

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
RICHARD S. HAGEMAN, P.T.	*	BOARD OF PHYSICIAN THERAPY
License No.: 17767	*	EXAMINERS
Respondent	*	Case No.: PT 15-29

* * * * *

CONSENT ORDER – REVISED (12/15/2015)

On August 19, 2015, the Maryland State Board of Physical Therapy Examiners (the “Board”) charged Richard S. Hageman, P.T. (the “Respondent”), license number 17767, with violations of certain provisions of the Maryland Physical Therapy Act (the “Act”), Md. Code Ann., Health Occupations (“Health Occ.”) §§ 13-101 *et seq.* (2014 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 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:

- (15) Violates any provision of this title or rule or regulation adopted by the Board; and
- (19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy[.]

The Board further charged the Respondent with the following violations of the Code of Maryland Regulations (Code Md. Regs.) 10.38.02.01 – **Code of Ethics**:

...

B. The physical therapist...shall respect the dignity of the patient [.]

10.38.02.02 – **Sexual Misconduct:**

A. A physical therapist ...may not engage in sexual misconduct.

B. Sexual misconduct includes, but is not limited to:

- (1) Sexual behavior with a client or patient in the context of professional evaluation, treatment, procedure or service to the client or patient, regardless of the setting in which the professional service is rendered;
- (5) Therapeutically inappropriate or intentional touching of a sexual nature;
- (6) A verbal comment of a sexual nature;
- (7) Physical contact of a sexual nature with a patient;
- (10) Sexual harassment of staff or students;
- (11) An unnecessary sensual act or comment[.]

On October 20, 2015, a Case Resolution Conference (“CRC”) was held on this matter. Based on negotiations occurring as a result of the CRC, Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following findings of fact:

I. Background

1. At all times relevant to the charges, the Respondent was licensed to practice physical therapy in the State of Maryland. The Respondent was originally

licensed on July 12, 1994. The Respondent's license is currently active and will expire on May 31, 2017.

2. At all times relevant hereto, the Respondent worked, and continues to work, at a physical therapy practice with several offices in Maryland ("Company A"),¹ one of which is located in Leonardtown, Maryland ("Facility A"). Respondent has worked at Facility A for approximately 16 years.

3. At all times relevant hereto, the Respondent was the clinical manager of Facility A.

II. Complaint

4. On December 17, 2014, the Board received a written complaint ("Complaint 1") from a patient ("Patient A") who received treatment from the Respondent at Facility A. Patient A stated that on November 25, 2014 and December 9, 2014, the Respondent:

- a. After giving Patient A a massage, said "I don't know who got more pleasure from that—you or me;"
- b. Continuously positioned his genitalia against Patient A's hand while she was lying on the physical therapy table; and
- c. During the massage, massaged the sides of her breasts and waist.

5. In response to the complaint and allegations, the Board initiated an investigation. On December 19, 2014, the Board subpoenaed the Respondent's

¹ Names of individuals and facilities are not used in this document in order to preserve confidentiality. The Respondent is aware of the identities of the individuals and facility. The Respondent was provided with a Confidential Identification List with the names of the individuals and facilities and the corresponding identifier.

personnel file from Company A. The personnel file contained reports of two incidents of sexual misconduct with office staff.

III. Findings of Unprofessional Conduct and Sexual Misconduct in Regard to Patient A Based on Patient A's Allegations²

6. On January 30, 2015, Patient A was interviewed by Board staff under oath and stated the following:

- a. In December 2011, Patient A received physical therapy from the Respondent for an injury. Patient A's children, approximately 14 and 16 years old, have also been treated by the Respondent;
- b. In Fall 2014, Patient A returned to the Respondent because she was experiencing tenseness in her neck and shoulders;
- c. Beginning November 2014, and during each physical therapy visit, Patient A changed into a gown, leaving only her yoga pants or sweatpants on. Patient A laid on her stomach on the treatment table. The Respondent placed electrodes on Patient A's shoulder area, and then placed a warm, moist towel on her back;
- d. The Respondent then performed therapeutic massage. Patient A laid with a pillow either down by her side or under her head, depending on the location of the pain in either her neck or back;
- e. On November 25, 2014, the Respondent performed therapeutic massage. Patient A was lying on her stomach with her arms lying next to her body and her hands were straight down by her side;
- f. The Respondent moved his hands down and over the front of Patient A's shoulders moving his hands about halfway down the front of her breasts. The Respondent then moved on to a different area of her back or shoulders, and then returned moving his hands down the front of her breasts. The Respondent did this three times;
- g. The Respondent massaged Patient A's right back area while he was standing on the left side of Patient A and the therapy table. During the course of the massage, the Respondent "took [Patient A's] left hand and put it on his genital area." The Respondent brushed his aroused genitalia

