

IN THE MATTER OF
KENNETH KWASH, P.T.

License No. 16019

Respondent

* BEFORE THE STATE BOARD
* OF PHYSICAL THERAPY
* EXAMINERS
* CASE NUMBER: 08-12

* * * * *

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. § 13-101, et seq., (2009 Repl. Vol.) (the "Act"), the Board charged Kenneth Kwash, 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:

- (12) Willfully makes or files a false report or record in the practice of physical therapy or limited physical therapy;
 - (13) 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;
 - (14) Submits a false statement to collect a fee;
 - (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;
- or
- (25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

The Board further charged the Respondent with a violation of its Standards of Care regulations, 10.38.03.02 (March 18, 2002):

.02 Standards of Practice.

A. Physical Therapists.

(2) The physical therapist shall:

- (a) Exercise sound professional judgment in the use of evaluation and treatment procedures;
- (b) Provide adequate treatment, time, and space to the patient;

The Board also charged the Respondent with a violation of its Requirements for Documentation, Code Md. Regs. §10, 10.38.03.(March 18, 2002):

.02-1 Requirements for Documentation.

A. The physical therapist shall document legibly the patient's chart each time the patient is seen for:

(1) The initial visit, by including the following information:

- (a) Date;
- (b) Condition, or diagnosis, or both, for which physical therapy is being rendered;
- (c) Onset;
- (d) History, if not previously recorded;
- (e) Evaluation and results of tests (measurable and objective data);
- (f) Interpretation;
- (g) Goals;
- (h) Modalities, or procedures, or both, used during the initial visit and the parameters involved including the areas of the body treated;
- (i) Plan of care including suggested modalities, or procedures, or both, number of visits per week, and number of weeks; and
- (j) Signature, title (PT), and license number.

(2) Subsequent visits, by including the following information (progress notes):

- (a) Date;
- (b) Cancellations, no-shows;
- (c) Subjective response to previous treatment;
- (d) Modalities, or procedures, or both, with any changes in the parameters involved and areas of body treated;
- (e) Objective functional status;
- (f) Response to current treatment;
- (g) Continuation of or changes in plan of care; and
- (h) Signature, title (PT), and license number, although the flow chart may be initialed.

(3) Reevaluation, by including the following information in the report, which may be in combination with visit note, if treated during the same visit:

- (a) Date;
- (b) Number of treatments;
- (c) Reevaluation, tests, and measurements of areas of body treated;
- (d) Changes from previous objective findings;
- (e) Interpretation of results;
- (f) Goals met or not met and reasons;
- (g) Updated goals;
- (h) Plan of care including recommendations for follow-up; and
- (i) Signature, title (PT), and license number;

(4) Discharge, by including the following information in the discharge summary, which may be combined with the final visit note, if seen by the physical therapist on the final visit and written by the physical therapist:

- (a) Date;
- (b) Reason for discharge;
- (c) Objective functional status;
- (d) Recommendations for follow-up; and
- (e) Signature, title (PT), and license number.

B. Notwithstanding §A(4) of this regulation, a physical therapist may direct a physical therapist assistant to treat a patient on a final visit.

.03 Penalties.

Violation of these regulations may result in the Board taking action to reprimand a licensee, place a licensee on probation, or suspend or revoke a license. The Board may also impose a penalty not exceeding \$5,000.

The Respondent was given notice of the issues underlying the Board's charges by notice dated September 25, 2009. Accordingly, a Case Resolution Conference was held on November 17, 2009, and was attended by Donald Novak, P.T., and Ved Gupta, Consumer, Members of the Board, Ann Tyminski, Executive Director of the Board, and Linda Bethman and Francesca Gibbs, Counsel to the Board. Also in attendance were the Respondent and his attorney, Howard Schulman, 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 September 30, 1986. The Respondent's license expires on May 31, 2011.
2. At all times relevant hereto, the Respondent was employed at the Ellicott City, Frederick and Owings Mills offices of Maryland Orthopedic, in Howard, Frederick and Baltimore Counties, respectively.
3. On August 17, 1999, the Board signed a Consent Order with the Respondent. The Order was a settlement of Charges filed by the Board, based upon instances of the Respondent's allowing unauthorized persons to practice physical therapy, billing falsely, and, leaving patients unattended, with ultrasound taped to them.
4. The Respondent's license was suspended for two years, with all but two months stayed, and he was placed on probation for 26 months with conditions, including reimbursing insurers for services billed but not rendered.
5. The Respondent successfully served his probation.
6. By a document dated July 18, 2007, the Board received a complaint from the

