

IN THE MATTER OF * BEFORE THE
PAMELA A. VOGEL, P.T.A. * MARYLAND STATE
License No. A2613 * BOARD OF PHYSICAL THERAPY
Respondent * EXAMINERS

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On or about July 20, 2006, the Maryland Board of Physical Therapy Examiners (the "Board") charged **PAMELA A. VOGEL, P.T.A.** (the "Respondent"), License No. A2613 with violating certain provisions of the Maryland Physical Therapy Act ("the Act"), codified at Md. Health Occ. ("H.O.") Code Ann. §§ 13-101 *et seq.* (2000 Repl. Vol. and 2004 Supp.)

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:

- (5) In the case of an individual who is authorized to practice limited physical therapy;
 - (i) Practices limited physical therapy other than as authorized by this title;
- (15) Violates any provision of this title or rule or regulation adopted by the Board; [and]
- (25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy.

The Board charged the Respondent with violating the following regulations:

Code Md. Regs. ("COMAR") tit. 10 § 38.03.02, "Standards of Practice."

B. Physical Therapy Assistants.

(1) The physical therapist assistant shall:

- (a) Follow the direction and plan of care of the physical therapist in the treatment of a patient;
* * *
- (d) Use only methods and procedures within the scope of practice of limited physical therapy;
* * *
- (f) Work within the physical therapy assistant's competency in treatment that is within the scope of practice of limited physical therapy; [and]
- (g) Document ongoing communication regarding changes in a patient's status and treatment authorized by the physical therapist.

The Board also charged the Respondent with violating the following regulations:

Code Md. Regs. ("COMAR") tit. 10 § 38.03.02-1.

C. The physical therapist assistant shall document the patient's chart each time the patient is seen by the physical therapist assistant following the physical therapist's initial evaluation or reevaluation by including the following:

- (6) Continuation of plan as established by the physical therapist or change of plan as authorized by the physical therapist.

BACKGROUND

On Tuesday August 29, 2006, the Respondent appeared before the Case Resolution Conference Committee (the "CRC") of the Board. As a result of the negotiations that occurred at the CRC, the Respondent agreed to enter into this Consent

Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

The Board finds the following:

1. At all times relevant to the charges herein, the Respondent was licensed to practice limited physical therapy in the State of Maryland being issued License Number A2613. The Respondent was originally licensed on September 13, 2001.
2. At all times relevant to the charges herein, the Respondent was practicing limited physical therapy at Hospital A¹, located in Waldorf, Maryland.
3. On or about May 12, 2005, the Board received a complaint from Physical Therapist A, a staff physical therapist with Hospital A in Waldorf, Maryland. Physical Therapist A alleged that the Respondent acted outside the scope of her practice of limited physical therapy in the treatment of a number of patients at Hospital A. Specifically, Physical Therapist A asserted that the Respondent wrote a progress note to a physician containing inappropriate conclusions without consultation with a physical therapist, performed reevaluations on patients, failed to timely communicate with a physical therapist, kept patients on her schedule beyond the standard time frame, ordered braces and splints for patients without consultation with a physical therapist, interpreted measurements, made conclusive notes in patient progress notes, and discharged patients without a physical therapist consultation.

¹ The names of the hospital and individuals identified herein are confidential.

4. As part of its investigation, the Board's investigator interviewed Physical Therapist A, who was duly sworn, on July 5, 2005. Physical Therapist A informed the Board's investigator that she began working for Hospital A on October 20, 2004, and immediately became aware of problems with the Respondent's treatment of patients. Physical Therapist A indicated that the Respondent was performing reevaluations of patients, taking patient measurements, and keeping patients on her schedule for extended periods of time.
5. Physical Therapist A told the Board's investigator that the Physical Therapist D, the Respondent's supervising physical therapist, gave permission for the Respondent to perform these functions.
6. Physical Therapist A further indicated that she witnessed the Respondent record manual muscle information and complete reevaluations on patients. According to Physical Therapist A, a Medicare patient was seen fifty-seven (57) times, fifty-five (55) times by the Respondent. Physical Therapist A informed the Board's investigator that Physical Therapist D knew that the Respondent was performing reevaluations and documenting treatment records inappropriately.
7. As part of its investigation, the Board's investigator interviewed Physical Therapist B, a physical therapy manager at Hospital A, who was duly sworn, on July 8, 2005. Physical Therapist B informed the Board's investigator that she was approached by staff physical therapists at Hospital A regarding the scope of practice issues regarding the Respondent. Physical Therapist B reviewed treatment records and found examples where the Respondent performed reevaluations on patients, completed assessments, sent inappropriate notes to physicians, and drew conclusions regarding patients.
8. Physical Therapist B told the Board's investigator that she counseled the Respondent regarding the fact that she was not allowed to complete range of

motion measurements. Physical Therapist B further testified that she counseled the Respondent on treating patients multiple times without a physical therapist intervention.