² Respondent denies these allegations.

on her hand approximately four or five times, and would “linger there for a moment.” Patient A “was shocked and [she] could not—[she] just couldn’t react;”

- h. When the Respondent completed the massage, Patient A got off the table, at which time the Respondent stated, “I don’t know who got more pleasure out of that, you or me.” After changing out of her gown and into her clothing, Patient A “just put [her] head down and [she] got out of there as fast as possible;”
- i. On December 9, 2014, Patient A had increased pain from traveling on airplanes. Patient A decided to return to the Respondent because “[she] thought, well, maybe that was just a one-time thing, you know, because he had never done anything like that before;”
- j. On December 9, 2014, Patient A changed into a gown and laid down on her stomach. She received electrical stimulation and heat therapy. Then the Respondent performed therapeutic massage on her shoulders and back;
- k. During the course of the massage and while Patient A was still lying on her stomach with her hands under the pillow that was under her head, the Respondent rubbed his hands along the side of Patient A’s breasts, touching a large portion of her breast tissue. The Respondent did this twice. Patient A “was just stunned.” Patient A “didn’t know why [she] didn’t say anything.” Patient A “just froze;”
- l. The Respondent took Patient A’s hand out from under the pillow and put it on his aroused genitalia. Patient A took her hand back and placed it back under the pillow. The Respondent again took Patient A’s hand from under the pillow and “firmly” pushed it on his aroused genitalia. Patient A took her hand back and placed it under the pillow. The Respondent quickly took Patient A’s hand back and again pressed it firmly against his aroused genitalia. Patient A’s hand remained there for approximately a minute or two;
- m. The Respondent asked Patient A, “Does that feel good?” Patient A reported that the Respondent has never asked her anything like that before;
- n. Patient A left the office quickly after her appointment and later called Facility A to cancel her appointment scheduled for December 12, and her re-evaluation scheduled for December 15, 2014; and

- o. Patient A told her best friend, mother, and doctor about the incidents with the Respondent. Her doctor advised her to report the incidents to the Board.

7. During a subsequent interview on June 5, 2015, Patient A described much of the same details as reported during her prior interview.

IV. Review of Patient A's Medical Records as Documented by the Respondent

- 8. The Respondent documented the following in Patient A's medical records:
 - a. On November 6, 2014, Patient A reported she had had a fall in which she experienced subsequent neck pain and stiffness. Symptoms included pain in right upper trapezius, neck, and right upper quadrant. Assessment: "chronic neck pain exacerbated by fall and striking head, cervical facet origin" and "diminished dynamic core stability." Diagnosis: "Cervicalgia." Plan: Therapy 2 times per week for 6 weeks including therapeutic exercise, neuromuscular re-education, manual therapy, self care/ADL, heat/ice, static cervical traction, electrical stimulation, and patient education;
 - b. On November 10, 18, 21, and 25, 2014, and December 9. Treatment: heat, electrical stimulation, manual therapy, and patient education; and
 - c. Respondent did not document a termination note.

V. Findings of Professional and Sexual Misconduct in Regard to Employees A and B

9. During the course of investigation of Patient A's written complaint the Board subpoenaed the Respondent's personnel file from Company A, which contained the following two incidents of sexual misconduct with office staff.

Employee A

10. During September 2007, the Respondent was the Clinical Manager at Facility A. The Respondent has supervisory authority over Employee A.

11. In or around September 2007, Employee A contacted the Respondent's direct supervisor, the Executive Director of Physical Therapy for Company A (the "Executive Director"), with a complaint.

12. On or about September 18, 2007, the Executive Director sent an email to the Respondent documenting Employee A's complaint:

- a. Employee A alleged verbal harassment citing several incidents. The comments that the Respondent allegedly made to Employee A focused on her butt and "sexy legs," "sexual dreams about [her]," her pony tail "driving him crazy," requesting she unbutton her blouse in response to a request to adjust her schedule, and inquiring "why she does not respond to his sexual advances;"
- b. Employee A alleged two incidents of touching, which Employee A considered sexual harassment. The first incident reported involved the Respondent grabbing Employee A's "butt and squeez[ing] [her] sides." Employee A reported that during the second incident, the Respondent "has slid his hand down [her] back and slid his hand down the back of [her] pants more than once;"
- c. Employee A reports that the sexual misconduct occurs on a daily basis and that the Respondent has admitted to her that "this is sexual harassment and that it could get him in a lot of trouble;" and
- d. Employee A indicated that she did not report this before because "she fears that reporting this will cause her to 'be treated harshly' or 'label her' in some way."

