

**IN THE MATTER OF**  
**SCOTT WASSERMAN, P.T.**  
**License No.: 18355**

**Respondent**

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\* **BEFORE THE STATE BOARD**  
\* **OF PHYSICAL THERAPY**  
\* **EXAMINERS**  
\* **Case No.: 01-BP-145**

**FINAL CONSENT ORDER**

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board"), and subject to Md. Health Occ. Code Ann. § 13-101 *et seq.* (the "Act"), the Board charged Scott Wasserman, P.T., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of H.O. § 13-316:

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) Submits a false statement to collect a fee;
- (16) Violates any provision of this title or rule or regulation adopted by the Board;
- (21) Grossly overutilizes health care services;
- (26) Fails to meet accepted standards in delivering physical therapy care.

The Board also charged the Respondent with violations of the Code Md. Regs. tit. 10, § 38.03.02-1 Requirements for Documentation:

A. As established by the American Physical Therapy Association of Maryland, and as approved by the Board, the physical therapist shall document the patient's chart as follows:

(1) For initial visit:

- (a) Date,
- (b) Condition/diagnosis for which physical therapy is being rendered,
- (c) Onset,
- (d) History, if not previously recorded,
- (e) Evaluation and results of tests (measurable and objective data),
- (f) Interpretation,
- (g) Goals,
- (h) Plan of care and
- (i) Signature, title (PT) and license number;

(2) For subsequent visits:

- (a) Date,
- (b) Modalities, procedures, etc.,
- (c) Cancellations, no-shows,
- (d) Response to treatment,
- (e) Signature and title (PT), with identifying signatures appearing on the patient's chart, although the flow chart may be initialed,
- (f) Weekly progress or lack of it,
- (g) Unusual incident/unusual response,
- (h) Change in plan of care;
- (i) Temporary discontinuation or interruption of services and reasons,
- (j) Reevaluation,
- (k) If there is a physical therapy assistant, reevaluate and document as required by Regulation .02L of this chapter;

(3) For discharge or last visit:

- (a) Date,
- (b) Reason for discharge,
- (c) Status for discharge,
- (d) Recommendations for follow-up, and
- (e) Signature and title.

The Board issued the charges on January 21, 2003. Thereafter, a Case Resolution Conference was held on April 1, 2003. Following the Case Resolution Conference, the parties agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

### **FINDINGS OF FACT**

The Board makes the following findings:

1. The Respondent is licensed to practice physical therapy in the State of Maryland. The Respondent was originally licensed on January 23, 1996.

2. At all times relevant hereto, the Respondent was employed as a physical therapist by Concentra Medical Centers, Inc. ("Concentra").

3. On or about March 11, 1999, the Board received a complaint from the Special Investigation Unit of the Injured Workers' Insurance Fund ("IWIF") that Concentra overutilized the following physical therapy procedures, as identified by the Current Procedural Terminology ("CPT") assigned to them:

**95831-** muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report

**95851-** range of motion measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine)

4. Thereafter, the Board conducted an investigation of services provided and claims submitted to IWIF by Physical Therapists ("PTs") and Physical Therapist Assistants ("PTAs") employed by Concentra at the time the complaint was filed. The investigation revealed documentation and coding deficiencies in addition to those originally alleged in the IWIF complaint.

## **CPT CODES**

5. CPT codes provide a uniform language that accurately describes medical, surgical and diagnostic procedures. According to the CPT Manual, the CPT is "the most widely accepted nomenclature for the reporting of physician procedures and service under government and private health insurance programs. CPT is also useful for administrative management purposes such as claims processing and for the development of guidelines for medical care review."

### **a. Codes 95831 and 95851**

6. The CPT codes identified in the IWIF complaint, 95831 and 95851, are classified as Neurology and Neuromuscular Procedures.<sup>1</sup> Both codes are appropriate to evaluate a patient who has suffered deficiencies as a result of a neurological disorder or disease such as stroke or multiple sclerosis in order to document the patient's progression or regression. Both of these codes require the physical therapist to generate a separate report.

7. The term "separate procedure," as used in the description of the codes in the CPT manual, identifies a procedure that is commonly carried out as an integral component of a total service or procedure. The CPT manual states further:

The codes designated as "separate procedure" should not be reported in addition to the code for the total procedure or service of which it is considered an integral component. However, when a procedure or service that is designated as a "separate procedure" is carried out independently or considered to be unrelated or

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<sup>1</sup> The most common CPT codes recorded in Concentra patient records are listed in the Physical Medicine and Rehabilitation section, the first two digits are "97." Unless a four-digit CPT code suffix is specified, the suffix for all codes used herein is "0000."

distinct from other procedures/services provided at that time, it may be reported by itself, or in addition to other procedures/services by appending the modifier "-59" to the specific "separate procedure" code to indicate that the procedure is not considered to be a component of another procedure, but is a distinct, independent procedure. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries).

