

IN THE MATTER OF

\*

BEFORE THE MARYLAND

IBRAHIM CHAPEYAMA, P.T.

\*

STATE BOARD OF

RESPONDENT

\*

PHYSICAL THERAPY EXAMINERS

LICENSE NUMBER: 21001

\*

CASE NUMBER: 11-45

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

### CONSENT ORDER

On or about, the Maryland Board of Physical Therapy Examiners (the "Board"), charged **IBRAHIM CHAPEYAMA, P.T.** (the "Respondent") (D.O.B.: 7/14/53), **License Number 21001** with violations of certain provisions of the Maryland Physical Therapy Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 13-101 *et seq.* (2009 Repl. Vol. and 2011 Supp.).

Specifically the Board charged the Respondent with the following provisions under § 13-316 of the Act:

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:

(4) In the case of an individual who is authorized to practice physical therapy is grossly negligent:

(i) In the practice of physical therapy;

(15) Violates any provisions 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; and

(25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy[.]

The pertinent provisions of the Code of Maryland Regulations (“COMAR”) referred to, *infra*, in §13-316 (15) provides the following:

**COMAR 10.38.03.01 Code of Ethics.**

§ C The physical therapist and physical therapist assistant shall protect the patient’s right to privacy by not divulging confidential information without consent of the patient or guardian unless required by law.

§ I The physical therapist and physical therapist assistant shall provide and maintain medical records in accordance with Health-General Article §§ 4-301 *et seq.*, Annotated Code of Md.

**COMAR 10.38.03.02 Standards of Practice.**

§ A (1) The physical therapist who establishes or changes the plan of care shall be ultimately responsible for patient care until another physical therapist:

- (a) Provides services to the patient; or
- (b) Provides supervision to the treating physical therapist assistant

**COMAR 10.01.16.05 Disposal of Medical Records.**

§ A A health care provider shall maintain a medical record in accordance with the records retention schedule and may dispose of the record when the minimum retention requirements as described in Regulation .04B of this chapter have been met.

§ B For purposes of destruction, a medical record is an indivisible entity unless, in the health care provider’s professional judgment, the medical record is divisible.

§ C A health care provider shall ensure confidentiality of medical records throughout the disposal process:

- (1) For paper records, by incineration, shredding, pulping, or other comparable process which renders the records permanently unreadable;
- (2) For electronic or magnetic media, such as computer disks or magnetic tapes, by completely sanitizing the media, and not just by erasure or deletion;
- (3) For other media, such as film, photos, or compact discs, by destroying the media with no possibility of recovery; and
- (4) By complying with the HIPAA security provisions at 45 CFR §164.310(d), as amended.

The pertinent provision of Md. Health General Code Ann. (“H.G.”) §§ 4-301 *et seq.*, provide the following:



## **§ 4-301 Definitions**

### **Disclose or disclosure**

(c) "Disclose" or "disclosure" means the transmission or communication of information in a medical record, including an acknowledgment that a medical record on a particular patient or recipient exists.

## **§ 4-309 Violations of Subtitle**

### **Disclosure violations**

(c) A health care provider or any other person is in violation of this subtitle if the health care provider or any other person:

- (1) Requests or obtains a medical record under false pretenses or through deception; or
- (2) Discloses a medical record in violation of this subtitle.

## **§ 4-403 Retention, destruction of medical records**

### **Destruction of medical records and reports**

(b) Except for a minor patient, unless a patient is notified, a health care provider may not destroy a medical record or laboratory or X-ray report about a patient for 5 years after the record or report is made.

### **Notification of patient**

(d) The notice under subsections (b) and (c) of this section shall:

- (1) Be made by first-class mail to the last known address of the patient;
- (2) Include the date on which the record of the patient shall be destroyed; and
- (3) Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30 days of the proposed date of destruction.

### **Notification after discontinuance of practice or business**

(e) After the death, retirement, surrender of the license, or discontinuance of the practice or business of a health care provider, the health care provider, the administrator of the estate, or a designee who agrees to provide for the maintenance of the medical records of the practice or business and who states, in writing to the appropriate health occupation board within a reasonable time, that the records will be maintained in compliance with this section, shall:

- (1) Forward the notice required in this section before the destruction or transfer of medical records; or
- (2) Publish a notice in a daily newspaper that is circulated locally for 2 consecutive weeks:
  - (i) Stating the date that the medical records will be destroyed or transferred; and

- ii) Designating a location, date, and time where the medical records may be retrieved, if wanted.

On April 17, 2012, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, and Consent.

### **FINDINGS OF FACT**

The Board finds the following:

#### **I. BACKGROUND**

1. At all times relevant hereto, the Respondent was and is a physical therapist, licensed to practice in the State of Maryland. Prior to immigrating to the United States, the Respondent practiced physical therapy in Kenya. The Respondent was initially licensed in Maryland on September 9, 2003. The Respondent's license expires on May 31, 2013. Respondent also maintains an active license in Pennsylvania and an inactive license in Michigan.

