

IN THE MATTER OF  
SHERI PRESENT, O.T.R./L  
Respondent  
License Number: 04298

\* BEFORE THE  
\* MARYLAND BOARD OF  
\* OCCUPATIONAL THERAPY  
\* PRACTICE  
\* Case Number: 05-10

\* \* \* \* \*

**FINAL DECISION AND ORDER**

**BACKGROUND**

On November 16, 2007, Sheri Present, O.T.R./L (“Ms. Present” or the “Respondent”) signed and executed a consent order with the Maryland State Board of Occupational Therapy Practice (the “Board”). (Ex. A.) Under the terms of this order, Ms. Present was suspended for one year, with all but three months of the suspension stayed. Ms. Present was placed on probation for a period of two years from the date the November 16, 2007 order was signed (November 16, 2007 – November 16, 2009). Ms. Present’s probation was generally conditioned upon the completion of five items. She was ordered to (1) cease and desist the use of medical devices not approved by the FDA, (2) complete forty (40) hours of pro bono community service, (3) successfully complete the Board’s Jurisprudence examination (4) complete continuing education requirements relative to ethics and billing, and (5) provide for a Board-approved clinical practice reviewer in occupational therapy to monitor the Respondent’s practice during at least one ½ day unannounced visit per month for the first three (3) months following the Stay of the Respondent’s suspension (February 16, 2008 – May 16, 2008) and at least every other month thereafter during the first year of probation, and at least quarterly for

the second year of probation. In addition, the consent order specified reporting requirements relative to the required practice review.

By notice dated January 16, 2009, the Board charged Ms. Present, pursuant to its authority under the Maryland Occupational Therapy Practice Act (the "Act"), Maryland Health Occ. Code Ann., ("H.O.") §§ 10-101 *et seq.* The Board charged Ms. Present with violating the terms of her consent order. Specifically, the notice the Board sent Ms. Present informed her that she had not completed some of the items listed on her consent order nor had she completed other items within the timeframes for completion as specified in the terms of her consent order.

Ms. Present's failure to comply with all of the terms of her consent order caused her to be charged with violating the terms of her November 16, 2007 consent order. Specifically, Ms. Present had allegedly failed to complete the continuing education requirements within the timeframes specified and failed to complete the pro bono community service, and practice review requirements of the order. After Ms. Present received notice from the Board, the matter was heard before a quorum of the Board on May 15, 2009. Ms. Present was represented by counsel during the duration of this hearing.

The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. For the reasons set forth below, the Board approves and adopts this Final Decision and Order.

## SUMMARY OF EVIDENCE

### **A. Documents**

The following documents were jointly offered into evidence on behalf of the State and Ms. Present: Exhibits 1 – 18.

### **B. Summary of Pertinent Witness Testimony**

Ms. Present was the only witness at the hearing. She testified on her own behalf.

#### **Sheri Present**

Ms. Present testified that she has been as occupational therapist for twenty-six years. (T. 28). Ms. Present admitted that she had not completed the required board approved pro bono community service. (T. 65-66). Ms. Present made some efforts in this area, but admitted that she did not comply with this term of her consent order.

Under the terms of her consent order, Ms. Present stated that she understood she was required to complete two continuing education courses. Ms. Present agreed to take a board-approved course in ethics and billing within six months of the date of her consent order (November 16, 2007). Ms. Present took a course in ethics, but it was not completed within six months of the date of the order. (T. 69 – 72). Similarly, Ms. Present took a course in billing, but it was not completed until March of 2009. This course was not completed until two months after the Board charged her for violating the terms of her consent order.

Ms. Present admitted that she was aware that she was to have a licensed occupational therapist review her practice within the first three months of the termination

of her suspension. Ms. Present's practice was never reviewed. Ms. Present admitted that she did not comply with this term of the consent order.

