

IN THE MATTER OF
ELLEN WATTAY, P.T.
License No. 13600

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICAL THERAPY
* EXAMINERS

Respondent

* * * * *

FINAL ORDER

Procedural History

This case arose from allegations that Ellen Wattay, P.T. (the "Respondent"), License Number 13600, among other things, committed an act of unprofessional conduct, failed to cooperate with a lawful Board investigation, and failed to adhere to the Board's documentation standards. Based upon this information and pursuant to its authority under the Maryland Physical Therapy Act, *Md. Code Ann.*, Health Occ. ("H.O.") §13-101 *et seq.* (the "Practice Act"), the Board of Physical Therapy Examiners (the "Board") issued formal charges against the Respondent for violating the Practice Act.

A hearing on the merits was held on September 27, 2005, before a Hearing Committee of the Board (the "Committee"), pursuant to Health Occ. § 13-317(d). On December 1, 2005, the Committee issued a Proposed Decision ("Proposed Decision") wherein it concluded that the charges against the Respondent were proven by a preponderance of the evidence. The Committee recommended that the Respondent's license to practice physical therapy be revoked. The Proposed Decision included notification to the parties of the right to file exceptions to the Committee's Proposed

Decision. Neither party filed exceptions to the Proposed Decision rendered in the matter.

On January 17, 2006, the full Board reviewed and considered the Committee's Proposed Decision and the record in accordance with COMAR 10.38.05.05F. On that same date, January 17, 2006, the Board convened for a final decision in the case.

SUMMARY OF THE EVIDENCE

The Board adopts and incorporates by reference the proposed Summary of Exhibits and Pertinent Witness Testimony made by the Committee in the Proposed Decision issued on December 1, 2005, as the Board's final Summary of the Evidence. The entire Proposed Decision is attached hereto as Appendix A.

FINDINGS OF FACT

The Board adopts and incorporates by reference the proposed Findings of Fact made by the Committee in the Proposed Decision issued on December 1, 2005, as the Board's final Findings of Fact.

OPINION

The Board adopts and incorporates by reference the Opinion made by the Committee in the Proposed Decision issued on December 1, 2005, as the Board's Opinion.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, and after consideration of the hearing record, the Board adopts the Committee's Conclusions of Law and finds that the Respondent violated *Md. Code Ann.*, Health Occ. § 13-316(2), (13), (16), (20), and (25).

SANCTIONS

For the reasons set forth in the Opinion of the Committee, as adopted by the Board, the Board adopts the sanction of revocation as recommended by the Committee in its Proposed Decision, dated December 1, 2005.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this day of January 17, 2006, by a majority of the full authorized membership of the Board, under the authority of Health Occupations Art. §13-316, it is hereby,

ORDERED that the license to practice physical therapy held by the Respondent, ELLEN WATTAY, is hereby REVOKED.

January 30, 2006
Date

Margery Rodgers P.T.
Margery Rodgers, P.T. *act*
Board Chairperson

NOTICE OF RIGHT TO APPEAL

Pursuant to *Md. Code Ann.*, Health Occ. § 13-318, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days of your receipt of this Final Order and shall be made as a petition for judicial review of a final decision in accordance with the Maryland Administrative Procedure Act, *Md. Code Ann.*, State Gov't §§ 10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

**IN THE MATTER OF
ELLEN G. WATTAY, P.T.
LICENSE NO. 13600
RESPONDENT**

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICAL THERAPY
* EXAMINERS**

* * * * *

PROPOSED DECISION

Background

On March 15, 2005, the Maryland State Board of Physical Therapy Examiners (the “Board”) issued formal charges against the license to practice physical therapy held by Ellen G. Wattay, P.T. (the “Respondent”). The Respondent was charged with failing to cooperate with a lawful Board investigation, failing to adhere to the Board’s documentation standards, and committing an act of unprofessional conduct. The Board delegated its hearing authority to a hearing committee of the Board consisting of three Board members. Md. Code Ann., Health Occ. §13-317(d). The Hearing Committee (the “Committee”) held an evidentiary hearing on September 27, 2005.

