

IN THE MATTER OF	*	BEFORE THE STATE BOARD
JACK “WES” BOLING, P.T.	*	OF PHYSICAL THERAPY
License No.: 23441	*	EXAMINERS
Respondent	*	Case Numbers: PT 19-19 & 20-11
* * * * *	*	* * * * *

CONSENT ORDER

On January 13, 2020, the Maryland State Board of Physical Therapy Examiners (the “Board”) charged Jack W. Boling, P.T. (the “Respondent”), License Number 23441, with violating provisions of the Maryland Physical Therapy Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 13-101 *et seq.* (2014 Repl. Vol & 2019 Supp.).

Specifically, the Board charged the Respondent with violating the following provisions of Health Occ. § 13-316:

Health Occ. § 313-316. Denials, reprimands, probations, suspensions, and revocations – Grounds

Subject to the hearing provisions of § 13-317 of this subtitle, the Board may deny a license or restricted license to any applicant, reprimand any licensee or holder of a restricted license, place any licensee or holder of a restricted license on probation, or suspend or revoke a license or restricted license if the applicant, licensee or holder:

- ...
(15) Violates any provision of this title or rule or regulation adopted by the Board;
- ...
(19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy;
- ...
(25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care[.]

The Board further charged the Respondent with the following violations of the Board's regulations:

Code of Maryland Regulations (Md. Code. Regs.) 10.28.02.02 – Sexual Misconduct:

- A. A physical therapist or physical therapist assistant may not engage in sexual misconduct.
- B. Sexual misconduct includes, but is not limited to:
 - ...
 - (d) Therapeutically inappropriate or intentional touching of a sexual nature;
 - ...
 - (7) Physical contact of a sexual nature with a patient[.]

Md. Code. Regs. 10.28.03.02 – Standards of Practice:

- A (2) The physical therapist shall:
 - (a) Exercise sound professional judgement in the use of evaluation and treatment procedure;
 - ...
 - (c) Provide the patient with accurate information about the physical therapy services provided[.]

Md. Code. Regs. 10.38.02.01 – Code of Ethics:

- ...
- B. The physical therapist...shall respect the dignity of the patient[.]

For reasons set forth below (see Section II A), effective November 15, 2019, the Board summarily suspended the Respondent's license to practice physical therapy in Maryland, concluding that the public health, safety or welfare imperatively required emergency action (**Case Number PT 20-11**). On December 17, 2019, after a post-

deprivation hearing before the Board, the Board issued an Order to continue the Respondent's suspension.

On February 18, 2020, a conference with regard to this matter was held before the Board's Case Resolution Committee ("CRC"). As a result of the CRC, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has reason to believe are true:

1. At all times relevant to the charges herein, the Respondent was licensed to practice physical therapy in the State of Maryland under license number 23441. The Respondent was originally licensed on September 28, 2010. The Respondent's license is scheduled to expire on May 31, 2021. The Respondent also holds an inactive license in Florida.
2. At times relevant to the current allegations herein, the Respondent was employed as a staff physical therapist at a medical practice (the "Practice") in Glenn Dale, Maryland.¹
3. The Respondent was terminated from employment at the Practice on November 5, 2018.

¹ Names of facilities, patients and other individuals are confidential.

I. Prior Disciplinary Action – 2015 Consent Order – Case Number PT15-04

4. On March 18, 2015, the Board charged the Respondent with the following violations of the Act: practices physical therapy with an unauthorized person or supervises or aids an unauthorized person in the practice of physical therapy, in violation of Health Occ. § 13-316 (11); willfully makes a false report or record in the practice of physical therapy, in violation of Health Occ. § 13-316 (12); and violates any provision of this title or rule or regulation adopted by the Board, in violation of Health Occ. § 13-316 (15).
5. The Board further charged the Respondent with violating Md. Code Regs. 10.38.03.02 – Standards of Practice – A. Physical therapists...(2) The physical therapist shall: ...(g) reevaluate the patient as the patient’s condition requires, but at least every 30 days, unless the physical therapist, consistent with accepted standards of physical therapy, documents in the treatment record an appropriate rationale for not reevaluating the patient.
6. This case arose when a former patient of the Respondent (“Patient A”), who presented for treatment of a herniated disc and low back pain, complained to the Board that the Respondent had treated her in an inappropriate manner during a treatment session. Specifically, Patient A complained that during the session, the Respondent turned his back to her, revealing approximately two to three inches of his intergluteal cleft. The Respondent then asked Patient A to touch him where her pain was most prevalent. Patient A declined to touch the Respondent. Patient A complained to the Board that she was “stunned,” “embarrassed,” and “felt violated”

by the Respondent's conduct. Patient A requested not to be treated by the Respondent.

