

IN THE MATTER OF * BEFORE THE
VIJAYAKUMAR PALANISWAMY, P.T. * STATE BOARD
License No.: 21367 * OF PHYSICAL
Respondent * THERAPY EXAMINERS
*

* * * * *

FINAL DECISION AND ORDER

Procedural History

On June 7, 2006, the Board of Physical Therapy Examiners (the "Board") issued a Summary Suspension Order against the physical therapist license held by Vijayakumar Palaniswamy, P.T (the "Respondent") based on an arrest warrant issued against the Respondent for allegations of 4th degree sex offense and 2nd degree assault. On June 20, 2006, a grand jury issued a 16-count indictment against the Respondent based on allegations of sex offense, assault, and false imprisonment. The Respondent failed to appear at the criminal proceedings and therefore a bench warrant was also issued. The Respondent, who was working in the United States on a visa, flew back to India on April 7, 2006, approximately one week after the first patient filed the criminal complaint against the Respondent.

Pursuant to the Administrative Procedure Act (APA), *Md. Code Ann.*, State Gov't § 10-201, *et seq.*, and the Maryland Physical Therapy Act (the "Act"), *Md. Code Ann.*, Health Occ. ("H.O.") § 13-101, *et seq.*, the Board sent an initial Notice of Intent to Revoke Physical Therapy License of Vijayakumar Palaniswamy, P.T., (the "Respondent"), License No. 21367, on March 20, 2007. The Notice instructed the

Respondent to request a hearing in writing within thirty (30) days of the Notice. On March 27, 2007, the Respondent submitted a written request for an evidentiary hearing. Pursuant to the Respondent's request, the Board scheduled an evidentiary hearing on May 15, 2007, at 9:00 a.m. The Board sent the Respondent notice of the hearing at his most recent address of record with the Board. The Respondent's counsel was also sent a copy of the notice of the hearing. On May 15, 2007, the day of the hearing, the Board waited until 9:37 a.m. for the Respondent, or his counsel, to appear. The Respondent failed to appear. The Board then proceeded to hear and determine this matter in Respondent's absence, in accordance with Health Occ. § 13-317(g).

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. 2 - Patient A's Complaint
- State's Exhibit No. 3 - Patient B's complaint
- State's Exhibit No. 4A - Application of criminal charges -- Patient A
- B - Arrest warrant re: Patient A
- State's Exhibit No. 7A - Police investigation re: Patient A
- B - Patient A's statement
- C - Patient B's statement
- D - Copy of Patient B's police report
- E - Patient C's statement
- F - Police report re: Patient C
- G - Written statement of M.M., PT
- H - Copy of written statement of D.C., PT
- I - Statement by AG re: Patient A

- State's Exhibit No. 8A - D.C.'s statement re: Patient E
- B - Copy of statement by M.M. re: Patient A
- C - Statement of D.C. re: Respondent's counseling re: Patient A's complaint
- D - Respondent's statement re: Patient A

- State's Exhibit No. 9A - Treatment records of Patient A
- B - Treatment records of Patient B
- C - Treatment records of Patient C
- D - Treatment records of Patient D

- State's Exhibit No. 10A - Letter from Respondent requesting hearing
- B - Emails to and from the Respondent and Board
- C - Certified mail/Board subpoenas

- State's Exhibit No. 11A - Copy of subpoena for schedule book pages for 5/9/05 and 5/11/05
- B - Copy of schedule book pages for 5/9/05 and 5/11/05

- State's Exhibit No. 12 - Respondent's Personnel file

- State's Exhibit No. 13 - Criminal search

- State's Exhibit No. 14 - Employment verification

- State's Exhibit No. 15 - Telephone search

- State's Exhibit No. 16 - Subpoena

- State's Exhibit No. 17A - Bures' investigative report, dated 8/2/06
- B - Patient A's written statement
- C - Patient D's interview
- D - Patient C's interview
- E - Patient B's interview
- F - Written statement of AG
- G - Interview with MM
- H - Interview with DC

- State's Exhibit No. 18A - Bures' 10/25/06 report
- B - Bures' 11/29/06 report
- C - 12/12/06 report

- State's Exhibit No. 19 - Expert report

- State's Exhibit No. 20A - Summary Suspension letter, dated 6/7/06
- B - Summary Suspension Order, dated 5/16/06
- C - Transcript of show cause hearing, 7/18/06
- D - Notice of Intent to Revoke letter, dated 3/21/07
- E - Notice of Intent to Revoke
- F - Unsigned Final Order
- G - Request for hearing, dated 3/27/07
- H - Hearing notice, dated 3/30/07

- State's Exhibit No. 21 - Email from Dept. of Homeland Security, dated 5/9/07

B. Witness Testimony.

State's Witnesses:

Patient A
 Patient B
 Patient C
 Patient D
 Marla Miranian, P.T.
 Detective Mike Lanier, Greenbelt City Police Department
 Ernest Bures, Investigator for Board of Physical Therapy Examiners

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice physical therapy in Maryland. The Respondent was first licensed in Maryland on January 3, 2005. The Respondent's license expired on May 31, 2007. (State's Ex. 1)

2. At all times relevant hereto, the Respondent practiced physical therapy at the Physiotherapy Associates' office (the "office") located in Greenbelt, Maryland. (State's Ex. 12)

3. By a complaint dated April 26, 2006, Patient A¹ reported that her primary care physician had referred her to the office for treatment of her upper and lower back.

