

IN THE MATTER OF	*	BEFORE THE MARYLAND
DAMON D. SUI, P.T.	*	BOARD OF PHYSICAL
LICENSE NO. 14951	*	THERAPY EXAMINERS
Respondent	*	Case No. PT-15-36

* * * * *

CONSENT ORDER IN LIEU OF
SUMMARY SUSPENSION

Background

Based on information received and a subsequent investigation by the Maryland Board of Physical Therapy Examiners (the “Board”), and subject to the Maryland Physical Therapy Act (the “Act”), Md. Code Ann., Health Occ. §§ 13-101, *et seq.*, and the Maryland Administrative Procedure Act, Md. Code Ann., State Gov’t §§ 10-201 *et seq.*, the Board notified Damon Sui, Physical Therapist, License No. 14951, of its intent to summarily suspended his physical therapist license. Specifically, the Board believed that reliable evidence demonstrated that a threat to the public health, safety, or welfare required emergency action, pursuant to Md. Code Ann., State Gov’t § 10-226(c)(1).

On October 18, 2016, the Board held a hearing before a quorum of the Board to allow the Respondent the opportunity to show cause why he did not pose an imminent threat to the health, safety, or welfare of the public, and why the summary suspension should not be issued. The Board now finds that the Respondent does not pose an imminent threat to the health, safety, or welfare of the public, provided that he comply with the terms and conditions set forth in this Consent Order.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice as a physical therapist in the State of Maryland under License Number 14951. The Respondent's license is currently active and is scheduled to expire on May 31, 2017.

2. At all times relevant hereto, the Respondent was employed as a physical therapist at Agency A, which provides in-home healthcare services to homebound patients. The Respondent is also self-employed providing physical therapy to private pay patients.

3. On or about February 3, 2015, the Board received a complaint from a social worker ("Social Worker A") with the Montgomery County Government, Adult Protective Services ("APS") regarding the Respondent. The complaint alleged that while investigating a case of self-neglect involving an elderly man ("Patient A"), APS discovered that the Respondent was providing in-home physical therapy services to Patient A for four to five years and was billing Patient A privately for those services. The complaint also stated that the Respondent did not maintain treatment records or plans of care for his private pay patients. The complaint further alleged that the Respondent borrowed \$30,000 from Patient A.

4. Furthermore, the complaint stated that during the APS investigation, Social Worker A discovered that the Respondent introduced Patient A to an attorney ("Attorney A") who subsequently became Patient A's medical and financial power of attorney. According to the complaint, Patient A is has severe memory impairment, with symptoms of dementia and depression.

5. On or about February 3, 2015, the Board issued a subpoena duces tecum for the APS records pertaining to Patient A. The records were provided on October 28, 2015, pursuant to a court order from the Circuit Court of Montgomery County.

6. A review of the APS records revealed that on or about December 29, 2014 Patient A was reported to APS for self-neglect. Social Worker A conducted the investigation and interviewed Witness A, Patient A's friend. According to Social Worker A's notes, Witness A stated that the Respondent introduced Patient A to Attorney A.

7. Social Worker A conducted several home visits with Patient A in January and February 2015, during which she observed short-term and long-term memory loss, impaired judgment and insight with depression. Social Worker A also noted that Patient A "appears to lack capacity and appears to be vulnerable."

8. During a home visit, Patient A told Social Worker A that the Respondent owed him money. Social Worker A was unable to determine from Patient A whether the Respondent had repaid the money.

9. On or about June 15, 2016, the Board's investigator interviewed the Respondent under oath.

10. The Respondent stated that he met Patient A in or around 2008 when he provided physical therapy services to Patient A through the Respondent's employer. According to the Respondent, he provided in-home physical therapy for Patient A until it became maintenance physical therapy, which was not reimbursable through Medicaid. At that time, the Respondent began providing maintenance physical therapy to Patient A privately.

11. The Respondent stated that since approximately 2008, he provided twice-weekly, 40-50 minute physical therapy sessions to Patient A and charged \$85 per session.

12. The Respondent also stated that he and Patient A became friends and so he assisted Patient A with activities of daily living such as bathing, haircuts, ordering and preparing medication, cooking meals, as well as home repair, small errands and laundry.