8. Code 95831 is defined in the CPT manual as follows: Muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report.

9. Code 95851 is defined in the CPT manual as follows: Range of motion ("ROM") measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine).

10. Objective findings such as muscle strength and range of motion are a standard of physical therapy documentation and are to be performed once a week at a minimum. It is not standard physical therapy practice to bill separately for these measurements except when being performed as re-evaluation. It is standard physical therapy practice to assess and interpret objective findings that result from muscle testing and range of motion testing in order to determine whether changes should be made to the patient's treatment plan and/or goals.

**b. Code 97110-Therapeutic exercise**

11. Therapeutic exercise (CPT code 97110) is classified as a therapeutic procedure. A therapeutic procedure is "a manner of effecting change through the application of clinical skills and/or services that attempt to improve

function. Physician or therapist required to have direct (one on one) patient contact."

12. Therapeutic exercise is defined in the CPT manual as follows: Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercise to develop strength and endurance, range of motion and flexibility.

13. Instructing a patient how to perform the exercise is a component of a therapeutic exercise and is not to be billed as a separate charge by the provider.

**c. Code 97112- Neuromuscular re-education**

14. Neuromuscular re-education (Code 97112) is classified as a therapeutic procedure and incorporates all of the elements of therapeutic exercises. Neuromuscular re-education is further defined as the neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture and proprioception.

**d. Code 97530- Therapeutic activity**

15. Therapeutic activity (Code 97530) is classified as a therapeutic procedure and is defined as, "direct (one on one) patient contact by the provider (use of dynamic activities to improve functional performance), each 15 minutes."

**General Allegations of Deficiencies**

16. Throughout the patients' treatment records, the Respondent noted and billed for therapeutic exercises and therapeutic activities in the absence of documentation that the patients required one-on-one supervision, contact or instruction during these activities.

17. Treatment plans as written in initial evaluations are inadequate in that they lack treatment procedures and/or modalities to be provided.

18. CPT codes are used for tests conducted shortly after a patient's initial evaluation. These tests include: range of motion, manual muscle testing, reflexes, girth and grip strength. Objective findings are a standard of physical therapy documentation and are to be performed on a weekly basis at minimum. It is not standard practice to bill separately for these measurements, except as part of a re-evaluation. The Respondent failed on most occasions to prepare reports for those procedures that are defined in the CPT manual as a "separate procedure" but billed for the procedure nonetheless.

### **Patient-Specific Allegations**

#### **Patient A**

19. Patient A, a female born in 1955, initially presented to Concentra on July 29, 1998 with complaints of shoulder pain. Patient A reported the injury occurred while at work.

20. The patient was evaluated by the Respondent on July 31, 1998.

21. The Respondent treated Patient A on October 2, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units)<sup>2</sup>.

22. The Respondent's documentation of the October 2, 1998 visit does not support the use of the duplicate Therapeutic Exercise code.

23. The Respondent treated Patient A on October 8, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2

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<sup>2</sup> Charges under the "Supplies" category are not at issue in this case and are not set forth herein.

units), Joint Mobilization (97265), Therapeutic Activity (97530); Tests - Range of Motion (95851).

24. The Respondent's documentation of the October 8, 1998 visit fails to support the use of the test code. The Therapeutic Activities are not specifically identifiable in the Respondent's documentation, which thus does not support the use of this code.

25. The Respondent treated Patient A on October 19, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), and Therapeutic Activity (97530).

26. The Respondent's documentation of the October 19, 1998 visit fails to support the use of the Therapeutic Activity code.

27. The Respondent treated Patient A on October 21, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Joint Mobilization (97265) and Therapeutic Activity (97530).

28. The Respondent's documentation of the October 21, 1998 visit reveals that the Therapeutic Activities are not specifically identifiable in the Respondent's documentation, and does not support the use of this code.

29. The Respondent treated Patient A on October 22, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530) (2 units).

30. The Respondent's documentation of the October 22, 1998 visit fails to support the use of the duplicate Therapeutic Exercise and Therapeutic Activities codes. The Therapeutic Activities are not specifically identifiable in the



Respondent's documentation, and documentation does not support the use of this code.

31. The Respondent treated Patient A on October 26, 1998. He noted the following charges for the visit: Modalities – Hot/Cold Packs (97010); Procedures – Therapeutic Exercise (97110) (2 units), Therapeutic Activity (97530); Tests - Range of Motion (95851).

