

IN THE MATTER OF \* BEFORE THE  
CHRISTINE LENCHERT, P.T. \* MARYLAND STATE  
License No. 15658 \* BOARD OF PHYSICAL THERAPY  
\* EXAMINERS

\* \* \* \* \*

**FINAL ORDER**

**Procedural History**

This case arose from a complaint filed by MAMSI insurance company which alleged that Physical Medicine Rehabilitation Center ("PMRC") was submitting physical therapy evaluations and reevaluations that were not signed by a physical therapist, and that an unlicensed aide was writing treatment notes. The Respondent, Christine Lenchert, P.T., License Number 15658, is the Clinical Director of PMRC in Oxon Hill, Maryland. The Board's investigation revealed that the Respondent failed to properly supervise the services performed by an aide. Specifically, the Respondent permitted an aide to function independently, with her own patient caseload; instructed and trained the aide to perform physical therapy services that were beyond the scope permitted under law; and permitted the aide to bill for those illegal and unsupervised services. The Respondent was subsequently charged on November 15, 2005. Based on this information and pursuant to its authority under the Maryland Physical Therapy Act, Md. Code Ann., Health Occ. ("H.O.") §13-101 *et seq.* (the "Practice Act"), the Board of Physical Therapy Examiners (the "Board") charged the Respondent with violating H.O. §13-316, which provides in relevant part:

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:

(5) In the case of an individual who is authorized to practice physical therapy, is grossly negligent:

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(iii) In the supervision of a physical therapy aide;

(12) Practices physical therapy or limited physical therapy with an authorized person or supervises or aids an unauthorized person in the practice of physical therapy or limited physical therapy;

(15) Submits a false statement to collect a fee;

(16) Violates any provision of this title or rule or regulation adopted by the Board;

(21) Grossly overutilizes health care services;

(26) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

The Board further charged the Respondent with the following violations of the Code of Maryland Regulations (COMAR), Title 10:

§ 38.03.02 – Standards of Practice (2003)

A. Physical Therapists.

(1) The physical therapist who establishes or changes the plan of care shall be ultimately responsible for patient care until another physical therapist:

(a) Provides services to the patient;

(b) Provides supervision to the treating physical therapist assistant; or

(c) Declares in writing that the physical therapist is accepting responsibility for the physical therapy care of the patient.

(2) The physical therapist shall:

\* \* \*

(h) Provide direct supervision of students, aides, and preceptees.

§ 38.03.02-1 – Requirements of Documentation (2002)

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) Cancellation, 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 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.

A four-day hearing on the merits was held on October 20 and November 28, 2006, and March 6 and April 12, 2007, before a Hearing Committee of the Board (the "Committee"), pursuant to Health Occ. § 13-317(d). On July 12, 2007, the Committee issued a Proposed Decision ("Proposed Decision") wherein it concluded that there was sufficient evidence to prove that the Respondent violated H.O. §13-316(5), (12), (15), (16) and (26), and Code Md. Regs. tit. 10 §§38.03.02A(1)-(2) and 38.03.02-1A(2)-(3); however, the Committee found insufficient evidence to affirm the Board's charge under Health Occ. § 13-316(21).

Contemporaneous with the issuance of the Proposed Decision, the Board's Executive Director informed the parties of the right to file exceptions before the full Board. The Respondent filed exceptions on August 6, 2007. The State filed a Response to the Respondent's exceptions on August 20, 2007.

On October 16, 2007, the parties appeared before a quorum of the Board for a hearing on the exceptions. On that same date, October 16, 2007, the Board convened for a final decision in this case.

## SUMMARY OF THE EVIDENCE

The Board adopts and incorporates by reference the proposed Summary of Exhibits and Pertinent Witness Testimony made by the Committee in the Proposed Decision issued on July 12, 2007, as the Board's final Summary of the Evidence. The Board clarifies, however, that State's Exhibit 16 was introduced, admitted, and later withdrawn. The entire Proposed Decision is attached hereto as Appendix A.

## FINDINGS OF FACT

Based on the Board's review of the evidence and the exceptions presented by the Respondent, the Board modifies the Committee's proposed Findings of Fact contained in the Proposed Decision issued on July 12, 2007. In modifying the Committee's proposed findings, the Board is attempting to clarify the bases of the Respondent's violations with respect to her supervision of Employee A. The Board's Findings of Fact are set forth below.<sup>1</sup>

1. At all times relevant, the Respondent was a licensed physical therapist in the State of Maryland. The Respondent was originally licensed on September 20, 1984, being issued License Number 15658. (State's Ex. 19)

2. At all times relevant, the Respondent was employed as Director of Physical Medicine Rehabilitation Center of the Metropolitan Washington Orthopaedic Association (hereinafter "PMRC"), which has several offices in Maryland. (*e.g.*, State's Ex. 11, Bates

1) The Respondent was the Supervising Physical Therapist at PMRC's Oxon Hill location. (T. 114, 164, 688, 701)

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<sup>1</sup> The Board deleted findings regarding the Respondent's use of the TENS unit as it was not charged.

