

IN THE MATTER OF * BEFORE THE MARYLAND
JAMES DYETT, P.T.A. * STATE BOARD OF
Respondent * PHYSICAL THERAPY EXAMINERS
License Number: A1457 * Case Number: 2006-10

CONSENT ORDER

On or about August 15, 2006, the Maryland State Board of Physical Therapy Examiners (the "Board"), charged James Dyett P.T.A. (the "Respondent") (D.O.B. 09/04/1965), License Number A1457, with violations of certain provisions of the Maryland Physical Therapy Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") §§ 13-101 *et seq.* (2005 Repl. vol.).

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

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:

- (15) Violates any provision of this title or rule or regulation adopted by this Board;
- (25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

The Board further charged the Respondent with the following violation of the Code of Maryland Regulations ("Code Md. Regs.") tit. 10, § 38.03.02-1C:

The physical therapist assistant shall document the patient's chart each time the patient is seen by the physical therapist assistant following the physical therapist's initial evaluation or reevaluation by including the following:

- (4) Modalities, procedures, or both, including parameters involved, and areas of body treated;
- (5) Objective functional status.

FINDINGS OF FACT

I. BACKGROUND

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

1. At all times relevant to these charges, the Respondent was and is a Physical Therapist Assistant (hereinafter, "P.T.A.") licensed to practice in the State of Maryland. He was initially licensed in Maryland on or about August 1, 1990, and his license is presently active.
2. At the time of the acts described herein, the Respondent was a P.T.A. contractually employed by Patrena Caldwell (hereinafter, "Ms. Caldwell"), a physical therapist, to perform physical therapy services at Maryland Health One, Inc., Belvedere Hotel, One East Chase Street, Baltimore, Maryland. The owner of Maryland Health One was Ms. Dela Cruz, a non-licensee.
3. On or about October 25, 2005, the Board opened an investigation based on its receipt of a complaint alleging false billing filed by a special investigator at Geico regarding physical therapy services

rendered to three patients involved in a motor vehicle accident who filed claims against the insured driver. The Respondent performed physical therapy services for all three patients.

4. As part of its investigation, the Board's investigator subpoenaed documents and conducted interviews of the Complainant, the Respondent, Ms. Caldwell and several employees of Maryland Health One,¹ including Ms. Dela Cruz and the PTA's² who rendered care to the three named patients. Additionally, as part of its investigation, the Board requested that a Physical Therapist conduct an expert review (hereinafter, "reviewer") and issue her opinion with regard to the standard of physical therapy care, the adequacy of documentation and the utilization of services rendered to these three patients. With regard to the three patient records reviewed, the reviewer opined that the Respondent failed to meet the standard of physical therapy care and documentation.
5. Based on its investigation, the Board charged the Respondent with violating Health Occ. § 13-316(15) and (25) and Code Md. Regs. tit. 10, §§ 38.03.02-1.

II. PATIENT RELATED FINDINGS OF FACT

PATIENT 1

¹ The employees interviewed also included those who provided contractual services to Maryland Health One.

² The Board also voted to charge Ms. Caldwell and another PTA stemming from this complaint.

6. Patient 1³ was a 47 year-old male patient, who presented to Maryland Health One on or about August 11, 2005 with complaints of neck pain following a motor vehicle accident. Dr. S conducted an initial physical examination and evaluation and diagnosed Patient 1 with cervical spine sprain, right wrist sprain, lumbar spine sprain and lumbosacral spine sprain. Dr. S's treatment plan for Patient 1 included conservative treatment and physical therapy consultation.
7. On or about August 11, 2005, Ms. Caldwell performed an initial physical therapy evaluation of Patient 1. The evaluation was only partially legible and Ms. Caldwell failed to note the frequency or duration of treatment for Patient 1.
8. On or about August 11, 2005, the Respondent treated Patient 1 with a cold pack, moist heat and electrical stimulation.⁴
9. The Respondent failed to document any parameters for electrical stimulation during this visit.
10. The Respondent failed to include objective functional status of Patient 1 during this visit.
11. The Respondent failed to document provision of exercises during this visit and failed to include information as to why the treatment was not provided.