The Administrative Prosecutor made a pre-hearing Motion to Quash the subpoena issued on behalf of the Respondent directing the Administrative Prosecutor, James Anagnos, to testify in this matter. The Respondent proffered that she sought testimony from Mr. Anagnos to support her argument that Mr. Anagnos issued the charges against her solely because the Respondent “embarrassed” him by interfering with his prosecution of a related matter.

Mr. Anagnos does not have any direct knowledge of the violations alleged in this matter. Furthermore, Mr. Anagnos does not have the authority to issue charges against a physical therapist nor any other healthcare provider. The charges in this matter were issued by the Board.

In addition, any discussions Mr. Anagnos had with the Respondent regarding possible settlement of this matter are confidential and may not be considered by this Board. Lastly, it is within the sound discretion of the Board as to whether an administrative prosecutor must withdraw from a case and testify as a witness. The Board determined that any testimony by Mr. Anagnos would be irrelevant and immaterial to the Respondent's guilt or innocence of the charges issued by this Board, and therefore granted the State's Motion to Quash. *See Raines v. State*, 142 Md.App. 206 (2002).

The Committee issues this Proposed Decision for review and consideration by a quorum of the Board. The Committee finds, by a preponderance of the evidence, that the State supported the charges issued against the Respondent. This Proposed Decision is being issued to present the Committee's findings of fact and conclusions of law in support of its recommendation for revocation of the Respondent's license to practice physical therapy.

Summary of Exhibits and Pertinent Witness Testimony

A. Exhibits

- State's Exhibit 1 - Charging document, dated March 15, 2005
- State's Exhibit 2 - April 5, 2003 Interview transcript of Ellen Wattay
- State's Exhibit 3 - Report of Investigative Activity – Ellen Wattay Telephone Interview of August 19, 2003
- State's Exhibit 4 - Affidavit of Ellen G. Wattay, dated May 25, 2004
- State's Exhibit 5 - Treatment Record Review Report for Patient A
- State's Exhibit 6 - Treatment Records for Patient A
- State's Exhibit 7 - Treatment Record Review Report for Patient B
- State's Exhibit 8 - Treatment Records for Patient B

- State's Exhibit 9 - Treatment Record Review Report for Patient C
- State's Exhibit 10 - Treatment Records for Patient C
- State's Exhibit 11 - Treatment Record Review Report for Patient D
- State's Exhibit 12 - Treatment Records for Patient D
- State's Exhibit 13 - Report of Investigative Activity – Rosalie Puttre Telephone Interview of September 2, 2003
- State's Exhibit 14 - Medicare Checks paid to Ellen Wattay
- State's Exhibit 15 - Treatment Records for Patient E

B. Summary of Pertinent Witness Testimony

Ernest Bures, Board investigator, testified on behalf of the State. Mr. Bures has been an investigator with the Board for five years during which he has conducted several hundred investigations. Mr. Bures previously served 26 years with the Baltimore County Police Department. Mr. Bures has received training in administrative investigations and has been certified by CLEAR. [T. 24-25] Mr. Bures testified that he conducted an investigation into a matter involving Brenda Cameron, P.T., during which he interviewed the Respondent in person and under oath, on April 5, 2003. [T. 26, 38] Mr. Bures testified that the Respondent indicated in that interview that she, at no time, gave anyone at Ocean City Physical Therapy the authority to sign her name to Medicare reimbursement checks. [T. 43-44] Mr. Bures further testified that he conducted a follow-up telephone interview with the Respondent in which she confirmed that she never gave permission to Ms. Cameron to bill Medicare using the Respondent's PIN for treatments rendered by Ocean City Physical Therapy, nor did she authorize Ms. Cameron to apply for a new Medicare provider number under the Respondent's name. [T. 47] Mr. Bures stated that, based on a telephonic interview with Patient E's wife, his investigation revealed that

the Respondent accepted payment from Patient E, a Medicare recipient, for services up front and later endorsed Medicare reimbursement checks back to the patient. [T. 51]

