

IN THE MATTER OF	*	BEFORE THE
ARLENE JOHNS, P.T.	*	MARYLAND STATE BOARD OF
LICENSE NUMBER: 19805	*	PHYSICAL THERAPY EXAMINERS
RESPONDENT	*	Case No. 01-BP-084

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

Based on the information received by the Maryland State Board of Physical Therapy Examiners ("the Board") and subject to the Maryland Physical Therapy Act, codified at Md. Health Occ. Code Ann., ("H.O.") §§ 13-101 *et seq.* (2000 Repl. Vol.) ("the Act"), the Board charged **Arlene Johns, P.T., D.O.B. 09-21-50, License Number: 19805**, ("the Respondent") with violating certain provisions of the Act under Health Occupations § 13-316. 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:

- (11) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes[.]

The applicable underlying grounds for disciplinary action under H.O. § 13-316(11) are as follows:

- (13) Willfully makes or files a false report or record in the practice of physical therapy or limited physical therapy;
- (18) Is professionally, physically, or mentally incompetent;
- (19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy; [and]
- (20) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

On August 2, 2001, 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 Natalie McIntyre, P.T., Member of the Board; Paul Ballard, Assistant Attorney General and Counsel to the Board; Ann Tyminski, Executive Director of the Board; John Nugent, Staff Attorney and Board Prosecutor; and the Respondent.

FINDINGS OF FACT

The Board finds that:

1. At all times relevant to the charges herein, the Respondent was licensed to practice physical therapy in the State of Maryland, being issued License No. 19805 by the Board on February 8, 2000.
2. At all times relevant to the charges herein, the Respondent was also licensed to practice physical therapy in the State of North Carolina, being issued License No. P-4720 by the North Carolina Board of Physical Therapy Examiners (the "North Carolina Board") on March 26, 1983.
3. At all times relevant to the charges herein, the Respondent was practicing physical therapy at the Hugh Chatham Memorial Hospital in Elkins, North Carolina.

4. On or about March 6, 2000, the North Carolina Board received a complaint from the physical therapy department at Hugh Chatham Memorial Hospital alleging the Respondent had entered false and misleading documentation in the notes of three patients.
5. As a result, formal disciplinary proceedings were instituted against the Respondent by the North Carolina Board, and the Respondent was given the opportunity to meet with an Investigative Committee of the North Carolina Board in an attempt to resolve the matter informally. On or about June 22, 2000, the Investigative Committee of the North Carolina Board met with the Respondent, and the parties agreed to investigate further.
6. On or about January 12, 2001, the Respondent entered into a Consent Order for Disciplinary Action in North Carolina agreeing to surrender her license to practice physical therapy in North Carolina for a period of twelve (12) months. However, six (6) months of the suspension were stayed, on the condition that after her license was returned during any remaining period of suspension, the Respondent would be required to keep the North Carolina Board informed of her place of employment and certify that her employer was aware of the conditions of her suspension. Furthermore, the Respondent was required to reimburse the North Carolina Board for its expenses incurred in its investigation.
7. By entering into the Consent Order with the North Carolina Board, the Respondent freely and voluntarily, and without coercion or duress, waived her right to request a contested case hearing pursuant to North Carolina law, and consented to the aforementioned disciplinary sanctions against her.

8. The Findings of Fact of the North Carolina Order indicate that the Respondent treated a patient (Patient "A")¹ on December 16, 1999, at the Hugh Chatham Memorial Hospital. The Respondent documented in her notes that Patient A sat in a pelvic neutral position for six minutes and stood unsupported for four minutes. The Findings of Fact, however, provide that Patient A's teacher, doctor, mother, and other treating professionals stated that these results could not be obtained without Patient A being assisted.
9. The Findings of Fact of the North Carolina Order also indicate that the Respondent performed an initial evaluation of a patient (Patient "B") at the Hugh Chatham Memorial Hospital on January 2, 2000. The Respondent documented in her notes that Patient B ambulated five feet to sit up in a chair and exercised all four extremities; yet, the Findings of Fact state that Patient B advised that he only performed exercises in bed.
10. Finally, the Findings of Fact of the North Carolina Order provide that the Respondent performed an initial evaluation of a patient (Patient "C") at the Hugh Chatham Memorial Hospital on January 3, 2000. The Respondent documented in her notes that Patient C walked thirty feet, became decompensated with exercise, and was independent in bed mobility and transfers. However, the Findings of Fact indicate that Patient C stated that she never got out of bed nor performed any exercises, which she confirmed to a physical therapist assistant providing a treatment on the same day.
11. Based on the Findings of Fact, the North Carolina Board concluded as a matter of law that the Respondent violated N.C. Gen. Stat. § 90-270.29(7) by the

¹ To ensure patient confidentiality, patients' names are not used in this document.

"commission of an act or acts of malpractice, gross negligence or incompetence in the practice of physical therapy," and N.C. Gen. Stat. § 90-270.36(9) by "engaging in conduct that could result in harm or injury to the public."

12. The North Carolina Order further provides that as a matter of law the Respondent violated N.C. Gen. Stat. § 90-270.36(6) by "engaging in any act or practice violative of any of the provisions . . . of the rules or regulations adopted by the Board . . ." The North Carolina Order further indicates that the Respondent violated 21 NCAC 48G.0601(a)(1) by "recording false or misleading data, measurements or notes regarding a patient," and (a)(21) by "willfully or intentionally communicating false or misleading information regarding a patient."

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated § 13-316(11).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 21st day of August 2001, by a majority of the Board, hereby

ORDERED that the Respondent's license to practice physical therapy in the State of Maryland is **SUSPENDED** for **ONE YEAR** with all but **TWO MONTHS** stayed; and be it further

ORDERED that the **SUSPENSION** of the Respondent's license will begin on August 22, 2001, and run through October 22, 2001; and be it further

CONSENT OF ARLENE JOHNS, PT

I, Arlene Johns, P.T., by affixing my signature hereto, acknowledge that:

1. 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 Health Occupations § 13-317 and the Maryland Administrative Procedure Act, codified at Md. State Govt Code Ann., §§ 10-201 *et seq.*
2. I am aware that I am entitled to a formal evidentiary hearing before the Board or an Administrative Law Judge.
3. By this Consent Order, I hereby consent and submit to 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.
4. I acknowledge that failing to abide by the conditions 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.
5. I voluntarily sign this Consent Order after having had an opportunity to consult an attorney, without reservation, and I fully understand the language, meaning, and terms of this Consent Order.

6. I have knowingly and willingly opted to act on my own behalf in this matter without the assistance of an attorney.

08/09/01
Date

Arlene Johns, P.T.
Arlene Johns, P.T.

STATE OF MARYLAND

CITY/COUNTY OF Baltimore,

I HEREBY CERTIFY that on this 9th day of August, 2001, before me, Notary Public of the State and City/County aforesaid, personally appeared **ARLENE JOHNS, P.T.**, License No. 19805 and made oath in due form of law that the foregoing Consent was her voluntary act and deed, and that the statements made herein are true and correct

AS WITNESSETH my hand and notarial seal.

Robert M. Lunde
Notary Public

My commission expires: July 1, 2002