

IN THE MATTER OF	*	BEFORE THE STATE BOARD
DARREN T. McCLEARY, P.T.A.	*	OF PHYSICAL THERAPY
Respondent	*	EXAMINERS
License No.: A01340	*	Case No.: 01-BP-123

* * * * *

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. Code Ann. § 13-101 *et seq.* (the "Act"), the Board charged Darren T. McCleary, P.T.A., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of H.O. § 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:

- (6) In the case of an individual who is authorized to practice limited physical therapy:
 - (i) Practices limited physical therapy other than is authorized by this title;
- (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 care.

The Board further charged the Respondent with the following violations of the Code of Maryland Regulations (Code Md. Regs.) tit. 10, § 38.03.02 Standards:

F. The physical therapist assistant shall use only methods and procedures within the scope of the practice of limited physical therapy;

J. The physical therapist assistant may not initiate treatment until the patient has been evaluated and the treatment planned by the physical therapist.

The Board also charged the Respondent with violations of the Code Md. Regs. tit. 10, § 38.03.02-1 Requirements for Documentation:

B. The physical therapist assistant shall adhere to the Board-approved requirements for documentation to the extent that the requirements are applicable to an assistant's scope of practice. The physical therapist assistant shall document the patient's chart for progress notes following the initial visit as follows:

- (1) Date;
- (2) Modalities, procedures, etc.;
- (3) Cancellations, no-shows;
- (4) Subjective response to treatment;
- (5) Objective functional status; and
- (6) Signature, title (PTA), and license number with identifying signatures appearing on the patient's chart, although the flow chart may be initialed.

The Board issued the charges on January 21, 2003. Thereafter, a Case Resolution Conference was held on April 5, 2003. Following the Case Resolution Conference, the parties agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

The Board makes the following findings:

1. The Respondent is licensed to practice as a physical therapist assistant in the State of Maryland. The Respondent was originally licensed on August 12, 1988.

2. At all times relevant hereto, the Respondent was employed as a physical therapist assistant by Concentra Medical Centers, Inc. ("Concentra").

3. On or about March 11, 1999, the Board received a complaint from the Special Investigation Unit of the Injured Workers' Insurance Fund ("IWIF") that Concentra overutilized the following physical therapy procedures, as identified by the Current Procedural Terminology ("CPT") assigned to them:

95831- muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report

95851- range of motion measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine)

4. Thereafter, the Board conducted an investigation of services provided and claims submitted to IWIF by Physical Therapist ("PTs") and Physical Therapist Assistants ("PTAs") employed by Concentra at the time the complaint was filed. The investigation revealed documentation and coding deficiencies in addition to those originally alleged in the IWIF complaint.

CPT CODES

5. CPT codes provide a uniform language that accurately describes medical, surgical and diagnostic procedures. According to the CPT Manual, the CPT is "the most widely accepted nomenclature for the reporting of physician procedures and service under government and private health insurance programs. CPT is also useful for administrative management purposes such as claims processing and for the development of guidelines for medical care review."

a. Codes 95831 and 95851

6. The CPT codes identified in the IWIF complaint, 95831 and 95851, are classified as Neurology and Neuromuscular Procedures.¹ Both codes are appropriate to evaluate a patient who has suffered deficiencies as a result of a neurological disorder or disease such as stroke, multiple sclerosis and ALD in order to document the patient's progression or regression. Both of these codes require the physical therapist to generate a separate report.

7. The term "separate procedure," as used in the description of the codes in the CPT manual, identifies a procedure that is commonly carried out as an integral component of a total service or procedure. The CPT manual states further:

The codes designated as "separate procedure" should not be reported in addition to the code for the total procedure or service of which it is considered an integral component. However, when a procedure or service that is designated as a "separate procedure" is carried out independently or considered to be unrelated or

¹ The most common CPT codes recorded in Concentra patient records are listed in the Physical Medicine and Rehabilitation section, the first two digits are "97." Unless a four-digit CPT code suffix is specified, the suffix for all codes used herein is "0000."

distinct from other procedures/services provided at that time, it may be reported by itself, or in addition to other procedures/services by appending the modifier "-59" to the specific "separate procedure" code to indicate that the procedure is not considered to be a component of another procedure, but is a distinct, independent procedure. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries).

8. Code 95831 is defined in the CPT manual as follows: Muscle testing, manual (separate procedure); extremity (excluding hand) or trunk, with report.

9. Code 95851 is defined in the CPT manual as follows: Range of motion ("ROM") measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine).