3. The Respondent, as the Director and Supervisor at PMRC Oxon Hill, hired Employee A as a physical therapy aide in August 2002 to work at its Oxon Hill location. Employee A worked at PMRC until September 2004. Employee A resigned her position at PMRC for a better employment opportunity. (T. 163-64, 566)

4. Employee A was not, nor was she ever, licensed as a physical therapist or physical therapist assistant. (T. 218)

5. The Respondent trained and supervised Employee A during the entirety of her employment at PMRC. (T. 164-65, 185, 547)

6. Employee A also worked at other PMRC locations, including the Silver Spring, Washington, D.C., and the Virginia locations. (T. 164)

7. While working at the PMRC in Oxon Hill, the Respondent trained Employee A to perform transverse friction massage on patients. (T. 166, 177-78) Other PMRC employees were aware that Employee A also performed transverse friction massage on patients with carpal tunnel syndrome. (T. 118) The Board's regulations do not permit aides to perform transverse friction massage. (Respondent's Ex. F)

8. The Respondent also instructed Employee A to document her unsupervised activities in the patients' clinical treatment notes. (T. 166-67, 225)

9. Employee A also documented patients' subjective responses in the clinical treatment notes. (e.g., State's Ex. 12, Bates 1769, 1782, 1792; State's Ex. 13, Bates 113, 116, 117, 119) On September 17, 2003, the Respondent counseled Employee A that she

should not document subjectives; however, Employee A continued to document subjectives with Patient C, who was the Respondent's patient. (T. 587; State's Ex. 13, Bates 113, 117, 119)

10. The Respondent assigned Employee A her own schedule of patients. These patients were scheduled to be "treated" directly by Employee A. (State's Ex. 15; T. 181-83)

11. Employee A routinely treated patients, including Patient C, on her own schedule without any guidance or supervision from physical therapists on-site. Patients were lead directly to Employee A for treatment, and Employee A subsequently treated them without any prior communication or interaction with the primary physical therapist.<sup>2</sup> (T. 215-16, 185-86, 206-7) After Employee A rendered her treatment, she placed the patient's file in the slot for the primary physical therapist to obtain a co-signature. (T. 167) The physical therapists did not always review Employee A's documentation before co-signing the treatment note. (T. 218)

12. If the primary physical therapist was not present when Employee A was performing treatment of a patient, another supervising physical therapist was not assigned to supervise that patient's treatment. There was always a physical therapist on-site when Employee A was working.<sup>3</sup> (T. 205-6)

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<sup>2</sup> The primary physical therapist at PMRC is the physical therapist who performed the evaluation or the most recent re-evaluation. The patients' charts were color-coded to correspond to the primary physical therapist in charge of that patient's physical therapy treatment. (T. 166-67)

<sup>3</sup> The Board deleted Proposed Finding No. 13 based on the Respondent's submission of Appendix A to her exceptions.

13. The treatment protocol at PMRC, Oxon Hill, as directed and enforced by the Respondent, required that Employee A maintain her own patient caseload. (T. 181-83) The Respondent instructed Employee A to treat patients with, among other things, transverse friction massage. (T. 177-78) The Respondent also allowed Employee A to increase or decrease weights on exercise plans, and add exercises listed on the exercise flowchart. (T. 166, 185-86) (e.g., State's Ex. 11, Bates 8; Ex. 12, Bates 1773-74; Ex. 13, Bates 113, 116) When progressing patients with their exercise program, Employee A did not consult with either the primary physical therapist, including the Respondent, or any other physical therapist on-site prior to implementing the change in treatment. (T. 169, 185-86, 229, 215-16)

14. As part of Employee A's treatment of Patient C, Employee A would make adjustments to Patient C's exercise plan. (State's Ex. 13, Bates 113, 116, 117, 119) When progressing Patient C with her exercise program, Employee A did not consult with the Respondent or any other physical therapist. (T. 185-86) Employee A documented the above treatment on Patient C in Patient C's treatment record, which the Respondent then co-signed.

15. In the rare instances in which Employee A consulted with a physical therapist regarding a patient's treatment, Employee A would document that communication in the patient's chart. (State's Ex. 12, Bates 1780) The Board can find no other documentation by the Respondent or any other physical therapist at PMRC in the medical charts or on any "post-its" that evidence any communication with Employee A regarding treatment of



patients on Employee A's patient schedule.

16. Other PMRC locations, such as the Silver Spring location, did not give aides their own patient schedules. (T. 194) In the Silver Spring location, Employee A was specifically instructed that she was not permitted to progress patients. (T. 233-34)

17. The Respondent billed for "one-on-one" treatment performed by Employee A for Patient C although the Respondent did not directly supervise Employee A during those treatments. (State's Ex. 13, Bates 174, 175, 178, 179)

18. The Respondent instructed Employee A to fill out a fee sheet for the independent services performed by Employee A. (T. 174) Fee sheets completed by Employee A were not reviewed or co-signed by physical therapists. (T. 218-19, *e.g.*, State's Ex. 13, Bates 238, 239, 242-49, 285-90)

19. PMRC's own policies and procedures manual prohibits aides from documenting treatment in a patients' medical chart, and does not list transverse friction massage as within the scope of permissible aide duties. (Respondent's Ex. B)

20. The Board issued the Respondent a Letter of Education on November 17, 1992, regarding the regarding the improper supervision and training of aides. (State's Ex. 21)

21. The physical set up of the PMRC Oxon Hill clinic would allow for a physical therapist to directly supervise an aide if that physical therapist was actively involved in the patients' physical therapy care and was providing aid, direction, and instruction to the

aide.

22. The Respondent's documentation of her treatment of Patient C was deficient. The Respondent's reevaluations did not include short or long-term goals, which were particularly necessary for Patient C's level of injury and protracted length of physical therapy care. (State's Ex. 13)

23. Although the Respondent and other staff physical therapists co-signed daily progress notes written in the medical record by Employee A, those treatment notes did not comply with the Board's documentation requirements for daily progress notes. For example, the progress notes did not generally contain subjective responses from previous treatment, objective functional status, or response to current treatment. (State's Ex. 11, 12, 13)

24. PMRC Oxon Hill no longer uses the services of aides. (T. 556)

### OPINION

As the Clinical Director for PMRC, Oxon Hill, the Respondent hired, trained, and provided direction and instruction to Employee A, an unlicensed aide.<sup>4</sup> The testimony of Employee A, as well as virtually every other staff person at PRMC, indicated in unequivocal terms, that the Respondent was their supervisor. Although, as Employee A's supervisor, the Respondent instructed and trained Employee A to perform duties that were clearly outside the scope of permissible aide duties, the Respondent argues that she cannot be sanctioned for such conduct since the patients who received these illegal

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<sup>4</sup> According to PMRC's policies and procedures manual, the Respondent was responsible for administering policies and procedures "in a manner which will facilitate maximum ethical and professional standards in the continued development and operation of an effective, dynamic program." (Respondent's Ex. B)

services were not the Respondent's patients.