Carol Zehnacker, DPT, testified as an expert in physical therapy. Dr. Zehnacker has been a licensed physical therapist since 1977 and specializes in orthopedic physical therapy. Dr. Zehnacker has taught at University of Maryland and currently teaches at Frederick Community College. [T. 54] Dr. Zehnacker reviewed the Respondent's treatment records of Patients A through E and generated an expert report. [T. 56] Dr. Zehnacker found numerous deficiencies in the Respondent's documentation of treatment, including the lack of goals and parameters in the initial evaluations, no discharge summaries, and no signature or license numbers on progress notes. [T. 60-73] Dr. Zehnacker testified that there was no progress note to substantiate a bill for Patient A. [T. 62] Dr. Zehnacker further testified that one evaluation appeared to be a photocopy of another later evaluation for the same patient, Patient B. [T.66-67] Dr. Zehnacker stated that physical therapists may not accept up front payment from Medicare patients and later endorse the Medicare reimbursement check back to the patients. Dr. Zehnacker stated that this is a commonly known prohibition by any practitioner who works with Medicare plans. [T. 74]

The Respondent testified on her own behalf. The Respondent stated that it was a mistake to take up-front money from a Medicare patient, but that she was not attempting to defraud Medicare. The Respondent testified that many of her progress notes were not signed by her because her secretary would type them from her dictation and immediately file them into the patients' charts without getting the Respondent to sign them first. [T. 77] The Respondent further testified that she did not intend to give false testimony to the Board and that she signed the May 25, 2004 affidavit in her civil case against the Camerons on the advice of her attorney. [T. 79]

FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Committee finds that the following facts are true:

1. At all times relevant, the Respondent was a licensed physical therapist in the State of Maryland. The Respondent was first licensed on 11/13/1958, and currently possesses License Number 13600.

2. At all times relevant to the charges herein, the Respondent was either a current or former owner of Ocean City Physical Therapy, Inc. (hereinafter "Ocean City Physical Therapy"), located at 13721 Coastal Highway, Ocean City, Maryland 21842.

Failure to Cooperate with a Lawful Board Investigation

3. On April 1, 2002, the Respondent sold the business that she formerly owned and operated as "Ocean City Physical Therapy" to the buyer Ocean City Physical Therapy, Incorporated. One of the officers of Ocean City Physical Therapy, Inc. was Brenda Cameron, P.T. (State's Ex. 2)

4. The Board received a complaint concerning Brenda Cameron, P.T., and her operation of Ocean City Physical Therapy after the April 1, 2002, purchase of the practice from the Respondent. [T. 26]

5. As part of its investigation, the Board's investigator interviewed the Respondent under oath on April 5, 2003. (State's Ex. 2)

6. During the April 5, 2003, interview, the Board's investigator showed the Respondent several checks issued by Medicare that were dated after April 1, 2002, and that were payable to

the Respondent. The back of the checks had the Respondent's signature, but the Respondent denied signing the checks. (State's Ex. 2)

7. During the same interview, the Respondent gave the following testimony:

Q. ...And would you please explain what happened with the check?

A. Well, it is their money because obviously it's (*sic*) their patients. I'm not disputing that. But they signed my name on it. This is not my signature.

...

Q. Did you at any time authorize anyone at Ocean City Physical Therapy to sign your name to any checks that were mailed to Ocean City Physical Therapy from Medicare?

A. No.

...

Q. And if I'm correct if what you're saying, in July the Camerons were issued an order to cease and desist using your provider numbers to attempt to bill, not attempt, I'm using the wrong term, to bill insurance companies?

A. They were told not to use my name, numbers or any identification of mine whatsoever in any way whatsoever.

(State's Ex. 2)

8. On August 19, 2003, the Board's investigator conducted a follow-up telephonic interview with the Respondent, in which the Respondent confirmed that at no time did she ever give Brenda Cameron permission to treat patients and bill Medicare under her Medicare provider number. The Respondent further indicated that she did not give permission to the Cameron's to file an application with Medicare to obtain a new provider number in the Respondent's name.