9. Physical Therapist B indicated that the Respondent admitted performing reevaluations in the past, but stated that she was no longer performing the reevaluations.
10. As part of its investigation, the Board's investigator interviewed the Respondent, who was duly sworn, on August 18, 2005. The Respondent explained to the Board's investigator that she did not perform reevaluations of patients at Hospital A, but instead at the direction of Physical Therapist D completed a performance test. According to the Respondent, a performance test was comprised of taking measurements and looking at the goals and objectively determining whether the patient had met the goals. The Respondent indicated that she never interpreted any of the data that she collected regarding patients. She also indicated that she did not discharge patients or order braces without first consulting with a physical therapist.
11. The Board's investigator interviewed Physical Therapist D, who was duly sworn, on August 25, 2005. Physical Therapist D explained to the Board's investigator that she was responsible for overseeing physical therapists, physical therapy assistants, and aides at Hospital A. She indicated that the Respondent was adequate in her skills as a physical therapy assistant, and that she never saw her perform outside the scope of her practice.

12. Physical Therapist D also indicated that she never told the Respondent to perform reevaluations. Physical Therapist D stated that she never had any therapists come to her with concerns about any physical therapy assistant acting outside the scope of limited physical therapy. However, she informed the Board's investigator that issues were brought up at a meeting by several physical therapists regarding how reevaluations were completed at Hospital A.
13. The Board's investigator interviewed Physical Therapist C, who was duly sworn, on August 26, 2005. Physical Therapist C was a staff physical therapist at Hospital A. Physical Therapist C informed the Board's investigator that a meeting was held in April 2005 by Physical Therapist D to address issues concerning the Respondent. According to Physical Therapist C, the Respondent was informed that she needed to address any issues or concerns with a physical therapist and she was not to complete reevaluations.
14. By subpoena dated June 16, 2005, the Board subpoenaed physical therapy treatment records of nine patients at Hospital A.
15. The physical therapy treatment records of Patients A-C were referred to an expert witness in physical therapy.

Patient A

16. Patient A, then a seventy-four (74) year old female, was referred for physical therapy after a total knee replacement on or about November 15, 2004.
17. On or about December 10, 2004, the Respondent performed two units of therapeutic exercise and group therapy on Patient A and completed a physical

performance test. The Respondent also sent a written report to Patient A's treating physician.

18. On or about December 17, 2004, the Respondent documented in Patient A's chart that she completed a "re eval perf." The Respondent further documented Patient A's assessment/goal status and updated goals for Patient A. Patient A was billed for two units of therapeutic exercise, one unit of manual therapy, and a physical performance test. There was no written report to a physician present in the chart for this date of service, and there was no documentation of discussion with any physical therapist concerning the status or treatment of Patient A.
19. On or about February 8, 2005, the Respondent sent a progress note to Patient A's treating physician discharging Patient A from physical therapy. There was no documentation of discussion with a physical therapist concerning Patient A in or around this time period. An unsigned discharge summary for Patient A is present in the treatment record.
20. The Board's expert witness reviewed Patient A's treatment record and concluded that there was no documentation of discussion or communication between a physical therapist and physical therapy assistant concerning Patient A. The Board's expert witness further concluded that the Respondent on two separate occasions provided reports to a physician without input from a physical therapist. In addition, the Board's expert witness concluded that the Respondent completed the assessment/goal status and updated goals relative to Patient A without documentation of communication with a physical therapist.

Patient B

21. Patient B, then a sixty-eight (68) year old male, was experiencing shoulder pain.
22. On or about August 8, 2004, an initial evaluation was performed on Patient B at Hospital A demonstrating medical necessity and justification for therapeutic intervention.
23. With the exception of October 29, 2004, the Respondent provided all subsequent treatments for Patient B through March 7, 2005, including various combinations and units of manual therapy, therapeutic exercise, therapeutic activity, neuromuscular reeducation, self care activities, electrical stimulation-attended, electrical stimulation-unattended, group therapy, a physical therapy performance test, and a reevaluation.
24. The Board's expert witness reviewed Patient B's treatment record and concluded that there was insufficient communication between the physical therapist(s) and the Respondent concerning Patient B, and that the Respondent continued to treat Patient B for an extended period of time without documented intervention or supervision from a physical therapist.
25. The Board's expert witness further concluded that there was no reevaluation completed by a physical therapist to justify medical necessity or further intervention related to Patient B after the first month of service.
26. The Board's expert witness also concluded that the Respondent independently completed that assessment/goal status and updated goals for Patient B and sent written reports to physicians concerning Patient B.

