

IN THE MATTER OF

*

BEFORE THE MARYLAND

SANDRA GOSCINSKI, O.T.,

*

STATE BOARD OF OCCUPATIONAL

Respondent

*

THERAPY PRACTICE

License No. **04445**

*

Case No. 2004-0003

FINAL OPINION AND ORDER

I. PROCEDURAL HISTORY

On September 23, 2004, the Board charged Ms. Goscinski with violating the Maryland Health Occupations Code and its implementing regulations as follows, by:

- (1) committing an act of gross negligence, incompetence or misconduct in the practice of occupational therapy or limited occupational therapy, in violation of Md. Health Occ. Code Ann. § 10-315 (3);
- (2) violating any rule or regulation of the Board, including any code of ethics adopted by the Board, in violation of Md. Health Occ. Code Ann. § 10-315 (5);
- (3) willfully making or filing a false report or record in the practice of occupational therapy or limited occupational therapy in violation of Md. Health Occ. Code Ann. § 10-315 (10);
- (4) submitting a false statement to collect a fee, in violation of Md. Health Occ. Code Ann. § 10-315 (12);
- (5) failing to exercise sound judgment and provide adequate care in the performance of duties as provided in nationally recognized standards of practice, in violation of COMAR 10.46.01.04 A;
- (6) failing to provide the highest quality of services to the client in violation of COMAR 10.46.02.01 A. (2);

(7) failing to inform the client if additional occupational services would be beneficial in violation of COMAR 10.46.02.01 A (5);

(8) failure to exercise sound professional judgment in the use of evaluation and treatment procedures in violation of COMAR 10.46.02.01 A (9); and

(9) failure to comply with all applicable laws dealing with occupational therapy, in violation of COMAR 10.46.02.01 A (15).

Following the filing of charges, a pre-hearing procedure took place during which the parties exchanged witness lists and documents, and a motion and responses were filed with respect to evidentiary matters. A full evidentiary hearing took place before a quorum of the Board on March 18, 2005, and June 1, 2005. Two witnesses testified for the State, including Ms. Jo-Ann Lane, a Computer Network Specialist and Case Manager for the Board, and Mr. Mark Schmeler, a registered occupational therapist on the faculty at the University of Pittsburgh and Director of Clinical Services for the Center for Assistive Technology at the University of Pittsburgh Medical School, who testified as an expert witness.

Ms. Goscinski, a licensed occupational therapist, was represented by counsel throughout the proceedings. Ms. Goscinski testified on her own behalf and in addition presented the following witnesses on her behalf: Mr. Dennis Kline, President of Source One, Inc.; Ronnie Kline, Jr., President of Source One Mobility, Inc.; Darrylyn Griffin, a licensed occupational therapist and Director of Rehabilitation at Franklin Square Hospital and Union Memorial Hospital for Medstar Health, who testified as a character witness; and Marcie Weinstein, Assistant Dean of the College of Health Professions and Associate Professor of

Occupational Therapy at Towson State University, who testified as an expert witness.

Twenty exhibits, numbers 1 through 20, as listed in counsel's letter of February 9, 2005, were admitted on behalf of Ms. Goscinski. Proposed exhibits numbers 22 and 23 were excluded by a Board pre-hearing ruling on March 11, 2005 based on a motion filed by the State. Proposed exhibit 21 was offered into evidence at the hearing but was not admitted.

Nine documents, numbered 1, 2A, 28, 3, 4A, 48, 4C, SA and 58, as listed on the "State's Exhibit list" attached to those documents, were also admitted into evidence as State's exhibits numbers 1 through 5.

II. EVALUATION OF THE EVIDENCE

Most of the facts of this case were not in controversy. Ms. Goscinski has been a licensed occupational therapist in this State since May of 2000 and has been working since then primarily as a *per diem* employee of Medstar Health, where she has an unblemished record and is known as an excellent occupational therapist.

Ms. Goscinski obtained additional employment from Source One Mobility, Inc. This additional employment is the subject matter of this case. For Source One Mobility, Inc., Ms. Goscinski produced and signed a form entitled "Occupational Therapy Evaluation" concerning a patient in the State of Virginia whom she had interviewed only by telephone. The central factual issues in this case are whether Ms. Goscinski's activity constituted a bona fide occupational therapy evaluation and, if not, whether her activities constituted an otherwise

professionally competent use of her license in providing the highest quality services to the client.

The testimony of the two opposing expert witnesses was the most significant testimony in this regard. Mr. Schmeler testified not only that an occupational therapy wheelchair evaluation cannot be properly done over the phone but also that many of the individual elements in the report could not have been done properly and competently over the phone. Ms. Weinstein essentially agreed that a formal occupational therapy wheelchair evaluation cannot be properly done over the phone. Ms. Weinstein also testified, however, that Ms. Goscinski's report, if considered as simply a data-gathering interview or the gathering of supplementary information for an occupational therapy consultation, could properly be done over the phone. Ms. Weinstein admitted, however, that the texts used in her institution would require an occupational therapist to use hands-on methodology in order to conduct a sensory-motor evaluation.