(State's Ex. 3)

9. In mid-2002, the Respondent filed a civil suit against the Cameron's. The suits were resolved in May 2004. (State's Ex. 4)

10. On May 25, 2004, the Respondent signed an affidavit in the presence of a notary public in which she testified, among other things:

I understood that checks received by the business on or after April 1, 2002 in payment for services performed by me or otherwise furnished by the business prior to April 2002, were the property of Ocean City Physical Therapy, Inc., and could be deposited or cashed by it by any means appropriate for that purpose, including signing my name on the checks.

When I sold the business to Ocean City Physical Therapy, Inc., I understood that it was going to submit bills and statements for payment under my existing provider number for the business until it had obtained a provider number in its name.

... At the request of Mrs. Cameron, I signed an application to be filed to obtain a second provider number in my name.

(State's Ex. 4)

Patient Specific Findings

Patient A:

11. Patient A sustained a partial rotator cuff tear of the right shoulder, was diagnosed with tendonitis of the right shoulder, and given a referral on February 2, 2002.

12. On February 12, 2002, Patient A was given an initial evaluation and treated by the Respondent. Patient A was last treated by the Respondent on March 7, 2002.

13. Patient A's initial evaluation did not include goals, frequency or duration of treatment (i.e., plan of care), or the Respondent's license number.

14. Progress notes, dated February 14 and 22, 2002, and March 1, 2002, were unsigned.

Patient B:

15. Patient B was diagnosed with osteoarthritis, sciatic radiculopathy, and muscle spasm.

16. On May 1, 2001, Patient B was initially evaluated by the Respondent. Patient B was treated by the Respondent from May 1, 2001, until May 17, 2001, and then again from

November 13, 2001, until December 4, 2001.

17. Patient B's initial evaluation did not include goals, objective data to demonstrate medical necessity, or the Respondent's signature or license number.

18. Progress notes dated May 1-17, 2001, failed to document treatment performed to justify billings, and there was no objective data present to show response to treatment. In addition, three of these progress notes lacked the Respondent's signature.

19. The November 1, 2001, initial evaluation was insufficient to demonstrate medical necessity and was a photocopy of the May 1, 2001, evaluation with minor alterations and goals added.

20. Progress notes dated November 13, 2001, and December 4, 2001, lacked the Respondent's signature.

21. No discharge summary was present.

Patient C:

22. Patient C was diagnosed with pain and degenerative joint disease of the cervical spine and given a prescription for physical therapy dated December 12, 2001.

23. Patient C was initially evaluated by the Respondent on December 11, 2001, which pre-dated the prescription. Patient C was treated by the Respondent from December 11, 2001, until December 28, 2001.

24. Patient C's initial evaluation lacked the Respondent's signature, title, and license number.

25. Progress notes for December 13, 2001, and December 27, 2001, lacked the Respondent's signature.

26. No discharge summary was present.

Patient D:

27. Patient D was diagnosed with back pain and given a prescription for physical therapy dated February 15, 2002.

28. Patient D was initially evaluated by the Respondent on February 28, 2002, and was treated by the Respondent until April 16, 2002.

29. Patient D's initial evaluation lacked the Respondent's signature, title, and license number.

30. The Respondent failed to perform a reevaluation despite treatments lasting over 30 days.

Patient E:

31. The Respondent provided physical therapy services to Patient E, a Medicare recipient, in August, September and October 2002.

32. The Respondent accepted immediate payment from Patient E for the physical therapy services provided. The Respondent then billed Medicare and endorses the Medicare reimbursement checks back to Patient E upon receipt.

OPINION

The Board is legislatively mandated to protect the public from incompetent and

unethical physical therapists. One of the Board's core functions in fulfilling this mandate is to investigate complaints regarding alleged incompetent or unethical conduct by physical therapists. The Board gives serious consideration to all complaints filed with the Board and fully investigates matters to ascertain whether there has been a violation of the Maryland Physical Therapy Act.