Patient C

27. Patient C, then a fourteen (14) year old female, was referred for physical therapy because of right ankle tendonitis and a possible fracture. On or about March 9, 2005, an initial evaluation was performed at Hospital A by a physical therapist demonstrating medical necessity and the need for therapeutic intervention.
28. With the exception of April 19, 2005, the Respondent provided all subsequent treatment to Patient B including manual therapy, neuromuscular reeducation, therapeutic exercise, therapeutic activity, electrical stimulation, and group therapy.
29. The Board's expert witness reviewed Patient C's treatment record and concluded that there was insufficient communication between the physical therapist(s) and the Respondent concerning Patient C, and that the Respondent continued to treat Patient C for an extended period of time without documented intervention or supervision from a physical therapist.
30. The Board's expert witness further found that the Respondent completed a reevaluation on Patient C on or about March 25, 2005, and completed assignment/goal status and updated goals on Patient C. In addition, the Board's expert witness found that the Respondent independently ordered a new brace for Patient C on or about April 28, 2005.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Md. Health Occ. Code Ann. § 13-316(5), (15), and (25).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 19th day of September 2006, by a majority of the Board considering this case:

ORDERED that the Respondent's license to practice limited physical therapy shall be **SUSPENDED** for a **PERIOD OF ONE (1) YEAR**; and be it further

ORDERED that the entire period of the suspension shall be **IMMEDIATELY STAYED**; and be it further

ORDERED that the Respondent shall be placed on **PROBATION** for a **PERIOD OF TWO (2) YEARS**, to commence from the date that this Consent Order is executed, subject to the following terms and conditions:

1. The Respondent shall enroll in and successfully complete the next available Maryland Physical Therapy Law Course;
2. The Respondent shall enroll in and successfully complete a Board-approved documentation course within the first six (6) months of the probationary period;
3. The Respondent shall submit the treatment records of four (4) patients within the first sixty (60) days of the probationary period to be reviewed by the Board and an additional four (4) patients on a quarterly basis thereafter. The Respondent shall follow the Board's recommendations regarding its review of the Respondent's documentation; and
4. The Respondent shall pay a fine in the amount of five-hundred dollars (\$500) by certified check or money order payable to the Board within one (1) year from the date that this Consent Order is executed; and be it further

ORDERED the above course shall be in addition to any Continuing Education requirements mandated for continuing licensure, and the Continuing Education shall not count toward fulfilling other continuing education requirements that the Respondent must

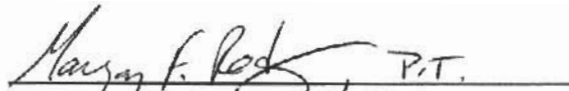
fulfill in order to renew his license to practice physical therapy; and be it further

ORDERED after the conclusion of the entire **TWO (2) YEAR** period of **PROBATION**, the Respondent may file a written petition for termination of her probationary status without further conditions or restrictions, but only if the Respondent has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the two year period of probation, and if there are no pending complaints regarding the Respondent before the Board; and be it further

ORDERED that should the Respondent violate any of the terms or conditions of this Consent Order, the Board, after notice, opportunity for a hearing and determination of violation, may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, said violation being proven by a preponderance of the evidence; and be it further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and be it further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §§ 10-611 et seq. (2004 Repl. Vol.).


Margery Rodgers, P.T., Chair
State Board of Physical Therapy Examiners

CONSENT OF PAMELA VOGEL, P.T.A.

I, Pamela Vogel, P.T.A., acknowledge that I have had the opportunity to consult with

counsel before signing this document. By this Consent, I admit to the Findings of Fact and Conclusions of Law as set forth above, and agree and accept to be bound by the foregoing Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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, 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 jurisdiction of the Board to initiate these proceedings and to issue and enforce the Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

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

9/15/06
Date

Pamela Vogel PTA
Pamela Vogel, P.T.A.

STATE OF MARYLAND

~~CITY~~ COUNTY OF ST. MARY'S :

I HEREBY CERTIFY that on this 15 day of SEPTEMBER, 2006, before

me, KAREN HOPFENGARDNER,^{FLK} a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Pamela Vogel, P.T.A., License Number A2613, and made oath in due
form of law that signing the foregoing Consent Order was her voluntary act and deed, and
the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Karen M. Hopfengardner
Notary Public

My Commission Expires: July 1, 2009