32. The Respondent's documentation of the October 26, 1998 visit fails to support the use of the Test code. In addition, the Therapeutic Activities are not specifically identifiable in the Respondent's documentation, and documentation does not support the use of this code.

33. The Respondent treated Patient A on October 30, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Myofascial Release (97250), and Therapeutic Activity (97530).

34. The Respondent's documentation of the October 30, 1998 visit reveals that the Therapeutic Activities are not specifically identifiable in the Respondent's documentation and does not support the use of this code.

35. The Respondent treated Patient A on November 3, 1998. He noted the following charges for the visit: Modalities – Ultrasound (97035); Procedures – Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530); Tests - Range of Motion (95851).

36. The Respondent's documentation of the November 3, 1998 visit fails to support the use of the Test code. The Therapeutic Activities are not

specifically identifiable in the Respondent's documentation, and the documentation does not support the use of this code.

#### **Patient B**

37. Patient B, a male born in 1958, initially presented to Concentra on November 4, 1998 with complaints of a groin strain. Patient B reported that the injury occurred while at work.

38. The patient was evaluated by the Respondent on November 4, 1998. The treatment plan included: modalities, range of motion exercises, mobilization, soft tissue mobilization, strain/counterstrain.

39. The Respondent treated Patient B on November 5, 1998. He noted the following charges for the visit: Modalities – Hot/Cold Packs (97010); Procedures – Therapeutic Exercise (97110) (2 units), and Therapeutic Activity (97530).

40. The Respondent's documentation of the November 5, 1998 visit reveals that the Therapeutic Activities are not specifically identifiable and the documentation does not support of this code.

41. The Respondent treated Patient B on November 6, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Therapeutic Activity (97530); Tests - Range of Motion (95851).

42. The Respondent's documentation of the November 6, 1998 visit reveals the objective findings are minimal and a separate report is not in the records for this patient. The Respondent's documentation does not support the use of the Therapeutic Activity code.

43. The Respondent treated Patient B on November 9, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530).

44. The Respondent's documentation of the November 9, 1998 visit fails to support the use of the Therapeutic Activities code.

45. The Respondent treated Patient B on November 10, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530).

46. The Respondent's documentation of the November 10, 1998 visit minimally supports the use of these codes. The documentation, however, fails to support charging for a total of 3 units of these procedures.

47. The Respondent treated Patient B on November 12, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Therapeutic Activity (97530) (2 units); Tests - Range of Motion (95851).

48. The Respondent's documentation of the November 12, 1998 visit fails to support the use of the test code. The documentation does not support billing for 4 units of exercise and activities. There is only one Therapeutic Activities identifiable in the Respondent's documentation.

49. The Respondent treated Patient B on November 17, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Neuromuscular Re-education (97112) and Therapeutic activity (97530).

50. The Respondent's documentation of the November 17, 1998 visit does not support the use of 3 separate codes and does not support billing for 4 units of activities/exercise.

**Patient C**

51. Patient C, a male born in 1963, initially presented to Concentra on June 1, 1998 with complaints of back strain.

52. The patient was initially evaluated by another physical therapist on June 1, 1998. The treatment plan included exercise.

53. The Respondent treated Patient C on June 11, 1998. He noted the following charges for the visit: Modalities – Hot/Cold Packs (97010); Procedures – Therapeutic Exercise (97110), Myofascial Release (97250), Joint Mobilization (97265) and Therapeutic Activity (97530); Tests - Range of Motion (95851).

54. The Respondent's documentation of the June 11, 1998 visit fails to support the use of the Test code. The documentation also fails to support the use of the Therapeutic Activity code.

55. The Respondent treated Patient C on June 12, 1998. He noted the following charges for the visit: Modalities – Hot/Cold Packs (97010); Procedures – Therapeutic Exercise (97110), Myofascial Release (97250) and Therapeutic Activity (97530).

56. The Respondent's documentation of the June 12, 1998 visit fails to support the use of the Therapeutic Activity code.

57. The Respondent treated Patient C on June 15, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Myofascial Release (97250) and Therapeutic activity (97530).

58. The Respondent's documentation of the June 15, 1998 visit fails to support the use of the Therapeutic Activity code.

#### **Patient D**

59. Patient D, a female born in 1954, initially presented to Concentra on October 22, 1998 with complaints of back pain.

60. The patient was initially evaluated by a physical therapist other than the Respondent. The treatment plan included: therapeutic exercise, neuromuscular re-education, therapeutic activities, and modalities.