The Board is authorized to subpoena testimony and place individuals under oath in order to insure that the evidence is competent and reliable. Md. Code Ann., Health Occ. § 13-317(e). Such evidence may be the basis upon which formal charges are issued. The Board is fully aware of the ramifications of formal disciplinary action on a professional license, and thus, the Board investigates matters thoroughly and requires full cooperation from those who are subpoenaed to give testimony in an investigation. All of this is said to emphasize the seriousness of the Board's investigative process and the potentially damaging effect of giving false testimony to the Board during an investigation.

The testimony of the Respondent to the Board's investigator during the initial April 2003 interview and the subsequent August 19, 2003, interview, was wholly contradicted by the Respondent's affidavit of May 25, 2004. To the Board, the Respondent testified that she did not give permission to the Cameron's to: (1) sign her name on Medicare reimbursement checks; (2) use her provider number for treatments rendered by Ocean City Physical Therapy, Inc.; or (3) file an application for an additional Medicare provider number in the Respondent's name. However, in the Respondent's Affidavit of May 25, 2004, she directly negated all of her previous statements to the Board. Coincidentally, the Respondent was also embroiled in a bitter civil suit against the Cameron's during the time she gave the false statements to the Board.

Because the Board bases its formal disciplinary actions upon evidence brought

forward through its investigations, it is imperative that witnesses give true and accurate statements. To do otherwise undermines the Board's investigative and disciplinary process and thus, thwarts its mandate to protect the public. This Committee feels that failing to cooperate with a lawful Board investigation by providing false statements is an extremely egregious offense and demonstrates a lack of good moral character.

The Respondent also failed to meet the accepted standards of practice in the documentation of her physical therapy treatment. The Respondent repeatedly failed to include goals or a plan of care in her initial evaluation. These are basic elements of an initial evaluation of a patient without which treatment cannot proceed. In addition, her treatment notes lacked discharge summaries, signatures and license numbers. These are also clear violations of the Board's documentation standards. The Respondent has practiced for many years and could offer this Committee no reason as to why her documentation lacked these basic components. In addition, the Respondent submitted billing for which there is no documentation to evidence that the treatment was actually rendered. This not only violates documentation standards, but it also constitutes false billing.

The Committee is also disturbed by the action of the Respondent in photocopying a prior initial evaluation to "re-use" as a subsequent initial evaluation for Patient B. Although the Respondent did not admit to photocopying and re-using the May 1, 2001 initial evaluation, the two documents are clearly the same, although the November 13, 2001, evaluation contained additional notes. It is irrelevant that the Respondent had treated Patient B before. If a patient returns for physical therapy treatment for the same or different diagnosis, and there has been a gap in physical therapy treatment, that patient is entitled to a full evaluation. To merely photocopy and build upon a prior evaluation suggests that the Respondent did not perform the

second evaluation, which is a serious deviation from the standard of care.

The Respondent also violated Medicare rules by accepting immediate payment from Patient E, and thereafter endorsing the Medicare reimbursement check back to the patient. The State's expert testified that this practice violates an accepted standard which governs the contractual relationship between healthcare providers and the Medicare program.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Opinion, the Hearing Committee finds that the Respondent violated Maryland Code Ann., Health Occ. § 13-316(2), (13), (16), (20), and (25).

RECOMMENDATION

Based upon the foregoing Findings of Fact, Opinion, and Conclusions of Law, on this 1st day of December, 2005, it is the recommendation of this Hearing Committee that the charges against the Respondent be affirmed and the Respondent's license to practice physical therapy be REVOKED.

12/1/05
Date

Jill Kuramoto PT
Jill Kuramoto, P.T.
Presiding Officer

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art. §13-317(d)(3), you have a right to file exceptions to this Proposed Decision with the Board of Physical Therapy Examiners. Exceptions shall be filed within 21 days of receipt of this Proposed Decision and shall be governed by COMAR 10.38.05F.