

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
MARK ROGERS, P.T.	*	BOARD OF PHYSICAL
License No.: 25828	*	THERAPY EXAMINERS
Respondent	*	Case Number: PT 19-03
* * * *	*	* * * *

CONSENT ORDER

On or about July 23, 2019, the Maryland State Board of Physical Therapy Examiners (the “Board”) charged **MARK ROGERS, P.T.** (the “Respondent”), License Number 25828, with violations of certain provisions of the Maryland Physical Therapy Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 13-101 *et seq.* (2014 Repl. Vol. & 2018 Supp.) and the regulations adopted by the Board.

Specifically, the Board charged the Respondent with violations of the following provisions of the Act:

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;
- ...
(19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy[.]

Pursuant to Health Occ. § 13-316(15), cited above, the Board further charges the Respondent with violations of the following regulations adopted by the Board:

COMAR 10.38.02.02 Sexual Misconduct.

- A. A physical therapist or physical therapist assistant may not engage in sexual misconduct.
- B. Sexual misconduct includes, but is not limited to:
 - ...
 - (6) A verbal comment of a sexual nature;
 - ...
 - (10) Sexual harassment of staff or students[.]

On January 21, 2020, a conference with regard to this matter was held before the Board's Case Resolution Conference ("CRC"). As a result of the CRC, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The Board finds the following facts.

1. At all times relevant to the charges herein, the Respondent was licensed to practice physical therapy ("PT") in the State of Maryland. The Respondent was originally licensed on January 8, 2016. The Respondent's license is scheduled to expire on May 31, 2020.
2. At all times relevant to the charges, the Respondent was the director of the department of physical therapy at a medical school in Maryland (the

“Department”).¹ The Respondent has since stepped down as director of the Department.

Complaint

3. On or about July 22, 2018, the Board received a complaint from the director of instructional technology at the Department (the “Complainant”).
4. The Complaint alleged that the Respondent had acted unprofessionally on more than one occasion toward the Complainant and other colleagues, including an incident he described as “workplace violence.”
5. Upon receipt of the complaint, the Board initiated an investigation.
6. In furtherance of the investigation, the Board investigator interviewed multiple witnesses who worked with the Respondent and the Complainant at the Department and obtained relevant documents.
7. The investigation revealed that the Respondent acted in an unprofessional manner, including the specific incidents described below.

Inappropriate Comments

8. Based on interviews with witnesses, the Board’s investigation revealed that on or about November 2, 2016, the Respondent and a number of colleagues attended a “team building” event at a local restaurant and bar that also connected to a bowling alley. That evening, a number of colleagues from the Department spent some time bowling and then sat at a large table for drinks and a meal.

¹ Names of facilities, patients and other individuals are confidential. The Respondent may obtain the names upon request to the Administrative Prosecutor.

9. At some point during the meal, the Respondent made a comment about what activity he would like to propose for the next team building event. According to multiple witnesses, the Respondent said that the next event should involve naked mud wrestling, and that a female colleague, a professor of physical therapy who is the co-director of the Department ("Professor A"), should wear a dog collar.
10. Following the statement, Professor A was informed of the comment about her, and she filed a Title IX complaint against the Respondent for sex discrimination.
11. The Department investigated the Title IX complaint and concluded the following in a Final Report:

During his interview, Respondent originally stated that he did not recollect any discussion about a possible next event. [The Respondent] later clarified and said that he did not recall anything being said about wrestling, specifically mud wrestling except that "it might have come up in the mix of the conversation" and acknowledged that it might have been he who mentioned mud wrestling. He did not recollect any response from the people at his table to his suggestion; in fact no one ever made a comment to him about mud wrestling. When asked if he had mentioned "naked" mud wrestling, Respondent replied that he had been the one to bring up mud wrestling but "he had no sports interest in naked mud wrestling." It was also his recollection ... that there were various people at his table tossing out ideas about a possible next event but he did not recall at the time of his interview what anyone else had been suggesting.

When asked if he had ever had made mention at his table of a "dog collar," Respondent said that "the dog collar business" seemed remote.

12. The Final Report also stated:

The Investigative Team interviewed 7 members of the Department of Physical Therapy that were present on November 2, 2016 at the ... bowling event. Three of the seven interviewees did share a similar recollection about nude/naked mud wrestling being referenced by Respondent and each recalled the mention of a dog collar. A fourth interviewee recalled Respondent making a comment about Complainant that was something the interviewee

felt was something Respondent should not have said. ... three of the interviewees did not recollect anything notable being said by Respondent.

13. The Final Report also noted, “The extent to which the interviewees were reluctant to participate for fear of retaliation is notable for its near unanimity and scope.”
14. The Respondent was given the opportunity to respond to the report, and wrote in his response that some of the testimony of the witnesses was “fabricated.” However, as the Final Report notes:

There is no evidence of bad faith, conspiratorial behavior or an agreement to offer false testimony. There was significant reluctance exhibited as well as concern about possible adverse implications of participating in the investigation – despite assurances that participation was mandatory and that the Policy prohibits retaliation. It is counter-intuitive to think that people who wanted to offer false testimony would be reluctant to come forward.

15. The “Findings” section of the Final Report stated the following:

The Investigative Team, having carefully weighed the information obtained in the interviews finds, under the preponderance of the evidence standard, that [it] is more likely than not that Respondent did make a statement in the presence of members of the Department of which he is referencing ... [Professor A] in the context of nude/naked mud wrestling and that mention was made regarding [Professor A] and a “dog collar.”

Workplace Confrontation

16. In an interview with the Board’s investigator, conducted under oath, the Complainant stated that on March 9, 2018, he was in a meeting with his immediate supervisor, who told him that the Respondent had decided to move certain personnel, including Professor A, to new offices.