7. In subsequent visits, Patient A was treated by a chiropractor who worked with the Respondent but was not authorized to practice physical therapy. The Respondent was documented as the provider on subsequent treatment notes. The Respondent was also indicated on subsequent billing records as the provider of Patient A's physical therapy services.
8. Neither the Respondent nor any other practitioner who was authorized to practice physical therapy reevaluated Patient A's condition or documented why a reevaluation was not performed
9. On May 28, 2015, the Respondent entered into a Consent Order ("2015 Consent Order") with the Board to resolve the Board's charges against him. Under the terms of the 2015 Consent Order, the Board adopted the allegations of fact set forth in the charging document as findings of fact. The Board concluded as a matter of law that the Respondent violated the disciplinary grounds and regulations under which he was charged
10. Under the terms of the 2015 Consent Order, the Respondent was placed on probation for a minimum of one (1) year. During probation, the Respondent was required to take the Board's closed-book jurisprudence examination with a score of at least 90 percent, to enroll in a Board-approved continuing education course in cultural competency and a separate Board-approved course in mitigating professional risk, to submit to the Board on a quarterly basis a minimum of at least

three (3) patient records for review for compliance with standards of practice, including billing practices; and to pay a fine of \$5,000.

11. By Order dated July 19, 2016, the Board terminated the Respondent's probation as he had successfully complied with the terms and conditions imposed by the Board in the 2015 Consent Order.

II. Current Allegations

A. Case Number PT 20-11

12. On or about October 31, 2019, the Board received a complaint from the owner of the Practice ("PT 1") after he received information about the Respondent's inappropriate treatment of a female former patient ("Patient 1") of the Practice.
13. At the time of PT 1's complaint, the Respondent had been terminated from the Practice.
14. The Board thereafter initiated an investigation.
15. PT 1 was notified by Patient 1's orthopedic physician ("Physician 1") that Patient 1 had not continued treatment at the Practice because the Respondent had touched her pubic area in an inappropriate manner.
16. In furtherance of its investigation, Board staff contacted Patient 1. Patient 1 stated that she had a prior surgery to repair a meniscus tear of her right knee. Physician 1 had referred Patient 1 to the Practice after Patient 1 complained of increased right knee pain during the Summer of 2018.

17. On or about November 5, 2018, Patient 1 initially presented to the Respondent. She wore spandex tights to the appointment after Practice staff instructed her not to wear loose-fitting clothes.
18. The Respondent initially met with Patient 1 in a common area of the office.
19. The Respondent spent several minutes discussing his belief in “whole body healing” and how every body part is connected in some way. While discussing “whole body healing” the Respondent checked the range of motion in her right knee. The Respondent told Patient 1 that her range of motion was “pretty good.”
20. The Respondent then directed Patient 1 to go to a private examination room with him.
21. Once in the examination room, the Respondent instructed Patient 1 to lie on her back. The Respondent resumed his discussion about “whole body healing” and once again checked the range of motion in her knee.
22. The Respondent, who was standing at the side of the examining table, then pressed on Patient 1’s pelvic area with his fingers.
23. The Respondent pressed down on Patient 1’s pubic bone with three of his fingers.
24. The Respondent directed Patient 1 to lift her right leg. He supported her right leg with his left hand. The Respondent then placed his right hand under Patient 1 and began to press on her coccyx (tail bone).
25. Patient 1 told the Respondent that she did not think what he was doing to her was a good idea. The Respondent immediately let go of Patient 1’s leg and told her that

the consultation was over. The Respondent instructed Patient 1 to make another appointment at the front desk.