13. On September 29, 2007, the Respondent emailed the Executive Director stating that "[he] believed that [their] relationship had developed to a point in which good natured kidding of a sexual nature was acceptable... Because [he] was unable to discern from [Employee A] that she objected [he] continued with what [he] perceived as good natured kidding and bantering of a sexual nature." The Respondent stated that "in hindsight, [he] view[s] [his] actions as wrong especially in light of the misperceptions by

[Employee A].”

Employee B

14. During fall 2010, the Respondent was the Clinical Manager at Facility A. The Respondent had supervisory authority over Employee B who was a physical therapy assistant.

15. On October 26, 2010, the following was documented in the Respondent’s personnel file at Company A:

- a. On September 19, 2010, Employee B called and reported that she would not be returning to work because she had an affair with the Respondent for several months. Employee B reported that her husband had learned of the affair after seeing several messages on her phone and was upset;
- b. The Respondent admitted to the affair and acknowledged the implications related to his work;
- c. Respondent was placed on probation and was asked to sign a new employee agreement; and
- d. The affair was disruptive not only to the Respondent and Employee B, but also to the clinic and personnel working in the clinic.

16. On November 29, 2010, the following was documented in the Respondent’s personnel file at Company A:

- a. Employee B’s husband called and asked to speak to the Respondent. After the Respondent introduced himself on the phone, Employee B’s husband said “he was having a tough time with all of this and that if [the Respondent] ever came close to his wife again he would kill [the Respondent];” and
- b. Per instructions from Company A’s Human Resources Department, the Respondent told Facility A’s staff about the call and instructed them on how to respond if Employee B’s husband were to call or show up.

17. On December 13, 2010, the Executive Director emailed Company A's Human Resources Department, documenting the following in the Respondent's personnel file at Company A:

- a. The Respondent called the Executive Director to inform him that an unknown female called the Respondent's wife. During that telephone call the unknown female informed the Respondent's wife that Employee B's husband was in the process of obtaining a hand gun permit. The unknown female stated the purpose of the call was to warn the Respondent and his wife; and
- b. The Executive Director advised the Respondent to call the police.

18. On December 15, 2010, the Respondent emailed the Executive Director stating the following:

- a. On December 15, 2010 at 7:00 AM, two employees approached the Respondent concerned about the phone call made to the Respondent's wife. Specifically, the two employees were concerned about the lock on the front door as it is only able to lock from the outside. The two employees also expressed concern about their safety when leaving at night;
- b. The Respondent told the employees that no police action had been taken, but that if there was any further activity he would "contact the police/courts as appropriate;" and
- c. The Respondent advised the Executive Director that an inside locking mechanism should be installed.

VI. Respondent's Admissions

19. On February 5, 2015, the Respondent was interviewed under oath by Board staff. During the interview, the Respondent made the following admissions regarding Patient A, Employee A, and Employee B:

- 20. Admissions Pertaining to **Patient A**:

- a. Patient A received a prescription from her pain specialist doctor to receive massages from a physical therapist;
 - b. The Respondent diagnosed Patient A with cervical pain and upper right quarter pain. The Respondent recommended that Patient A do home exercises to improve her cervical range of motion and her posture. The Respondent also planned to use modalities of heat, electrical stimulation, and soft tissue mobilization;
 - c. The Respondent massaged all of Patient A's back, mostly focusing on the upper trapezius, working from her iliac crest and moving upwards;
 - d. Patient A presented wearing a sweatshirt. The Respondent provided her with a gown. The Respondent left while Patient A changed and returned after she opened the door. Patient A laid on the table in the prone position (i.e., lying face down);
 - e. The Respondent tucked a towel in the waistband of Patient A's pants;
 - f. The Respondent set up the heat and electrical stimulation. When complete, the Respondent removed the electrodes, but if he was not immediately available, another physical therapist took the heat pack off and removed the electrodes. Afterwards, the Respondent performed soft tissue work;
 - g. The Respondent massaged over Patient A's shoulders and down the clavicle. The Respondent massaged as far as the pectoral region; and
 - h. The Respondent made the following comment to Patient A after giving her a massage: "I don't know who gets more out of this, you or me."
21. Admissions Pertaining to **Employee A**:
- a. In 2007, Employee A was leaning forward and her back was exposed. The Respondent ran his hand or finger across her back and said "What's that?" The Respondent acknowledges that the touching was inappropriate;
 - b. The Respondent admits to making a comment about Employee A wearing her hair up;
 - c. The Respondent admits to making a comment to Employee A that "she had runner's legs, that she should run because she had tall, lean legs;"

