

IN THE MATTER OF	*	BEFORE THE STATE BOARD
DEAN CLATWORTHY, P.T.	*	OF PHYSICAL THERAPY
License No. 20214	*	EXAMINERS
Respondent	*	CASE NUMBER: 06-BP-430

\* \* \* \* \*

**FINAL CONSENT ORDER**

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board"), and subject to Md. Health Occ. Ann. § 16-101, *et seq.*, (2005 Repl. Vol. and 2006 Supp.) (the "Act"), the Board charged Dean Clatworthy, P.T., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 13-316:

Subject to the hearing provisions of § 13-317 of this subtitle, the Board may deny a license, temporary license, or restricted license to any applicant, reprimand any licensee or holder of a temporary license or restricted license, place any licensee or holder of a temporary license or restricted license on probation, or suspend or revoke a license, temporary license, or restricted license if the applicant, licensee, or holder:

- (15) Violates any provision of this title or rule or regulation adopted by the Board;
- (19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy;

The Board also charged the Respondent for violation of its Code of Ethics, Code Md. Regs. tit. 10, § 38.02 (August 2, 1982):

.01 Code of Ethics.

- F. The physical therapist and physical therapist assistant shall report to the Board of Physical Therapy Examiners all information that indicates a person is allegedly performing, or aiding and abetting, the illegal or unsafe practice of physical therapy.

The Respondent was given notice of the issues underlying the Board's charges by dated September 24, 2007. Accordingly, a Case Resolution Conference was held on

December 3, 2007, and was attended by Steven Ryan, P. T. and Lois Rosedom-Boyd, Board members, Ann Tyminski, and Joy E. Aaron, Executive Director and Deputy Director of the Board, respectively, and Linda Bethman, Assistant Attorney General, Counsel to the Board. Also in attendance were the Respondent and his attorney, Donna Senft, 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 physical therapy in the State of Maryland. The Respondent was first licensed on May 25, 2001. The Respondent's license expires on May 3, 2008.

2. At all times relevant herein, the Respondent was the office manager of Physiotherapy Associates' (the "Company") Greenbelt, Maryland office.

3. Vijayakumar Palaniswamy, a Physical Therapist, was employed by the Company to provide physical therapy services. Mr. Palaniswamy was under the direct supervision of the Respondent.

4. By a complaint to the Board dated April 27, 2006, Patient A<sup>1</sup> reported that her primary care physician had referred her to Physiotherapy Associates for treatment of her upper and lower back. Patient A made the following specific complaints:

A. Patient A's first appointment was on March 6, 2006 with Mr.

Palaniswamy, who applied electrical stimulation (e-stim), heat and ultrasound therapy in a private room, followed by exercises in the main room. Thereafter, Mr. Palaniswamy had Patient A do exercises in the main room first, and then began her individual therapy in a private room. The door to the treatment room was always closed and there was no chaperone present. Patient A was clothed from the waist down and wore a gown on top, without a bra or with her bra unhooked;

B. After the second appointment, Mr. Palaniswamy asked Patient A if he could put his leg up on her while he was administering the ultrasound therapy, which resulted in his almost lying on top of Patient A with one foot on the ground. (Patient A assumed that he took this position in order to gain leverage for treating her upper back problems. Patient A consented to this procedure, because she had had no prior experience with physical therapy);

C. On approximately the third appointment, on March 15th, Mr. Palaniswamy began to completely lie on top of Patient A, which made her very uncomfortable. On the fourth appointment, March 17th, Mr. Palaniswamy began rocking his penis against Patient A as he lay on top of Patient A. On the fifth appointment, March 28th, Mr. Palaniswamy again laid on top of Patient A, rocking with what Patient A conceived of as "an erect penis" against her, while he put his hand under her gown against her breast;

D. On March 30, 2006, Mr. Palaniswamy got on top of Patient A while he was giving her the ultrasound. After he dismounted and started to wipe off the gel, Mr.

---

<sup>1</sup>Patients' names are confidential.

Palaniswamy again got on top of Patient A and started "humping" Patient A's buttocks with an erect penis. During this time, Mr. Palaniswamy's hand was on Patient A's breast, his face was touching Patient A's face, and he was breathing hard. When someone tried to open the door, against which he had propped a chair, he jumped off quickly;

E. As Patient A was leaving the office, she informed a staff member what had happened and was told that closing the door was against office policy. The staff member also expressed the fact that another patient had told her that she was uncomfortable with Mr. Palaniswamy's treatment. Shortly thereafter, Patient A described Mr. Palaniswamy's actions to the Respondent's, who asked her to provide him with a written statement, which she did;

F. Patient A's husband, mother and doctor convinced her to file a police report, which she did. On April 19, 2006, an arrest warrant was issued for Mr. Palaniswamy for sexual offenses committed against Patient A.

