

IN THE MATTER OF	*	BEFORE THE
THOMAS H. HORN, JR., P.T.	*	STATE BOARD OF PHYSICAL
LICENSE NO. 15476	*	THERAPY EXAMINERS
RESPONDENT	*	Case No. 08-113

* * * * *

FINAL ORDER

Procedural Background

On January 21, 2008, the Maryland Board of Physical Therapy Examiners (the "Board") sent the Respondent, Thomas H. Horn, Jr., P. T., a Notice of Intent to Revoke the Respondent's physical therapist's license with an opportunity to request hearing within thirty (30) days. On February 17, 2009, the Board received Mr. Horn's timely written request for a hearing. On May 13, 2009, the Board held an evidentiary hearing before a quorum of the Board, in accordance with the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-201 *et seq.*, and the Board's regulations, COMAR 10.38.05.

SUMMARY OF THE EVIDENCE

A. Documents.

The following documents were admitted into evidence.

- State's Exhibit No. 1 - Computer Printout of Licensure Information
- State's Exhibit No. 2A - Memo from P. Rooney, Investigator, dated 4/9/08
- 2B - Copies of U.S. Army Investigative documents
- 2C - U.S. Criminal Information/Charges
- 2D - Criminal Judgment in U.S. District Court, dated 4/18/08
- 2E - Copy of Notification from Respondent, dated 4/21/08

- 2F - Board's letter to Capt. A. Slitt, dated 4/16/08
- 2G - Respondent's letter to Board Investigator, undated
- State's Exhibit No. 3A - Patient Records of Patient A
- 3B - Respondent's Personnel Records from PT Practice A
- 3C - Respondent's 2006 License Renewal Application
- 3D - Respondent's Personnel Records from PT Practice B
- State's Exhibit No. 4 - Board's Investigative Report
- State's Exhibit No. 5A - Notice of Intent to Revoke, dated January 20, 2009
- B - 2/17/09 Request for Hearing
- C - 2/20/09 Hearing Notice

B. Witness Testimony.

State's Witnesses:

Jason Craig Marovich, Special Agent, Department of Defense Criminal Investigations Command
Ernest Bures, Investigator, Board of Physical Therapy Examiners

Respondent's Witnesses:

Thomas H. Horn, Jr., P.T., Respondent

FINDINGS OF FACT

Based upon the documentary and testimonial evidence admitted into the administrative record of this matter, the Board finds the following:

1. At all times relevant hereto, the Respondent was licensed to practice physical therapy in Maryland. The Respondent was first licensed on August 31, 1983. The Respondent's license expired on May 31, 2008. (State's Ex. 1)
2. From approximately 11/24/03 until 2/28/06, the Respondent was employed as

a physical therapist at Rehab Specialists of Frederick ("Rehab Specialists"). (State's Ex. 3B)

3. While employed at Rehab Specialists, the Respondent evaluated and treated Patient A¹ for degenerative disc disease and arthritis in the lumbar region on 2/7/06 and 2/9/06. (State's Ex. 3A, Bates 127-28, 136, 138-39)

4. During the Respondent's treatment of Patient A, the Respondent engaged in sexually inappropriate and unprofessional conversations with Patient A. The Respondent discussed sexually explicit details of his treatment of and interaction with other female patients. (State's Ex. 3B, Bates 159-61)

5. As a result of the Respondent's inappropriate behavior, Patient A cancelled her next two appointments because she felt "gross and dirty". (State's Ex. 3B, Bates 159; State's Ex. 3A, Bates 129)

6. On February 13, 2006, Rehab Specialists Human Resources contacted Patient A to follow up on her reasons for canceling her appointments with the Respondent. Patient A reiterated that the Respondent was unprofessional and discussed sexually explicit details about other female patients causing Patient A to feel extremely uncomfortable. (State's Ex. 3B, Bates 161) Patient A also filed a similar complaint with her insurance company. (State's Ex. 3B, Bates 162)

7. On February 15, 2006, Rehab Specialists placed the Respondent on a 90-day probationary period during which time he was not permitted to treat female patients without the presence of another female employee in the room. (State's Ex. 3B, Bates 163) Ultimately, on or about February 28, 2006, the Respondent was terminated from Rehab

¹ Patient names are confidential but have been disclosed to the Respondent.