- d. The Respondent recalls that Employee A went to his office and asked to adjust her work schedule. The Respondent admits to telling Employee A, “Just lift up your shirt and you can go ahead.” The Respondent admits that was inappropriate; and
 - e. The Respondent’s employer investigated this incident and concluded that the Respondent’s behavior was inappropriate. The Respondent was given a written reprimand, which was placed in his personnel file.
22. Admissions Pertaining to **Employee B:**
- a. The Respondent admits to having an “inappropriate relationship” and “having sex” with Employee B in 2010. The Respondent states that the relationship lasted 3 months;
 - b. The Respondent states that as a result of the inappropriate relationship Employee B resigned from her position. The Respondent was reprimanded and his pay was reduced by \$10,000 for one year; and
 - c. As a result of the inappropriate relationship, Employee B’s husband called the Respondent and made serious threats.

VI. Summary of Findings

23. The Respondent’s conduct, including but not limited to:
- a. Failure to respect the dignity of Patient A and sexual behavior as evidenced by the alleged inappropriate touching of Patient A’s breasts, alleged placing Patient A’s hand on his aroused genitalia numerous times, allegedly placing his alleged aroused genitalia in front of her face, and alleged attempting to place his thumb in Patient A’s mouth; and making a verbal comment of an allegedly sexual nature and making an unnecessary allegedly sensual comment as evidenced by his comment to Patient A stating “I don’t know who got more pleasure out of that, you or me;”
 - b. Therapeutically inappropriate or intentional touching of an alleged sexual nature and alleged physical contact of a sexual nature as evidenced by the alleged inappropriate touching of Patient A’s breasts, allegedly placing Patient A’s hand on his allegedly aroused genitalia numerous times, and allegedly attempting to place his thumb in Patient A’s mouth during a therapeutic massage;
 - c. Sexual harassment of staff as evidenced by touching Employee A, in an inappropriate manner and making sexually inappropriate comments; and

- d. Sexual harassment of staff as evidenced by having an inappropriate relationship with Employee B, is evidence of unprofessional conduct and sexual misconduct in the practice of physical therapy in violation of Health Occ. § 13-316(15) and (19) and Code Md. Regs. 10.38.02.01 and 10.38.01.02.

24. The Respondent denies the allegations of inappropriate touching of a sexual nature of Patient A; and, denies that his verbal comment to Patient A was of a sexual nature or intent.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated regulations in the Maryland Code of Regulations 10.38.02.01 (Code of Ethics) adopted by the Board, in violation of Health Occ. § 13-316(15); and committed acts of unprofessional conduct in the practice of physical therapy in violation of Health Occ. § 13-316(19) in regard to Patients A and Employees A and B.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 17TH day of NOVEMBER, 2015, by a majority of the full authorized membership of the Board considering this case:

ORDERED that the Respondent's license to practice physical therapy be **SUSPENDED for minimum of thirty (30) days**, effective fourteen (14) business days from the date of this Order; and be it further

ORDERED that the Respondent shall deliver to the Board his original Physical Therapy license, number 17767, and his license renewal certificate, which expires on May 31, 2017; and it is further

ORDERED that prior to lifting the suspension and reinstatement, the Respondent is subject to the following conditions:

- a. Within ten (10) days of the date of the Consent Order, the Respondent shall provide a copy of the Consent Order to all of his places of employment as a physical therapist, including the U.S. Naval Reserve, and shall provide written confirmation to the Board of having done so;
- b. Within sixty (60) days of the date of the Consent Order, the Respondent shall submit to an evaluation by a Board-approved licensed mental health provider who has expertise in evaluating health care professionals who engage in boundary violations, under the following terms:
 - i. The Respondent agrees that a copy of the Consent Order and a copy of the transcript of the Respondent's interview, and any other documents in the Board investigative file that are requested by the mental health evaluator, will be provided to the mental health evaluator and to the mental health treatment provider;
 - ii. The Respondent agrees that the mental health evaluator will submit a written evaluation to the Board regarding whether Respondent requires mental health counseling to assist him in recognizing that his comments of a personal nature to a patient and his comments of a sexual nature to co-employees are considered sexual misconduct;
 - iii. The Respondent agrees that if the mental health evaluator recommends ongoing counseling, he will follow the treatment recommendations. The mental health evaluator may serve as the mental health treatment provider or the Respondent may receive counseling from another Board-approved mental health provider;

- iv. The Respondent shall ensure that the mental health treatment provider submits quarterly progress reports to the Board, if ongoing counseling is recommended;
- c. The Respondent may petition the Board for the suspension to be lifted, provided he has successfully complied with the terms and conditions of the Consent Order and contingent on a report to the Board from the mental health evaluator or the mental health treatment provider recommending a change in the Respondent's licensure status; and it is further

ORDERED that if the Board lifts the suspension, ~~and if the mental health evaluator has recommended ongoing counseling~~, the Respondent will be placed on **PROBATION** for a minimum of two (2) years from the date the suspension is lifted, under the following conditions:

- 1. Within sixty (60) days, the Respondent shall successfully complete with of passing score of at least 85% the closed-book jurisprudence examination given by the Board;
- 2. Within ninety (90) days, the Respondent shall successfully complete an ethics course/tutorial for health care professionals regarding professional boundaries with patients
- 3. Within ninety (90) days, the Respondent shall successfully complete an ethics course/tutorial in preventing sexual harassment in the workplace;
- 4. The courses shall be in addition to any continuing education requirements mandated for continuing licensure. Any continuing education credit earned shall not count toward fulfilling continuing education requirements that Respondent must fulfill in order to renew his license to practice physical therapy;
- 5. The Respondent will follow the treatment recommendations of the mental health treatment provider ~~if the mental health treatment provider recommends treatment~~; and
- 6. ~~If the mental health evaluator recommends treatment~~, the Respondent shall ensure that the mental health treatment provider submits quarterly progress reports to the Board; and it is further

ORDERED that the Respondent will comply and practice within all statutes and regulations governing the practice of physical therapy in the State of Maryland; and it is further

ORDERED that any violation of any of the terms of this Order shall constitute unprofessional conduct; and it is further

ORDERED that if the Respondent fails to comply with the terms of this Consent Order, the Board, after notice and a hearing, and a determination of violation, may impose any other disciplinary sanctions it deems appropriate, said violation being proved by a preponderance of evidence; and be it further;

ORDERED that if the Respondent has satisfactorily complied with all terms and conditions, and there are no outstanding complaints regarding Respondent's practice, Respondent may petition the Board for termination of probation without further terms or conditions after the **two (2) year** period imposed under this Consent Order; 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 the Respondent shall not petition the Board for early termination of his probationary period or the terms of this Consent Order; and be it further

ORDERED that this Consent Order is a public document pursuant to Md. Code Ann. Gen. Pro. § 4-101 et seq. (2014).

Date

11/17/16

Krystal Lighty, P.T.,
Board Chair

Maryland State Board of Physical Therapy Examiners

CONSENT

I, Richard S. Hageman, P.T., License No. 17767, by affixing my signature hereto, acknowledge that:

1. I have consulted with counsel, Thomas C. Morrow, Esquire, and knowingly and voluntarily elect to enter into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.
2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Code Ann. Health Occ. § 13-317 (2014 Repl. Vol.) and Md. State Gov't Code Ann. §§ 10-201 *et seq.* (2014 Repl. Vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have 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 am waiving those procedural and substantive protections.
4. I voluntarily enter into 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 my right to appeal any adverse ruling of the Board that might have followed any such hearing, and any right to appeal this Consent Order.
5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

Date

11/6/15


Richard S. Hageman, P.T.
Respondent

Reviewed by:


Thomas C. Morrow, Esquire
Counsel for Respondent

NOTARY

STATE OF MARYLAND

CITY/COUNTY of Baltimore

I HEREBY CERTIFY that on this 6th day of November,
2015, before me, a Notary Public of the State and County aforesaid, personally
appeared Richard S. Hageman, and made oath in due form of law that the
foregoing was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.



Norma Iris White
Notary Public

My Commission Expires: _____