managing physical therapist supervisor of Maryland Orthopedic. The Complainant stated the following:

A. On July 7, 2007, the Respondent treated Patient A¹, and he charted and billed for manual therapy. On July 9, 2007, when Physical Therapist A asked Patient A how she did with the treatment, Patient A stated that no manual therapy was provided and that the Respondent never touched her;

B. The clinic received similar information about Patient B who reported to the P.T.A. that he never received ultrasound when being treated by the Respondent;

C. The Complainant contacted the head of the Human Resources department to relay the information received, and a meeting with the Respondent was set up after the two charts were reviewed;

D. At the meeting, on July 11, 2007, after the facts were presented to the Respondent, he was given an opportunity to clarify his documentation, but he didn't offer any explanation. Although he promised to change his ways, he was terminated by the company;

E. Following this meeting, a widespread effort was made to review the Respondent's charts, and corrective billing measures were implemented. At times, addenda were added to patients' charts to explain the billing errors and to correct any erroneous billings. In addition, a quality control committee was formed to prevent potential errors of this nature.

7. Upon receipt of the complaint, the Board began an investigation, during which

¹Patients' and other therapists' names are confidential.

the following occurred:

A. The Respondent admitted that he was dismissed from the company based upon the review of two patients' charts whereby the patients stated that they did not receive the treatment he billed for;

B. Based upon a review of the Respondent's personnel file, after the Respondent's dismissal, five other patients indicated that they also did not receive the treatments billed for by the Respondent;

C. Despite having been disciplined for using "stationary" ultrasound, the Respondent indicated that his technique of ultrasound was stationary in that he placed the wand on the patients' joint or other area and he would leave the wand stationary, leaving the patient unsupervised. Based upon this "technique", the Respondent acknowledged that the patient probably did not know that the ultrasound was being used as a treatment;

D. The Respondent further acknowledged that his treatment notes might be hard to read and interpret by another person;

E. The Complainant was interviewed and indicated that he created a Patient Charge Error Correction Log reflecting reported treatments billed but not performed by the Respondent;

F. Physical Therapist A was interviewed and stated that the Respondent's handwriting was difficult to read and interpret. Although the Respondent claimed that health issues caused him to bill erroneously, Physical Therapist A stated that the Respondent did not call in sick often and seemed to be able to handle his patient schedule. She further stated that the Complainant drafted a memo and log to be

completed upon discovery of any additional patient treatment discrepancies and billing errors, and that additional patients reported not receiving treatment from the Respondent, leading to further corrections made administratively to patient billing and charts;

G. The P.T.A. was interviewed and stated that two patients had complained to her concerning treatments they did not receive by the Respondent in previous sessions. She said that the Respondent's notes were difficult to read. The P.T.A. further stated that she observed the Respondent prop up the ultrasound wand to keep it in one area, turn on the machine, and then leave the patient;

H. The Board investigator interviewed several patients:

(1) Patient A, a patient at the Ellicott City office, stated that she was not satisfied with her treatment by the Respondent and requested another physical therapist. She stated that at no time did the Respondent put his hands on her for manual therapy or any other manipulation of the neck or back. Patient A stated that the only treatment she would get was when the Respondent turned on the e-stim machine and left;

(2) Patient B, a patient at the Frederick office, stated that the Respondent treated him at the Frederick office and that he was "not happy" with the results and refused to go back to the Respondent. He further stated that, at no time, did the Respondent put his hands on him for manual, therapy, massage or any other manipulation of the back. Patient B recalled that the only treatment the Respondent did was to turn on the e-stim machine and leave.

