

IN THE MATTER OF

*

BEFORE THE STATE BOARD

MITCHELL FOX, O.T.

*

OF OCCUPATIONAL

License No. 04527

*

THERAPY PRACTICE

Respondent

*

CASE NUMBER: 2006-002

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Occupational Therapy Practice (the "Board"), and subject to Md. Health Occ. Ann. § 10-101, et seq., (the "Act") (2000 Repl. Vol. and 2004 Supp.) (the "Act"), the Board charged Mitchell Fox, O.T., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 10-315:

Subject to the hearing provisions of §10-316 of this subtitle, the Board may deny a license or temporary license to any applicant, reprimand any licensee or holder of a temporary license, place any licensee or holder of a temporary license on probation, or suspend or revoke a license or temporary license if the applicant or licensee, or holder:

- (5) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board;
- (7) Aids or abets an unauthorized individual in the practice of occupational therapy or limited occupational therapy;
- (10) Willfully makes or files a false report or record in the practice of occupational therapy or limited occupational therapy;
- (11) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;
- (12) Submits a false statement to collect a fee [;].

The Board further charges the Respondent with a violation of its General Regulations, Code Md. Regs. tit. 10, § 46.01 (December 10, 2001):

.03 Supervision Requirements

C. Aide.

- (1) A supervising occupational therapist or occupational therapy assistant working with an aide shall provide direct supervision to the aide when the aide is performing tasks within the occupational therapy treatment program.

The Board further charges the Respondent with a violation of its Code of Ethics, Code Md. Regs. tit. 10, § 46.02 (August 7, 2000):

.01 General Conduct.

A. The licensee shall:

- (15) Comply with all applicable laws dealing with occupational therapy practice;

C. The licensee may not:

- (4) Use, or participate in the use of, a form of communication that contains or implies a:
 - (b) False, fraudulent, misleading, deceptive, or unfair statement or claim.

The Respondent was given notice of the issues underlying the Board's charges by letter dated August 30, 2006. Accordingly, a Case Resolution Conference was held on October 20, 2006, and was attended by Linda Leimbach, Board member, Donna Ashman, Executive Director of the Board, Jo-Ann Lane, Case Manager, and Grant Gerber, Counsel to the Board. Also in attendance were the Respondent, who knowingly and voluntarily

waived his right to an attorney, and the Administrative Prosecutor, Roberta Gill, Assistant Attorney General.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent was licensed to practice occupational therapy in the State of Maryland. The Respondent was first licensed on August 18, 2000. The Respondent's license expired on June 30, 2006.¹

2. At all times relevant herein, the Respondent was employed by RSI, a temporary staffing agency.

3. By document dated October 26, 2005, the Board received a complaint from the Director of Rehab Services at Adventist Rehabilitation Hospital of Maryland, located in Takoma Park, Maryland. The complaint stated that the Respondent left the treatment of a patient to a rehab aide in the gym while he left the area completely in order to evaluate another patient bedside. Specifically, the Respondent acknowledged that he directed the aide to perform a 60-minute treatment consisting of donning/doffing socks with adaptive equipment, dynamic standing tasks, upper extremity exercises and toileting task, with use of a rolling walker in the therapy gym. The Respondent billed for a 60-minute treatment, which he did not perform. The Respondent's contract with Adventist was cancelled and the

¹ The Respondent requested an extension on the completion of his Continuing Education Units (CEUs), which request was denied by the Board. A licensee has to have completed his/her CEU fulfillment between January 1, 2004 and December 31, 2005. If those are not completed and an extension has not been granted by the Board, one has to apply for reinstatement and cannot practice between the time the license has expired and the reinstatement is acted upon. The Respondent's license was reinstated on July 21, 2006.

charge to the patient was removed. The Board's investigation substantiated all of these findings.

4. As set forth above, by allowing an aide to perform one-hour's worth of occupational therapy services on a patient while the Respondent was in another room tending to another patient, and by billing for same the Respondent violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 10-315 (5), (7), (10), (11), (12); Code Md. Regs. tit 10, 46.01.03 C 91); and Code Md. Regs. tit. 10 § 46.02.01 (A) (15) and C (4) (b).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 15th day of December, 2006, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice occupational therapy is hereby placed on **PROBATION** for one year, subject to the following conditions:

- A. The Respondent shall take and pass an ethics course pre-approved by the Board and submit documentation of completion thereof to the Board;
- B. The Respondent shall take and pass, with the requisite percentage, the Board's law examination;

- C. The costs for compliance of the above shall be borne by the Respondent;
- D. The Respondent's Continuing Education Credits (CEUS) will be audited for the next renewal cycle.

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

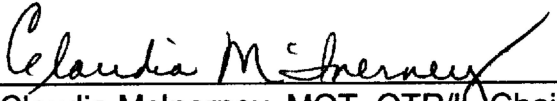
ORDERED that should the Board receive a report that the Respondent has violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, 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 or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of occupational therapy in Maryland; and be it 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 his license, provided that he 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;

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (2004 Repl. Vol. and 2006 Supp.), this document consists of the

contents 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 that it is mandated to report to.


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

CONSENT OF MITCHELL FOX, O.T.

I, Mitchell Fox, by affixing my signature hereto, acknowledge that:

1. I have knowingly and voluntarily waived my right to counsel;
2. I am aware that without my consent, my license to practice occupational

therapy in this State cannot be limited except pursuant to the provisions of § 10-315 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2004 Repl. Vol. and 2006 Supp.).

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 10-316 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 10-317 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice occupational therapy in the State of Maryland.

12/07/06

Date



Mitchell Fox, O.T.

STATE OF District of Columbia

CITY/COUNTY OF Washington, DC:

I HEREBY CERTIFY that on this 7th day of December, 2006, before me, Alice Faye McClarin, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Mitchell Fox, O.T., License No. 04527, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Alice Faye McClarin
Notary Public

My Commission Expires: ALICE FAYE McCLARIN
Notary Public of District of Columbia
~~My Commission Expires April 30, 2008~~