

IN THE MATTER OF * **BEFORE THE MARYLAND BOARD OF**
WALTER AUCLAIR, P.T.A. * **PHYSICAL THERAPY EXAMINERS**
RESPONDENT * **Board Case No. 22-18**
License No. A2189 * **OAH No. MDH-BPTE-97-23-30156**

* * * * *

FINAL DECISION AND ORDER

On June 26, 2023, the Maryland Board of Physical Therapy Examiners (the “Board”) charged Walter Auclair, Physical Therapist Assistant, License No. A2189 (the “Respondent”) with violations of Maryland law, the Maryland Physical Therapy Act, Md. Code Ann., Health Occ. § 13-101 *et seq.* (the “Act”), and the Board’s regulations, COMAR 10.38.01 *et seq.* Specifically, the Respondent was charged with (1) committing sexual misconduct, in violation of Md. Code Ann., Health Occ. § 1-212(a)(1) & (2), (b)(2), and COMAR 10.38.02.02A, B(6) & (7); (2) violating any provision of the title or rule or regulation adopted by the Board, in violation of Section 13-316(15) of the Act; and (3) committing an act of unprofessional conduct in the practice of limited physical therapy, in violation of Section 13-316(19) of the Act.

An evidentiary hearing was held on the Charges on March 6 and 7, 2024, at the Office of Administrative Hearings. Administrative Law Judge Michael R. Osborn issued a 34-page Proposed Decision on May 30, 2024, recommending dismissal of all the Charges by the Board.¹ The State filed Exceptions with the Board on June 29, 2024, and the Respondent filed a response on July 14, 2024. An Exceptions Hearing was held before the Board on September 17, 2024. This Final Decision and Order constitutes the Board's final decision in this case.

¹ The Administrative Law Judge found that the Respondent’s misconduct was not “in the practice of limited physical therapy” and dismissed the charges pursuant to Md. Code Ann., Health Occ. § 13-316(19). The Board disagrees, as discussed later in this Final Decision and Order.

FINDINGS OF FACT

The Board adopts findings of fact 1-30, 32-34, 36-39, and 41-42² proposed by the Administrative Law Judge in the Proposed Decision.³ The Board takes note of the following facts:

1. At all times relevant hereto, the Respondent was licensed to practice as a physical therapy assistant by the Board, License No. A2189. The Respondent was originally licensed in Maryland on August 18, 1998, and his license is set to expire on May 31, 2025.
2. At all times relevant hereto, the Respondent was part owner and worked as a physical therapy assistant at a private practice (the “Practice”).
3. On or about May 11, 2022, the Board received a complaint from the husband of one of the Respondent’s patients (the “Patient”) regarding the Respondent’s practice.
4. The Patient began receiving physical therapy for neck pain at the Practice in September 2021. The Patient received physical therapy on 26 occasions between September 28, 2021, and January 27, 2022; the Respondent provided physical therapy to the Patient on 18 of the 26 sessions.
5. The Patient’s last visit at the Practice was on January 27, 2022, although she was not formally discharged until April 2022..
6. Over the course of 35 days while the Patient was being treated at the Practice, between November 19, 2021, and January 23, 2022, the Respondent and the Patient exchanged approximately 881 text messages. On at least one of those days, the Respondent and

² Proposed findings of fact 31 and 40 include the Administrative Law Judge’s opinion regarding the text messages between the Respondent and the Patient. Proposed finding of fact 35 states that the Patient first moved into a hotel on January 25, 2022; she testified, however, that it was January 20, 2022.

³ The Proposed Decision is incorporated by reference in this Final Decision and Order and is maintained in the Board’s files as Attachment A to this Final Decision and Order..

Patient texted more than 100 times. The Respondent and the Patient continued texting after her last visit to the Practice.

7. The Respondent and the Patient texted on various topics. A number of the text messages were unusually intimate for texts between a health care practitioner and a patient, including the Respondent texting the Patient “I miss you and want you in my arms watching football right now” (to which the Patient responded “I’d love that”) and “I will even watch at clinic if I could be w[ith] you,” and the Patient texting the Respondent “any possibility to see you, I’d meet you in a heartbeat,” “good god I miss you,” and “I want to be with you so badly.”
8. While she was a patient at the Practice, the Respondent and the Patient had many conversations about the Patient opening her own practice as a speech-language pathologist (possibly at the same location as the Practice). The Respondent and the Patient met at restaurants on multiple occasions to discuss her business plans, though they discussed other personal topics as well. The Respondent and the Patient met for lunch and dinner and their meals would include food and alcoholic drinks.
9. On January 20, 2022, the Patient checked into a hotel because of issues in her marriage. The Respondent visited her in the hotel and hugged her because she was crying. The Patient stayed in the hotel for three days.
10. On January 30, 2022, the Patient checked into a different hotel after her husband found the text messages between her and the Respondent. The Respondent once again visited her at the hotel and hugged her to comfort her.

CONCLUSIONS OF LAW AND DISCUSSION

The Board finds no evidence that the Respondent committed sexual misconduct with a

patient as set forth in COMAR 10.38.02.02; as such, it adopts the conclusions of law set forth in the Administrative Law Judge's Proposed Decision as it relates to the Charges under Md. Code Ann., Health Occ. §§ 1-212 and 13-316(15). Accordingly, the Board dismisses these charges.