13. In furtherance of its investigation, the Board issued a subpoena duces tecum to the Respondent for his treatment records for Patient A. At his Board interview, the Respondent stated that he doesn't keep any written notes or treatment records for his private patients because "nobody ever read[s] them, nobody ever asks for them . . . I just don't keep records. I do the evaluation but just don't keep daily notes on people."

14. The Respondent further stated that he conducts initial evaluations but does not conduct re-evaluations because most of the people he treats are "maintenance" patients and their diagnoses aren't going to change.

15. The Respondent stated that he treats, on average, four or five private patients at a time. The Respondent treats the private patients until they pass away or for as long as the patient wants to continue to work with him.

16. The Respondent stated that the longest period of time he has provided physical therapy services to a private patient is 15 years.

17. The Respondent stated that he is currently providing physical therapy services to seven private patients (Patients A through G):

- a. The Respondent has treated Patient B twice-a-week for approximately six months;
- b. The Respondent has treated Patient C twice-a-week for approximately one year;
- c. The Respondent has treated Patient D twice-a-week for approximately three months;
- d. The Respondent has treated Patient E once-a-week for approximately one year; and

e. The Respondent has treated Patient F one to two times per week for approximately two years.

18. The Respondent stated that he charges Patients A through G between \$90 and \$110 per session.

19. According to the Respondent, most of his private patients were discharged from Agency A and wanted to continue receiving maintenance physical therapy, which is not covered by Medicaid.

20. The Respondent stated that he has treated approximately 15-20 private patients, and approximately five or six private patients to whom he provided physical therapy for more than five years.

21. The Respondent admitted to borrowing \$30,000 from Patient A. The Respondent stated that Patient A offered to loan him money when Patient A learned that the Respondent's home sustained hurricane damage.

22. According to the Respondent, Patient A loaned the Respondent \$30,000 and the Respondent agreed to repay the loan with monthly payments of \$1000 less the cost of the physical therapy services (\$680 per month) that he continued to provide to Patient A.

23. The Respondent repaid Patient A approximately \$9600 and the remaining \$20,400 was repaid by providing services to Patient A.

24. The Respondent stated that he fully paid off the loan from Patient A on or about June 1, 2015.

25. The Respondent provided copies of canceled checks totaling \$9600.

26. According to the Respondent, Patient A's friend, Witness A, was Patient A's power of attorney. The Respondent stated that sometime after 2008, Witness A approached the

Respondent and indicated that he no longer was able to serve as power of attorney for Patient A. At that time, the Respondent introduced Patient A to Attorney A.

27. Attorney A was a former patient of the Respondent and agreed to serve as Patient A's power of attorney. On or about November 19, 2013, Patient A executed a power of attorney naming Attorney A as financial and medical power of attorney.

28. On August 23, 2016, the Board issued a Notice of Intent to Suspend Physical Therapy License, notifying the respondent of its intent to summarily suspend his license to practice physical therapy, based on a finding that a threat to the public health, safety, or welfare required emergency action, pursuant to Md. Code Ann., State Gov't § 10-226(c)(1).

29. Following the Respondent's request, the Board held a Show Cause Hearing with the Respondent in front of a quorum of the Board on October 18, 2016, to allow the respondent the opportunity to show cause why he did not pose an imminent threat to the health, safety, or welfare of the public, and why the summary suspension should be lifted.

30. At the Show Cause Hearing, the Respondent admitted to the allegations, but claimed that he violated boundaries with good intent. The Respondent suggested that he allowed himself to become friends with Patient A, which led to bad judgement on his part. The Respondent also stated that he very much regretted taking a loan from Patient A and that he was now doing reevaluations and keeping progress notes for all of his private pay patients.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent is subject to discipline pursuant to Md. Code Ann., Health Occ. §§ 13-316(15), (19), and (25); COMAR 10.38.03.02A(2)(a), (e), and (g); and COMAR 10.38.03.02-1.