61. The patient was evaluated again on October 27, 1998. This treatment plan is illegible and does not indicate the necessity for a second evaluation.

62. The Respondent treated Patient D on October 29, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530).

63. The Respondent's documentation of the October 29, 1998 visit fails to support the use of the Therapeutic Activities code.

64. The Respondent treated Patient D on November 2, 1998. He noted the following charges for the visit: Modalities – Hot/Cold Packs (97010); Procedures – Therapeutic Exercise (97110) (2 units), Therapeutic Activity (97530).

65. The Respondent's documentation of the November 2, 1998 visit fails to support the use of the Therapeutic Activities code.

66. The Respondent treated Patient D on November 5, 1998. He noted the following charges for the visit: Procedures – Therapeutic Exercise (97110) (2 units), Therapeutic Activity (97530); Tests - Range of Motion (95851).

67. The Respondent's documentation of the November 4, 1998 visit fails to support the use of the Test code. The documentation also fails to support the use of the Therapeutic Activities code.

68. The Respondent was interviewed by the Board during its investigation of this case. The Respondent's explanation of the difference between Therapeutic Activity and Therapeutic Exercise does not reflect the accepted and published definition of those terms. He was also unable to explain the use of Neuromuscular Re-education. The Respondent's statements with regard to the charges for which he is alleged herein to have failed to have provided adequate documentation likewise fails to support use of those codes.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated Md. Health Occ. Code Ann. §§ 13-316 (15), (16), and (26). The Board also finds that the Respondent violated Code Md. Regs. tit. 10, § 38.03.02-1. On April 15, 2003, the Board dismissed the charge of H.O. § 13-316(21) Grossly overutilizes health care services.

## ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20<sup>th</sup> day of MAY, 2003, by a majority of a quorum of the Board,

**ORDERED** that the Respondent shall be placed on probation for a period of at least one (1) year, subject to the following conditions:

1. The Respondent shall pay a fine in the amount of one thousand dollars (\$ 1,000.00), to be paid prior to the termination of probation;
2. The Respondent shall take the Board-approved law and ethics course and pass the associated examination administered by the Board;
3. The Respondent shall successfully complete a Board-approved documentation course;
4. The Respondent shall successfully complete a Board-approved billing course;
5. The Respondent may apply the above coursework to the Respondent's continuing education requirements for licensure renewal;

**AND IT IS FURTHER ORDERED** that if the Respondent fails to comply with any of the terms or conditions of probation set forth above, that failure shall be deemed a violation of this Order; 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 should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity of 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 of Probation shall be upon the Respondent to demonstrate compliance with the Order or conditions; and it is further

**ORDERED** that the Respondent shall bear the expenses associated with the Consent Order; and it is further

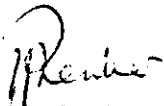
**ORDERED** that, at the end of the probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on the Respondent's license, provided the Respondent can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and it is further

**ORDERED** that for purposes of public disclosure, as permitted by Md. State Gov't Code Ann. § 10-617(h) (Repl. Vol. 1999), this document consists 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.

5-30-03  
Date

  
Penelope D. Lescher, M.A., P.T., M.C.S.P., Chair  
State Board of Physical Therapy Examiners


## CONSENT

I, Scott Wasserman, P.T., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney and have been advised by my attorney of the legal implication of signing this Consent Order;
2. I am aware that without my consent, my license to practice physical therapy in this State cannot be limited except pursuant to the provisions of H.O. § 13-317 and the Maryland Administrative Procedure Act, codified at State Gov't §§ 10-219 *et seq.*
3. I am aware that I am entitled to a formal evidentiary hearing before the Board;
4. By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. 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 behalf and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the 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.
5. I acknowledge that failing to abide by the condition set forth in this Order, I may, after an opportunity to be heard, suffer disciplinary action, including revocation of my license to practice physical therapy in the State of Maryland.

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

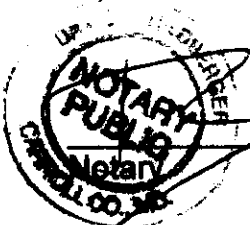
5/14/03  
Date

  
Scott Wasserman, P.T.  
Respondent

STATE OF: Massachusetts  
CITY/COUNTY OF: Franklin

I HEREBY CERTIFY that on this 14<sup>th</sup> day of May, 2003, before me, a Notary of the State of Massachusetts and the City/County of Franklin, personally appeared Scott Wasserman, P.T., and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed, and that the statements made herein are true and correct.

**AS WITNESS** my hand and notarial seal.



My Commission expires: 04/06/04