

IN THE MATTER OF \* BEFORE THE MARYLAND  
DENNIS NOLE, P.T.A. \* STATE BOARD OF  
Respondent \* PHYSICAL THERAPY EXAMINERS  
License Number: A1345 \* Case Number: 2006-10

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**CONSENT ORDER**

On or about August 15, 2006, the Maryland State Board of Physical Therapy Examiners (the "Board"), hereby charged Dennis Nole P.T.A. (the "Respondent") (D.O.B. 02/04/1951), License Number A1345, with violations of certain provisions of the Maryland Physical Therapy Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") §§ 13-101 *et seq.* (2005 Repl. vol.).

Specifically, the Board charged the Respondent with violations of the following provisions of Health Occ. § 13-316:

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

- (15) Violates any provision of this title or rule or regulation adopted by this Board;
- (20) Grossly overutilizes health care services; and
- (25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care. OK .

The Board further charged the Respondent with the following violations of the Code of Maryland Regulations ("Code Md. Regs.") tit. 10, § 38.03.02-1C:

The physical therapist assistant shall document the patient's chart each time the patient is seen by the physical therapist assistant following the physical therapist's initial evaluation or reevaluation by including the following:

- (4) Modalities, procedures, or both, including parameters involved, and areas of body treated;
- (5) Objective functional status; and

Code Md. Regs. tit. 10, § 38.03.02B(1)(g):

Document ongoing communication regarding changes in a patient's status and treatment authorized by the physical therapist.

### **FINDINGS OF FACT**

#### **I. BACKGROUND**

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant to these charges, the Respondent was and is a Physical Therapist Assistant (hereinafter, "PTA") licensed to practice physical therapy in the State of Maryland. He was initially licensed in Maryland on or about August 12, 1988, and his license is presently active.
2. At the time of the acts described herein and for approximately the past twelve years, the Respondent has been employed as a PTA by Maryland Health One, Inc., Belvedere Hotel, One East Chase Street, Baltimore, Maryland. The owner of Maryland Health One

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and the Respondent's employer was and is Ms. Dela Cruz, a non-  
licensee.

3. On or about October 25, 2005, the Board opened an investigation based on its receipt of a complaint alleging false billing filed by a special investigator at Geico regarding physical therapy services rendered to three patients involved in a motor vehicle accident who filed claims against the insured driver. The Respondent performed physical therapy services for two of the three patients.
4. As part of its investigation, the Board's investigator subpoenaed documents and conducted interviews of the Complainant, the Respondent, Ms. Caldwell and several employees of Maryland Health One,<sup>1</sup> including Ms. Dela Cruz and the PTA's<sup>2</sup> who rendered care to the named patients. Additionally, as part of its investigation, the Board requested that a Physical Therapist conduct an expert review (hereinafter, "reviewer") and issue her opinion with regard to the standard of physical therapy care, the adequacy of documentation and the utilization of services rendered to these patients. With regard to the two patient records reviewed, the reviewer opined that the Respondent failed to meet the standard of physical therapy care and documentation, failed to document any ongoing communication with the physical therapist and he continued to provide treatment to the two patients without evidence

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<sup>1</sup> The employees interviewed also included those who provided contractual services to Maryland Health One.

<sup>2</sup> The Board also voted to charge Ms. Caldwell and another PTA stemming from this complaint.

of objective findings to base continuing care, constituting an overutilization of health care services.

5. Based on its investigation, the Board charged the Respondent with violating Health Occ. § 13-316(15), (20) and (25) and Code Md. Regs. tit. 10, §§ 38.03.02-1C and 38.03.02B(1)(g).

## II. PATIENT RELATED FINDINGS OF FACT

### PATIENT 1

6. Patient 1<sup>3</sup> was a 47 year-old male patient, who presented to Maryland Health One on or about August 11, 2005 with complaints of neck pain following a motor vehicle accident. Dr. S conducted an initial physical examination and evaluation and diagnosed Patient 1 with cervical spine sprain, right wrist sprain, lumbar spine sprain and lumbosacral spine sprain. Dr. S's treatment plan for Patient 1 included conservative treatment and physical therapy consultation.
7. On or about August 11, 2005, the Ms. Caldwell performed an initial physical therapy evaluation of Patient 1. The evaluation was only partially legible and Ms. Caldwell failed to note the frequency or duration of treatment for Patient 1.

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<sup>3</sup> For purposes of confidentiality, patient names will not be used in this document.