First, the Respondent's argument is factually incorrect. The Respondent treated Patient C for approximately eight (8) months, during which time she allowed Employee A to provide physical therapy services to Patient C without any supervision. Employee A testified credibly that she independently added weights, repetitions, and exercises without any professional direction from the physical therapists. In addition, the Respondent instructed Employee A to submit a fee sheet to bill this illegal aide activity as therapeutic exercises, which requires one-to-one direct contact with the healthcare professional, although Employee A rendered this treatment without direct supervision.

Secondly, the Respondent has been charged with grossly negligent supervision of an aide, and supervising and aiding an unauthorized person in the practice of physical therapy. The Respondent directed and enforced a practice protocol which required that an unlicensed individual render physical therapy treatments to patients with complex medical conditions without professional supervision or instruction. If this does not qualify as grossly negligent supervision of an aide, then the Board is hard-pressed to imagine what would. The fact that other physical therapists were always on site and signed-off on the aide's progress note means absolutely nothing unless any one of those physical therapists provided input or direction to Employee A *before* she initiated treatment on each and every patient.

The Respondent has done her best to label Employee A as a "liar". (T. 909) However, the Board adopts the Committee's credibility assessment of Employee A and the rationale for its assessment. Furthermore, the Board finds that many of the other undisputed findings corroborate Employee A's testimony. There is no dispute that Employee A was given her own patient load. This practice, in and of itself, would raise red flags that Employee A was functioning independently. Secondly, there is no dispute that the patients' records, including the records for the Respondent's patient, Patient C, are, for the most part, devoid of any documentation of instruction or guidance from any

physical therapist, and provide evidence that Employee A documented activities outside the scope of permissible aide activities. Lastly, there is no dispute that Employee A did not obtain a physical therapist's "sign-off" until after she rendered treatment. This includes treatment Employee A rendered to Patient C. Again, this corroborates Employee A's testimony that the physical therapists were endorsing or ratifying the treatment performed by Employee A after the fact, rather than providing Employee A with the necessary instruction prior to treatment.

The Respondent misstates that the Committee is attempting to sanction her for false billing because the Respondent billed for aide-rendered services. To the contrary, the Committee specifically stated that whether aide-rendered services may be billed depends on the third-party payor. (See Proposed Decision, p. 12) The Board concludes that the Respondent submitted false billings based on its finding that the Respondent permitted Employee A to bill for therapeutic exercises Employee A performed on Patient C without any supervision or instruction by the Respondent. It is undoubtedly a false statement to bill for a skilled service when no licensed, skilled professionals are involved in the particular treatment. Even Medicare Part A, which the Respondent relies on to support the premise that aide-rendered services are reimbursed by some payors, requires that the physical therapist start the session and delegate the treatment to an aide. It specifically states that "aides cannot independently provide a skilled service." (Respondent's Ex. K)

With respect to the issue of documentation, the Board finds the Respondent's deficient documentation of her treatment of Patient C very telling. The Respondent signed-off on progress notes she permitted Employee A to write in Patient C's medical record. These notes contained subjective responses, increase/decrease in weights, repetitions, and added exercises. Notably, these notes did not contain one instance of a communication between the Respondent and Employee A directing Employee A to do any of the above. The progress notes were also woefully insufficient, and did not contain

essential clinical information required by the Board's regulations. Nonetheless, the Respondent co-signed them, and continued to do so for months.

The Respondent justified the protracted period of treatment for Patient C by explaining that Patient C's rehabilitation was a very complex process. Yet despite the complexity of Patient C's medical condition, the Respondent's reevaluations were generic at best, woefully insufficient, and again lacked key clinical criteria required by the Board's regulations. And although the Board must concur with the Committee's interpretation of the regulations regarding the necessity of a discharge summary, the Board finds it difficult to imagine that the Respondent would not be compelled, as a matter of good practice, to write a discharge summary on a medically complex patient that she was treating for over eight months.

Lastly, the Respondent filed an exception arguing that Board member, Donald Novak, should have been recused from the proceedings based on an "appearance of impropriety." (Resp. Exceptions, p. 14) The Respondent conceded at the exceptions hearing that there was no evidence of actual bias. However, the Respondent argues that Mr. Novak's prior professional relationship with the State's expert creates an appearance of impropriety. Specifically, the Respondent bases her exception on the following facts: (1) Mr. Novak worked for the State's expert, Dr. Carol Zehnacker, at Amber Hill Physical Therapy from approximately 1990 to 2000; (2) Mr. Novak subsequently purchased Amber Hill from Dr. Zehnacker in 2000; and (3) Mr. Novak participated in in-services provided by Amber Hill during the course of his employment.

The Board finds that Mr. Novak's participation in these proceedings did not create an appearance of impropriety simply because he had a professional relationship with the State's expert 7 years prior. First, Mr. Novak's past relationship with Dr. Zehnacker was solely professional, not personal or social. Secondly, based on the testimony of the State's expert elicited by the Respondent, any in-services at Amber Hill were performed by various personnel, students and outside sources – not necessarily Dr. Zehnacker. (T.

481) Thirdly, Mr. Novak has had no relationship with Dr. Zehnacker for the past seven years since his purchase of Amber Hill. Lastly, Mr. Novak stated clearly on the record at the exceptions hearing that his "business relationship with Dr. Zehnecker of seven years ago had no influence or bearing on [my] decision in this case." (Vol. 5, T. 36) Mr. Novak's statement is buttressed by the fact that the Hearing Committee did not adopt most of Dr. Zehnacker's expert opinions, and that the full Board subsequently adopted the Hearing Committee's pertinent recommendations. Indeed, the votes of both the Hearing Committee and the Board were unanimous.