The Board, however, rejects the Administrative Law Judge's conclusion of law related to Md. Code Ann., Health Occ. § 13-316(19). The Administrative Law Judge's conclusion was based on his finding that the Respondent's conduct was not unprofessional conduct in the practice of limited physical therapy because it was not directly related to his patient care. Although there is no case law specifically regarding the practice of limited physical therapy, Maryland courts have applied a broad interpretation of what is "in the practice of medicine" for physicians. *See Kim v. Maryland State Board of Physicians*, 423 Md. 523, 527 (2011) (lying on a renewal application deemed in the practice of medicine); *Finucan v. Maryland Bd. of Physician Quality Assurance*, 380 Md. 577, 597 (2004) (sexual relationship with three patients deemed in the practice of medicine); *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 66 (1999) (sexual harassment of administrative employees of a hospital deemed in the practice of medicine); *Cornfeld v. State Board of Physicians*, 174 Md. App. 456, 468 (2007) (lying to a hospital peer review deemed in the practice of medicine). A review of the public disciplinary orders on the Board's website shows an equally broad interpretation of "in the practice of [limited] physical therapy."

Maryland courts have also broadly interpreted what may be considered to be "unprofessional conduct" by physicians. *See Finucan*, 380 Md. at 597 (sexual relationship with three patients deemed unprofessional conduct); *Salerian v. Maryland State Bd. of Physicians*, 176 Md. App. 231, 249 (2007) (disclosing confidential physician-patient information was unprofessional conduct); *Cornfeld*, 174 Md. App. at 468 (dishonesty by lying to a hospital peer

review deemed unprofessional conduct). So too has the Board broadly defined “unprofessional conduct” by physical therapists and physical therapist assistants.

Considering whether the Respondent’s conduct in this matter was unprofessional, the Administrative Law Judge cited *Finucan* in correctly noting that “a physician must take care not to exploit the power he or she has over a patient.” He then, however, found that the Respondent and the Patient were “equals” because the Respondent is a physical therapist assistant and the Patient is a speech-language pathologist. The Board rejects this understanding of the physical therapist assistant-patient relationship. A physical therapist assistant, like any health professional, has an inherent power over the patient in a physical therapist assistant-patient relationship, regardless of their respective degrees. The relevant power here is the power in that particular relationship, not power in the world at large.⁴ When a patient is being treated by a physical therapist assistant, that physical therapist assistant is the expert in limited physical therapy, is in charge of that treatment, and is in a position of power over the patient in that relationship; this is true whether the patient is a high school dropout, a speech-language pathologist, the chief of surgery, or the Governor of Maryland.

Similarly misguided was the Administrative Law Judge’s focus on the Patient not finding the Respondent’s conduct unprofessional. That the Patient approved of the Respondent – who she described as still being a close personal friend – stepping over the appropriate boundaries of the physical therapist assistant-patient relationship is, quite frankly, irrelevant. The burden is on the individual licensed by the Board, not the patient, to understand the ethical confines of appropriate behavior.

Conduct may be unprofessional in the practice of limited physical therapy if it is

⁴ If the Respondent were to seek out treatment from the Patient in her capacity as a speech-language pathologist, she would hold the power over him in regards to that practitioner-patient relationship

“intertwined with patient care to pose a threat to the patients or the . . . profession” or if it “diminished the standing” of the practice of limited physical therapy. *Cornfeld*, 174 Md. App. at 474, 477-78. “Unprofessional conduct” is “conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming” a physical therapist assistant in good standing. *Salerian*, 176 Md. App. at 248 (quoting *Finucan*, 380 Md. at 593). The Respondent’s behavior in this case was unbecoming a physical therapist assistant and diminishes the standing of the profession in the eyes of the Board.

Exchanging almost 900 text messages with a patient over a two month period is unprofessional conduct in the practice of limited physical therapy. Texting a patient – or someone who had been a patient a week earlier and had not yet been formally discharged – “I miss you want you in my arms watching football right now” is unprofessional conduct in the practice of limited physical therapy. Attempting to help a patient start a business, taking multiple meetings along those lines, and having multiple meals with alcoholic drinks discussing said business and other personal matters is unprofessional conduct in the practice of limited physical therapy. Meeting a patient at a hotel to discuss troubles in their marriage and hugging them to comfort them at said meetings is unprofessional conduct in the practice of limited physical therapy. The Respondent’s conduct in this case was unprofessional conduct in the practice of limited physical therapy.

Based on the foregoing, the Board finds that the Respondent is subject to discipline pursuant to Md. Code Ann., Health Occ. § 13-316(19).

ORDER

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

ORDERED that the Respondent's license to practice limited physical therapy in Maryland, License No. A2189, is **REPRIMANDED**; and be it further,

ORDERED that this is a formal order of the Board and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions § 4-333(b).

03/18/2025
Date



Rebecca Holsinger, DPT, PT, NCS, CVIP
Chair
Maryland Board of Examiners of Psychologists

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 13-318, and Md. Code Ann., State Gov't § 10-222, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days of the date this Final Decision and Order is mailed and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

If you file an appeal, the Board is a party and should be served with the court's process. In addition, if an appeal is filed, you are requested to send a copy to the Board's counsel, Brett Felter, at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is no longer a party to this case and need not be served or copied.