3. By complaint dated May 9, 2006, the Board received information from Patient B indicating that, on February 24, 2006, as Patient B's treatment session was ending, Mr. Palaniswamy suggested that Patient B receive ultrasound treatment to her injured shoulder. After going to a back room, Mr. Palaniswamy rested his hand across Patient B's right breast, while administering ultrasound. He then asked Patient B to do her last exercise, a "butterfly lift", wherein she moved both arms while stretched out face-down on the table. As Patient B did this exercise, Mr. Palaniswamy placed his body halfway on hers, in order to "stabilize" her back.<sup>2</sup>

---

2 Lying on a patient while applying ultrasound is not an accepted mode of physical therapy treatment.

4. On May 29, 2006, Patient C filed a complaint with the Prince George's County Police Department, which resulted in a further warrant being issued for Mr. Palaniswamy for a sexual offense.

5. Patient C complained that, in January 2006, she was referred to the company for treatment for her lower back, and the following occurred:

A. Mr. Palaniswamy provided her initial evaluation and treatment. During that evaluation, Mr. Palaniswamy asked Patient C to remove her top so that he could access her back for the attachment of the TENS unit and for massage therapy. Mr. Palaniswamy failed to provide a gown for Patient C, making her uncomfortable;

B. During the second session, Mr. Palaniswamy again asked Patient C to remove her top, which she did. Her discomfort level increased because Mr. Palaniswamy closed the treatment room door;

C. During Patient C's last session, Mr. Palaniswamy mounted Patient C's back and she felt his body pressing against her buttocks. Patient C stated that she felt uncomfortable with what he was doing and asked if this particular position was necessary, to which Mr. Palaniswamy replied "yes, because this way I can really get to your problem areas and give a better massage." Patient C stated that she did not believe him and asked him to stop, because she was feeling more pain by the motions of his hip grinding and pressing on her back;

D. When Mr. Palaniswamy left the room and the Physical Therapy Assistant (PTA) came in, Patient C asked her about this technique; the PTA said that this

should be reported, which Patient C did, as well as inform the Respondent about prior sessions where Mr. Palaniswamy had positioned himself behind her and pressed his hips into her buttocks under the premise of using a therapy technique. When Mr. Palaniswamy found out that Patient C had made a complaint, he apologized and asked her not to tell the Respondent that he had not offered her a gown.

6. On June 23, 2006, the Grand Jury of Prince George's County issued a 16-Count indictment against Mr. Palaniswamy. Specifically, Mr. Palaniswamy was charged with: falsely imprisoning Patient A on March 9, 2006, as well a 4<sup>th</sup> degree sexual offense and 2<sup>nd</sup> degree assault on that date; false imprisonment, 4<sup>th</sup> degree sexual offense and 2<sup>nd</sup> degree assault on March 17, 2006 on Patient A; false imprisonment, 4<sup>th</sup> degree sexual offense and 2<sup>nd</sup> degree assault on March 28, 2006 on Patient A; false imprisonment, 4<sup>th</sup> degree sexual offense and 2<sup>nd</sup> degree assault on March 30<sup>th</sup> on Patient A; a 4<sup>th</sup> sexual offense and 2<sup>nd</sup> degree sexual offense on February 24, 2006 on Patient B; and, 4<sup>th</sup> degree sexual offense and 2<sup>nd</sup> degree assault in January 2006 on Patient C.

7. As a result of information on Patients A, B and C, the Board issued a Summary Suspension of Mr. Palaniswamy's license on June 7, 2006. A Show Cause hearing was requested by Mr. Palaniswamy and a subsequent Motion for Continuance was filed by Mr. Palaniswamy's attorney on July 13<sup>th</sup>, which was granted. On August 14, 2006, a Show Cause hearing was held before the Board: Mr. Palaniswamy failed to appear, but his attorney was present and indicated that Mr. Palaniswamy would not

contest the summary suspension of his license until after the upcoming criminal trial, depending upon the outcome of same. On or about July 25, 2006, the Board received Mr. Palaniswamy's license. On September 12, 2006, Mr. Palaniswamy failed to appear for his criminal trial. Consequently, there is an outstanding bench warrant for Mr. Palaniswamy's arrest.