8. The Respondent treated Patient 1 on the following dates: August 12, 15, 16, 17, 19, 22, 24, 25, 26, 29 and September 1 and 6, 2005.<sup>4</sup>
9. On or about August 12, 2005, the Respondent treated Patient 1 with moist heat and electrical stimulation and massage to his spine and a cold pack and ultrasound to his wrist.
10. On or about August 15, 2005, the Respondent treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and cold pack, ultrasound and therapeutic exercise to his wrist.
11. On August 16, 2005, the Respondent documented "states his wrist [illegible] him." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and cold pack, ultrasound and therapeutic exercise to his wrist.
12. On August 17, 2005, the Respondent documented Patient 1 was "still having some pain." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and a cold pack, ultrasound and therapeutic exercise to his wrist.
13. On August 19, 2005, the Respondent documented that Patient 1 indicated the "Pain is still there." He treated Patient 1 with moist



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<sup>4</sup> The Board subpoenaed Patient 1's records from both Maryland Health One and Geico; the progress notes from August 19, 22, 24 and 25, 2005, that were in Maryland Health One's records were missing from Geico's records.

heat, massage and therapeutic exercise to his spine and a cold pack, ultrasound and therapeutic exercise to his wrist.

14. On August 22, 2005, the Respondent documented that Patient 1 stated, "My wrist hurts the most." He treated Patient 1 with moist heat, massage and therapeutic exercise to the spine and moist heat, ultrasound and therapeutic exercise to the wrist.
15. On August 24, 2006, the Respondent documented that Patient 1 "continue to c/o some pain." He treated Patient 1 with moist heat, massage and therapeutic exercise to the spine and moist heat, ultrasound and therapeutic exercise to the wrist.
16. On August 25, 2005, the Respondent documented that Patient 1 indicated, "I'm a little better today." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and moist heat, ultrasound and therapeutic exercise to the wrist.
17. On August 26, 2005, the Respondent documented that Patient 1 "continue[s] to express some progress but still has some pain." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and moist heat, ultrasound and therapeutic exercise to his wrist.
18. On August 29, 2005, the Respondent documented Patient 1 stated that his "back feels a little better." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his



spine and moist heat, ultrasound and therapeutic exercise to his wrist.

19. On September 1, 2005, the Respondent documented Patient 1 stated, "things are getting better." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and moist heat, ultrasound and therapeutic exercise to his wrist.
20. On September 6, 2005, the Respondent documented that Patient 1 "continue[s] to express progress." He treated Patient 1 with moist heat, electrical stimulation, massage and therapeutic exercise to his spine and moist heat, ultrasound and therapeutic exercise to his wrist.
21. The Respondent failed to document any communication with the physical therapist regarding any change in status of Patient 1's pain during any of his visits.
22. The Respondent continued to render treatment to Patient 1, without communicating with the physical therapist changes in his pain status and without requesting that the patient be reevaluated for treatment changes.
23. The Respondent failed to document any parameters for electrical stimulation during any of the treatments on August 12, 15, 16, 17, 19, 22, 24, 25, 26, 29, 2005 or on September 1 or 6, 2005.

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24. The Respondent failed to document any objective functional status for Patient 1 on August 12, 15, 16, 17, 19, 22, 24, 25, 26, 29, 2005 or on September 1 or 6, 2005.
25. The Respondent's care and treatment of Patient 1 as outlined above fails to meet accepted standards in delivering physical therapy constituting a violation of Health Occ. § 13-316 (25).
26. The Respondent's failure to document parameters for electrical stimulation constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(4).
27. The Respondent's failure to document any objective functional status for Patient 1 constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(5).
28. The Respondent's failure to document ongoing communication regarding changes in a patient's status and treatment authorized by the physical therapist constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02B(1)(g).
29. The Respondent's continuation of Patient 1's treatment without evidence of objective findings on which to base continuing care, represents a gross overutilization of health care services in violation of Health Occ. § 13-316(20).

**PATIENT 2**

30. Patient 2, a 40 year old male patient, presented to Maryland Health One on or about August 11, 2005 with complaints of neck pain and

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back pain following a motor vehicle accident. Dr. S conducted an initial physical examination and evaluation and diagnosed Patient 2 with cervical spine sprain, lumbar spine sprain and lumbosacral spine sprain. Dr. S's treatment plan for Patient 2 included conservative treatment and physical therapy consultation.

