

IN THE MATTER OF

*

BEFORE THE STATE BOARD

CARLO M. CAPULONG, P.T.

*

OF PHYSICAL THERAPY

License No.: 22757

*

EXAMINERS

Respondent

*

Case Number: PT 19-15

* * * * *

FINAL DECISION AND ORDER

On February 8, 2019, the Maryland State Board of Physical Therapy Examiners (the “Board”) charged **CARLO M. CAPULONG, P.T.** (the “Respondent”), License Number 22757, with violations of certain provisions of the Maryland Physical Therapy Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 13-101 *et seq.* (2014 Repl. Vol. & 2017 Supp.).

Specifically, the Board charged the Respondent with violations of the following provisions of H.O. § 13-316:

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:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license...for the ...licensee...;

...

- (10) Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country...for an act that would be grounds for

disciplinary action under the Board's disciplinary statutes;

...

- (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[.]

The Board further charged the Respondent with violations of Md. Code Regs.

10.38.03.02 – Code of Ethics:

...

H. A licensee shall notify the Board in writing within 60 days if any license, certificate, permit, or registration granted by another state for the practice of physical therapy or limited physical therapy has been limited, restricted, suspended, revoked, or subjected to other disciplinary action by the licensing or certifying authority[.]

On January 21, 2020, a the Board held an evidentiary hearing before a quorum of the Board, in accordance with Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-201 *et seq.*, and the Board's regulations, COMAR 10.38.05. After the conclusion of the hearing, the same quorum of the Board convened to deliberate and voted to sanction the license held by the Respondent for the reasons set forth in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

The following documents were entered into evidence.

A. Documents

Joint Exhibits

1. PT Board licensing system report
 2. May 29, 2018 Application for Reinstatement of PT License
 3. October 4, 2018 Disciplinary Action Jurisdiction Notification
 4. October 22, 2018 Respondent's responses to Board staff email
 5. October 22, 2018 Subpoena *Ad Testificandum* with transcript of November 7, 2018 Board Interview of Respondent
 6. May 21, 2018 Virginia Board of Physical Therapy Notice of Informal Conference and Statement of Allegations
 7. August 21, 2018 Virginia Board of Physical Therapy Order
 8. [WITHDRAWN BY AGREEMENT OF THE PARTIES]
 9. February 8, 2019 Charges Under the Maryland Physical Therapy Act
- #### Respondent's Exhibits
1. Termination of Probation - VA Board of Physical Therapy (January 16, 2020)
 2. Letter of Reference: Nancy J. Elling, BSN RN CPN (Family / Patient Reference)
 3. Letter of Reference: Dennis Angeles, PT (Clinical Reference)
 4. Letter of Reference: Marquita Harper, Wellness Nurse (Facility Reference)
 5. Certificates of Completion for Continuing Educational Credits (Majority

Ethics-Focused)

B. Witnesses

State: None

Respondent: Carlo M. Capulong, P.T., Respondent

The Respondent testified on his own behalf. He answered all questions from his counsel and the prosecution. He explained that he admitted to the charges and regretted not appealing his case in Virginia. The Respondent admitted that he had made over 150 billing errors in Virginia over the course of a year which the subject his order in that state. He did not inform Maryland about that matter in his initial application.

FINDINGS OF FACT

The following findings of fact were stipulated by the parties:

1. At all times relevant to the charges herein, the Respondent was licensed to practice physical therapy (“PT”) in the State of Maryland. The Respondent was originally licensed in Maryland on November 21, 2008.
2. The Respondent’s Maryland license expired on May 31, 2015. The Respondent applied for reinstatement of his license on May 29, 2018 and the Board approved his reinstatement application.
3. The Respondent’s Maryland PT license is scheduled to expire on May 31, 2019.
4. The Respondent also holds an active license in Virginia and inactive licenses in Texas and North Carolina.

5. On or about October 4, 2018, the Board was notified by the Federation of State Boards of Physical Therapy that the Respondent had been disciplined by the Virginia Board of Physical Therapy (“Virginia Board”) effective August 21, 2018.
6. Upon notification of the Respondent’s discipline in Virginia, the Board initiated an investigation that included obtaining pertinent documents related to the Virginia Board’s action, requesting the Respondent to respond to the allegations related to the discipline, and interviewing the Respondent under oath.

Virginia Board Discipline

7. On or about June 2, 2016, the Virginia Board notified the Respondent that the Board had received a complaint regarding him. On or about October 6, 2016, the Virginia Board notified the Respondent that it had received a second complaint regarding the Respondent.
8. On or about July 26, 2016, the Respondent, who was accompanied by counsel, was interviewed by Virginia Board staff regarding the first complaint.
9. On or about December 29, 2016, the Respondent, who was accompanied by counsel, was interviewed by Virginia Board staff, regarding the second complaint.
10. On May 21, 2018, the Virginia Board issued to the Respondent a Notice of Informal Conference and Statement of Allegations (Statement of Allegations”).
11. The Statement of Allegations notified the Respondent that: 1) between May 2015 and February 2016, during the course of his employment as a PT at Facility 1,¹ he

¹ Names of patients and facilities are confidential.

fraudulently documented visits, treatment notes or evaluations for 17 patients that did not occur; and 2) between June 6, 2016 and June 24, 2016, during the course of his employment as a PT at Facility 2, the Respondent fraudulently documented patient visits, treatment notes or evaluations, and mileage for nine patients that did not occur.

