

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
DOUGLAS A. ROSENER, P.T.	*	BOARD OF PHYSICAL THERAPY
License No.: 18876	*	EXAMINERS
Respondent	*	Case No.: PT 10-40

* * * * *

CONSENT ORDER

On August 22, 2011, the Maryland State Board of Physical Therapy Examiners (the "Board") charged Douglas A. Rosener, P.T. (the "Respondent") with violations of the Maryland Physical Therapy Act (the "Act"), Md. Health Occupations ("H.O.") Code Ann. §§ 13-101 *et seq.* (2009 Repl.Vol.).

The pertinent provisions of the Act under H.O. § 13-316 provide as follows:

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:

...

- (15) Violates any provision of this title or rule or regulation adopted by the Board[.]

The Board further charged the Respondent with the following violation of the Code of Maryland Regulations (Code Md. Regs.) tit. 10, § 38.02.01 – **Code of Ethics**:

...

F. The physical therapist...shall report to the Board of Physical Therapy Examiners all information that indicates a person is allegedly performing, or aiding and abetting, the illegal or unsafe practice of physical therapy[.]

On October 13, 2011, a conference with regard to this matter was held before the Board's Case Resolution Conference ("CRC") Panel. 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

1. At all times relevant to the charges herein, the Respondent was licensed to practice physical therapy in the State of Maryland. The Respondent was originally licensed on August 25, 1997. The Respondent's license is currently active and will expire on May 31, 2012.
2. At all times relevant hereto, the Respondent was a co-owner of a physical therapy practice ("Company A")¹ that had offices in several locations in Maryland, one of which is in Bowie, Maryland ("Facility A").
3. On March 9, 2010, the Board received a written complaint ("Complaint 1") from a physical therapy assistant ("PTA") who worked at Facility A. The PTA stated that in October 2009, the Clinical Director at Facility A, who is a physical therapist ("PT 1"), had confided to the PTA that she had had an inappropriate sexual relationship with a patient ("Patient A").
4. The PTA stated that when PT 1 told her of the inappropriate relationship, the PTA advised her to immediately stop the relationship and to discharge Patient A from her care. Thereafter, PT 1 continued to treat Patient A. In or around October 2009, the PTA, who noted that working conditions were becoming uncomfortable, reported PT 1's conduct to the Respondent.

¹ Names of individuals and facilities will not be used in this document in order to preserve confidentiality.

5. On March 15, 2010, the Board received a written complaint regarding the Respondent from four of PT 1's co-workers at Facility A ("Complaint 2").
6. In Complaint 2, the Complainants describe various work disruptions at Facility A from June to November 2009 which they attributed to PT 1's relationship with Patient A. PT 1 was seen crying while she treated patients and on one occasion was observed crying in a private treatment room while treating Patient A. The Complainants reported that PT 1 would leave Facility A suddenly for last-minute appointments which then required the rescheduling or reassigning of her patients.
7. Upon receipt of Complaints 1 and 2, the Board initiated an investigation of the allegations, which investigation included interviews of employees of Facility A, including PT 1 and the Respondent.

Findings of Fact Pertaining to the Respondent's Violation of the Code of Ethics. §10.38.02.01B

a. PT 1

8. In furtherance of its investigation, the Board subpoenaed from Facility A PT 1's personnel file. As set forth below, the Respondent met with PT 1 on several occasions to discuss the complaints he had received from employees at Facility A.
9. On October 7, 2009, the Respondent met with PT 1 to discuss concerns he had received from a PT at Facility A² regarding PT 1 and Patient A. The complaining PT had told the Respondent that PT 1 spent an excessive amount of time when treating Patient A, often behind closed

² The PT was one of the employees who filed a written complaint with the Board.

doors. PT 1 denied that she had an inappropriate relationship with Patient A, stating that his case was complicated. The Respondent advised PT 1 that the discomfort of the staff and their allegations were sufficient for him to conclude that the Respondent should no longer treat Patient A, or at the very least, treat him in the open gym area.

10. On October 30, 2009, the Respondent and the other co-owner of Facility A, Owner B, met with PT 1 to discuss concerns regarding her relationship with Patient A. PT 1 continued to deny that she had engaged in inappropriate conduct with Patient A. The Respondent and Owner B instructed PT 1 to remove Patient A from her schedule and PT 1 stated she would do so.
11. On November 3, 2009, the Respondent and Owner B determined that the Respondent had not removed Patient A from her schedule and instructed her once again to do so.
12. On November 17, 2009, the Respondent once again discussed with PT 1 concerns that had been raised by several additional employees of Facility A regarding her relationship with Patient A. PT 1 again denied having an inappropriate relationship with Patient A.³
13. On August 26, 2010, Board staff interviewed the Respondent. The Respondent stated that he had observed that PT 1's behavior and work performance had "certainly...changed a bit," but that the complaints he

³ Owner B also failed to report to the Board the concerns regarding PT 1. The Board charged Owner B with, *inter alia*, violating the Code of Ethics for this failure as well as maintaining an inappropriate relationship with a patient. The Board also charged PT 1 for violations of the Act, the Board's Code of Ethics and Requirements for Documentation.

had received from employees were just hearsay. The Respondent further stated that he did not report PT 1's conduct to the Board because he "was okay with the fact that ...when I told [PT 1] to stop treating [Patient A] and that stopped happening, to me, that was enough." In addition, the Respondent stated that "allegations happen all the time" and he did not have any proof, so he "didn't feel like it was a matter that needed to be taken to the Board."

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's conduct constitutes violations of the Act, specifically, H.O. § 13-316 (15) and the Board's Code of Ethics as charged.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 17th day of April, 2012, by a majority of the quorum of the Board:

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent shall successfully complete the next available law and ethics course that is offered by the Board; and it is further

ORDERED that within sixty (60) days of this Consent Order, the Respondent shall pay a monetary fine in the amount of one thousand dollars (\$1,000.00) to be paid in full to the Board by certified or bank guaranteed check

made payable to the Maryland State Board of Physical Therapy Examiners; and it is further


ORDERED that the Respondent shall be responsible for all costs under this Consent Order; and it is further

ORDERED that should the Board receive information that the Respondent has violated the Act or if the Respondent violates any conditions of this Order, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order shall be on the Respondent to demonstrate compliance with the Order or conditions; and it is further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of physical therapy in Maryland; and it is further

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't Code Ann. §10-617(h)(2009 Rep. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank to which it is mandated to report.

04/17/12
Date


John F. Baker, PT
Chairperson


CONSENT

I, Douglas A. Rosener, PT, acknowledge that I am represented by counsel and have consulted with 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 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.

3/22/12
Date


Douglas A. Rosener, PT
Respondent

STATE OF MARYLAND
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 22 day of March 2012,
before me, a Notary Public of the foregoing State and City/County personally
appeared Douglas A. Rosener, PT, 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.



Linda M. Persing
Notary Public
Linda M. Persing

**MY COMMISSION EXPIRES
MARCH 8, 2015**