8. Thereafter, the Board continued its investigation, which disclosed the following:

A. Patient D was treated by Mr. Palaniswamy on May 9 and 11, 2005. During treatment, Patient D stated that Mr. Palaniswamy closed the treatment room door and laid on top of her, gyrating his hips into her buttocks. Patient D further stated that, although she was billed for exercises, ultrasound and electrical stimulation, as well as hot and cold packs, Mr. Palaniswamy only provided massage. Patient D stated that she reported this incident to an unknown female who worked at the facility, as well as to the Respondent, who "counseled him this type of activity;"<sup>3</sup>

B. After Patient A made her complaint to the Respondent on or about March 30, 2006, the Respondent spoke with Mr. Palaniswamy who claimed that only one foot was off the ground while he was treating her. The Respondent then contacted the Human Resources Department at the corporate headquarters in Memphis, Tennessee, and the Vice President of Human Resources undertook an investigation, talking with staff and the patient. He was unable to speak to Mr. Palaniswamy, who claimed to have left for India. In a letter to Mr. Palaniswamy, dated May 5, 2006, the Vice President

---

<sup>3</sup> Because the statute of limitations had run out, Patient D was not included in the criminal charges.

concluded that, even though he couldn't substantiate Patient A's specific allegations, the circumstances surrounding the treatment allowed that type of claim to be made; specifically, by closing the door at the time of treatment, in light of the fact that he had been warned against this by the Respondent and others that it was Physiotherapy Associates' policy to treat with the door partially or completely open, a patient could claim that something inappropriate took place. The Vice President indicated that, even though Mr. Palaniswamy was suspended, Mr. Palaniswamy's failure to be interviewed was deemed a failure to cooperate and to follow the company's policy about notice, in case he was needed to treat patients. Consequently, Mr. Palaniswamy was terminated, as of May 5, 2006.

9. On March 21, 2007, the Board sent to Mr. Palaniswamy a Notice of Intent to Revoke his license. On July 13, 2007, he requested a hearing, despite the fact that he was supposed to have left for India the prior year. On May 15, 2007, the hearing was held before a quorum of the Board. At that time, the Board was informed by Detective Mike Lanier of the Greenbelt Police Department that on April 10, 2007, despite being on the "No Fly" list by the Department of Homeland Security, Mr. Palaniswamy had flown to India from Dulles Airport in Virginia. Consequently, Mr. Palaniswamy failed to appear for his hearing, which resulted in his license being revoked, effective June 28, 2007.

10. At the hearing, Patients A, C and D all testified that they had informed the Respondent about Mr. Palaniswamy's inappropriate conduct.



11. As set forth above, by failing to: report Mr. Palaniswamy's inappropriate sexual contact with patients to the Board as required; enforce company policy regarding open door treatment, and by failing to take appropriate disciplinary action after first being informed of Mr. Palaniswamy's conduct, the Respondent violated the Act and the regulations thereunder.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §13-316 (15) and its Code of Ethics, Code Md. Regs. tit. 10, § 38.02.F. The Board finds no violation of § 3-316 (19).

### ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 19<sup>th</sup> day of February, 20008, by a majority of a quorum of the Board,

**ORDERED** that the Respondent is hereby **REPRIMANDED** and he is subject to the following conditions:

1. The Respondent shall successfully complete the first available Board-approved law and ethics course;
2. The Respondent shall successfully complete, within one year of the effective

date of this Order, a Board-approved course focusing on the appropriate handling and/or response to complaints alleging sexual misconduct;

3. The Respondent shall pay a fine to the Board of \$1500 within one year of the effective date of the Order;

4. The Respondent shall bear the costs of complying with the Order.

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

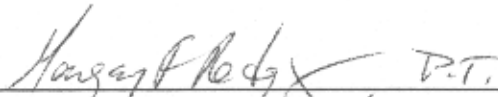
**ORDERED** that should the Board receive a report that the Respondent has violated any condition of this Order, the Respondent shall be immediately suspended from practice for a period of at least one year. The Respondent shall have an opportunity for a Show Cause hearing within a reasonable time thereafter on the issue of the Respondent's compliance, or lack thereof. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order 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 physical therapy in Maryland; and be it further

**ORDERED** that, at the end of the year period, the Respondent may petition the Board to remove 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 as it

deems necessary;

**ORDERED** that for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 2004), 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.

  
\_\_\_\_\_  
Margery Rodgers, P.T., Chairperson  
State Board of Physical Therapy Examiners

CONSENT OF DEAN CLATWORTHY, P.T.

I, Dean Clatworthy, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Donna Senft, and have been advised by her of the legal implication of signing this Consent Order;
2. I am aware that without my consent, my license to practice physical therapy in this State cannot be limited except pursuant to the provisions of § 3-316 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2004 Repl. Vol.).
3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby submit 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 § 3-317 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 3-318 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 physical therapy in the State of Maryland.

1/28/08

Date

  
\_\_\_\_\_  
Dean Clatworthy, P.T.

STATE OF Maryland \_\_\_\_\_:

CITY/COUNTY OF Howard \_\_\_\_\_:

I HEREBY CERTIFY that on this 28 day of January, 2008, before me, Amy Lefayt, a Notary Public of the foregoing State and (City/County), personally appeared Dean Clatworthy, License No. 20214, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Amy Lefayt  
Notary Public

My Commission Expires: may 9, 2011

