 2003). Respondent failed to attend the Case Resolution Conference. She did not answer her phone at the time of the telephonic prehearing conference. She made no filings pursuant to the schedule established at the telephonic prehearing conference, despite the fact that the schedule was mailed to her. Finally, she did not attend the hearing on this

matter, which was conducted before the Board on May 16, 2003. Sherrai Hamm, Assistant Attorney General, appeared before the Board on behalf of the State and presented the State's case *ex parte*.

Findings of Fact

1. The Respondent was issued a license to practice occupational therapy on May 7, 1982.
2. At all times relevant to this matter, Respondent was employed by Gateway Health Services ("Gateway") from May 31, 2001 until on or about November 1, 2001.
3. Gateway provides temporary and permanent placement of physical therapists, speech therapists and occupational therapists to assisted living facilities, home care agencies, hospitals and clinics.
4. The Respondent was assigned by Gateway to HomeCall Home Health Care ("HomeCall"), an agency that provides health care services to patients at their homes.
5. In December 2001, Artie Esworthy, the President of HomeCall notified Jennifer Probst, Administrator of Gateway that Respondent had failed to appear for scheduled visits with a HomeCall client ("Patient A").
6. Patient A, an eighty-six year old female, who suffered from diabetes mellitus, chronic renal failure, and rheumaty arthritis, was referred to occupational therapy by her treating physician. Patient A was initially assessed by the Respondent on September 5, 2001.

7. The Respondent recommended to Patient A's physician that Patient A receive occupational therapy two times per week during the first week of treatment then three times per week for the next six weeks. Patient A's physician signed an order for the treatment plan recommended by the Respondent.
8. Patient A complained to HomeCall that Respondent had failed to appear for scheduled visits.
9. The Respondent saw Patient A only three times.
10. However, Respondent's treatment notes indicated that Respondent saw Patient A twelve times, September 11, 12, 15, 18, 20, 22, 25, 27, 28, 2001 and October 2 and 4, 2001.
11. Peggy Green, Branch Manager for HomeCall, audited Patient A's medical chart and spoke to Patient A, who confirmed that Respondent saw her only three times. Patient A received dialysis treatments every Monday, Wednesday and Friday from 11AM to 5 PM. She did not schedule visits with Respondent for those days. However, Respondent documented in Patient A's medical chart that she had made visits on two of these days.
12. Patient A had a personal aide who worked Mondays through Saturdays from 9 AM to 1 PM. The Aide never saw Respondent at Patient A's home. Yet, Respondent entered in Patient A's medical chart a note that she made a visit to Patient A on September 25, 2001 from 12 PM to 12:45 PM.
13. Patient A's family never met Respondent.

14. The completed treatment notes for Patient A were submitted by Respondent to HomeCall. HomeCall issued a check to Gateway based on the treatment notes that Respondent had submitted.
15. HomeCall billed the Medicare program on behalf of Patient A for occupational therapy, which Respondent indicated on treatment notes that she had provided to Patient A on the following dates: September 11, 12, 15, 18, 20, 22, 25, 27, 28, 2001 and October 2 and 4, 2001.
16. Respondent's conduct, as described above, violates the Act and Board regulations.

Conclusions of Law

By willfully recording false treatment notes in Patient A's medical charts, Respondent violated H.O. § 10-315 (3), which authorizes the Board to take action against a licensee who "commits any act of ... misconduct in the practice of occupational therapy."

Respondent's conduct also constitutes a violation of H.O. 10-315(5), which authorizes the Board to take action against a licensee who "[v]iolates any rule or regulation of the Board, including any code of ethics adopted by the Board." Respondent's conduct violated COMAR 10.46'.01.04, which states that "[a]n occupational therapist shall exercise sound judgment and provide adequate care in the performance of duties as provided in nationally recognized standards of practice." Respondent's conduct also violated the Board's Code of Ethics, COMAR 10.46.02.01, which provides, in part:

C. The licensee shall:

(2) Provide the highest quality services to the client; [and]

(15) Comply with all applicable laws dealing with occupational therapy practice.

D. The licensee may not:

(2) Allow financial gain to be paramount to the delivery of service to the client;

(4) Use, or participate in the use of: a form of communication that contains or implies a:

(b) False, fraudulent, misleading, deceptive, or unfair statement or claim.

Respondent's conduct also constitutes a violation of H.O. 10-315(10), which authorizes the Board to take action against a licensee who "[w]illfully makes or files a false report or record in the practice of occupational therapy ... "

Finally, Respondent's conduct also constitutes a violation of H.O. 10-315(12), which authorizes the Board to take action against a licensee who "[s]ubmits a false statement to collect a fee."

Respondent's willfully deceitful conduct is a serious violation of the Act, the Board's regulations and the Board's Code of Ethics. It not only resulted in financial harm, but also placed Patient A in jeopardy by including misleading information in her medical notes. This could have led another health care practitioner to erroneously assume that Patient A had received appropriate treatment, when in fact she had not. Accordingly, it is hereby

ORDERED that the occupational therapy license of Yolanda Romero,
license number 01559 be **REVOKED**, effective as of the date of this Order.
This Final Decision and Order is a public document under Md. Code Ann., State
Government § 10-617.

July 18, 2003
Date

Claudia McInerney
MOT, OTR/L

Claudia McInerney, MOT, OTR/L
Vice Chairperson
State Board of Occupational Therapy