

(7) Aids or abets an unauthorized individual in the practice of occupational therapy or limited occupational therapy; and

(10) Willfully makes or files a false report or record in the practice of occupational therapy or limited occupational therapy.

The Board further concludes that the Respondent violated the following additional provisions:

H.O. § 10-301. License Required; exceptions.

(a) *In general.* - Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice occupational therapy or limited occupational therapy in this State.

H.O. § 10-401. Practicing without license.

(a) *Practicing occupational therapy.*—Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice occupational therapy in this State unless licensed to practice occupational therapy by the Board.

H.O. § 10-402. Misrepresentation – Occupational therapist.

(a) *In general.* – Unless authorized to practice occupational therapy under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this State.

(b) *Certain representations prohibited.* -- Unless authorized to practice occupational therapy under this title, a person may not use the credentialing abbreviation “O.T.” or any other words, letters, or symbols with the intent to represent that the person practices occupational therapy.

H.O. § 10-404. Providing occupational therapy.

A person may not provide, attempt to provide, offer to provide, or represent that the person provides occupational therapy unless the occupational therapy is provided by an individual who is authorized to practice occupational therapy or limited occupational therapy under this title.

COMAR

A. Occupational Therapist.

(1) An occupational therapist shall exercise sound judgment and provide adequate care in the performance of duties as provided in nationally recognized standards of practice.

(2) An occupational therapist shall document client information as follows:

- (a) Evaluation;
- (b) Treatment program;
- (c) Progress reports;
- (d) Reevaluations;
- (e) Discharge summaries;
- (f) Verbal orders; and
- (g) Clarification orders.

D. 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.

(2) An aide shall perform only those tasks that do not require education or training in occupational therapy.

(3) An occupational therapist or occupational therapy assistant working with an aide shall document evidence of in-service training and demonstration of skill and competence to ensure safe performance of the tasks assigned to the aid.

(4) Prescribed tasks within the treatment program that may be performed by an aide under direct supervision of an occupational therapist or occupational therapy assistant include:

- (a) Transfer practice;
- (b) Assisting in routine:
 - (iv) Functional activity,
 - (v) Functional exercise, or
 - (vi) Activities of daily living (ADL) program;
- (c) Applying assistive devices;
- (d) Apply adaptive devices;
- (e) Assisting the client with the use of assistive equipment;
- (f) Assisting the client with the use of adaptive equipment;
- (g) Reality orientation for the confused client; and
- (h) Assisting the occupational therapist in treatment, including but not limited to:
 - (i) Guarding,

- (iv) Positioning, and
- (v) Assisting with group and community re-entry activities.

(5) Non-treatment activities that may be performed by an aide under the direction of an occupational therapist or occupational therapy include:

- (a) Clerical;
- (b) Secretarial;
- (c) Housekeeping;
- (d) Supply maintenance;
- (e) Equipment maintenance;
- (f) Fabrication of straps for splinting and bracing;
- (g) Holding for splinting or bracing;
- (h) Fabrication of assistive devices that are not worn directly by a client;
- (i) Routine transfers for transporting clients;
- (j) Transporting clients; and
- (k) Activities ancillary to group and individual activities.

10.46.01.04.1 Standards of Practice.

B. Occupational Therapist. An occupational therapist shall exercise sound judgment and provide adequate care in the performance of duties as provided in nationally recognized standards of practice.

10.46.02.02 General Conduct.

B. The licensee shall:

- (9) Exercise sound professional judgment in the use of evaluation and treatment procedures;
- (11) Function with discretion and integrity in relations with other health professionals;
- (16) Ascertain whether all occupational therapy personnel within the facility are licensed if the licensee practices within a facility;
- (17) Report to the Board a person whom the licensee believes to be performing or aiding and abetting the illegal practice of occupational therapy; and
- (18) Comply with all applicable laws dealing with occupational therapy practice.