26. The Respondent's actions made Patient 1 was very uncomfortable. She decided not to return for physical therapy treatment at the Practice right away.
27. In early 2019, Patient 1 contacted the Practice to schedule an appointment because her right knee was painful. Patient 1 told Practice staff that she did not want to be treated by the Respondent because she had felt very uncomfortable when he had previously treated her. A Practice staff member told her that the Respondent was no longer at the Practice. Patient 1 made an appointment at the Practice but did not keep it.
28. On or about October 28, 2019, Patient 1 presented to Physician 1 with complaints of shoulder pain and bilateral knee pain. Patient 1 told Physician 1 that she had not returned to the Practice for physical therapy because of how the Respondent had treated her at the November 5, 2018 appointment.

B. Case Number PT 19-19

29. On or about December 17, 2018, the Board received a complaint from the Clinical Director of the Practice.
30. The complaint alleged that the Respondent had acted inappropriately with two patients ("Patient B" and "Patient C").
31. Thereafter, the Board initiated an investigation that included obtaining by subpoena the Respondent's personnel file and interviewing under oath the Respondent, Patient B, the parent of Patient B ("Parent 1"), Patient C and Practice personnel.

32. Review of the Respondent's personnel file revealed that in 2017 Practice management counseled him regarding the need to maintain patient confidentiality. In 2018, the Respondent was counseled after a complaint from a female patient alleged that the Respondent had treated her in an inappropriate manner. The Respondent was warned to "never touch [patients] in areas where you are not treating them for any reason....When evaluating or treating patients, do not get too close to them so that they felt uncomfortable, however, inform the patient every step of the evaluation what you are doing, and why." Also in 2018, the Respondent was counseled that reporting to work in an impaired state was unprofessional, irresponsible, and put patients at risk.

Patient B

33. On November 5, 2018, Patient B, then a 17-year-old male, and his mother ("Parent 1") initially presented to the Practice. Patient B had undergone knee surgery several months prior to this visit. Patient B was a high school athlete and was upset about his sports-related injury.
34. The Respondent treated Patient B at the initial visit.
35. Parent 1 and Patient B were several minutes late for the appointment and Parent 1 had telephoned the Practice to advise of their lateness.
36. During the appointment, the Respondent asked Patient B questions regarding his condition. Parent 1 attempted to respond to some of the questions regarding dates to ensure that the responses were accurate. As Parent 1 attempted to respond, the

Respondent put his hand up to Parent 1's face on several occasions and said that he was not talking to her.

37. The Respondent continued to ask questions of Patient B, but as Patient B started to explain how his injury occurred, the Respondent interrupted him and told him to speak up.
38. Parent 1, who was seated near Patient B, called another employee over and asked if the Respondent was always rude. The employee just shrugged in response.
39. After the appointment, Patient B asked Parent 1 if he had done anything wrong and was upset that he had not answered the Respondent's questions to the Respondent's satisfaction, given the Respondent's reaction to him.
40. Parent 1 declined to see the Respondent at subsequent visits because she felt that the Respondent had been rude and disrespectful to both herself and Patient B.
41. A physical therapist other than the Respondent ("PT 2") treated Patient B at subsequent visits. Parent 1 discussed with PT 2 the Respondent's conduct.

Patient C

42. Patient C, then a fifty-two-year-old male, was referred by his physician to the Practice for physical therapy for lumbar strengthening and stretching exercises. Patient C's physician had diagnosed Patient C with lumbar region spondylosis with radiculopathy.
43. Patient C initially presented to the Practice on November 5, 2018 and was seen by the Respondent.
44. The Respondent instructed Patient C to lay on his back on an examining table.