¹ The identities of the patients referred to herein are confidential. However, the Respondent had the opportunity to obtain the identities of the patients during discovery.

Patient A made the following specific complaints:

- A. Patient A's first appointment was on March 6, 2006, with the Respondent, who applied electrical stimulation (e-stim), heat and ultrasound therapy in a private room, followed by exercises in the main room. Thereafter, the Respondent had Patient A do exercises in the main room first, and then began her individual therapy in a private room. The door to the treatment room was always closed and there was no one else present. Patient A was clothed from the waist down and wore a gown on top, without a bra or with her bra unhooked.
- B. After the second appointment, the Respondent asked Patient A if he could put his leg up on her while he was administering the ultrasound therapy, which resulted in his almost lying on top of Patient A with one foot on the ground. (Patient A assumed that he took this position in order to gain leverage for treating her upper back problems. Patient A consented to this procedure, because she had had no prior experience with physical therapy).
- C. On the third appointment, on March 15th, the Respondent began to completely lie on top of Patient A, which made her very uncomfortable. On the fourth appointment, March 17th, the Respondent began "rocking" his penis against Patient A as he lay on top of Patient A. On the fifth appointment, March 28th, the Respondent again laid on top of Patient A, rocking what Patient A perceived as an erect penis against her, while he put his hand under her gown against her breast.
- D. On March 30, 2006, the Respondent got on top of Patient A while he was giving her ultrasound. After he dismounted and started to wipe off the gel, the

Respondent again got on top of Patient A and started "humping" Patient A's buttocks with an erect penis. During this time, the Respondent's hand was on Patient A's breast, his face was touching Patient A's face, and he was breathing hard. When someone tried to open the door, against which he had propped a chair, he jumped off quickly.

E. As Patient A was leaving the office, she informed a staff member what had happened and was told that closing the door to the treatment room was against office policy. Shortly thereafter, Patient A described the Respondent's actions to the office manager.

F. Patient A's husband, mother and doctor convinced her to file a police report, which she did. On April 19, 2006, an arrest warrant was issued for the Respondent for 4th degree sexual offenses and 2nd degree assault committed against Patient A. (State's Ex. 7B)

4. By complaint dated May 9, 2006, the Board received information from Patient B indicating that:

A. On February 24, 2006, as Patient B's treatment session was ending at the office, the Respondent suggested that Patient B receive ultrasound treatment to her injured shoulder. (State's Ex. 3)

B. Prior to that date, Patient B had always received ultrasound in a common room area. However, on this visit, the Respondent led Patient B to a back room, passing several empty examination rooms. The Respondent seated Patient B in a chair and then rested his hand across Patient B's right breast while administering ultrasound. (T. 21-23)

C. The Respondent then moved Patient B to a treatment table to do her last exercise, a "butterfly lift" wherein she moved both arms while stretched out face-down on the table. As Patient B did this exercise, the Respondent placed his body halfway on hers, in order to "stabilize" her back, and then proceeded to "grind" his groin area into Patient B's buttocks. (T. 23-25)

5. On May 29, 2006, Patient C filed a complaint with the City of Greenbelt Police Department. (State's Ex. 7E)

6. Patient C complained that, in January 2006, she was referred to the office for treatment for her lower back, and the following occurred:

A. The Respondent provided her initial evaluation and treatment. During that evaluation, the Respondent asked Patient C to remove her top so that he could access her back for the attachment of the TENS unit and for massage therapy. The Respondent failed to provide a gown for Patient C, making her uncomfortable. (T. 34)

B. During the second session, the Respondent again asked Patient C to remove her top, which she did. Her discomfort level increased because the Respondent closed the treatment room door. (State's Ex. 7E; State's Ex. 17D)

C. During Patient C's last session with the Respondent, the Respondent was laying face-down on the treatment table for a stretching exercise. The Respondent then climbed on top of the Respondent, straddling Patient C's buttocks and gyrating against her with an erect penis. Patient C not only felt uncomfortable but was experiencing increased back pain, and therefore directed the Respondent to stop.

D. Patient C immediately requested to speak with an assistant. When the Respondent left the room and the assistant came in, Patient C asked her whether physical therapists ever climbed on top of their patients. The assistant advised Patient C to report the incident to the manager, which Patient C did. Patient C also informed the manager about a prior session in which the Respondent stood behind her and pressed his hips into her buttocks under the premise of using a therapy technique.

E. When the Respondent found out that Patient C had complained to the manager, he apologized and asked her not to tell the manager that he had not offered her a gown.