31. On or about August 11, 2005, Ms. Caldwell performed an initial physical therapy evaluation of Patient 2. The evaluation was only partially legible and failed to note the frequency or duration of treatment for Patient 2.
32. On or about August 18, 22 and 31, 2005, the Respondent performed physical therapy services for Patient 2.
33. On or about August 18, 2005, the Respondent documented that Patient 2 "continued to c/o pain." He performed physical therapy services for Patient 2 including moist heat, electrical stimulation, massage and therapeutic exercise to Patient 2's lumbar spine and moist heat, ultrasound and therapeutic exercise to Patient 2's cervical spine.
34. On August 19, 2005, PTA NH documented Patient 2 had no complaints of pain.
35. Three days later, on or about August 22, 2005, the Respondent documented that Patient 2 indicated "there's still pain" and he performed physical therapy services including moist heat, electrical stimulation, massage and therapeutic exercise to Patient 2's lumbar



spine and moist heat, ultrasound and therapeutic exercise to Patient 2's cervical spine.

36. On August 23, 2005, PTA NH documented that Patient 2 stated "that has had no pain in cervical spine for a week."
37. On August 25, 2005, PTA JC documented that Patient 2 reported "[without] c/o pain this a.m."
38. On August 26, 2005, PTA NH documented that Patient 2 reported "no pain to cervical spine or lumbar spine" but complained of left hip pain.
39. On August 30, 2005, PTA NH documented that Patient 2 continued to complain of left hip pain.
40. On August 31, 2005, the Respondent failed to document any complaints from Patient 2 regarding hip pain, and documented that Patient 2 was "a little better but still has some pain." The Respondent performed the following physical therapy services: moist heat, electrical stimulation, massage and therapeutic exercise to the lumbar spine and moist heat, ultrasound and therapeutic exercise to the cervical spine.
41. The Respondent failed to document any communication with the physical therapist regarding any change in Patient 2's pain status on August 22 or 31, 2005.

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42. The Respondent failed to establish and/or document any parameters for electrical stimulation for Patient 2 during the visits on August 18, 22 and 31, 2005.
43. The Respondent failed to document any objective functional status for Patient 2 on August 18, 22 and 31, 2005.
44. When questioned under oath by the Board's investigator regarding why he had failed to document any parameters for electrical stimulation, the Respondent responded that the standard for electrical stimulation was "to tolerance." The Respondent denied that it was necessary to document any parameters.
45. The Respondent's care and treatment of Patient 2 as outlined above fails to meet accepted standards in delivering physical therapy constituting a violation of Health Occ. § 13-316 (25).
46. The Respondent's failure to document parameters for electrical stimulation constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(4).
47. The Respondent's failure to document any objective functional status for Patient 2 constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02-1C(5).
48. The Respondent's failure to document ongoing communication regarding changes in a patient's status and treatment authorized by the physical therapist constitutes a violation of Health Occ. § 13-316(15) and Code Md. Regs. tit. 10, § 38.03.02B(1)(g).

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49. The Respondent's continuation of Patient 2's treatment without evidence of objective findings on which to base continuing care, represents a gross overutilization of health care services in violation of Health Occ. § 13-316(20).

**II. Gross Overutilization of Health Services**

50. The Respondent, by his own admission, has been an employee of Maryland Health One for twelve to thirteen years.

51. On or about January 4, 2006, the Board's investigator interviewed the Respondent under oath regarding patient scheduling as follows:

...the practice is [the patients] come for two weeks – every day for two weeks....The first two weeks [the patients] come every day...

The investigator further questioned the Respondent as follows:

**Investigator:** But it's a standing practice, though, that any new patient is going to be treated every day for the first two weeks?

**D.N.:** Right.

**Investigator:** And when I say every day, it's Monday through Friday.

**D.N.:** Yes, correct.

**Investigator:** So it's actually five days a week?

**D.N.:** Five days a week.

**Investigator:** The first two weeks. They they (sic) re-evaluated by the doctor?

**D.N.:** Yes.

**Investigator:** And then he'll say, well, treat them for three days a week?

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**D.N.** That's correct.

**Investigator:** Does it ever get down to where they're only treated for one day a week or two days a week?

**D.N.:** No.

52. The Respondent's continuation of Patient 1's and Patient 2's treatment without evidence of objective findings to base continuing care and his knowledge that Maryland Health One's "standard practice" of performing physical therapy on each and every patient five days a week for the first two weeks and then after re-evaluation by a physician, treating each and every patient three days per week constitutes gross overutilization of health services in violation of Health Occ. § 13-316(20).

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Md. Health Occ. Code Ann. § 13-316(15), Code Md. Regs. tit. 10, § 38.03.02-1C(4), Code Md. Regs. tit. 10, § 38.03.02-1C(5), Code Md. Regs. tit. 10, § 38.03.02B(1)(g), Health Occ. § 13-316 (20) and Health Occ. § 13-316 (25).