(3) Patient C, a patient at the Frederick office, stated that the only time that the Respondent touched him was when he "cracked his back like a chiropractor".

Patient C further stated that he continues to have back muscle spasms. He indicated that the Respondent would direct him to do exercises without supervision. Patient C stated that the Respondent would turn on the e-stim machine and instruct him that the session was over when the bell went off, and would leave the room;

(4) Patient D stated that at no time did the Respondent put his hands on him for manual therapy, massage, or manipulation of the back. He further stated that, during his therapy sessions, the Respondent would direct him to do exercises without supervision. Patient D stated that he would lie down on his side, at which time, the Respondent would place gel on his hip, place a rolled towel on him, and then prop up the ultrasound wand using the rolled towel. Patient D further stated that the Respondent would then leave the treatment room.

6. Records were corrected and refunds made for the following patients:

(1) Patient A: treatment date of 6/30/07: 97110; treatment date of 7/7/07: 97110;²

(2) Patient B: treatment date of 5/1/07: 97140;

(3) Patient C: treatment date of 6/21/07: 97035 and 97140;³ treatment date of 6/26/07: 97140; treatment date of 7/5/07: 97035 and 97140; treatment date of 7/6/07: 97140; and, treatment date of 7/10/07: 90735;

(4) Patient D: treatment date of 6/22/07: 97110 and 97112;⁴ treatment

² CPT code 97110 is therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility

³ CPT code 97140: Manual therapy techniques (e.g., mobilization/ manipulation, manual lymphatic drainage, manual traction), one or more regions, each 15 minutes

⁴ CPT code 971121 is a therapeutic procedure, one or more areas, each 15 minutes; neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture, and/or proprioception for

date of 7/3/07: 97110 and 97112;

(5) Patient E treatment of 7/7/09; Codes 97035 and 97112.⁵

7. As set forth above, the Respondent violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §13-317 (12), (13), (14), (15), (19) and (25); 10.38.03.02, A(2) (a), (b); 10.38.03.02-1, A(1)(a-j), (2) (a-h), (3)(a-i), (4) (a-e); B; and .10.38.03.03.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of April, 2010, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice physical therapy is hereby **SUSPENDED**, for Two Years, with all but Four Months **STAYED**; be it further

ORDERED that, thereafter, the Respondent is placed on Two Years Probation with the following conditions:

A. The Respondent's practice shall be monitored by a Board-approved

sitting and/or standing activities

⁵ CPT code 90735 is the application of a modality to one or more areas; ultrasound, each 15 minutes; CPT code 97112 is a therapeutic procedure, one or more areas, each 15 minutes; neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture, and/or proprioception for

Mentor who shall submit quarterly reports;

- B. The Respondent shall adhere to the Mentor's recommendations regarding documentation, treatment and billing;
- C. The Respondent shall promptly pay the Mentor according to terms set by the Board.

ORDERED that the Consent Order is effective thirty days from 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 lifting the 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/Suspension 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 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

sitting and/or standing activities.

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) (Repl. Vol. 2009), 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., Chair
State Board of Physical Therapy Examiners

CONSENT OF KENNETH KWASH, P.T.

I, Kenneth Kwash, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Howard Schulman, and have been advised by him 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 § 13-316 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2009 Repl. Vol.);
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 § 13-

317 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 13-318 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.

3/27/10
Date

KTBK
Kenneth Kwash, P.T.

STATE OF Maryland
CITY/COUNTY OF Howard:

I HEREBY CERTIFY that on this 27 day of March, 2010, before me, Kenneth B. Kwash, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Kenneth Kwash, License No. 16019, 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.

My Commission Expires:

Notary Public
KRYSTAL BRAUN
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
MY COMMISSION EXPIRES APRIL 6, 2010