7. Patient D was treated by the Respondent at the office on May 9 and 11, 2005. During treatment, Patient D stated that the Respondent closed the treatment room door and laid on top of her, gyrating his hips into her buttocks. Patient D stated that she reported this incident to an unknown female who worked at the facility, as well as to the manager. (State's Ex. 17C)

8. On June 20, 2006, the Grand Jury of Prince George's County issued a 16-Count indictment against the Respondent. Specifically, the Respondent was charged with: falsely imprisoning Patient A on March 9, 2006, as well a 4th degree sexual offense and 2nd degree assault on that date; false imprisonment, 4th degree sexual offense and 2nd degree assault on March 17, 2006 on Patient A; false imprisonment, 4th degree sexual offense and 2nd degree assault on March 28, 2006 on Patient A; false imprisonment, 4th degree sexual offense and 2nd degree assault on March 30th on Patient A; a 4th degree sexual offense and 2nd degree assault on

February 24, 2006 on Patient B; and, a 4th degree sexual offense and 2nd degree assault in January 2006 on Patient C.

9. As a result of information on Patients A, B and C, the Board issued a Summary Suspension of the Respondent's license on June 7, 2006. A Show Cause hearing was requested by the Respondent. On July 18, 2006, a Show Cause hearing was held before a quorum of the Board. The Respondent failed to appear, but his attorney was present and indicated that the Respondent would not contest the summary suspension of his license until after the upcoming criminal trial, depending upon the outcome of same. On September 12, 2006, the Respondent failed to appear for his criminal trial. Consequently, there is an outstanding bench warrant for the Respondent's arrest.

10. With regard to the Respondent's physical therapy practice, the Board adopts the opinions as set forth in the expert report of Dr. Carol Zehnacker. (State's Ex. 19). Specifically:

A. Patient A: the Respondent's initial evaluation on 3/6/06 had minimal data for medical necessity and therapeutic intervention. Neither the time spent in the clinic or the exercises on the flow sheet justified the charges of multiple units of 15 minutes, direct one-on-one contact with the physical therapist for three or four units of therapeutic exercise (CPT Code 97110), one to two units of manual therapy (CPT Code 97140), ultrasound (CPT Code 97035), moist heat (CPT Code 97010), and electrical stimulation (CPT Code 97014). The Respondent failed to document a discharge.

- B. Patient B: neither the exercises on the flow sheet nor the time the patient spent in the clinic, e.g., from one hour to one hour and twenty minutes, justified the charges of multiple units of 15 minutes, direct one-on-one contact with the physical therapist for three to four units of CPT Code 97110 and one unit of 97140, along with modalities of electrical stimulation and moist heat that typically are twenty minute treatments. The discharge summary precedes the last progress note.
- C. Patient D: the Respondent documented minimal data for medical necessity and therapeutic intervention on the 5/9/06 evaluation.

CONCLUSION OF LAW

Based upon the foregoing summary of evidence and findings of fact, the Board of Physical Therapy Examiners concludes that the Respondent violated Md. Code Ann., Health Occ. §13-316(2), (12), (14), (15), (17), (19), (25) and Code Md. Regs. tit. 10, § 38.02.01B, § 38.02.02A and B(1), (2), (5) and (7), and § 38.03.02A(2)(a).

SANCTION

The Board finds the Respondent's conduct to be morally and professionally inexcusable. The Respondent intentionally deceived patients into believing that his sexual misconduct was part of legitimate physical therapy practice. Patients seek physical therapy to help them alleviate their pain and discomfort. Instead, the patients involved in this matter were sexually assaulted by a healthcare practitioner in whom they placed their trust. The Respondent intentionally created an opportunity to be alone with these patients, in back rooms behind closed doors, so that he could gratify his own

sexual needs at the expense of his patients' health and safety. The fact that the Respondent had only been licensed in Maryland since January 2005 is further indication that he is simply incapable of possessing a physical therapist license without abusing the privilege. In addition, the Respondent's documentation of his physical therapy treatment evidences that the Respondent engaged in fraudulent billing practices.

The Board finds that the Respondent's grievous misconduct has caused him to earn a permanent revocation of his license. The Board feels that this sanction is clearly warranted and necessary to address the myriad violations committed by the Respondent as well as to provide a deterrent to other physical therapists who may be tempted abuse the privilege of licensure.

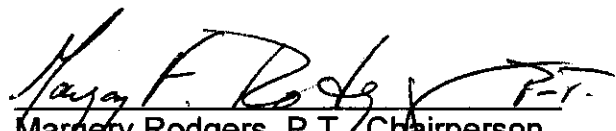
ORDER

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

ORDERED on this 28th day of June 2007 that the Respondent's license to practice physical therapy in the State of Maryland is immediately subject to a **PERMANENT REVOCATION**; and it is further

ORDERED that this Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2004 Repl. Vol.).

June 28, 2007
Date


Margery Rodgers, P.T., Chairperson
Board of Physical Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to H.O. § 13-318, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty days of your receipt of this executed Order, and shall be made as provided for judicial review of a final decision in the APA, codified at State Govt. Code Ann. § 10-201, et seq.