Although the Board has the greatest respect for Ms. Weinstein, she appeared to be trying to avoid or talk around the more difficult questions concerning: (1) evaluating edema or sensory-motor status over the phone; (2) the degree to which self-report can be used for the various parts of a wheelchair evaluation; and (3) whether Ms. Goscinski's contact with the patient constituted a skilled intervention. Altogether, the Board finds Mr. Schmeler's testimony to represent more accurately and completely the standards of the profession.

III. FINDINGS OF FACT

After considering the entire record in this case, including the testimony and exhibits entered into evidence at the hearing, and the arguments of counsel, the Board finds the following facts.

1. Ms. Goscinski was first permanently licensed to practice occupational therapy in Maryland in May of 2000. Her license is currently active. She has never been licensed to perform occupational therapy in the State of Virginia.

2. A patient of a Virginia physician learned about the availability of a motorized wheelchair from a television ad placed by Source One Mobility, Inc., a motorized wheelchair company based in Virginia. Source One Mobility, Inc. then prepared a Certificate of Medical Necessity to be filled in and signed by the patient's physician.

3. On October 10, 2002, Dr. James McDaniel, a physician licensed in Virginia, filled out the Certificate of Medical Necessity for and prescribed a motorized wheelchair for this patient who resided in Virginia.

4. Source One Mobility, Inc. arranged to provide the motorized wheelchair to the patient and billed the federal Medicare program for it.

5. Because of a history of fraud in the industry in general, the federal Medicare program will not necessarily accept the physician's prescription or the Certificate of Medical Necessity as adequate proof that a motorized wheelchair is needed. Medicare often audits motorized wheelchair providers to determine if wheelchairs are or were necessary.

6. Source One Mobility, Inc. delivered the motorized wheelchair to the patient. The wheelchair was checked and adjusted by a technician employed by the company.

7. A wheelchair technician is not considered to be a health professional by Medicare, and a technician's assessment of the need for a motorized wheelchair is given no weight by Medicare when it does audits of power wheelchair sales.

8. Source One Mobility, Inc. then contacted Ms. Goscinski and hired her to provide professional input on the necessity of a motorized wheelchair for this patient. The company employed her as an occupational therapist so she could produce a document demonstrating that her professional expertise was used in determining (or validating) that the purchase of a wheelchair was necessary. The company wanted the document to put in its files in case Medicare later audited the need for the power wheelchairs provided by the company.

9. Ms. Goscinski at no time met or physically saw the patient. On November 6, 2002, she called the patient from Maryland and conducted a one-half hour telephone interview, most of it through an intermediary, the patient's daughter.

10. In addition to obtaining such data as the patient's medical diagnoses, social environment and medication profile, Ms. Goscinski obtained data from the daughter over the phone from which she made "clinical findings" of shoulder flexion and rotation, hip flexion, upper extremity strength, lower extremity

strength, fine motor coordination, grip strength of the hands, sensory deficits in the hands and legs, edema, pain, endurance and balance.

11. Measurements of shoulder flexion, internal rotation and strength of the upper and lower extremities cannot be done in accordance with the standards of occupational therapy practice over the telephone but require direct observation of and interaction with the patient. These measurements are important for a person who may use a wheelchair, and they need to be done in person. For example, a flexion of over 90 degrees of the knee will force the person to compensate by tilting the pelvis back, and it is absolutely required that an occupational therapist touch the patient to evaluate this flexion in person in order to properly take this measurement.

12. In accordance with the standards of occupational therapy practice, measurement of the strength of the lower extremities cannot be done over the telephone; these measurements require personal observation.

13. In accordance with the standards of occupational therapy practice, the range of motion of the hip cannot be evaluated over the phone. Evaluating the hip requires placing the patient in the supine position and then passively measuring flexion in person to make sure that it is the hip that is flexing, not the spine. Measurement of the range of motion of the hip is very important because bending the spine instead of the hip compromises the patient's posture in the long term.

14. Measurement of sensory perception of the hands and feet is important in determining how the person can use the wheelchair without injury. In

accordance with the standards of occupational therapy practice, evaluation of the person's sensory perception must be done in person.

15. In accordance with the standards of occupational therapy practice, measurement of fine motor coordination requires direct observation of the person and is important in determining if and how the person may operate the wheelchair.

16. In accordance with the standards of occupational therapy practice, personal observation of the home environment is required in order to properly **assess** whether the person can use the wheelchair safely and effectively in that environment, especially when the patient lives in a motor home.

17. Ms. Goscinski produced a document¹ entitled "Occupational Therapy Evaluation" dated November 6, 2002, recommending a power wheelchair. In this evaluation, she purportedly made "clinical findings" concerning each of the items set out in finding of fact # 10, above. Since she did not personally observe the person being evaluated, and since the evaluation of those aspects of a person's case listed in findings of fact # 11 through 16 requires an in-person evaluation, her evaluation failed to meet the standards of practice for occupational therapy.

