

IN THE MATTER OF * **BEFORE THE STATE BOARD**
KELLY EBERWEIN DELYANNIS, P.T. * **OF PHYSICAL THERAPY**
License No. 17884 * **EXAMINERS**
Respondent *

* * * * *

CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board") and subject to the Maryland Physical Therapy Act ("the Act"), codified at Md. Health Occ. ("H.O.") Code Ann. §§ 13-101 *et seq.* (1994 Repl. Vol.), the Board charged Kelly Eberwein Delyannis, P.T., License No. 17884, ("the Respondent") with violating certain provisions of the Act under Health Occupations § 13-316 and Code Md. Regs. ("COMAR") tit. 10 § 38.01 *et seq.*

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

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

- (13) Willfully makes or files a false report or record in the practice of physical therapy or limited physical therapy;
- (15) Submits a false statement to collect a fee;
- (16) Violates any rule or regulation adopted by the Board; and
- (20) Commits an act of unprofessional conduct in the practice of physical therapy.

The Board also charged the Respondent with violating the following regulations:

Code Md. Regs. ("COMAR") tit. 10 § 38.02.01 Code of Ethics.

- F. The physical therapist . . . shall report to the Board of Physical Therapy Examiners all information that indicates a person is allegedly performing, or aiding and abetting, the illegal or unsafe practice of physical therapy.

COMAR 10.38.03.02-1 Requirements for Documentation.

- A. As established by the American Physical Therapy Association of Maryland, and as approved by the Board, the physical therapist shall document the patient's chart as follows:

(1) For initial visit:

- (a) Date,
- (b) Condition/diagnosis for which physical therapy is being rendered,
- (c) Onset,
- (d) History, if not previously recorded,
- (e) Evaluation and results of tests (measurable and objective data),
- (f) Interpretation,
- (g) Goals,
- (h) Plan of care, and
- (i) Signature, title (PT), and license number;

(2) For Subsequent visits:

- (a) Date,
- (b) Modalities, procedures, etc.,
- (c) Cancellations, no-shows,
- (d) Response to treatment,
- (e) Signature and title (PT), with identifying signatures appearing on the patient's chart, although the flow chart may be initialed,
- (f) Weekly progress or lack of it,
- (g) Unusual incident/unusual response,
- (h) Change in plan of care,
- (i) Temporary discontinuation or interruption of services and reasons,
- (j) Reevaluation, and

* * *

(3) For discharge or last visit:

- (a) Date,
- (b) Reason for discharge,

- (c) Status at discharge,
- (d) Recommendations for follow-up, and
- (e) Signature and title.

On October 7, 2003, a Case Resolution Conference was held at the Board's offices to determine whether there existed the possibility of resolving the pending issues without having an evidentiary hearing. Present were Linda Bethman, Esquire, Board counsel; Ann Tyminski, Executive Director of the Board; Shirley Leeper, P.T.A., Board member; John Shober, P.T., Board member; Kelly Eberwein Delyannis, P.T, Respondent; Marc K. Cohen, Esquire, counsel to the Respondent; Donna J. Senft, Esquire, counsel to the Respondent; and James C. Anagnos, Administrative Prosecutor.

FINDINGS OF FACT

The Board makes the following findings:

1. At all times relevant to the charges herein, the Respondent was licensed to practice physical therapy in the State of Maryland. The Respondent was first licensed on November 15, 1994, being issued License No. 17884.
2. At all times relevant to the charges herein, the Respondent was employed as a physical therapist at Germantown Physical Therapy, Inc. [hereafter "Germantown Physical Therapy"], located at 20528 Boland Farm Road, Suite 211, Germantown, Maryland 20876.

Count I – Patient Specific Allegations

With respect to Patient A, Patient E and Patient I, the Board identified several instances where the medical record documentation for the services rendered by the Respondent did not correspond to the billing statements submitted by Germantown

Physical Therapy to the patient or the patient's insurer. Specifically, the Board found that the description of the modalities and/or procedures for a particular treatment provided by the Respondent did not match the CPT codes billed by Germantown Physical Therapy for that same treatment session. Contrary to the Respondent's documentation, Germantown Physical Therapy submitted claims that included charges that were inconsistent with the Respondent's documented services.