Maryland case law is clear that the burden is on the Respondent to prove an appearance of impropriety that would require recusal. There is a strong presumption that the Board, and its members, are impartial participants in the legal process. *Jefferson-El v. State*, 330 Md. 99, 107 (1993) The standards that are applied to the judiciary are the same standards that apply to the Board members in their quasi-judicial capacities. *Regan v. State Board of Chiropractic Examiners*, 355 Md. 397, 410 (1999) That is, "by examining the record facts and the law, and deciding whether a reasonable person knowing and understanding all the relevant facts would recuse..." *Regan*, 355 Md. at 411. Mr. Novak's professional relationship with the State's expert of more than 7 years ago is not, in and of itself, sufficient to satisfy the high burden required for recusal. As stated above, Mr. Novak was just one member of the three-member hearing panel, and just one member of the 6-member Board which rendered the final unanimous decision in this matter. Furthermore, neither the Hearing Committee nor the Board placed any real reliance on the State's expert's opinions.

In the alternative, the Board finds that the Respondent has waived the opportunity to raise this issue in the exceptions process. See *Maryland Board of Dental Examiners v. Fisher*, 123 Md.App. 322 (1998). The Respondent was informed about Mr. Novak's past relationship with the State's expert while the expert was under cross-examination on the second day of hearing. (Vol. 2, T. 480) The Respondent's counsel was permitted total

leeway in questioning Dr. Zehnacker regarding her past interactions with Mr. Novak. The Respondent's counsel, upon receiving all of the information which he chose to elicit, failed to make any motion for recusal at that time, or at any time during the third or fourth day of hearing.<sup>5</sup> The Respondent waited until after she received an adverse proposed decision to claim Mr. Novak's participation created an appearance of impropriety. By failing to raise the recusal issue in a timely manner, thereby precluding from the Hearing Committee the opportunity to address the issue, and if necessary, make appropriate adjustments, the Respondent waived her right to argue for recusal of Mr. Novak at the later exceptions hearing.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Opinion, and after consideration of the hearing record, the Respondent's exceptions, and the State's responses thereto, the Board finds that the Respondent violated Md. Code Ann., Health Occ. §13-316(5), (12), (15), (16) and (26), and Code Md. Regs. tit. 10, § 38.03.02A(1)-(2) and §38.03.02-1A(2)-(3). The Board affirms the dismissal of Health Occ. § 13-316(21).

### **SANCTIONS**

For the reasons set forth in the Opinion above, the Board sanctions the Respondent with a suspension of one (1) year, with all but sixty (60) days stayed, probation for two (2) years, and a fine of \$5,000. The Board has serious concerns that an experienced physical therapist such as the Respondent would so flagrantly violate the Maryland Physical Therapy Act, particularly after already being personally educated by the Board in 1998 on the issue of appropriate supervision. Furthermore, as the Clinical Director,

<sup>5</sup> In fact, the Respondent was specifically given the opportunity to pursue this issue on the fourth day of hearing. The Presiding Officer began the hearing by asking is there were any preliminary matters that counsel wanted to raise. (Vol. 4, T. 815)

the Respondent was responsible for supervising and enforcing a practice protocol that clearly violated Maryland law, and diminished the quality of treatment received by patients.

The Board's regulations clearly list the services with which an aide may assist a physical therapist. It is undisputed that the regulations do not permit unlicensed individuals to assist with or render transverse friction massage. In fact, PMRC's own policies and procedures do not list this as a permissible aide activity. Nonetheless, the Respondent trained Employee A to render this skilled service with full knowledge that it was a violation of the law.

The Respondent refuses to accept any accountability for her actions, and instead argues that she is beyond the jurisdiction of the Board because she is in a managerial position. Not only did the Board's findings involve the Respondent's direct patient care, the Board also has the authority, and the obligation, to discipline the Respondent for her misconduct as the aide's supervisor. The Board feels that this sanction is necessary to address the violations committed by the Respondent as well as to provide a deterrent to other physical therapists who may be tempted to abdicate their professional responsibilities in rendering physical therapy care.

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 5<sup>th</sup> day of February, 2008, by a unanimous vote of the Board, that under the authority of Health Occupations Article, §13-316, it is hereby

**ORDERED** that the license to practice physical therapy held by the Respondent, CHRISTINE LENCHERT, is SUSPENDED for one (1) year, with all but SIXTY (60) days STAYED, to be effective March 1, 2008; and be it further,

**ORDERED** that the Respondent's license be thereafter placed on PROBATION for at least TWO (2) YEARS during which the Respondent shall:



1. Successfully complete a Board-approved documentation course within the first year of probation;

2. Take and pass the Maryland Jurisprudence Examination within the first year of probation; and

3. Successfully complete a Board-approved college-level ethics course; and be it further,

**ORDERED** that the Respondent pay a fine in the amount of \$5,000.00; and be it further,

**ORDERED** that on or before March 1, 2008, the Respondent shall submit her physical therapist's license to the Board of Physical Therapy Examiners to be held by the Board during the active suspension period; and be it further,

**ORDERED** that the Respondent may petition the Board for release from probation no earlier than two (2) years from the date probation commences. The Board, in its discretion, shall release the Respondent from probation provided that the Respondent has fully complied with the probationary conditions above and paid the fine; and be it further,

**ORDERED** that should the Respondent violate any of the terms and/or conditions of this Order, the Board, in its discretion, after notice and an opportunity for a hearing, may impose any additional sanctions, including revocation and/or a monetary penalty authorized under the Maryland Physical Therapy Act; and be it further,

**ORDERED** that this is a Final Order of the Maryland Board of Physical Therapy Examiners and as such is a PUBLIC DOCUMENT pursuant to *Md. Code Ann.*, State Gov't §§ 10-611 *et seq.*

February 5, 2008  
Date

Shirley Leeper, P.T.A.  
Shirley Leeper, P.T.A.  
Vice-Chair

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. §13-318, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Order and shall be made a provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201 et seq., and Title 7, Chapter 200 of the Maryland Rules.