12. The Statement of Allegations specifically noted that the Respondent documented multiple visits to patients in group homes that could not have occurred because the patients were not at the group home at those times.
13. The Statement of Allegations further noted that the Respondent fraudulently documented between one and 15 patient visits that did not occur for the 26 patients at issue.
14. The Statement of Allegations notified the Respondent that an informal conference would be held regarding the allegations.
15. The informal conference was held on August 16, 2018.
16. Effective August 21, 2018, the Virginia Board issued an Order in which the Board concluded as a matter of law that the Respondent violated the following provisions of the Board's disciplinary statutes and regulations:

Virginia Code § 54.1-3480. Refusal, revocation or suspension.

A. The Board may...suspend...revoke any license or censure or reprimand any person or place hm on probation for such time as it may designate for any of the following causes:

- (1) False statements or representations or fraud or deceit...in the practice of physical therapy;

...

- (3) Unprofessional conduct as defined by this chapter[.]

Virginia Code § 54.1-3480(3) – Unprofessional Conduct

Any physical therapist...licensed by the Board shall be considered guilty of unprofessional conduct if he:

...

- (7) Performs any act likely to deceive, defraud or harm the public;

- (9) Violates...any of the provisions of this chapter or regulations of the Board[.]

Virginia Regulations Governing the Practice of Physical Therapy

Part IV. Standards of Practice

18 VAC 112-20-160. Requirements for patient records.

...

C. Practitioners shall properly manage and keep timely, accurate, legible and complete patient records;

D. Practitioners who are employed by a health care institution, school system or other entity, in which the individual does not own or maintain his own records, shall maintain patient records in accordance with the policies and procedures of the employing entity[.]

17. In the August 21, 2018 Order, the Virginia Board placed the Respondent on indefinite probation for a minimum of 12 months under terms and conditions that included that the Respondent successfully complete Board-approved courses of at least three hours of Continuing Education each in ethics and documentation. The Respondent was further required to submit to the Board on a quarterly basis “Self Reports” that include his current address, telephone number, email address and verification of all current practice employment.

Maryland Reinstatement Application

18. On May 29, 2018, the Respondent electronically transmitted to the Board an application for reinstatement of his license, which had expired in 2015.

19. The Respondent answered NO to the following questions on the application:

...

3. Has a state, federal, or foreign licensing or disciplinary board or agency (including Maryland, D.C. and Puerto Rico), or a comparable body of the armed service, filed any complaints against you, or investigated you for any reason[?]

20. The Respondent failed to report that in 2016, the Virginia Board had investigated two complaints that had been filed against him.

The Board determined the following findings of fact:

21. By email dated October 22, 2018, the Respondent provided responses to Maryland Board staff's questions regarding his discipline in Virginia.

22. The Respondent responses to the Board's inquiries were not true and accurate. The Respondent had been notified of the Virginia Board's investigation of the complaints against him and had been interviewed regarding the complaints in 2016, over one year before he applied for reinstatement of his Maryland license.

23. On November 7, 2018, the Respondent was interviewed under oath by Board staff. When asked why he had failed to report the Virginia Board's investigation of when responding to Question 3 on the reinstatement application, the Respondent initially stated that he had "interpreted [the question] in a different way... I was just – I was basing that question, has an order been given to me." The Respondent later agreed that he may have forgotten about the Virginia action and further stated, "And of

course, I was thinking, well, no order has been given to me yet. So maybe it's safe to answer no, you know, anything along those lines at least."

24. The Respondent has been disciplined by the Virginia Board for making false statements in the practice of physical therapy and unprofessional conduct in the practice of physical therapy for acts that would be grounds for discipline in Maryland.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes that the Respondent violated Health Occ. § 13-316 (1), (10), (15) and (19). The Board further finds that the Respondent violated Md. Code Regs. 10.38.03.02(H). The Respondent admitted to these violations of law except for Health Occ. § 13-316 (1). The Board found that the Respondent fraudulently or deceptively obtained a license in violation of Health Occ. § 13-316 (1). The facts support the Board's conclusion that the Respondent's failure to disclose his status in Virginia at the time of his reinstatement was deceptive (at a minimum). The Board reinstated his license because he did not disclose information about his status in Virginia. If the Board had all of the information at the time he applied for reinstatement, it might not have reinstated his license. Therefore, the Board concludes that his actions were deceptive and in violation of the practice act.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent shall be placed on **PROBATION** for a minimum of one (1) year; and it is further,

ORDERED that during the probationary period, the Respondent shall comply fully with the following terms and conditions:

- (1) Within six (6) months of the beginning of the Respondent's probationary period, he shall successfully pass the Board's closed-book law examination with a passing score of 90 percent;
- (2) Within six (6) months of the beginning of the Respondent's probationary period, he shall successfully pass the Ethics and Boundaries Assessment Services Essay Examination; and
- (3) Within six (6) months of the beginning of the Respondent's probationary period, he shall pay a fine of \$2,500.00; 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 failure to comply fully and satisfactorily with the terms and conditions of the Order shall constitute a violation of probation; 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 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 Order; and it is further,

ORDERED that the Respondent may petition the Board to terminate probation after a minimum of one (1) year from the effective date of the probation, provided that the Respondent has fully complied with the above conditions and no complaints regarding the Respondent are pending before the Board; and it is further,

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

ORDERED that, unless stated otherwise in the Order, any time period prescribed in this order begins when the 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.

3/19/20
Date

Sumesh Thomas
Sumesh Thomas, DPT
Chair
Maryland State Board of Physical
Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 13-318, you have the right to take a direct judicial appeal. Any petition for judicial review shall be filed within thirty (30) days of this Final Decision and Order and shall be made as provided for 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.