

**IN THE MATTER OF**

**ALBERTO FUENTES, II, P.T.**

**License No.: 19434**

**Respondent**

\* **BEFORE THE STATE BOARD**  
\* **OF PHYSICAL THERAPY**  
\* **EXAMINERS**  
\* **Case No.: 01-BP-133**

\* \* \* \* \*

**FINAL CONSENT ORDER**

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board"), and subject to Md. Health Occ. Code Ann. § 13-101 *et seq.* (the "Act"), the Board charged Alberto Fuentes, II, P.T., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation 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, 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) Submits a false statement to collect a fee;
- (16) Violates any provision of this title or rule or regulation adopted by the Board;
- (21) Grossly overutilizes health care services;
- (26) Fails to meet accepted standards in delivering physical therapy care.

The Board also charged the Respondent with violations of the Code Md. Regs. tit. 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,**
- (k) If there is a physical therapy assistant, reevaluate and document as required by Regulation .02L of this chapter;**

**(3) For discharge or last visit:**

- (a) Date,**
- (b) Reason for discharge,**
- (c) Status for discharge,**
- (d) Recommendations for follow-up, and**
- (e) Signature and title.**

The Board issued the charges on January 21, 2003. Thereafter, a Case Resolution Conference was held on April 4, 2003. Following the Case Resolution Conference, the parties agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

### **FINDINGS OF FACT**

The Board makes the following findings:

1. At all times relevant hereto, the Respondent was licensed to practice physical therapy in the State of Maryland. The Respondent was originally licensed on January 6, 1998.

2. At all times relevant hereto, the Respondent was employed as a physical therapist by Concentra Medical Centers, Inc. ("Concentra").

3. On or about March 11, 1999, the Board received a complaint from the Special Investigation Unit of the Injured Workers' Insurance Fund ("IWIF") that Concentra overutilized the following PT procedures, as identified by the Current Procedural Terminology ("CPT") assigned to them:

**95831-** muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report

**95851-** range of motion measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine)

4. Thereafter, the Board conducted an investigation of services provided and claims submitted to IWIF by Physical Therapists ("PTs") and Physical Therapist Assistants ("PTAs") employed by Concentra at the time the complaint was filed. The investigation revealed documentation and coding deficiencies in addition to those originally alleged in the IWIF complaint.

## **CPT CODES**

5. CPT codes provide a uniform language that accurately describes medical, surgical and diagnostic procedures. According to the CPT Manual, the CPT is "the most widely accepted nomenclature for the reporting of physician procedures and service under government and private health insurance programs. CPT is also useful for administrative management purposes such as claims processing and for the development of guidelines for medical care review."

### **a. Codes 95831 and 95851**

6. The CPT codes identified in the IWIF complaint, 95831 and 95851, are classified as Neurology and Neuromuscular Procedures.<sup>1</sup> Both codes are appropriate to evaluate a patient who has suffered deficiencies as a result of a neurological disorder or disease such as stroke or multiple sclerosis in order to document the patient's progression or regression. Both of these codes require the physical therapist to generate a separate report.

7. The term "separate procedure," as used in the description of the codes in the CPT manual, identifies a procedure that is commonly carried out as an integral component of a total service or procedure. The CPT manual states further:

The codes designated as "separate procedure" should not be reported in addition to the code for the total procedure or service of which it is considered an integral component. However, when a procedure or service that is designated as a "separate procedure" is carried out independently or considered to be unrelated or

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<sup>1</sup> The most common CPT codes recorded in Concentra patient records are listed in the Physical Medicine and Rehabilitation section, the first two digits are "97." Unless a four-digit CPT code suffix is specified, the suffix for all codes used herein is "0000."

distinct from other procedures/services provided at that time, it may be reported by itself, or in addition to other procedures/services by appending the modifier "-59" to the specific "separate procedure" code to indicate that the procedure is not considered to be a component of another procedure, but is a distinct, independent procedure. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries).

8. Code 95831 is defined in the CPT manual as follows: Muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report.

9. Code 95851 is defined in the CPT manual as follows: Range of motion ("ROM") measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine).

10. Objective findings such as muscle strength and range of motion are a standard of physical therapy documentation and are to be performed once a week at a minimum. It is not standard physical therapy practice to bill separately for these measurements except when being performed as re-evaluation. It is standard physical therapy practice to assess and interpret objective findings that result from muscle testing and range of motion testing in order to determine whether changes should be made to the patient's treatment plan and/or goals.

**b. Code 97110-Therapeutic exercise**

11. Therapeutic exercise (CPT code 97110) is classified as a therapeutic procedure. A therapeutic procedure is "a manner of effecting change through the application of clinical skills and/or services that attempt to improve

function. Physician or therapist required to have direct (one on one) patient contact."