IN THE MATTER OF  
CHRISTINE LENCHERT, P.T.  
LICENSE NO. 15658  
RESPONDENT

\* BEFORE THE  
\* MARYLAND STATE  
\* BOARD OF PHYSICAL THERAPY  
\* EXAMINERS

\* \* \* \* \*

**PROPOSED DECISION**

**Background**

On November 15, 2005, the Maryland State Board of Physical Therapy Examiners (the "Board") issued formal charges against the license to practice physical therapy held by Christina Lenchert, P.T. (the "Respondent"). The Board's charges in this case were the result of a complaint filed with the Board by MAMSI Insurance, which alleged, among other things, that evaluations and reevaluations were not signed by a physical therapist, and that an aide was writing daily treatment notes.

The Board delegated its hearing authority to a hearing committee of the Board consisting of three Board members. Md. Code Ann., Health Occ. §13-317(d). The Hearing Committee (the "Committee") held a four-day evidentiary hearing on October 20 and November 28, 2006, and March 6 and April 12, 2007. The Committee issues this Proposed Decision for review and consideration by a quorum of the Board. The Committee finds, by a preponderance of the evidence, that the Respondent violated the Maryland Physical Therapy Act. This Proposed Decision is being issued to present the Committee's findings of fact and conclusions of law in support of its recommendation for its proposed sanction of the Respondent's license to practice physical therapy.

## Summary of Exhibits and Pertinent Witness Testimony

### A. Exhibits

- State's Exhibit 1 - 9/15/03 Complaint and attached documentation  
State's Exhibit 2 - List of employees at PMRC from 5/1/03 – 10/1/03  
State's Exhibit 3 - Transcript of interview of Employee A  
State's Exhibit 4 - Transcript of interview of Employee C  
State's Exhibit 5 - Transcript of interview of Employee D  
State's Exhibit 6 - Transcript of interview of Employee E  
State's Exhibit 7 - Transcript of interview of Employee F  
State's Exhibit 8 - Transcript of interview of Employee G  
State's Exhibit 9 - Not Admitted  
State's Exhibit 10 - Board subpoena to PMRC for original records for 15 named patients  
State's Exhibit 11 - Patient A – PMRC patient record  
State's Exhibit 12 - Patient B – PMRC patient record  
State's Exhibit 13 - Patient C – PMRC patient record  
State's Exhibit 14 - Board subpoena for PMRC patient appointment book from 6/1/03 Thru 9/30/03  
State's Exhibit 15 - PMRC patient appointment pages from 6/1/03 thru 9/30/03  
State's Exhibit 16 - Summary of PMRC patient appointments  
State's Exhibit 17 - Curriculum vitae of Carol Zehnacker, PT, DPT, CMT  
State's Exhibit 18 - Expert report of Dr. Zehnacker  
State's Exhibit 19 - 11/15/05 Charges Under the Maryland Physical Therapy Act  
State's Exhibit 20 - Patient/Employee Key  
State's Exhibit 21 - 11/17/92 "Closure with Education" Letter to Respondent  
State's Exhibit 22 - 2/28/06 Consent Order – Wendy Ann Merry, PTA
- Respondent's Exhibit A - 11/17/92 Closure with Education Letter to Respondent  
Respondent's Exhibit A-1 - 11/17/92 Closure with Education Letter to Respondent containing handwritten notes  
Respondent's Exhibit B - PMRC Policies and Procedures Manual  
Respondent's Exhibit C-1 - PMRC Name Tag for Z.L.  
Respondent's Exhibit C-2 - PMRC Name Tag for C.S.  
Respondent's Exhibits D-1 – D-7- Photographs of PMRC  
Respondent's Exhibit H - Board's Law and Regulations Manual, Oct. 2006 ed.  
Respondent's Exhibit I - 5/19/99 Board letter to Nancy Ciesla, PT  
Respondent's Exhibit J-1 – Consent Order – Christine Grasso, PTA  
Respondent's Exhibit J-3 - Consent Order - Robert Cvetic, PTA  
Respondent's Exhibit K - CMS Item-By-Item Guide to the Minimum Data Set  
Respondent's Exhibit M - APTA Guide for Professional Conduct  
Respondent's Exhibit O - CMS FAQ's  
Respondent's Exhibit Q - Curriculum vitae of Ernest Burch, P.T.  
Respondent's Exhibit R - 6/29/06 Expert Report by Ernest Burch, PT

Respondent's Exhibit T - Consent Order – Marguerita Ledwell, P.T.  
Respondent's Exhibit U - CMS Manual, Appendix F, printed out on 3/5/07  
Respondent's Exhibit V - Resume of Employee A w/ cover letter dated 4/06  
Respondent's Exhibit W - Resume of Employee A (2002)  
Respondent's Exhibit X-1 – X-12 – Fax cover sheets from/letters to Employee A from  
2002-2004

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

### State's Witnesses:

Ernest Bures, Board Investigator  
Wendy Merry, PTA  
Nakischa Davis  
Carol Zehnacker, DPT

### Respondent's Witnesses:

Christina Lenchert, PT  
Christine Sutton, PTA  
Robert Cvetic, PTA  
Nakischa Davis  
Jennifer Angeles, PT  
Wendy Merry, PTA  
Christine Grasso, PTA  
Ernest Burch, Jr., PT

## **FINDINGS OF FACT**

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Committee finds that the following facts are true:

1. At all times relevant, the Respondent was a licensed physical therapist in the State of Maryland. The Respondent was originally licensed on September 20, 1984, being issued License Number 15658. (State's Ex. 19)

2. At all times relevant, the Respondent was employed as Director of Physical Medicine Rehabilitation Center of the Metropolitan Washington Orthopaedic Association (hereinafter "PMRC"), which has several offices in Maryland. (e.g., State's Ex. 11, Bates 1) The