Specialists as a result of the Respondent's misconduct with Patient A. (State's Ex. 3B, Bates 169, 177)

8. On April 27, 2006, the Respondent filled out a renewal application with the Board. On the application, Question #9 asks, "Has your employment by any hospital, HMO, other healthcare facility, institution, practice, or military entity been terminated for disciplinary reasons?" The Respondent answered "no" to this question, despite being terminated from Rehab Specialists merely 6 weeks prior. (State's Ex. 3C)

9. The Respondent documented a discharge summary for Patient A dated 2/14/06 in which he noted that Patient A requested discontinuation and was independent in her home exercise program. Patient A had not completed therapy as prescribed in the plan of care. (State's Ex. 3B, Bates 130, 132)

10. From May 2006 through May 2007, the Respondent practiced physical therapy at Kimbrough Ambulatory Care Center ("Kimbrough"). (T. 66-67)

11. On May 16, 2007, Patient B, a Staff Sergeant, filed a complaint regarding the Respondent stating that the Respondent touched her inappropriately during her treatment session with the Respondent earlier that day. (State's Ex. 2B, Bates 12)

12. Fort Meade's Criminal Investigation Command Division ("CID") investigated Patient B's complaint. The CID's investigators interviewed other female patients treated by the Respondent at Kimbrough and identified 12 others who provided sworn statements that they were also inappropriately touched by the Respondent. (State's Ex. 2B, Bates 24-26)

13. During the Respondent's initial interview with CID and a subsequent polygraph examination, the Respondent denied any inappropriate conduct with respect to

Patient B. However, afterwards, the Respondent admitted to touching Patient B inappropriately, as well as inappropriately touching an extensive number of other female patients during the prior 7 to 10 years. (State's Ex. 2B, Bates 12, 24, 29-30, 99-102, 105-107)

14. The 12 other victims alleged that the Respondent inappropriately touched them in the breasts, buttocks or vaginal areas. (State's Ex. 2B, Bates 24-26, 40-97)

15. On February 28, 2008, the Respondent pled guilty to two counts of simple assault in the U.S. District Magistrate's Court. On April 18, 2008, the Respondent was sentenced with 5 years probation subject to the following terms:

- A. Satisfactorily participate in a mental health treatment program;
- B. On home detention for six (6) months, except for activities approved by his probation officer;
- C. Notify the Maryland Board of Physical Therapy Examiners of his convictions and provide written verification to his probation officer by April 21, 2008;
- D. Prohibited from working in the health care field; and
- E. Any employment by the [Respondent] while on probation shall be approved in advance by his probation officer. (State's Ex. 2D)

OPINION

The unprofessional, abusive, and criminal actions of the Respondent warrant the Board's most stringent sanction of revocation. Physical therapists are trained to provide care and rehabilitation to individuals who are suffering from painful and sometimes

debilitating physical injuries or impairments. The public must be able to trust that a physical therapist will be competent and ethical in the provision of physical therapy services. The Respondent grossly violated the public's trust by routinely touching female patients inappropriately under the guise of physical therapy treatment. The Board can think of no worse deceit than that perpetrated by the Respondent on countless patients who sought legitimate and effective treatment. Instead, the Respondent abused his position of trust as a healthcare professional to satisfy his own personal desires. This deviant type of misconduct is inexcusable and career-ending.

The Board believes that the Respondent, through his actions, has forfeited his right to practice physical therapy. Indeed, the Respondent concedes that he should not have a license. And although the Respondent claims that he is remorseful for his actions, the Board believes that the Respondent is remorseful more for the consequences of his actions on himself and his family. Through this order, however, the Board is attempting to redress the irreparable harm caused by the Respondent to the victims, the public, and the physical therapy profession.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and opinion, the Board concludes that the Respondent is subject to discipline in accordance with Health Occupations Article §§ 13-316(1), (6), (10), (15), (19) and (25). The Board also concludes that the Respondent is subject to discipline based on COMAR 10.38.02.01B and 10.38.02.02A and B(7). The Board dismisses the charge based on Health Occupations Article § 13-316(24).

ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusions of Law, by a unanimous decision of a quorum of the Board it is hereby:

ORDERED that the Respondent's license to practice physical therapy be REVOKED permanently; and be it further,

ORDERED that this is a final order of the Maryland Board of Physical Therapy Examiners and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

August 19, 2009
Date

Margery F. Rodgers, P.T.
Margery Rodgers, P.T.
Chair

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., §13-318, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.