C. The licensee may not:

(2) Allow financial gain to be paramount to the delivery of service to a client; and

(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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Maryland State Board of Occupational Therapy Practice, hereby:

ORDERED that the Respondent's license to practice Occupational Therapy is hereby **SUSPENDED** for a period of One (1) Year with all but Three (3) Months stayed, effective December 1, 2007; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a period of Two (2) Years from the date this Order is signed by the Board, subject to the following conditions:

1. **Cease and Desist use of Medical Device**

a. The Respondent shall Cease and Desist treating patients using the Tomatis Electronic Ear, the Tomatis Solisten Device or other auditory integration training (AIT) device without providing evidence acceptable to the Board that the device has been approved for use by the FDA, or unless she seeks and retains approval from an Institutional Review Board (IRB), including compliance with all applicable statements and procedures required by 21 CFR Part 50 (Protection of Human Subjects and particularly Subpart B - Informed Consent of Human

Subjects), 21 CFR Part 56 (Institutional Review Boards) and 21 CFR Part 812 (Investigational Device Exemptions), and uses the device under and in accordance with those protocols.

b. If the Respondent can provide evidence satisfactory to the Board that a device the Respondent intends to use is approved for use by the FDA without the need for an Investigational Device Exemption, the Respondent shall only use the device after obtaining fully informed consent of the patient or the minor patient's guardian(s) and reducing the consent to writing on a Board-approved consent form. The information and consent should explain, at a minimum, that there are few validated studies regarding the use of auditory integration training and there is currently no scientific evidence to support the effectiveness of auditory integration training. It should further note that according to the American Academy of Pediatrics Committee on Children with Disabilities, current information does not support the use of auditory integration training and that the method is experimental. The Respondent can indicate that preliminary research and anecdotal reports, including work at the Spectrum Center, suggest that AIT may show promise. The Respondent shall also inform the patient/guardian(s) that the identical listening program is recommended for all patients regardless of diagnosis and current level of functioning.

c. The Respondent shall Cease and Desist allowing unlicensed persons to perform occupational therapy.

2. Pro Bono Community Service

a. After the completion of the suspension period, the Respondent shall perform, without remuneration, forty (40) hours of *pro bono* community service providing occupational therapy in the State of Maryland as proposed by the Respondent and approved by the Board.

b. Upon completion of the forty (40) hours of *pro bono* community service required, the Respondent shall file a written report with the Board that verifies that the Respondent performed the *pro bono* community service without remuneration, and which describes with particularity the professional services performed.

c. If requested by the Board, the Respondent shall make available for the Board, or its designee, all records of treatment for each patient for whom *pro bono* occupational therapy was performed.

3. Maryland Law Examination

a. Within ninety (90) days from the date this Order is signed by the Board, the Respondent shall take the Board's Jurisprudence examination and obtain a grade of at least seventy-five percent (75%) without using any reference materials, books, or other aids during the examination.

b. The Respondent may retake the examination if she does not attain a score of at least seventy-five percent (75%). The Respondent's failure to attain a score of at least seventy-five percent (75%) after three (3) attempts shall constitute a Violation of Probation and shall result in a continuation of the suspension of the Respondent's license until such time as the Respondent

successfully completes the examination, closed book, with at least a seventy-five percent (75%).

4. Continuing Education

a. Within six (6) months of the effective date of this Consent Order, the Respondent shall successfully complete a Board-approved course in ethics.

b. Within six (6) months of the effective date of this Consent Order, the Respondent shall successfully complete a Board-approved course in billing; the course shall not focus on increasing revenue but should focus on appropriate coding.

c. For each course, the Respondent shall submit to the Board the course description and/or syllabus of the course prior to enrolling in the course. The Board reserves the right to reject the course submitted for fulfillment of this condition, and may request additional information regarding the course. The Respondent shall submit written verification to the Board of the course completion within fifteen (15) days of completing the course. The course work required in this Order shall be taken in addition to the continuing educational requirements for Board licensure.