12. Therapeutic exercise is defined in the CPT manual as follows: Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercise to develop strength and endurance, range of motion and flexibility.

13. Instructing a patient how to perform the exercise is a component of a therapeutic exercise and is not to be billed as a separate charge by the provider.

**c. Code 97112- Neuromuscular re-education**

14. Neuromuscular re-education (Code 97112) is classified as a therapeutic procedure and incorporates all of the elements of therapeutic exercises. Neuromuscular re-education is further defined as the neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture and proprioception.

**d. Code 97530- Therapeutic activity**

15. Therapeutic activity (Code 97530) is classified as a therapeutic procedure and is defined as, "direct (one on one) patient contact by the provider (use of dynamic activities to improve functional performance), each 15 minutes."

**General Allegations of Deficiencies**

16. Throughout the patients' treatment records, the Respondent noted and billed for therapeutic exercises and therapeutic activities in the absence of documentation that the patients required one-on-one supervision, contact or instruction during these activities.

17. Treatment plans as written in initial evaluations are inadequate in that they lack treatment procedures and/or modalities to be provided.

18. CPT codes are used for tests conducted shortly after a patient's initial evaluation. These tests include: range of motion, manual muscle testing, reflexes, girth and grip strength. Objective findings are a standard of physical therapy documentation and are to be performed on a weekly basis at minimum. It is not standard practice to bill separately for these measurements, except as part of a re-evaluation. The Respondent failed on most occasions to prepare reports for those procedures that are defined in the CPT manual as a "separate procedure" but billed for the procedure nonetheless.

#### **Patient-Specific Allegations**

##### **Patient A**

19. Patient A, a female born in 1942, initially presented to Concentra on October 27, 1998 after falling at her work site. The Respondent evaluated Patient A on that date as having cervical spine and shoulder strain.

20. The Respondent treated Patient A on October 29, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530) and Tests - Manual Muscle Testing (95831) and Range of Motion (95851)<sup>2</sup>.

21. The Respondent's documentation of the October 29, 1998 visit fails to support charging under either of the test codes nor does it support charging for two (2) units of Therapeutic Exercise.

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<sup>2</sup> Charges under the "Supplies" category are not at issue in this case and are not set forth herein.

**Patient B**

22. Patient B, a female born in 1963, initially presented to Concentra on December 28, 1998 after sustaining a wrist sprain in a work-related incident on the same date.

23. The Respondent treated Patient B on December 28, 1998 and included in his treatment plan iontophoresis, active range of motion exercises, joint mobilization, therapeutic activities and modalities.

24. The Respondent treated Patient B on December 29, 1998 and noted the following charges for that visit: Modalities - Iontophoresis (97033); Procedures - Therapeutic Exercise (97110), Neuromuscular Re-education (97112) and Therapeutic Activity (97530).

25. The Respondent's documentation of the December 29, 1998 visit fails to support charging under all three (3) procedure codes.

26. The Respondent treated Patient B on December 30, 1998. He noted the following charges for that visit: Modalities - Iontophoresis (97033); Procedures - Therapeutic Exercise (97110), Neuromuscular Re-education (97112) and Therapeutic Activity (97530) and Tests - Range of Motion (95851), Girth Measurements (97799) and Jamar 1 (97750).

27. The Respondent's documentation for the December 30, 1998 visit fails to support charging under all three (3) of the procedure codes or the test codes.

28. The Respondent treated Patient B on January 4, 1999 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110)



and Tests - Jamar 1 (97750). The Respondent documented that Patient B performed push/pull activities and charged this as Therapeutic Exercise. The Respondent's documentation fails to support charging under the test code. In addition, the Respondent improperly charged the push/pull activities as Therapeutic Exercise, rather than Therapeutic Activity.

#### **Patient C**

29. Patient C, a female born in January 1964, initially presented to Concentra on December 1, 1998 with a work-related injury to her left ankle.

30. The Respondent evaluated Patient C and included in the treatment plan therapeutic exercise, neuromuscular re-education, theraband exercises, bike and modalities for pain.

31. The Respondent treated Patient C on December 2, 1998 and noted the following charges for that visit: Modalities - Hot/Cold Packs (97010) and Electrical Stimulation (97041); Procedures - Therapeutic Exercise (97110), Neuromuscular Re-education (97112), Joint Mobilization ((97265) and Therapeutic Activity (97530).

32. The Respondent's documentation for the December 2, 1998 visit fails to support charging under the Therapeutic Activity code.

33. The Respondent treated Patient C on December 3, 1998 and noted the following charges for that visit: Modalities - Iontophoresis (97033); Procedures - Therapeutic Exercise (97110) (2 units), Neuromuscular Re-education (97112), Joint Mobilization (97265) and Therapeutic Activity (97530); and Tests - Range of Motion (95851).