18. Ms. Goscinski disclosed on the evaluation that it had been performed over the telephone.

19. The original document included a place for the signature of the physician. Dr. James McDaniel, however, refused to sign the document and in fact filed a complaint about Ms. Goscinski's telephone evaluation, a complaint which eventually worked its way back to this Board. Ms. Goscinski then

produced another document, also entitled "Occupational Therapy Evaluation," that did not have a signature line for the physician.² This document also recommended a power wheelchair. Ms. Goscinski dated this document also November 6, 2002, though it was in fact completed much later. This document did not highlight on a grid, as did the first document, the clinical "findings" of muscle strength and joint flexion, but it made essentially the same findings in narrative form. The evaluation set out in this document also failed to meet the standards of practice for occupational therapy.

20. Neither of the reports submitted by Ms. Goscinski dated November 6, 2002 constituted a true occupational therapy evaluation. In completing these reports, Ms. Goscinski knew that the wheelchair provider intended to use those documents in case of any federal audit to claim that the wheelchair had been approved by a licensed occupational therapist who had conducted an occupational therapy evaluation. Ms. Goscinski knew or should have known that her reports did not constitute legitimate occupational therapy evaluation that met the standards of practice.

21. Both of Ms. Goscinski's reports included "clinical findings" which were not, in fact, clinical findings within the meaning of the occupational therapy profession, since they were not arrived at by the appropriate professional methods.

IV. CONCLUSIONS OF LAW

¹ State's Exhibit 2B, second of three unnumbered attachments, pages 1 through 3.

² State's Exhibit 3; Respondent's Exhibit 7.

By completing an occupational therapy "evaluation" that did not meet the standards of practice of the profession, and by reciting "clinical findings" which were not, in fact, clinical findings within the meaning of the occupational therapy profession, Ms. Goscinski committed an act of incompetence in the practice of occupational therapy, in violation of Md. Health Occ. Code Ann. § 10-315 (3). In so doing, she also violated regulations of the Board in violation of Md. Health Occ. Code Ann. § 10-315 (5), by failing to exercise sound judgment and provide adequate care in the performance of duties as provided in nationally recognized standards of practice, in violation of COMAR 10.46.01.04 A., by failing to provide the highest quality of services to the client in violation of COMAR 10.46.02.01 A. (2), and by failing to exercise sound professional judgment in the use of evaluation and treatment procedures in violation of COMAR 10.46.02.01 A. (9). She has thus failed to comply with all applicable laws dealing with occupational therapy, in violation of COMAR 10.46.02.01 A.

The Board further concludes that any occupational therapist report concerning the need for a wheelchair which purports to document the exercise of professional judgment violates the statutes and regulations set out above if that report contains any findings required by the standards of occupational therapy to be made by means of a personal or hands-on observation of the person, if the occupational therapist has not made the required type of personal or hands-on observation.

The Board will not conclude that Ms. Goscinski has willfully made or filed a false report or record in the practice of occupational therapy in violation of Md. Health

Occ. Code Ann. § 10-315 (10) or that she has made a false statement to collect a fee, in violation of Md. Health Occ. Code Ann. § 10-315 (12). This was a very close issue, in the opinion of the Board, because Ms. Goscinski knowingly participated in the plan of preparing an "occupational therapy evaluation" that was not, in reality, a legitimate occupational therapy evaluation. In addition, there were assertions in the "clinical findings" sections of those reports which were not, in fact, clinical findings within the meaning of the occupational therapy profession. Ms. Goscinski argues that she merely named the document incorrectly as an "evaluation," but the Board notes that the naming of the report as an "evaluation" was not the only significant factor. The recitation of "clinical findings" which were not, in fact, clinical findings within the meaning of the occupational therapy profession created the false impression that an occupational therapist had appropriately exercised her professional expertise in producing this report - and this was not the case. Even if the document had not been called an "evaluation," its misleading recitation of "clinical findings" is troubling to the Board and, without more, would result in a conclusion that false statements were made in the practice of occupational therapy. Since, however, Ms. Goscinski disclosed on both reports that her "findings" were the results of a telephone interview, her reports were rendered essentially meaningless and ambiguous. These reports demonstrated incompetence, but they did not meet the statutory standard of being false.³

³ No evidence was presented that Ms. Goscinski violated COMAR 10.46.02.01 A. (5), and that charge will be dismissed. The State, which has the burden of proof, did not meet its burden on this particular issue.

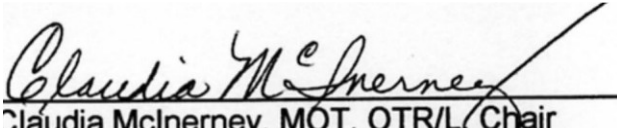
V. SANCTION

The Board will reprimand Ms. Goscinski for her conduct in this case.

VI. ORDER

It is therefore **ORDERED** that Sandra Goscinski, O.T., License No. 04445, be, and she hereby is, **REPRIMANDED**.

SO ORDERED this 15th day of July, 2005.


Claudia McInerney, MOT, OTR/L (Chair)
State Board of Occupational Therapy Practice

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 10-317 (b), Ms. Goscinski has the right to take a direct judicial appeal. Any appeal must be filed within 30 days from the receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, State Gov't Article § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Ms. Goscinski files an appeal, the Board is a party and should be served with the court's process. The Administrative Prosecutor is not involved in the case at this point and need not be served with or copied on the pleadings.