Respondent was the Supervising Physical Therapist at PMRC's Oxon Hill location. (T. 114, 164, 688, 701)

3. The Respondent, as the Director and Supervisor at PMRC Oxon Hill, hired Employee A as a physical therapy aide in August 2002 to work at its Oxon Hill location. Employee A worked at PMRC until September 2004. Employee A resigned her position at PMRC for a better employment opportunity. (T. 163-64, 566)

4. Employee A was not, nor was she ever, licensed as a physical therapist or physical therapist assistant. (T. 218)

5. The Respondent trained and supervised Employee A during the entirety of her employment at PMRC. (T. 164-65, 185, 547)

6. Employee A also worked at other PMRC locations, including the Silver Spring, Washington, D.C., and the Virginia locations. (T. 164)

7. While working at the PMRC in Oxon Hill, the Respondent trained Employee A to perform transverse friction massage and to apply a TENS unit on patients. (T. 166, 177-78, 192) Employee A was instructed by the Respondent to bill the TENS application as electrotherapy. (T. 191-2; State's Ex. 13, Bates 238) Other PMRC employees also witnessed Employee A utilizing the TENS unit on patients and were aware that Employee A also performed transverse friction massage on patients with carpal tunnel syndrome. (T. 118, 134) Aides are not permitted to perform transverse friction massage or use TENS units. (Respondent's Ex. F)

8. The Respondent also trained Employee A to document the above illegal activities in the patients' clinical treatment notes. (T. 166-67)

9. Employee A also documented patients' subjective responses in the clinical treatment

notes (e.g., State's Ex. 12, Bates 1769, 1782, 1792; State's Ex. 13, Bates 113, 117, 119). On September 17, 2003, the Respondent counseled Employee A that she should not document subjectives; however, Employee A continued to document subjectives with Patient C, who was the Respondent's patient. (T. 587; State's Ex. 13, Bates 113, 117, 119)

10. The Respondent attempted to train Employee A to perform joint mobilization, however the Employee A refused by indicating that she did not feel she was competent to perform such treatment. (T. 188-89) Joint mobilization is a skill physical therapy intervention that is not permitted to be performed by unlicensed personnel, such as aides. (T. 300-301)

11. The Respondent assigned Employee A her own schedule of patients. These patients were scheduled to be "treated" directly by Employee A. (State's Ex. 15; T. 181-83)

12. Employee A routinely treated patients on her own schedule without any guidance or supervision from physical therapists on-site. Patients were lead directly to Employee A for treatment, and Employee A subsequently treated them without any prior communication or interaction with the primary physical therapist.<sup>1</sup> (T. 185-86) After Employee A rendered her treatment, she placed the patient's file in the slot for the primary physical therapist to obtain a co-signature. (T. 167)

13. At times, Employee A treated patients when the primary physical therapist was not on-site. However, the primary physical therapist would, nonetheless, sign-off on treatment performed by Employee A. (State's Ex. 15, 6/5/03 (Patient H.S.) - State's Ex. 12, Bates 1775; State's Ex. 15, 8/6/03 (Patient H.S.) - State's Ex. 12, Bates 1782; State's Ex. 15, 6/18/06 (Patient

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<sup>1</sup> The primary physical therapist at PMRC is the physical therapist who performed the evaluation or the most recent re-evaluation. The patients' charts were color-coded to correspond to the primary physical therapist in charge of that patient's physical therapy treatment. (T. 166-67)

G.R.) – State’s Ex. 18, p.11; State’s Ex. 15, 7/23/03 (Patient G.R.) – State’s Ex. 18, p. 12; State’s Ex. 15, 8/5/03 (Patient J.P.) – State’s Ex. 11, Bates 10; State’s Ex. 15, 9/18/03 (Patient C.M.) – State’s Ex. 13, Bates 113)

14. If the primary physical therapist was not present when Employee A was performing treatment of a patient, another supervising physical therapist was not assigned to supervise that patient’s treatment. There was always a physical therapist on-site when Employee A was working. (T. 205-6)

15. As part of Employee A’s treatment of patients, Employee A would apply a TENS unit, perform transverse friction massage, and progress patients with their exercise plans by increasing or decreasing weights, or by adding exercises listed on the exercise flowchart. (T. 166) (*e.g.*, State’s Ex. 11, Bates 8; Ex. 12, Bates 1773-74; Ex. 13, Bates 113, 116) When progressing patients with their exercise program, Employee A did not consult with either the primary physical therapist or any other physical therapist on-site prior to implementing the change in treatment. (T. 169, 186, 229)

16. In the rare instances in which Employee A consulted with a physical therapist regarding a patient’s treatment, Employee A would document that communication in the patient’s chart. (State’s Ex. 12, Bates 1780) There is no other documentation by the Respondent or any other physical therapist at PMRC in the medical charts or on any “post-its” that evidence any communication with Employee A regarding treatment of patients on Employee A’s patient schedule.

17. Other PMRC locations, such as the Silver Spring location, did not give aides their own patient schedules. In the Silver Spring location, Employee A was specifically instructed



that she was not permitted to progress patients. (T. 233-34)

18. The Respondent billed for "one-on-one" treatment performed by Employee A for Patient C although the Respondent did not directly supervise Employee A during those treatments. On at least one occasion, September 18, 2003, it does not appear that the Respondent was even working on the date that she co-signed a treatment note for treatment rendered by Employee A. (State's Ex. 12; State's Ex. 13, Bates 113)

19. The Respondent instructed Employee A on how to fill out a fee sheet. Fee sheets completed by Employee A were not co-signed by physical therapists. (T. 174)

20. PMRC's own policies and procedures manual prohibits aides from documenting treatment in a patients' medical chart. (Respondent's Ex. B)

21. The physical set up of the PMRC Oxon Hill clinic would allow for a physical therapist to directly supervise an aide if that physical therapist was actively involved in the patients' physical therapy care and was providing aide, direction, and instruction to the aide.