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 5<sup>th</sup> day of December, 2006, by a majority of the Board considering this case:



**ORDERED** that the Respondent's license as a Physical Therapist Assistant shall be **SUSPENDED FOR A PERIOD OF TWO (2) YEARS**; and be it further

**ORDERED** that the **SUSPENSION BE IMMEDIATELY STAYED**; and be it further

**ORDERED** that the Respondent be placed on **PROBATION FOR A PERIOD OF TWO (2) YEARS**, subject to the following terms and conditions:

1. The Respondent shall enroll in and successfully complete the Maryland Physical Therapy Law Course within two years of the execution of this Consent Order;
2. The Respondent shall enroll in and successfully complete a comprehensive Board-approved course in documentation within two years of the execution of this Consent Order;
3. The courses outlined in paragraphs one (1) and two (2) shall be in addition to any Continuing Education requirements mandated for continuing certification as a P.T.A., and shall not count toward fulfilling any certification requirements that the Respondent must fulfill in order to renew his P.T.A. certification;
4. The Respondent shall be required to have the Board review a total of six (6) treatment records to be evenly divided between his employment facilities, on a quarterly basis (every three months) for the duration of his TWO YEAR probationary period as follows:
  - a. The first due date for submission of the treatment records to the Board shall be on or before three months from the date of execution of this Consent Order. The subsequent due dates for the Respondent's treatment records will be on or before three months from the date of the previous submission. The dates of the treatment records for each quarter will reflect treatment by the Respondent during that period of time;
  - b. The Board shall review all aspects of the Respondent's documentation and treatment including but not limited to the use of billing codes related to physical therapy treatment;

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c. The Respondent shall comply with all written recommendations made by the Board following its quarterly review of his treatment records. The Respondent's failure to comply with the Board's written recommendation shall be deemed a violation of this Consent Order;

d. The Respondent's failure to submit the quarterly treatment records on or before the due dates outlined in paragraph 5a. shall be deemed a violation of this Consent Order.

5. The Respondent shall pay a monetary fine in the amount of five hundred dollars (\$500) by bank guaranteed check made payable to the Maryland State Board of Physical Therapy Examiners no later than six months from the date this Consent Order is executed;

and be it further

**ORDERED** the Respondent shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations promulgated thereunder; and be it further

**ORDERED** that the Respondent shall not petition the Board for early termination of his probationary period; and be it further

**ORDERED** after the conclusion of the entire **TWO (2) YEAR PERIOD of PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, but only if the Respondent has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the two year period of probation, and if there are no pending complaints regarding the Respondent before the Board; and be it further


**ORDERED** that should the Respondent violate any of the terms or conditions of this Consent Order, the Board, after notice and an opportunity for a hearing and determination of violation, may impose any other disciplinary



sanctions it deems appropriate, including suspension or revocation, said violation being proven by a preponderance of the evidence; and be it further

**ORDERED** that the Respondent shall be responsible for all costs in fulfilling the terms and conditions of this Consent Order; and be it further

**ORDERED** that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §§ 10-611 (2004 Repl. vol.).

  
Margery Rodgers, P.T., Chair  
State Board of Physical Therapy Examiners

**CONSENT OF DENNIS NOLE, P.T.A.**

I, Dennis Nole, P.T.A., License Number A1345, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with counsel before signing this Consent Order.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 13-317 (2005 Repl. vol.) and Md. State Gov't Code Ann. §§ 10-201 et seq. (2004 Repl. vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after 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 own behalf, and to all other substantive and procedural protections to which I am entitled by law. I am waiving those procedural and substantive protections.





4. I voluntarily enter into the foregoing Findings of Fact and Conclusions of Law and Order and agree to abide by the terms and conditions set forth herein as a resolution of the charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license as a Physical Therapy Assistant.

6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

10/16/06  
Date

Dennis Nole P.T.A.  
Dennis Nole, P.T.A.

Reviewed and Approved by:

Marc K. Cohen  
Marc K. Cohen, Esquire

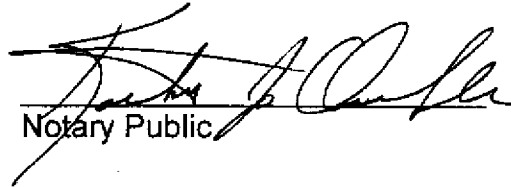
**STATE OF MARYLAND**

**CITY/COUNTY OF** Baltimore

I HEREBY CERTIFY that on this 16<sup>th</sup> day of October,

2006, before me, K. Oswinkle, a Notary Public of the foregoing State and City/County, personally appeared Dennis Nole, P.T.A., License Number A1345, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

**AS WITNESSETH** my hand and notarial seal.

  
Notary Public

My Commission Expires: 3/1/10