17. The Complainant felt the Respondent's decision was made in order to retaliate against Professor A for having filed the Title IX complaint, so the Complainant said in a raised voice, "You can't treat people like this" and left the room.
18. Minutes later, the Complainant went upstairs to another office and was talking with two other colleagues about a matter involving technical support.
19. Suddenly, the Respondent entered the room, visibly "pissed" or angry. The Complainant assumed that his immediate supervisor had told the Respondent of his earlier remark.
20. The Respondent walked toward the Complainant, who was seated at the time, and said, "We're going to talk about your behavior."
21. According to the Complainant, the two then walked out into the hall, and as they turned the corner, the Respondent, "turns at me and his finger is about an inch from my face. And he's like, 'We're going to talk about your behavior.'"
22. The Complainant then said, "Take your finger out of my face. You've done this before, and I'm not tolerating this."
23. When he stated, "you've done this before," the Complainant was referring to a previous incident when the Respondent had encroached on his physical space in an inappropriate manner. That incident occurred shortly after the Respondent joined the Department some years before. At that time, according to the Complainant, the Respondent, "pulled me out of a meeting ... and same thing. His finger's in my face. He's like, 'In case you don't know, I need shit around here to work.'" The Complainant responded by saying, "Can you take your finger out of my face?"

24. Following the March 9, 2018 confrontation in the hall, the Complainant and the Respondent had a conversation in the Respondent's office, where "cooler heads prevailed." During that conversation in the Respondent's office, the Complainant admitted that he had told a medical school auditing committee about the previous incident, and the Respondent replied, "Oh, so you're the one that told the committee about that."

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes as a matter of law that the Respondent's conduct, as described above, specifically, making an inappropriate comment about Professor A during a work-related event constitutes: an act of unprofessional conduct in the practice of physical therapy, in violation of Health Occ. § 13-316(19); and a violation of any provision of this title or rule or regulation adopted by the Board in violation of Health Occ. § 13-316(15), specifically: COMAR 10.38.02.02A and COMAR 10.38.02.02B(6) & (10).

The Respondent's conduct, as described above, specifically, engaging in an unprofessional workplace confrontation with the Complainant, constitutes: an act of unprofessional conduct in the practice of physical therapy, in violation of Health Occ. § 13-316(19).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent shall be **SUSPENDED** for **THIRTY (30) DAYS**, all **STAYED**; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a minimum of **TWO (2) YEARS** and continuing until the following terms and conditions are fully and satisfactorily complied with:

1. Within **ninety (90) days** of the effective date of the consent order, the Respondent shall pay a monetary penalty in the amount of **two thousand five hundred dollars (\$2500.00)** to the Board;
2. Within six (6) months of the effective date of the consent order, the Respondent shall, at his own expense, successfully complete an **in-person continuing education course, approved by the Board in advance, equivalent to at least four (4) continuing education (C.E.) credits**, focusing on **professional boundaries**; and the Respondent shall submit written verification that satisfies the Board of the successful completion of the course within 30 (thirty) days of completion of the course;
3. After a minimum period of six (6) months from the effective date of the consent order, if the Respondent has complied with all terms and conditions of probation shown above, and the Respondent has chosen not to renew his license upon expiration, the Respondent may submit a written petition for early termination of probation. After consideration of the petition, the Respondent's probation may be administratively terminated through an order of the Board if the Respondent has complied with all probationary terms and conditions, his license has expired, and there are no pending complaints relating to the charges; and
4. The Respondent shall comply with the Maryland Physical Therapists Act.

IT IS FURTHER ORDERED that the Respondent shall practice in accordance with the laws and regulations governing physical therapy; and it is further

ORDERED that failure to comply fully and satisfactorily with the terms and conditions of the Consent Order shall constitute a violation of probation; and it is further

ORDERED that, if the Board determines, after notice and an opportunity for a hearing, that the Respondent has failed to comply with any term or condition of this Consent Order, the Board may impose further disciplinary action and/or a monetary penalty. The burden is upon the Respondent to prove his compliance with the Consent Order; and it is further

ORDERED that the Respondent may petition the Board to terminate probation after a minimum of two (2) years from the effective date of this Consent Order, provided that the Respondent has fully complied with the above conditions and no complaints regarding the Respondent are pending before the Board; and it is further

ORDERED that the Respondent shall bear all costs associated with fulfilling the terms of the Consent Order; and it is further

ORDERED that, unless stated otherwise in the Consent Order, any time period prescribed in this order begins when the Consent Order goes into effect; and it is further

ORDERED that for purposes of public disclosure, as permitted by Md. Code Ann., General Provisions Article § 4-333(b), this document consists of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may disclose same to any national reporting data bank to which it is mandated to report.

2-26-2020
Date

Sumesh Thomas OIO
Sumesh Thomas, P.T.
Chair
Maryland State Board of Physical
Therapy Examiners

CONSENT

I, Mark Rogers, P.T., acknowledge that I have had the opportunity to be represented by counsel before entering 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.

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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and 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 any adverse ruling of the Board that I might have filed after any such hearing. I acknowledge that this is a formal order of the Board and as such is a public document.

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

2/24/20
Date


Mark W. Rogers
Mark Rogers, P.T.
Respondent

STATE OF MARYLAND

CITY/COUNTY OF Prince George's

I HEREBY CERTIFY that on this 24th day of February 2020, before me,
a Notary Public of the foregoing State and City/County personally appeared Mark Rogers,
P.T., and made oath in due form of law that signing the foregoing Consent Order was his
voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Notary Public



My commission expires: _____