10. Objective findings such as muscle strength and range of motion are a standard of physical therapy documentation and are to be performed once a week at a minimum. It is not standard physical therapy practice to bill separately for these measurements except when being performed as re-evaluation. It is standard physical therapy practice to assess and interpret objective findings that result from muscle testing and range of motion testing in order to determine whether changes should be made to the patient's treatment plan and/or goals.

b. Code 97110-Therapeutic exercise

11. Therapeutic exercise (CPT code 97110) is classified as a therapeutic procedure. A therapeutic procedure is "a manner of effecting change through the application of clinical skills and/or services that attempt to improve

function. Physician or therapist required to have direct (one on one) patient contact."

12. Therapeutic exercise is defined in the CPT manual as follows: Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercise to develop strength and endurance, range of motion and flexibility.

13. Instructing a patient how to perform the exercise is a component of a therapeutic exercise and is not to be billed as a separate charge by the provider.

c. Code 97112- Neuromuscular re-education

14. Neuromuscular re-education (Code 97112) is classified as a therapeutic procedure and incorporates all of the elements of therapeutic exercises. Neuromuscular re-education is further defined as the neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture and proprioception.

d. Code 97530- Therapeutic activity

15. Therapeutic activity (Code 97530) is classified as a therapeutic procedure and is defined as, "direct (one on one) patient contact by the provider (use of dynamic activities to improve functional performance), each 15 minutes."

General Allegations of Deficiencies

16. A PTA is not licensed to perform the following: evaluations or re-evaluations, assessments, progress reports, changes to treatment plan without consulting the PT and documenting the consultation, discharges or discharge summaries.

17. The Respondent documented and/or billed for evaluation codes, documented a change in the treatment plan, recommendation or progress report and documented discharges without appropriate authorization on several of the patient charts that were reviewed, as set forth in detail below. In addition, the Respondent also documented billing for procedure codes for exercise that were not supported by documentation of treatment, as detailed below.

Patient-Specific Allegations

Patient A

18. Patient A, a female born in 1962, initially presented to Concentra on May 27, 1998 with lumbar strain which she sustained in a work-related incident. Patient A was evaluated by a Concentra PT and was treated by PTs for several visits.

19. The Respondent treated Patient A on June 8, 1998 and noted the following charges for that visit: Modalities - Hot/Cold Packs (97010); Procedures - Therapeutic Exercise (97110) (x2) and Therapeutic Activity (97530).²

20. The Respondent's documentation of the June 8, 1998 visit fails to support charging for two (2) units of Therapeutic Exercise or under the Therapeutic Activity code.

21. The Respondent treated Patient A on June 11, 1998 and noted the following charges: Modalities - Hot/Cold Packs (97010), Electrical Stimulation (97041) and Ultrasound (97035); Procedures - Therapeutic Exercise (97110) and Myofascial Release (97250); and Tests - Range of Motion (95851). The

² Charges under the "Supplies" category are not at issue in this case and are not set forth herein.

Respondent completed a Physical Therapy Progress Report and made recommendations the Concentra physician regarding the patient's treatment.

22. In making treatment recommendations without appropriate authorization, the Respondent practiced beyond the scope of his license.

23. The Respondent treated Patient A on June 17, 1998 and noted the following charges for that visit: Modalities - Hot/Cold Packs (97010) and Electrical Stimulation (97041); Procedures - Therapeutic Exercise (97110); and Tests - Manual Muscle Testing (95831) and Range of Motion (95851). The Respondent also made an assessment regarding Patient A's status.

24. The Respondent practiced beyond the scope of his license in making an assessment of Patient A without appropriate authorization.

Patient B

25. Patient B, a male born in 1965, initially presented to Concentra on May 28, 1998 after spraining a finger while at work. Patient B was evaluated by a Concentra PT and was treated by PTs for several visits thereafter.

26. The Respondent treated Patient B on June 9, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) (2 units) and Tests - Range of Motion (95851) and Jamar (97750). The Respondent also completed a Physical Therapist Progress Report for review by a Concentra physician in which he makes assessments of Patient B.

27. The Respondent documentation fails to support charging under the Therapeutic Exercise code. Moreover, the Respondent practiced beyond the scope of this license in conducting and charging for tests and measurements,

assessing the patient's status and communicating the assessment to a physician without appropriate authorization.

Patient C

28. Patient C, female born in 1971, initially presented to Concentra on July 6, 1998 with contusions of the face, scalp and neck which she sustained in a work-related incident. Patient C was evaluated by a Concentra PT and was treated by PTs for several visits thereafter.

29. The Respondent treated Patient C on July 7, 1998 and noted the following charges for that visit: Modalities - Hot/Cold Packs (97010); and Procedures - Therapeutic Exercise (97110) and Therapeutic Activity (97530).