5. Practice Review

The Respondent shall have a Board-approved clinical practice reviewer (the "reviewer") in occupational therapy to monitor the Respondent's practice of occupational therapy as follows:

a. The Respondent shall permit the reviewer to directly observe her treatment of patients, during at least one ½ day unannounced visit per month for

the first three (3) months following the Stay of the Respondent's suspension and at least every other month thereafter during the first year of the probationary period and on additional unannounced visits thereafter as recommended by the reviewer, or the Board, but not less than quarterly, for the second year of the probationary period and;

b. The Respondent shall permit the reviewer to conduct unannounced on-site random chart review or off-site chart review based on patient selection of the reviewer, of at least six (6) patient charts⁷, every 30 to 60 days, for a minimum of three (3) reviews within the first year of probation, and at least twice for second year of the probationary period to review all aspects of practice;

c. The Respondent shall provide to the reviewer the complete record for each patient whose care is being reviewed. The reviewer shall focus on the care and treatment rendered by the Respondent from 2007 and thereafter;

d. The reviewer shall review all aspects of care provided, including but not limited to, evaluation, diagnosis, treatment planning, treatment, progress, re-evaluations, discharge summaries, orders, informed consent, and billing. All record entries should be signed by the person performing the entered task;

e. The Respondent shall make all reasonable efforts to ensure that the reviewer submits written reports to the Board within thirty (30) days of each visit to Respondent's office or chart review, describing the findings and if required, making recommendations for improvement; and

f. The Respondent shall comply with all written recommendations of

⁷ If the Respondent has less than six charts available for review, the reviewer shall review those charts available.

the reviewer or the Board. Failure to comply with the written recommendations, unless otherwise approved by the Board after evaluation of a written submission from the Respondent , shall be deemed a violation of the Consent Order; and it is further

ORDERED that the Respondent shall comply with all laws governing the practice of occupational therapy under the Act, and all rules and regulations promulgated there under; and it is further

ORDERED that if the Respondent fails to follow any of the terms and conditions of this Consent Order, such failure shall be deemed a Violation of Probation and of this Consent Order and the Board may take any action it deems appropriate under the Act, including, but not limited to, immediately suspending the Respondent's license, provided the Respondent is given the opportunity for a show cause hearing at the next regularly scheduled meeting of the Board; and it is further

ORDERED that two (2) years from the effective date of this Order, the Respondent may petition the Board for termination of her probationary status without any conditions or restrictions whatsoever. If the Respondent has satisfactorily complied with all conditions of probation, including the completion of the entire two (2) year period, and there are no outstanding complaints regarding the Respondent, the Board shall terminate the probation; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order, including but not limited to the cost of the practice reviewer, and the Respondent has the option of submitting the name of a practice reviewer of her own choosing, subject to approval by the Board; and it is further

ORDERED that this Consent Order is a PUBLIC DOCUMENT as defined in Md. State Gov't Code Ann. § 10-611 *et seq.* (2004 & Supp. 2006).

11/16/07
Date

Claudia A. McInerney, MOT, OTR/L/DA
Claudia A. McInerney, MOT, OTR/L
Maryland Board of Occupational Therapy Practice

CONSENT

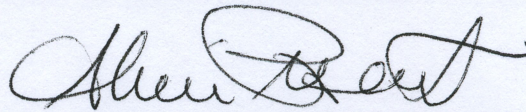
I, Sheri Present, OTR/L, License No. 04298, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with an attorney during the course of these proceedings and I have knowingly and voluntarily elected to proceed without counsel.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 10-316 (2005) and Md. State Gov't. Code Ann. §§10-201 *et seq.* (2004 & Supp. 2007).
3. I acknowledge the validity of this Consent Order as if entered into after 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 own behalf, and to all other substantive and procedural protections provided by law.
4. I voluntarily enter into and consent to the foregoing Findings of Fact, Conclusions of Law and Order. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order as set forth in § 10-317 of the Act and Md. State Gov't. Code Ann. §§ 10-201 *et seq.* (2004 & Supp. 2007).


5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, and, following proper procedures, I may suffer disciplinary action, which may include revocation of my license to practice occupational therapy in the State of Maryland.

6. I sign this Consent Order without reservation as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

11/16/07
Date


Sheri Present, OTR/L

Reviewed and approved by:


William Thrush, Esquire

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY THAT on this 11th day of November, 2007, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared Sheri Present, OTR/L, and made oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

Abigail M. Burke
Notary Public

My Commission Expires: 9/9/2010