34. The Respondent's documentation of the December 3, 1998 visit fails to support charging for two (2) units of Therapeutic Exercise (97110). His documentation also fails to support charging under the Range of Motion test code as no Range of Motion was noted in the patient's record.

35. The Respondent treated Patient C on December 4, 1998 and noted the following charges for that visit: Modalities - Iontophoresis (97033); Procedures - Therapeutic Exercise (97110) (2 units), Neuromuscular Re-education (97112) and Joint Mobilization (97265).

36. The Respondent's documentation fails to support charging for two (2) units of Therapeutic Exercise. Notably, the Respondent provided very similar treatment to Patient C on December 2, 1998 and charged for one (1) unit of Therapeutic Activity and one (1) unit of Therapeutic Exercise.

37. The Respondent treated Patient C on December 10, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) (2 units), Neuromuscular Re-education (97112), Joint Mobilization (97265) and Therapeutic Activity (97530); and Tests - Manual Muscle-hand (95832) and Range of Motion (95851).

38. The Respondent's documentation fails to support charging for two (2) units of Therapeutic Exercise, nor does it support charging under all three (3) of the Procedure codes or the Test codes.

39. The Respondent was interviewed by the Board during its investigation of this case. The Respondent's explanation of the difference between Therapeutic Activity and Therapeutic Exercise does not reflect the

accepted and published definition of those terms. Moreover, his statements with regard to codes for which he is alleged herein to have failed to have provided adequate documentation likewise fail to support the use of those codes. His statements reflect his lack of understanding regarding the difference between objective findings recorded as part of standard weekly documentation and the documentation requirements of a CPT test and measurement code.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated Md. Health Occ. Code Ann. §§ 13-316(15), (16), (21), and (26). The Board also finds that the Respondent violated Code Md. Regs. tit. 10, § 38.03.02-1.

### **ORDER**

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 16<sup>th</sup> day of June, 2003, by a majority of a quorum of the Board,

**ORDERED** that the Respondent shall be placed on probation for a period of at least one (1) year, to commence upon reinstatement of his Maryland license to practice physical therapy, subject to the following conditions:

1. The Respondent shall take the Board-approved law and ethics course and pass the associated examination administered by the Board;
2. The Respondent shall successfully complete a Board-approved documentation course;
3. The Respondent shall successfully complete a Board-approved

billing course;

4. The Respondent may apply the above coursework to the Respondent's continuing education requirements for licensure renewal;

**AND IT IS FURTHER ORDERED** that if the Respondent fails to comply with any of the terms or conditions of probation set forth above, that failure shall be deemed a violation of this Order; and it is further

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

**ORDERED** that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity of a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order to Probation shall be upon the Respondent to demonstrate compliance with the Order or conditions; and it is further

**ORDERED** that, at the end of the probationary period, the Respondent

may petition the Board to be reinstated without any conditions or restrictions on the Respondent's license, provided the Respondent can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and it is further

**ORDERED** that the Respondent shall bear the expenses associated with the Consent Order; and it is further

**ORDERED** that for purposes of public disclosure, as permitted by Md. State Gov't Code Ann. § 10-617(h) (Repl. Vol. 1999), this document consists of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank to which it is mandated to report.

JUNE 17, 2003  
Date

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


## CONSENT

I, Alberto Fuentes, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney and have been advised by my attorney of the legal implication of signing this Consent Order;
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 H.O. § 13-317 and the Maryland Administrative Procedure Act, codified at State Gov't §§ 10-219 *et seq.*
3. I am aware that I am entitled to a formal evidentiary hearing before the Board;
4. By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law and Order, provided 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 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 acknowledge that failing to abide by the condition set forth in this Order, I may, after an opportunity to be heard, suffer disciplinary action, including revocation of my license to practice physical therapy in the State of Maryland.

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

16 May 03  
Date

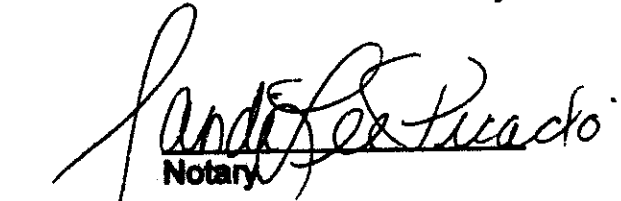
  
Alberto Fuentes, P.T.  
Respondent

STATE OF: Florida

CITY/COUNTY OF: Broward

I HEREBY CERTIFY that on this 16 day of May, 2003, before me, a Notary of the State of Florida and the City/County of Broward, personally appeared Alberto Fuentes, P.T., and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed, and that the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.

  
Notary

My Commission expires: 5/22/2004

SANDI LEE PICADO  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # CC030200  
EXPIRES 05/22/2004  
BONDED THRU ASA 1-888-NOTARY1