Patient B¹

3. The initial evaluation for Patient B, dated April 4, 2000, performed by the Respondent lacks time frames and objective functional goals.
4. In addition, progress notes for Patient B's April 13, 14, 18, 21, 25, and May 3, 2000 treatments performed by the Respondent lack adequate objective documentation of progress.

Patient G

5. Patient G was treated by the Respondent on June 26, 1999. Patient G's progress note for the June 26, 1999 treatment performed by the Respondent contains no documentation indicating that a reevaluation was performed, even though one was required to be performed prior to that date.

Patient H

6. Patient H was treated by the Respondent on January 13, 1999. Patient H's progress note for the January 13, 1999 treatment performed by the Respondent

¹To ensure the confidentiality, patients' and employees' names are not used in this document.

contains no documentation indicating that a reevaluation was performed, even though one was required.

Patient J

7. Patient J was treated by the Respondent on July 14, 19, 21, and 26, 1999. Patient J's progress notes for treatments performed by the Respondent on those dates contain no documentation indicating that a reevaluation was performed during any of those treatments, even though one was required.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated: H.O. § 13-316(16) (violates any rule or regulation adopted by the Board), to wit, COMAR 10.38.03.02-1 (Requirements for Documentation). All other charges with respect to the Respondent are dismissed.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and agreement of the parties, it is this 18th day of October 2003, by a majority of a quorum of the Board

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further


ORDERED that on or before March 1, 2004, the Respondent shall successfully complete: (a) a Board-approved billing course, focusing on the proper use of ICD-9's and CPT codes; and (b) a Board-approved documentation course; and it is further

ORDERED that if the Respondent fails to comply with the above terms of settlement, such failure will be taken into consideration in the event that the Respondent reapplies for licensure in Maryland; and it is further

ORDERED that the Respondent shall bear all costs associated with the Consent Order; and be it further

ORDERED that for the purposes of public disclosure, as permitted by the Maryland Public Information Act, codified at Md. State Govt. Code Ann. §§ 10-611 *et seq.* (1999 and Supp.), this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order resulting from formal disciplinary proceedings.

October 28, 2003
Date


Margery Rodgers, P.T., Chairperson
State Board of Physical Therapy Examiners

CONSENT OF KELLY EBERWEIN DELYANNIS, P.T.

I, KELLY EBERWEIN DELYANNIS, P.T., by affixing my signature hereto, acknowledge that:

1. I am represented by legal counsel.
2. I am aware that without my consent, my license to practice physical therapy in this State cannot be limited, except pursuant to the provisions of Md. Health Occ. Code Ann. § 13-317 (2000 and Supp.) and the Maryland Administrative Procedure Act, codified at Md. State Govt. Code Ann. §§ 10-201 *et seq.* (1999 and Supp.).

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

4. By this Consent Order, I neither admit nor deny the foregoing Findings of Fact, Conclusions of Law, and Order provided that the Board adopts the foregoing Consent Order in its entirety. 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 as provided by law. I acknowledge the legal authority and the 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.

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

10/22/03
Date

Kelly Eberwein Delyannis P.T.
Kelly Eberwein Delyannis, P.T.

STATE OF: Virginia

CITY/COUNTY OF: Virginia Beach

I HEREBY CERTIFY that on this 22nd day of October 2003, before me, a Notary of the State of Virginia and the City/County of

Virginia Beach, personally appeared Kelly Delyannis, P.T.,

License No. 17884, and made oath in due for of law that signing the foregoing Consent Order was his voluntary act and deed, and that the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.

Lynn Marie Edwards
Notary Public Commissioned as Lynn Newcomb Melton

My Commission expires: Nov 30, 2004