### **FINDINGS OF FACT**

Based upon the testimony and the exhibits presented at the evidentiary hearing, the Board finds the following facts to be true by a preponderance of the evidence:

1. At all times relevant, Ms. Present was and is licensed to practice Occupational Therapy in the State of Maryland. Ms. Present initially was licensed on October 15, 1999 and issued license number 04298.
2. Ms. Present entered into a consent order with the Board on November 16, 2007. This order is attached as Ex. A.
3. On or about January 16, 2009, the Board charged Ms. Present with violating the terms of her consent order.
4. The Board finds that Ms. Present did not complete the required pro bono community service under the terms of her consent order.
5. The Board finds that Ms. Present did not complete the required continuing education under the terms of her consent order.
6. The Board finds that Ms. Present did not have her practice reviewed as required under the terms of her consent order.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Summary of Evidence, Findings of Fact and Discussion, the Board concludes as a matter of law that Ms. Present has violated the terms of her consent order. As Ms. Present admitted, she failed to complete three terms of her consent order. Ms. Present had the responsibility to complete all of the

terms of the consent order. The Board orders her to complete all of the terms of her consent order. Additionally, the Board orders Ms. Present suspended for nine months and adds an additional year to her probation. As the Board's sanctions act as a "catharsis for the profession and a prophylactic for the public," (*McDonnell v. Comm'n on Medical Discipline*, 301 Md. 426, 436 (1984)), it is imperative that occupational therapists understand that serious misconduct has serious ramifications.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this **18<sup>th</sup>** day of **December, 2009**, by a majority of the full-authorized membership of the Board, hereby

**ORDERED** that Respondent, Ms. Sheri Present, is **SUSPENDED** for nine months beginning **January 1, 2010**; and it is further

**ORDERED** that Respondent's license shall be placed on **PROBATION** for an additional year, effective upon completion of her term of suspension (**October 1, 2010 - October 1, 2011**); and it is further

**ORDERED** that, Respondent must satisfy the following conditions:

1. Pro Bono Community Service

a. After the completion of the suspension period and before January 1, 2011, the Respondent shall perform, without remuneration, eighty (80) 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 eighty (80) 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.

2. Practice Review

The Respondent shall provide for, and submit the name of, a Board-approved clinical 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 clients during at least one, ½ day unannounced, visit per month for the first six (6) months following the completion of the Respondent's suspension (1/1/2010-10/1/2010) and at least every other month thereafter during the probation;

b. The Respondent shall permit the reviewer to conduct unannounced on-site random chart review, or off-site chart review, based on client selection of the reviewer, of at least six (6) client charts, every 30 to 60 days, for a minimum of three (3) reviews during the probation to review all aspects of practice;

c. The Respondent shall provide to the reviewer the complete record for each client 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 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 there shall be no automatic termination of probation, and that upon satisfactory completion of the conditions of probation as stated herein, the Respondent must petition the Board for termination of probation and full reinstatement of her license. If the Respondent fails to make any such petition, then the probationary status shall continue indefinitely, subject to the terms and conditions set forth in this Final Decision and Order; and it is further

**ORDERED** that this Final Decision and Order shall be effective from the date it is signed by the Board; and it is further

**ORDERED** that the Respondent's failure to fully comply with the terms and conditions of this Final Decision and Order shall be deemed a violation of probation and of this Final Decision and Order, and that upon such violation the Board may impose any discipline which it might have imposed for Respondent's actions in this case; and it is further

**ORDERED** that the burden of proof shall be on Respondent to demonstrate compliance with this Final Decision and Order and the terms and conditions of probation; and it is further

**ORDERED** that the Respondent shall be responsible for all costs incurred under this Final Decision and Order, including but not limited to the cost of the practice reviewer, and it is further

**ORDERED** that Respondent shall abide by the laws and regulations regarding the practice of occupational therapy. Failure to do so shall constitute a violation of probation and of this Final Decision and Order; and it is further

**ORDERED** that any violation of this Final Decision and Order by Respondent shall constitute unprofessional conduct; and it is further

**ORDERED** that this is a Final Order of the Maryland State Board of Occupational Therapy Practice and, as such, is a **PUBLIC DOCUMENT** and is reportable to any entity to which the Board is obligated by law to report, and is disclosable under the Maryland Public Information Act, Maryland State Gov't Code Ann. §§10-611 *et seq.*

  
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Joyce Ford, COTA/L  
Maryland State Board of Occupational  
Therapy Practice



**NOTICE OF RIGHT TO APPEAL**

Pursuant to Maryland Health Occ. Code Ann. § 10-317, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing 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, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.