22. The Respondent's documentation of her treatment of Patient C was deficient. The Respondent's reevaluations did not include short or long-term goals, which were particularly necessary for Patient C's level of injury and protracted length of physical therapy care. (State's Ex. 13)

23. Although the Respondent and other staff physical therapists co-signed daily progress notes written in the medical record by Employee A, those treatment notes did not comply with the Board's documentation requirements for daily progress notes.

24. PMRC Oxon Hill no longer uses the services of aides. (T. 556)

## OPINION

The Board's legislative mandate is to protect the public by insuring that Maryland citizens receive physical therapy services from competent and ethical physical therapists. The Respondent was the Director and Supervisor at the PMRC Oxon Hill location. The Respondent hired, trained and supervised Employee A as an unlicensed physical therapy aide. Although the Respondent attempted to minimize her supervisory and managerial roles, the evidence and testimony clearly indicates that the Respondent personally directed and supervised the physical therapy staff at PMRC Oxon Hill. The letterhead of PMRC states that the Respondent is the "Director" and virtually every PMRC staff person testified that the Respondent was the supervisor.

The crux of the issue in this matter is whether the Respondent directed and permitted Employee A, an unlicensed aide, to perform physical therapy duties absent adequate supervision and to perform duties that an aide is not permitted to perform. Employee A testified in detail regarding her training, experience, and responsibilities at PMRC Oxon Hill. The Hearing Panel found Employee A to be a very credible witness. Employee A's demeanor was calm and steady. She maintained eye contact throughout her testimony and did not fidget nor seem uncomfortable with any of the questioning on direct or cross. Employee A's testimony was consistent – she never wavered, even under what was sometimes very aggressive cross-examination.

Furthermore, Employee A lacked any motivation to testify against the Respondent. Employee A was not the complainant in this matter; the complaint was filed by an insurance company. (State's Ex. 1) Employee A resigned her position from PMRC on good terms. Even the Respondent testified that she was a good employee. (T. 566) Although the Respondent attempted to argue that Employee A was a "liar", the Hearing Panel flatly rejects that assertion

based on the Panel's opportunity to personally observe Employee A's demeanor and testimony, and the documentary evidence supporting her testimony.<sup>2</sup>

The Hearing Panel finds that the Respondent arranged to allow Employee A to have her own schedule of patients. These patients were scheduled directly with Employee A. The primary physical therapist, i.e., the physical therapist who evaluated or last re-evaluated the patient, may or may not have been working on the same day or at the same time. If the primary physical therapist was not working at the time Employee A was with a particular patient, Employee A was never directed to another physical therapist to supervise the treatment for that patient. Although there were always physical therapists on-site when Employee A was with her patients, she rarely had any professional interaction with any physical therapist, including the Respondent, with respect to the treatment of those patients.

The Board's regulations state that a physical therapist must provide direct supervision of an aide by providing aid, direction and instruction. Employee A was never provided with any aid, direction or instruction with regard to her treatment of any of the patients on her schedule, with the exception of those rare instances in which Employee A documented communication with a physical therapist. Although the Respondent testified that she would communicate with Employee A on "stick 'em" notes, the record is completely vacant of any evidence of any communication with Employee A regarding the treatment of any patient.

Employee A testified that her only interaction with a physical therapist would be to

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<sup>2</sup> In attempting to impeach Employee A's testimony, the Respondent offered evidence that Employee A faxed a resume, two years after she terminated employment at PMRC, to a blind advertisement. The fax number was the same fax number as PMRC's, and therefore, the Respondent argues that Employee A was attempting to obtain a job at PMRC again. Employee A testified, again credibly, that she was responding to a blind ad and did not recognize the fax number. It is certainly understandable that one would not remember a fax number two years later. This evidence did nothing to undermine Employee A's credibility. The Respondent also placed great emphasis on wording used by Employee A in her resume regarding her duties at other physical therapy practices. The hearing panel again found Employee A's testimony to be credible in that she was merely describing, to the best of her ability, her duties. Again, Employee A's resume did not undermine her credibility with respect to the duties she

obtain a co-signature of either the primary physical therapist or another physical therapist *after* she finished the treatment session. Employee A testified that she believed she needed to obtain the co-signature because she was not licensed. There is absolutely no way that a physical therapist could directly supervise treatment provided by an aide if the physical therapist has not first met with the patient to obtain relevant clinical information. Indeed, the Respondent's Exhibit K (CMS Guidance document), although not applicable to the patients at issue in this matter, even states "[w]hen the therapist starts the session and delegates the performance of the therapy treatment to a therapy aide..." Thus, CMS clearly requires direct and initial participation of the physical therapist before an aide may commence physical therapy interventions in accordance with the physical therapist's plan of care.

During the treatment sessions, Employee A would increase or decrease weights, or add exercises listed on the exercise flow sheet, without any prior consultation with the physical therapist. The physical therapists would thereafter co-sign Employee A's treatment note. Employee A was also directed by the Respondent to utilize a TENS unit and perform transverse friction massage on patients. These physical therapy interventions are clearly not permitted to be performed by an aide. COMAR 10.38.04.03. Thereafter, Employee A would actually document these illegal activities in the treatment notes, and a physical therapist would co-sign it. It appears that sometimes, as cited above, the physical therapist who co-signed Employee A's note was not even present when Employee A rendered the treatment.

Further evidencing the lack of involvement by physical therapists in the treatment of patients on Employee A's schedule is that the notes by Employee A, which were all co-signed by physical therapists, lacked the requisite components of a daily progress note. If, in fact, a physical therapist actually met with a patient first, as some contended, before Employee A

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performed at PMRC Oxon Hill under the direction and supervision of the Respondent.

commenced her treatment, then the notes would reflect other key components such as the subjective response, objective functional status, and response to current treatment. None of the notes for patients on Employee A's schedule reflect any documentation by the physical therapist that the physical therapist met with or assessed any patient treated by Employee A. The documentation only reflects a physical therapist's sign-off on an insufficient note, sometimes containing documentation of illegal activities.

