

IN THE MATTER OF * **BEFORE THE STATE BOARD**
KATHERINE MILLS, P.T. * **OF PHYSICAL THERAPY**
License No. 21871 * **EXAMINERS**
Respondent * **CASE NUMBER: 07191C**

* * * * *

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., (2005 Repl. Vol. and 2008 Supp.) (the "Act"), the Board charged Katherine Mills, 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:

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

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

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

(12) Willfully makes or files a false report or record in the practice of physical therapy or limited physical therapy;

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

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

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

The Board also charges the Respondent with a violation of its Code of Ethics regulations, Md. Code Regs. tit. 10 §.38.02 (March 18, 2002):

.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 Board further charges the Respondent with a violation of its Standards of Practice regulations, Code Md. Regs. tit, 10 §.38.03 (March 18, 2002):

.02 Standards of Practice.

A. Physical Therapists.

(j) Delegate to the physical therapist assistant only treatment that is within the competency and scope of practice of the physical therapist assistant [;].

The Board also charges that the Respondent violated its regulations, Requirements for Documentation, Code Md. Regs. tit. 10.38.03. (March 18, 2002):

.02-1.

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) Modalities, or procedures, or both, with any changes in the parameters involved and areas of body treated;
 - (d) Objective status;
 - (e) Response to current treatment, if any;
 - (f) Changes in plan of care; and
 - (g) 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 the visit note, if treated during the same visit:
- (a) Date;
 - (b) Number of treatments since the initial evaluation or last reevaluation;
 - (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) Updated 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 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.

D. Subsequent visits, as referred to in §A(2) of this regulation, in the same day by the same physical therapist do not require separate progress notes unless there is a change in the patient's status.

E. Ongoing Communications. Both the physical therapist and the physical therapist assistant shall document ongoing communication between the physical therapist and physical therapist assistant regarding changes in a patient's status and treatment plan.

.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 letter dated August 4, 2009. Accordingly, a Case Resolution Conference was held on September 3, 2009, and was attended by Donald Novak, P.T., and Ved Gupta, Consumer, Board members, Ann Tyminski, Executive Director of the Board, and Linda Bethman and Francesca Gibbs, Counsel to the Board. Also in attendance were the Respondent, who

knowingly and voluntarily waived her right to an attorney, and the Administrative Prosecutor, Roberta Gill.

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 July 5, 2006. The Respondent's license expires on May 31, 2011.
2. At all times relevant to the charges herein, the Respondent was practicing physical therapy at The Water's Edge, a privately owned physical therapy practice located in Stevensville, Maryland. The Respondent was employed as a staff physical therapist from mid-May to October 2007. The Water's Edge was owned and operated by Owner A, who is not licensed by any health occupation licensing board.
3. As a result of a complaint that the Board received on or about September 28, 2006, from Physical Therapist A, the Board began an investigation into the billing practices of The Water's Edge and the therapists involved there.
4. While the Board was already conducting an investigation of The Water's Edge, as a result of Physical Therapist A's complaint, it received a complaint from Physical

Therapist B, dated May 31, 2007, which indicated that, on 5/24/07, his charges entered on the SOAP note, exercise flowsheet and “superbill” or billing document, all had three direct one-on-one codes and a group code billed for each patient. On 5/25/07, he found that all three superbills had been altered and changed from what he had billed to four direct one-on-one direct codes for each patient. Physical Therapist B indicated that he had copies of two of the three changes made. Physical Therapist B further indicated that he tried to get the alterations changed back to the original and then called the Board’s investigator to alert him.

5. The Investigator indicated that he returned a telephone call to Physical Therapist B who stated that he had received a call from a “The Water’s Edge” front desk worker who told him that The Water’s Edge had received a Board subpoena for three patient files and, that on the days that a particular employee did billing, the billing records were altered for each of his patients. Physical Therapist B said that, since he had already filed a complaint regarding the same thing, he did not return the call and was advised not to by the Investigator.
6. The Board received a second complaint from Complainant A, the former billing employee referred to by the front desk worker who called Physical Therapist B. Complainant A had called the Maryland Insurance Administration, Insurance Fraud Division to report insurance fraud at The Water’s Edge.
7. Physical Therapist B resigned his position at The Water’s Edge on June 15, 2007, shortly after being interviewed by the Investigator, as a result of the first complaint by Physical Therapist A. Complainant A’s employment was terminated by Owner A

on May 29, 2007, the day the Board's Investigator first interviewed Complaint A as a result of the first complaint. Complainant A was told her position was being eliminated.