2. At all times relevant hereto, the Respondent was engaged in the private practice of physical therapy. In or about April 2005, the Respondent began his employment with physical therapy facility ("P.T. Facility A"<sup>1</sup>) located in Cumberland, MD. In the same month, Respondent purchased the practice and renamed it "P.T. Facility B".

3. In 2007, Respondent moved the offices of P.T. Facility B from its original location to an a new office in Cumberland, MD 21502.

4. On or about March 3, 2011, the Respondent closed P.T. Facility B following a court-ordered eviction.

---

<sup>1</sup> Facility names will not be used in this document in order to preserve confidentiality.



## **II. THE COMPLAINT**

5. On or about April 18, 2011, the Board received a complaint (“the Complaint”) from a former patient of the Respondent, (“Patient A”) alleging that the Respondent improperly disposed of medical records, resulting in disclosure of private, confidential, patient information.

6. Thereafter, the Board initiated an investigation of the allegations set forth in the Complaint. As part of its investigation, the Board interviewed several witnesses, including the Respondent and Patient A, and obtained photographs of the discarded records.

7. The results of the Board’s investigation are set forth *infra*.

## **III. BOARD INVESTIGATION**

8. On or about April 27, 2011, Board staff interviewed Patient A, who stated that while employed with a newspaper delivery service, he discovered hundreds of pages of Allegheny P.T.’s medical records abandoned in a public dumpster.

9. The discarded records included his own medical records while he was a patient of both P.T. Facility A and B. These records contained personal information including insurance and billing information, confidential medical data as well as names, addresses and telephone numbers.

10. Patient A had never been contacted by the Respondent and offered the opportunity to pick up his original medical records, prior to disposal.

11. Patient A contacted an agent of P.T. Facility A (“Witness A”) and notified her of his discovery and his concerns about the disclosure of his confidential medical records.

12. On or about April 18, 2011, Witness A personally observed and photographed the discarded medical records. She took digital photographs and verified that the records belonged to patients of P.T. Facility B.

13. Witness A attempted to notify the Respondent by leaving a message on his answering machine. She requested that he retrieve the abandoned records but the Respondent did not return her call.

14. Witness A contacted the Board and advised Board staff of her involvement and personal observations of the records.

15. On or about April 22, 2011, Board staff interviewed a maintenance worker ("Witness B") from the Respondent's former office building. Witness B stated that he had observed the Respondent and his son removing boxes from the P.T. Facility B office prior to the Respondent's eviction but could not confirm whether the boxes contained medical records.

16. On or about May 18, 2011, the Respondent was interviewed by Board staff and admitted, under oath, that when he purchased P.T. Facility A in 2005, he took possession of the building, all equipment and the existing patient records. He also purchased the right to provide continuity of care to existing patients and hoped to ultimately maintain them as his own patients.

17. For the existing patients who continued care with P.T. Facility B, the Respondent created new P.T. records. Respondent claimed that his professional responsibility for the old patient records was 75% and that the previous owners' responsibility was 25%.

18. Due to financial difficulties, which included back rent of \$25,000, the Respondent's practice closed in March 2011 following a court-ordered eviction. At the time of eviction, the Respondent believed that he was not responsible for the medical records that preceded his acquisition of the practice.

19. Prior to eviction, the Respondent removed only the records created by P.T. Facility B and left approximately fifteen (15) to twenty (20) boxes of records created by P.T. Facility A, in the office from where he was evicted.

20. Respondent claimed to have no knowledge as to how his medical records materialized inside a public dumpster.

21. The Respondent offered two possible explanations. First, the bank that owned the mortgage on the building, removed the records from the building following his eviction, and discarded them in the dumpster. Second, staff from P.T. Facility A discarded them in 2007 after the Respondent had moved from the original office location.

22. The Respondent believed that it was permissible to leave medical records in his former office. At no time did the Respondent contact any current or former patients, the previous owners, his attorney, the Board, the bank or a peer to inquire how to legally dispose of medical records.

23. The Respondent admitted to being aware of the strict confidentiality requirements of HIPAA<sup>2</sup>.

24. On or about April 25, 2011, Board staff contacted the company that owned the public dumpster and arranged for the dumpster to be taken to a recycling facility.

---

<sup>2</sup> The Health Insurance Portability and Accountability Act, a 1996 federal statute, which includes stringent requirements for maintaining and protecting the confidentiality of health care information.



25. At the recycling facility, Board staff attempted records recovery but discovered that many of the records had been damaged due to the collection of rainwater in the dumpster.

26. As a result of the damage, the records were sorted into two (2) categories, “recoverable” and “not recoverable”. Unrecoverable documents were placed in an industrial shredder for appropriate disposal.

27. Four hundred and sixty-nine (469) patient records were recovered and transported to the Board’s office for database entry and sorting. The “recoverable” paper records began to show signs of developing mold. A decision was made to notify each patient of their opportunity to claim the records by a certain date. After that time, the remaining records were shredded.