There was much discussion regarding whether aides are permitted to "treat" rather than "assist" with treatments. The Hearing Panel believes that this is a distinction without a difference. The fact is that the Respondent trained and directed Employee A to perform treatments that were clearly outside the scope of permissible aide duties. Furthermore, whether Employee A was treating or assisting in the treatment of permissible interventions, Employee A lacked any supervision whatsoever by a licensed and skilled physical therapist. In essence, the Respondent permitted Employee A to function as an independent physical therapist.

With respect to Employee A's documentation in the clinical record, the Hearing Panel finds that nothing prevents an aide from documenting in the clinical record *if* the aide was documenting permissible aide activities only, and *if* the aide was receiving guidance and instruction from a physical therapist and that guidance was documented. An aide could then document the permissible physical therapy interventions performed at the direction of the physical therapist, and have the physical therapist sign the note. Unfortunately, that did not occur here.

The Board has historically held the position that only licensed physical therapy personnel should document in the clinical record since licensed personnel are responsible for the physical therapy treatment. (State's Ex. 21) The Hearing Panel has concerns that allowing

unlicensed personnel to document treatment in the clinical record could lead down a slippery slope where the unlicensed personnel is eventually practicing independently, outside of his or her permissible scope. That is exactly what happened here. Under the direction and supervision of the Respondent, Employee A was documenting impermissible aide activities as well as subjective responses, and was functioning without any physical therapist guidance or instruction. The physical therapist's co-signature was obtained for administrative purposes only. Indeed, PMRC's own policies and procedures prohibit an aide from documenting in the medical record. (Respondent's Ex. B)

With respect to billing one-on-one CPT codes for aide-rendered services, the Hearing Panel finds that whether a particular billing is appropriate depends on the criteria as set out by the third party payor although the Panel is not aware, nor was the Respondent's expert, of any third party payors that reimburse for one-on-one interventions rendered by aides.<sup>3</sup> [T. 863-64] In the case of Patient C, however, the Respondent clearly billed for therapeutic exercises performed by Employee A when Employee A did not have direct supervision of her services. In fact, it appears that on September 18, 2003, the Respondent was not even present when Employee A billed for therapeutic exercises, although the Respondent co-signed the note for that date. Furthermore, the Respondent instructed Employee A to bill transverse friction massage as manual therapy and the TENS unit as electrotherapy. As aides are not legally permitted to perform transverse friction massage or apply a TENS unit, it is impermissible for aides to bill for those services, regardless of whether the aide had direct supervision.

The evidence did not prove, by a preponderance of the evidence, that the Respondent

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<sup>3</sup> Although the Respondent was admitted as an expert regarding the "negligent supervision of aides", he actually never utilized aides in his physical therapy practice. (T. 840) However, to the extent that his opinion is given any weight, he testified that he would not have allowed an aides to bill for therapeutic exercise. (T. 852)

grossly overutilized physical therapy services in her treatment of Patient C. However, the Panel is concerned that the Respondent did not participate more in the treatment of Patient C. The Respondent testified that the nature and extent of Patient C's injury, a shoulder joint replacement, justified the protracted period of treatment. However, Patient C's records reflect minimal participation of the Respondent in Patient C's treatment.

Furthermore, the Panel cannot find, by a preponderance of the evidence, that the Respondent failed to write a discharge summary for Patient C. The Respondent did not see Patient C for purposes of discharge, and therefore, a discharge summary was not required.<sup>4</sup>

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Opinion, the Hearing Committee finds that the Respondent violated Maryland Code Ann., Health Occ. § 13-316(5), (12), (15), (16) and (26), and Code Md. Regs. tit. 10 §§ 38.03.02A(1)-(2) and 38.03.02-1A(2)-(3). The Committee finds that the Respondent did not violate Md. Code Ann., Health Occ. § 13-316(21).

#### RECOMMENDATION

Based upon the foregoing Proposed Findings of Fact, Opinion, and Conclusions of Law, on this 12<sup>th</sup> day of July, 2007, it is hereby:

RECOMMENDED THAT the Respondent's license to practice physical therapy be SUSPENDED for one (1) year, with all but sixty (60) days stayed; and it is further,

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<sup>4</sup> This hypertechnical legal interpretation was argued by the Respondent and reluctantly accepted by the Hearing Panel. However, as testified by the Respondent's expert, who actually assisted in the drafting of these regulations, it has always been the intent of the Board to require a discharge summary for every patient. The Respondent's expert, Mr. Burch, testified that Respondent's counsel "convinced" him that the regulations stated otherwise. (T. 835-839) Particularly in Patient C's case, which involved severe injury and physical therapy treatment expanding over the course of nine (9) months, it is inconceivable that a physical therapist would not write a discharge summary at the conclusion of the treatment.

RECOMMENDED THAT the Respondent's license be thereafter placed on PROBATION for at least TWO (2) YEARS during which the Respondent shall:

1. Successfully complete a Board-approved documentation course within the first year of probation;
2. Take and pass the Maryland Jurisprudence Examination within the first year of probation; and
3. Successfully complete a Board-approved college-level ethics course; and be it further,

RECOMMENDED THAT the Respondent pay a fine in the amount of \$5,000.00.

Date

July 12, 2007

Jill Kuramoto  
Jill Kuramoto, P.T.  
Vice-Chair

**NOTICE OF RIGHT TO FILE EXCEPTIONS**

Pursuant to Md. Code Ann., Health Occ. Art. §13-317(d)(3), you have a right to file exceptions to this Proposed Decision with the Board of Physical Therapy Examiners. Exceptions shall be filed within 21 days of receipt of this Proposed Decision and shall be governed by COMAR 10.38.05F.