³ For purposes of confidentiality, patient names will not be used in this document, but will be provided to the Respondent.

⁴ Patient 1 received physical therapy on several additional dates, but by other PTA's or Ms. Caldwell.

12. The Respondent's care and treatment of Patient 1 as outlined above fails to meet accepted standards in delivering physical therapy, constituting a violation of Health Occ. § 13-316 (25).
13. The Respondent's failure to document parameters for electrical stimulation constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(4).
14. The Respondent's failure to document any objective functional status for Patient 1 constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(5).

PATIENT 2

15. Patient 2, a 40 year-old male patient, presented to Maryland Health One on or about August 11, 2005 with complaints of neck pain and back pain following a motor vehicle accident. Dr. S conducted an initial physical examination and evaluation and diagnosed Patient 2 with cervical spine sprain, lumbar spine sprain and lumbosacral spine sprain. Dr. S's treatment plan for Patient 2 included conservative treatment and physical therapy consultation.
16. On or about August 11, 2005, Ms. Caldwell performed an initial physical therapy evaluation of Patient 2. The evaluation was only partially legible and failed to note the frequency or duration of treatment for Patient 2.

17. On or about August 11, 2005, the Respondent performed physical therapy services for Patient 2 including moist heat and electrical stimulation.
18. The Respondent failed to establish and/or document any parameters for electrical stimulation for Patient 2 during this visit.
19. The Respondent failed to include objective functional status of Patient 2 during this visit.
20. The Respondent failed to document provision of exercises during this visit and failed to include information as to why the treatment was not provided.
21. The Respondent's care and treatment of Patient 2 as outlined above fails to meet accepted standards in delivering physical therapy constituting a violation of Health Occ. § 13-316 (25).
22. The Respondent's failure to document parameters for electrical stimulation constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(4).

PATIENT 3

23. Patient 3, a 53 year-old male patient, presented to Maryland Health One on or about August 9, 2005 with complaints of head pain, neck pain and bilateral knee pain following a motor vehicle accident. Dr. S conducted an initial physical examination and evaluation and diagnosed Patient 3 with a contusion of his forehead, post traumatic headaches, cervical spine sprain, lumbosacral spine

sprain and contusions of both knees. Dr. S's treatment plan for Patient 3 included conservative treatment and physical therapy consultation.

24. On or about August 11, 2005, Ms. Caldwell performed an initial physical therapy evaluation of Patient 3. The evaluation was only partially legible and failed to note the frequency or duration of treatment for Patient 3.
25. On or about August 11, 2005, the Respondent performed physical therapy services for Patient 3 including moist heat to both knees, his cervical and lumbosacral spine and electrical stimulation to his lumbosacral spine. The Respondent failed to establish and/or document any parameters for electrical stimulation for Patient 3 during this visit.
26. On or about August 12, 2005, the Respondent performed physical therapy services for Patient 3 including moist heat and ultrasound to his cervical spine and moist heat with electrical stimulation and massage to his lumbosacral spine. The Respondent failed to *establish and/or document any parameters for electrical stimulation for Patient 3 during this visit.*
27. The Respondent failed to include the objective functional status of Patient 3 on August 11 or 12, 2005.

28. On August 11 and 12, 2005, the Respondent failed to document provision of exercises for Patient 3 and failed to include information as to why the treatment was not provided.
29. The Respondent's care and treatment of Patient 3 as outlined above fails to meet accepted standards in delivering physical therapy constituting a violation of Health Occ. § 13-316 (25).
30. The Respondent's failure to document parameters for electrical stimulation constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(4).
31. The Respondent's failure to document any objective functional status for Patient 3 constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(5).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Md. Health Occ. Code Ann. § 13-316(15), Code Md. Regs. tit. 10, § 38.03.02-1C(4), Code Md. Regs. tit. 10, 38.03.02-1C(5) and Health Occ. § 13-316 (25).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 17th day of October, 2006, by a majority of the Board considering this case:

ORDERED that the Respondent's license as a Physical Therapy Assistant shall be **REPRIMANDED**; and be it further