28. Although the Respondent advanced two (2) possible theories as to how his patients’ medical records materialized inside a public dumpster, the Board investigation revealed that neither of those theories were credible. First, the Respondent suggested that the bank may have transported the records from his office to the dumpster. Board staff, however, observed bank officials vacating the Respondent’s unoccupied office following eviction. No bank official was seen removing or transporting any medical records or files, nor would the bank have had any responsibility or obligation to discard medical records left in an abandoned office building following eviction of the tenant.

29. Second, the Respondent suggested that the former owners may have transported the records from the old office and discarded them in the dumpster following his relocation to his new office. Board staff examined the recovered records prior to



shredding and learned that none of the discarded records referenced the old office address used by the previous owners, P.T. Facility A. All of the records referenced the Respondent's new address where he relocated his office in 2007.

#### **IV. SUMMARY**

30. The Respondent divulged confidential information without his patients' consent or knowledge and thereby, failed to protect his patients' right to privacy. He failed to maintain medical records in accordance with state and federal law, mandating strict security provisions for the retention and disposal of confidential medical information. The Respondent also failed to notify his patients and/or the Board, as required, of his intention to destroy or abandon the records.

31. The Respondent's actions, as set forth above constitute, in whole or in part, gross negligence in the practice of physical therapy in violation of H.O. § 13-316(4); violating provision(s) of this title or rule or regulation adopted by the Board in violation of H.O. § 13-316 (15) and the pertinent regulations codified in COMAR; committing an act of unprofessional conduct in the practice of physical therapy in violation of H.O. § 13-316 (19); and failing to comply with accepted standards of practice in the delivery of physical therapy, in violation of H.O. §13-316 (25). The Respondent's conduct, as set forth above, also constitutes, in whole or in part, a failure to maintain the confidentiality of medical records, in violation of H.G. §§ 4-301 *et seq.*

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated H.O.: §13-316(4), (15), (19) and (25); H.G.: §§ 4-301(c), 4-

309(c)(1) and (2); 4-403(b),(d)(1-3), and (e)(1) and (2)(i)(ii); COMAR: §§ 10.38.03.01(C)(I); 10.38.03.02 A(1)(a) and (b); 10.01.16.05 (A),(B) and (C)(1-4).

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 17<sup>th</sup> day of July 2012, by a majority of the Board considering this case:

**ORDERED** that the Respondent's license to practice physical therapy is hereby **SUSPENDED** for a period of **ONE (1) YEAR**, all stayed; and it is further

**ORDERED** that the Respondent's license to practice physical therapy shall be placed on **PROBATION** for a period of **TWO (2) YEARS**, to commence from the date that this Consent Order is executed, and be it further

**ORDERED** that within one (1) year of the date of the Consent Order, the Respondent must complete the next available Board-approved Maryland Physical Therapy Law and Ethics course and be it further

**ORDERED** that within **THREE (3) MONTHS** of the date of this Consent Order, the Respondent shall enroll in and successfully complete a Board-approved course focusing on medical recordkeeping, to include HIPAA and requirements for maintenance, retention and disposal of medical records and it is further

**ORDERED** that within **ONE (1) YEAR** from the date of this Consent Order pay to the Board, a fine in the amount of \$5,000.00 and it is further

**ORDERED** that the Continuing Education requirements required by this Consent Order shall not count toward fulfilling other continuing education requirements that the



Respondent must fulfill in order to renew her license to practice physical therapy; and  
be it further

**ORDERED** that Respondent shall comply with the Maryland Physical Therapy Act and all laws, statutes and regulations pertaining to the practice of physical therapy; and be it further

**ORDERED** that if Respondent violates any of the terms and conditions of this probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before an Administrative Law Judge at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, or after an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case under the Maryland Physical Therapy Act, including a reprimand, probation, suspension, revocation and/or a monetary fine, said violation being proved by a preponderance of the evidence; and be it further

**ORDERED** that at the conclusion of the **TWO (2) YEAR** probationary period and only after the Board's receipt of documentation confirming successful completion of the probationary conditions, the Respondent may petition the Board for termination of probation; and be it further

**ORDERED** that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and be it further

**ORDERED** that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 et seq. (2009 Repl. Vol. and 2011 Supp.).

Date

7/17/12

John Baker, P.T., D.S.C.P.T.

Chair, Board of Physical Therapy Examiners

**CONSENT OF IBRAHIM CHAPEYAMA, P.T.**

I, Ibrahim Chapeyama, P.T., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree and accept to be bound by the foregoing Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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, confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce the Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

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

Date

6/16/12

Ibrahim Chapeyama, P.T.

Respondent



**NOTARY**

**STATE OF MARYLAND**

**CITY/COUNTY OF** Allegany:

I HEREBY CERTIFY that on this 16 day of June, 2012,  
before me, a Notary Public of the foregoing State personally appeared Ibrahim  
Chapeyama, P.T. License Number PT21001, and made oath in due form of law that  
signing the foregoing Consent Order was her voluntary act and deed, and the  
statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Robert W. Lewis  
Notary Public

My Commission Expires: 3/15/2014