8. As a result of receiving these two additional complaints which both alleged illegal billing practices at The Water's Edge, the Board launched a more extensive investigation into the practice.

9. The Board's investigation disclosed the following:

A. With regard to aquatic therapy, the Respondent and other therapists at the facility billed patients for aquatic therapy as a separate unit of therapy plus as a unit of group therapy, when treating patients simultaneously in groups in the pool. They billed Medicare and other insurers for aquatic therapy as separate units;

B. As a result of this disclosure, the Board retained a Physical Therapist expert to review patient records, who determined the following:

(1) The Water's Edge continued to bill insurers, including Medicare, under Physical Therapist B's name after he left in or around June 15, 2007;¹

(2) The Water's Edge continued to use Physical Therapist B's name on billing forms even though another therapist, such as the Respondent, provided the treatment;

(3) The other therapists and billing employees confirmed this

¹Physical Therapist B relocated to Florida, and, up until the time of the charges, the facility has continued

continued long-term use of Physical Therapist B's name and provider number after he had left the practice because the other therapists were not credentialed. Even when there was a credentialed Physical Therapist employed, billings continued using Physical Therapist B's name as the provider;

- (4) The patient evaluations, reevaluations and daily treatment notes were not signed by the treating therapists, who used a computer treatment note-writing system, with the exception of one therapist;
- (5) The Water's Edge uses a computerized medical note-writing system and the therapists, with the one noted exception, do not print out the documents in order to sign and put license numbers on them, as required;
- (6) Employees testified that Physical Therapist B had instructed the therapists how to bill for pool therapy when treating multiple patients, as follows: multiple patients could be treated at the same time in the pool; one patient from the group would be taken out to work with while the aide is working with the other patients; thus, an individual units plus a group unit is billed for each patient.
- (7) The Board's Investigator also analyzed the three files to set forth the names of the therapists who provided treatment on the dates the Expert based on his report on.

to bill Medicare and other insurers under his name.

(8) Combining the Expert's opinion and the analysis provided by the Investigator, the following occurred with regard to Patient A, who went to The Water's Edge 24 times for treatment for lumbosacral sprain;

(a) On 5/14/07, there was a discrepancy between the daily note, the superbill and the charges that the Respondent wrote, in that the daily note indicated three units of aquatic therapy and one unit of group therapy. The superbill indicates four units of aquatic therapy and does not have one unit of group therapy. Patient A was only scheduled for a 30 minute appointment slot, but was charged as set forth above;

(b) On 5/21/07, the Respondent again saw Patient A for a 30 minute appointment, but billed three units of attended therapy;

(c) The Respondent billed her services under Physical Therapist B's name.

(9) With regard to the Respondent's treatment of Patient B who went to The Water's Edge 11 times for treatment related to multiple Immune Deficiencies related to Scleroderma, and whose initial evaluation occurred on 5/23/07, the following combined Expert's opinion and Investigator's analysis applies:

(a) Patient B's initial evaluation was performed on 5/23/07 by

the Respondent, but was billed under Physical Therapist B's name;

- (b) The Respondent next saw Patient B on 6/6/07, but billed for her services under Physical Therapist B's name. Patient B and another patient were scheduled for the same time, and Patient B was billed for three units of therapeutic exercise and one unit of group therapy;
- (c) The Respondent next saw Patient B on 6/13/07 when Patient B and another patient had aquatic therapy at the same time; the Respondent charged Patient B three units of aquatic therapy and one unit of group therapy, under the name of Physical Therapist B as provider;
- (d) The Respondent next saw Patient B on 7/2/07, after Physical Therapist B had left the practice, yet she billed for Patient B's treatment under the name of Physical Therapist B. In addition, the manner in which the Respondent wrote the progress note suggests that aquatic therapy was performed, but three units of therapeutic exercises and one unit of group therapy were charged. A review of the aquatic flow sheet indicates that only aquatic exercises were performed. In addition, two other patients were scheduled at the same time, making it extremely difficult for the Respondent to provide the

type and amount of therapy charged;