45. The Respondent touched Patient C's penis and manipulated his genitals through Patient C's clothes during the session. The Respondent told Patient C that this would make Patient C's back feel good.
46. The Respondent did not explain to Patient C what he was doing at any time during the session.
47. Although Patient C was concerned regarding the Respondent's actions during the session, Patient C did not say anything during the session because he thought the Respondent knew what he was doing.
48. Upon returning home after the November 5, 2018 office visit, Patient C discussed the Respondent's conduct with his wife. Patient C's wife was also concerned and told Patient C that the Respondent's conduct was not right.
49. On November 12, 2018, Patient C returned to the Practice and was seen by PT 2.
50. Patient C told PT 2 that he was relieved that the Respondent was not treating him and told PT 2 about the Respondent's conduct.
51. PT 2 reported the Respondent's conduct to the Board.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Health Occ. § 13-316 (15), (19) and (25) and Md. Code Regs. 10.38.02.02A and B, 10.28.03.02A(2), and 10.38.02.01B.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 25TH day of MARCH, 2020, by a majority of the quorum of the Board:

ORDERED that the Respondent's license to practice physical therapy is **SUSPENDED** for a minimum of **ONE (1) YEAR**,² and it is further

ORDERED that the summary suspension imposed upon the Respondent effective November 14, 2019 is terminated as moot; and it is further

ORDERED that during the suspension, the Respondent shall comply with the following terms and conditions of the suspension:

Within the first **SIX (6) MONTHS** of the suspension period, the Respondent shall, **at his own expense**, undergo a mental health evaluation by a Board-approved mental health provider, under the following terms.

- a) The Respondent shall sign and update the written release/consent forms requested by the Board, including release/consent forms to authorize the mental health provider to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from the provider's records and files in a public order. The Respondent shall not withdraw his release/consent;
- b) The mental health provider shall in a timely manner submit to the Board a detailed report regarding the Respondent's evaluation, including the Respondent's ability to practice physical therapy in a safe manner and recommendations for further treatment or restrictions on the Respondent's practice, if any;
- c) The Respondent shall comply fully with any treatment recommendations proposed by the mental health provider and approved by the Board;
- d) the Respondent's failure to comply with any of the above terms or conditions constitutes a violation of this Consent Order;

² If the Respondent's license expires during the period of the suspension, the suspension and any conditions will be tolled.

ORDERED that the Respondent shall not apply for early termination of suspension;
and it is further

ORDERED that after **ONE (1) YEAR** of suspension, the Respondent may petition the Board to terminate the suspension, provided he has complied with all the terms of the suspension and there are no complaints pending against him; and it is further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing physical therapy; and it is further

ORDERED that, if the Board determines, after notice and an opportunity for a hearing, that the Respondent has failed to comply with any term or condition of this Consent Order, the Board may impose further disciplinary action and/or a monetary penalty. The burden is upon the Respondent to prove his compliance with the Consent Order; and it is further

ORDERED that the Respondent shall bear all costs associated with fulfilling the terms of the Consent Order; and it is further

ORDERED that, unless stated otherwise in the Consent Order, any time period prescribed in this order begins when the Consent Order goes into effect. and it is further

ORDERED that for purposes of public disclosure, as permitted by Md. Code Ann., General Provisions Article § 4-333(b), this document consists of the foregoing Findings of

Fact, Conclusions of Law and Order and that the Board may disclose same to any national reporting data bank to which it is mandated to report.

3/25/20
Date

Sumesh Thomas, P.T.
Chair
Maryland State Board of Physical
Therapy Examiners

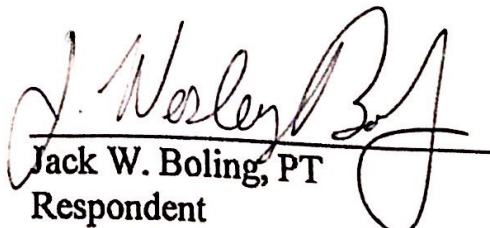
CONSENT

I, Jack W. Boling, PT, acknowledge that I have had the opportunity to be represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order 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 allegations. 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 am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing. I acknowledge that this is a formal order of the Board and as such is a public document.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

3/25/20
Date

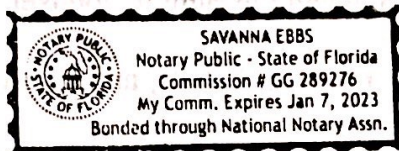

Jack W. Boling, PT
Respondent

STATE OF MARYLAND

CITY/COUNTY OF Duval

I HEREBY CERTIFY that on this 25th day of March 2020, before me, a Notary Public of the foregoing State and City/County personally appeared Jack W. Boling, PT, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



[Signature]
Notary Public

My commission expires: January 7, 2023