30. The Respondent's documentation of the July 7, 1998 visit fails to support charging under the Therapeutic Exercise or Therapeutic Activity codes.

31. The Respondent treated Patient C on July 10, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) (2 units) and Therapeutic Activity (97530); Tests - Range of Motion (95851). The Respondent also recommended that Patient C be discharged from treatment.

32. The Respondent's documentation of the July 19, 1998 visit fails to support charging for two (2) units of Therapeutic Exercise or under the Therapeutic Activity code. Moreover, by making an assessment regarding the patient's discharge and communicating that information to the physician without appropriate authorization, the Respondent practiced beyond the scope of his license.

Patient D

33. Patient D, a female born in 1965, initially presented to Concentra on June 10, 1998 after sustaining a contusion to her left arm in a word-related incident. Patient D was evaluated and treated by a Concentra PT on that date.

34. The Respondent treated Patient D on June 24, 1998 and noted the following charges for that visit: Procedures - Therapeutic Exercise (97110) and Therapeutic Activity (97530). The Respondent also recommended that Patient D be discharged from treatment.

35. The Respondent's documentation of the June 23, 1998 visit fails to support charging under the Therapeutic Exercise or Therapeutic Activity codes. In addition, the Respondent practiced beyond the scope of his license in recommending the discharge of Patient D without appropriate authorization.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated Md. Health Occ. Code Ann. §§ 13-316(6)(i), (15), (16), (21), and (26). The Board also finds that the Respondent violated Code Md. Regs. tit. 10, § 38.03.02(F) and (J) and § 38.03.02-1.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of MAY, 2003, by a majority of a quorum of the Board,

ORDERED that the Respondent shall be placed on probation for a period of at least two (2) years, subject to the following conditions:

1. The Respondent shall take the Board-approved law and ethics course and pass the associated examination administered by the Board, within the first year of probation;

2. The Respondent shall successfully complete a Board-approved documentation course;

3. The Respondent shall successfully complete a Board-approved billing course;

4. The Respondent may apply the above coursework to the Respondent's continuing education requirements for licensure renewal;

AND IT IS FURTHER ORDERED that if the Respondent fails to comply with any of the terms or conditions of probation set forth above, that failure shall be deemed a violation of this Order; and it is further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of limited physical therapy in Maryland; and it is further

ORDERED that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially 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 of a hearing, the Board may take

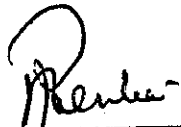
further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order to Probation shall be upon the Respondent to demonstrate compliance with the Order or conditions; and it is 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 the Respondent's license, provided the Respondent 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; and it is further

ORDERED that the Respondent shall bear the expenses associated with the Consent Order; and it is further

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't Code Ann. § 10-617(h) (Repl. Vol. 1999), this document consists 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 to which it is mandated to report.

5.20.03
Date



Penelope D. Lescher, M.A., P.T., M.C.S.P., Chair
State Board of Physical Therapy Examiners

CONSENT

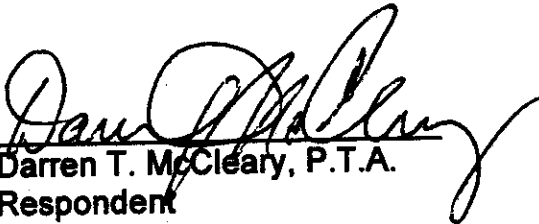
I, Darren T. McCleary, P.T.A., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney and have been advised by my attorney 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 H.O. § 13-317 and the Maryland Administrative Procedure Act, codified at State Gov't §§ 10-219 *et seq.*
3. I am aware that I am entitled to a formal evidentiary hearing before the Board;
4. By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal.
5. I acknowledge that failing to abide by the condition set forth in this Order, I may, after an opportunity to be heard, suffer disciplinary action, including

revocation of my license to practice limited physical therapy in the State of Maryland.

6. I voluntarily sign this Consent Order after having an opportunity to consult with an attorney, without reservation, and I fully understand the language, meaning and terms of this Consent Order.

5/13/03
Date

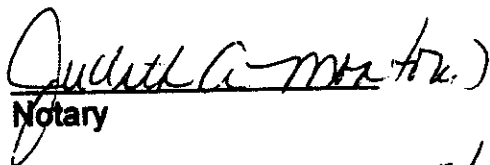

Darren T. McCleary, P.T.A.
Respondent

STATE OF: MARYLAND

CITY/COUNTY OF: CARROLL

I HEREBY CERTIFY that on this 13th day of MAY, 2003, before me, a Notary of the State of MARYLAND and the City/County of CARROLL, personally appeared Darren T. McCleary, P.T.A., and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed, and that the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.


Notary

My Commission expires: 07/01/05