- (e) The Respondent next saw Patient B on 7/11/07; her notes indicate three units of aquatic therapy and one unit of group therapy were performed, but there was no bill present to determine how and under whose name the services were billed.
- (10) Patient C was seen 11 times at The Water's Edge for left knee degenerative joint disease. She was apparently evaluated by the Respondent. Following is the Expert's opinion regarding her treatment, as well as the Investigator's analysis:
- (a) The initial evaluation is not signed, has no initials and no license number; however, the Respondent submitted a fee sheet, although it was billed under Physical Therapist B's name as the provider;
 - (b) The Respondent treated Patient C on 5/16/07, when she had one other patient scheduled for aquatic exercises at the same time. The Respondent charged Patient C three units of aquatic therapy and one unit of group therapy. It would be impossible for the Respondent to perform the one-on-one time required by the procedures code;
 - (c) The Respondent's notes for her 5/30/07 treatment of Patient C fail to document the number of units of procedures

performed, although the patient was charged three units of aquatic therapy and one unit of group therapy;

(d) On that day, there is a discrepancy with the procedures performed in the patient's documentation and charges entered: the Respondent saw the patient for a total of 60 minutes and performed three units of aquatic therapy and one unit of group therapy; yet, on the charge bill, there are four units of aquatic therapy and no charge of one unit of group therapy;

(e) The Respondent performed the discharge summary, which had objective data and noted improvement with the patient's functional ability, which was measured and described; however, the Respondent failed to compare those measurements and descriptions with the initial examination. Also, the Respondent failed to indicate that, in addition to a reevaluation, two units of therapeutic exercises and heat and electrical stimulation were performed.

11. As set forth above, by failing to accurately bill for her sessions, by participating in a billing scheme to bill for services not rendered or rendered by unqualified persons, by failing to adhere to the standards of documentation, and, by not alerting the Board to irregularities at The Water's Edge, as required, the Respondent violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 13-316 (14), (15) (25); Md. Code Reg. tit. 10 § .38.02.01F; § 10.38.03.02-1A (1) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j); (2) (a), (b), (c), (d), (e), (f), (g); (3) (a), (b), (c), (d), (e), (f), (g), (h), (i); (4) (a), (b), (c), (d), (e); B; D; E; and § 10.38.03.03. The Board concludes that the Respondent did not violate §§ 13-316 (4), (11), and (12). The Board further concludes that the Respondent did not violate 10 §.38.03 .02A. (j).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of October, 2009, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice physical therapy is hereby placed on PROBATION for One Year, during which the Respondent shall complete the following:

- A. Take and pass, with the requisite percentage, the Board-approved ethics and law course and examination;
- B. Take and successfully pass a Board-pre-approved billing course.

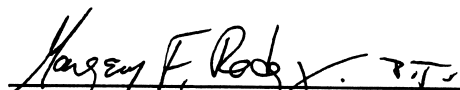
ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive a report that the Respondent has violated 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 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 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 practice without any conditions or restrictions on her license, provided that he/she can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and 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. 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., Chair
State Board of Physical Therapy
Examiners

CONSENT OF KATHERINE MILLS, P.T.

I, Katherine Mills, by affixing my signature hereto, acknowledge that:

1. I am not represented by an attorney and have knowingly and voluntarily waived my right to one;
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., (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 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.

10/15/09
Date

Katherine S Mills
Katherine Mills, P.T.

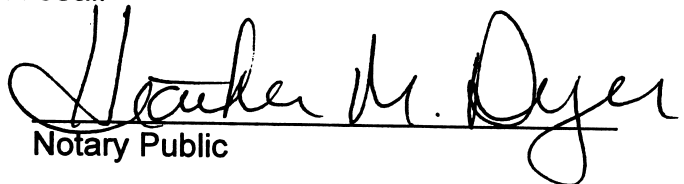
STATE OF Maryland

CITY/COUNTY OF Talbot:

I HEREBY CERTIFY that on this 15th day of October, 2009, before me, Heather M. Dyer, a Notary Public of the foregoing State and (City/County),
(Print Name)

personally appeared Katherine Mills, License No. 21871, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.


Notary Public

HEATHER M. DYER

My Commission Expires: _____ **NOTARY PUBLIC STATE OF MARYLAND**
~~My commission expires March 22, 2011~~