ORDER

Based on agreement of the parties, it is this 9TH day of November, 2016, by an affirmative vote of the Board, hereby:

ORDERED that the Respondent's license be SUSPENDED for ONE (1) YEAR, all of which shall be STAYED; and be it further,

ORDERED that the Respondent's license be placed on PROBATION for at least FOUR (4) YEARS, during which he shall:

- a) Within the first six (6) months after the effective date of this Consent Order, pay a fine of \$3,000, paid in full in certified check or bank check made payable to the Maryland Board of Physical Therapy Examiners;
- b) Within the first one (1) year after the effective date of this Consent Order, sign up for and complete the Professional/Problem-Based Ethics ("ProBE") Program;
- c) Upon completion of the ProBE program, sign up for and complete the American Physical Therapy Association's online 10-module Professionalism Series;
- d) Within the first 60 days of probation, successfully complete a Board-approved continuing education course in documentation;
- e) Within the first 60 days of probation, pass the Board's closed-book jurisprudence exam with a passing score of at least 90%;
- f) Provide a copy of this Consent Order to any and all physical therapy employers and ensure that his employers provide quarterly progress reports to the Board; and
- g) On a quarterly basis, submit at least three (3) patient charts to the Board for review of compliance with standards of practice, including record-keeping standards; and be it further,

ORDERED as a condition of this Consent Order that the Respondent shall not provide physical therapy services to any private pay patients; and be it further,

ORDERED that the Respondent shall practice at all times in accordance with the Maryland Physical Therapy Act; and be it further,

ORDERED that after two (2) years of probation, the Respondent may petition the Board for modification of the probationary terms herein, provided that he has been fully compliant with the terms of probation and does not have any pending complaints filed against him; and be it further,

ORDERED that after four (4) years of probation, the Respondent may petition the Board to terminate probation, provided that he has been fully compliant with the terms of probation and does not have any pending complaints filed against him; and be it further,

ORDERED that none of the educational hours taken as a result of this Consent Order shall count towards the continuing education hours required for the Respondent to renew his license; and be it further

ORDERED that the Respondent shall at all times cooperate with the Board in the monitoring, supervision, and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and be it further,

ORDERED that the Respondent's failure to fully cooperate with the Board shall be deemed a violation of this Consent Order; and be it further,


ORDERED that in the event the Board finds in good faith that the Respondent has violated any of the terms or conditions of this Consent Order, the Board may impose further disciplinary action against the Respondent's registration, including but not limited to suspension or revocation, provided that the Respondent is first given the opportunity for a hearing; and be it

further,

ORDERED that the Respondent shall bear all expenses associated with this Consent Order; and be it further,

ORDERED that this is a formal order of the Maryland Board of Pharmacy and as such is a public document pursuant to Md. Code Ann., General Provisions § 4-333(b).

11/9/2016
Date


Krystal Lighty, Chair
Maryland Board of Physical Therapy Examiners

CONSENT

1. By signing this Consent, I submit to the foregoing Consent Order as a resolution of this matter. I waive any rights I may have had to contest the findings of fact and conclusions of law contained in this Consent Order, and I agree to be bound by the foregoing Consent Order and its conditions.

2. I acknowledge the validity of this Consent Order as if it were made after a hearing in which I would have had the right to counsel, to confront witnesses on my own behalf, and to all other substantial procedural protections provided by law.

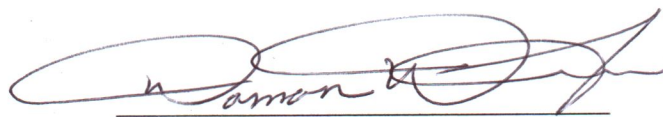
3. I acknowledge that this is a formal order of the Board and as such is a public document.

3. I acknowledge the legal authority and the jurisdiction of the Board to enter and enforce this Consent Order.

4. I acknowledge that, by entering into this Consent Order, I am waiving my right to appeal any adverse ruling of the Board that might have followed an evidentiary hearing.

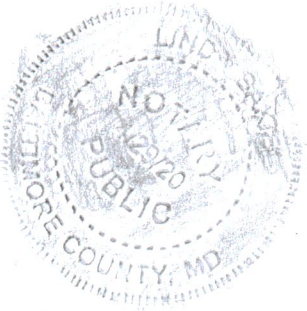
5. I sign this Consent Order freely and voluntarily, after having had the opportunity to consult with counsel. I fully understand the language, meaning, and effect of this Consent Order.

11-3-2016
Date


Damon Sui, Physical Therapist

STATE OF MARYLAND
COUNTY/CITY OF Baltimore

I hereby certify that on this 3rd day of November, 2016, before me, a Notary Public of the State of Maryland and County/City aforesaid, personally appeared DAMON SUI, and made an oath in due form that the foregoing Consent was his voluntary act and deed.



Linda Bakie
Notary Public
My commission expires: 4/19/2020