ORDERED that the Respondent shall be placed on **PROBATION FOR A PERIOD OF TWO (2) YEARS**, to commence from the date of this Consent Order, subject to the following terms and conditions:

1. The Respondent shall enroll in and successfully complete the Maryland Physical Therapy Law Course within one year of the execution of this Consent Order;
2. The Respondent shall enroll in and successfully complete a comprehensive Board-approved course in documentation within one year of the execution of this Consent Order;
3. The courses outlined in paragraphs one (1) and two (2) shall be in addition to any Continuing Education requirements mandated for continuing certification as a P.T.A., and shall not count toward fulfilling any certification requirements that the Respondent must fulfill in order to renew his P.T.A. certification;
4. The Respondent shall be required to have the Board review six (6) treatment records on a quarterly basis (every three months) for the duration of his TWO YEAR probationary period as follows:
 - a. The first due date for submission of the treatment records to the Board shall be on or before three months from the date of execution of this Consent Order. The subsequent due dates for the Respondent's treatment records will be on or before three months from the date of the previous submission. The dates of the treatment records for each quarter will reflect treatment by the Respondent during that period of time;
 - b. The Board shall review all aspects of the Respondent's documentation and treatment including but not limited to the use of *billing codes related to physical therapy treatment*;
 - c. The Respondent shall comply with all written recommendations made by the Board following its quarterly review of his treatment records. The Respondent's failure to comply with the Board's written recommendation shall be deemed a violation of this Consent Order;
 - d. The Respondent's failure to submit the quarterly treatment records on or before the due dates outlined in paragraph 4a. shall be deemed a violation of this Consent Order.

5. The Respondent shall pay a monetary fine in the amount of five hundred dollars (\$500) by bank guaranteed check made payable to the Maryland State Board of Physical Therapy Examiners no later than six (6) months from the date this Consent Order is executed;

and be it further

ORDERED that the Respondent shall not petition the Board for early termination of his probationary period or the terms of this Consent Order and that the Respondent's probation may not be terminated while he is being investigated as a result of a subsequent complaint or if he has been charged by the Board with a violation of the Medical Practice Act based upon a subsequent complaint; and be it further

ORDERED the Respondent shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations promulgated thereunder; and be it further

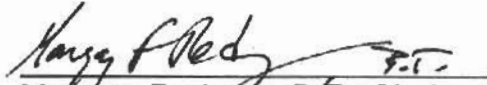
ORDERED after the conclusion of the entire **TWO (2) YEAR PERIOD of PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, but only if the Respondent has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the two year period of probation, and if there are no pending complaints regarding the Respondent before the Board; and be it further

ORDERED that should the Respondent violate any of the terms or conditions of this Consent Order, the Board, after notice and an opportunity for a hearing and determination of violation, may impose any other disciplinary

sanctions it deems appropriate, including suspension or revocation, said violation being proven by a preponderance of the evidence; and be it further

ORDERED that the Respondent shall be responsible for all costs 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 (2004 Repl. vol.).


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

CONSENT OF JAMES DYETT, P.T.A.

I, James Dyett, P.T.A., License Number A1457, by affixing my signature hereto, acknowledge that:

1. I have been advised of my right to be represented by the attorney of my choice throughout proceedings before the Board, including the right to counsel with an attorney prior to signing this Consent Order. I have knowingly, willfully and intelligently waived my right to be represented by an attorney before signing this Consent Order.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 13-317 (2005 Repl. vol.) and Md. State Gov't Code Ann. §§ 10-201 et seq. (2004 Repl. vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after 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 to which I am entitled by law. I am waiving those procedural and substantive protections.

4. I voluntarily enter into the foregoing Findings of Fact and Conclusions of Law and Order and agree to abide by the terms and conditions set forth herein as a resolution of the charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license as a physical therapy assistant.

6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

10/13/06
Date


James Dyett, P.T.A.

STATE OF MARYLAND

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 13th day of October, 2006, before me, Jylva J. Morgan/psm, a Notary Public of the foregoing State and City/County, personally appeared James Dyett, P.T.A., License Number A1457, and made oath in due form of law that signing the foregoing

Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.


Notary Public

My Commission Expires: 8/1/07