

IN THE MATTER OF	*	BEFORE THE STATE BOARD
CARY PERALTA, P.T.	*	OF PHYSICAL THERAPY
License No.: 20583	*	EXAMINERS
Respondent	*	Case No.: 04-05

* * * * *

CONSENT ORDER

The State Board of Physical Therapy Examiners (the "Board") charged **CARY PERALTA, P.T.** (the "Respondent"), License No. 20583, with violating certain provisions of the Maryland Physical Therapy Act ("the Act"), codified at Md. Health Occ. ("H.O.") Code Ann. §§ 13-101 *et seq.* (2000 and Supp. 2003).

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

§ 13-316. Denials, reprimands, probations, suspensions, and revocations-Grounds.

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:
 - * * *
 - (iii) In the supervision of a physical therapy aide;
- (12) 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;
- (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; (or)
- (26) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

The Board charges the Respondent with violating the following regulations:

Code Md. Regs. ("COMAR") tit. 10 § 38.02.01 Code of Ethics (2002).

- 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.

Code Md. Regs. ("COMAR") tit. 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.

COMAR 10. 38.03.02-1. Requirements for 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) Cancellations, no-shows;
 - (c) Subjective response to previous treatment;
 - (d) Modalities, or procedures, or both, with any changes in the parameters involved and areas of body treated;
 - (e) Objective functional status;
 - (f) Response to current treatment;
 - (g) Continuation of or changes in plan of care; and
 - (h) Signature, title (PT), and license number, although 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.

The Board issued the charges on November 15, 2005. Thereafter, a Case Resolution Conference was held on August 2, 2007 in an attempt to resolve the Charges pending against the Respondent prior to a hearing. Following the Case Resolution Conference, the parties agreed to resolve the matter by way of settlement.

FINDINGS OF FACT

The Board finds that:

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 June 28, 2002, being issued License Number 20583.
2. At all times relevant to the charges herein, the Respondent was employed as a physical therapist at Physical Medicine Rehabilitation Center of the Metropolitan Washington Orthopaedic Association [hereinafter "PMRC"], which had several offices in the State of Maryland. The Respondent began working at PMRC in May, 2001.
3. Employee A¹ was employed at PMRC as a physical therapy aide from

¹Employees' and patients' names are confidential. However the Respondent may obtain them by making a request to the Administrative Prosecutor.

2002 until 2004.

4. Employee A has never been licensed by the Board as either a physical therapist or a physical therapist assistant.

5. A physical therapy aide is "a person who performs certain physical therapy duties under the direct supervision of a licensed physical therapist."²

6. "Direct supervision" means that a licensed physical therapist is personally present and immediately available within the treatment area to give aid, direction, and instruction when physical therapy procedures or activities are performed.³

7. The Respondent worked with Employee A at PMRC's Oxon Hill, Maryland location.

8. Employee A advised the Board's investigator that while she was employed at PMRC her duties included whirlpool, transverse friction massage, and progressing patients (i.e., showing patients how to do exercises and then increasing the weight and/or the number of repetitions).⁴

9. Employee A further advised the Board's investigator that she frequently performed these duties without the Respondent, or any other licensed physical therapist, being personally present and immediately available within the treatment area.

10. Employee A would perform the aforementioned treatments on patients

² See COMAR 10.38.04.01B (2001).

³ See COMAR 10.38.01.01B(7) (2001).

⁴ Activities that physical therapy aides are permitted to perform under direct supervision are enumerated at COMAR 10.38.04 (2001).

without the direct supervision of a physical therapist, including the Respondent. Employee A would then write the patient treatment note and complete a billing slip, which was referred to as a "charge ticket" at PMRC.

11. Thereafter, a physical therapist, including the Respondent, would "co-sign" the treatment note even though the "co-signing" physical therapist, including the Respondent, did not treat the patient or directly supervise the therapy provided by Employee A.

12. The Board's investigator interviewed the Respondent and asked the Respondent if physical therapy aides at PMRC had their own patient loads. The Respondent answered, "yeah."

13. The Board's investigator interviewed Employee B, a physical therapist who began her employment at PMRC on May 14, 2001, and was still employed there on January 20, 2005, the day on which she was interviewed.

14. Employee B confirmed that physical therapy aides at PMRC write patient treatment notes and complete fee sheets.

15. Employee B also described the extent to which physical therapy aides are involved in treating patients: "when [the manager at PMRC] hires the aides, we were-we trained aides, they shadow us and we instruct them and show them how – what they need to do and- as far as supervising patients, how to do exercises. And after they see the patient, we told them that, call the therapist." The physical therapist then co-signs the treatment note.

16. Employee C, a physical therapist assistant employed at PMRC since June 1999, described the role of physical therapy aides as follows: physical

therapy aides "usually do the exercise programs and they supervise the patient, they follow them, make sure that the patient is performing all the exercises, and they also do whirlpools...."

17. Employee D, a physical therapist assistant employed at PMRC since November 1997, advised the Board's investigator that while a physical therapy aide is working with a patient a physical therapist is "in the same vicinity," but that the physical therapist could at the same time be treating another patient.

18. Employee E, a physical therapist assistant employed at PMRC since 1993, provided the following description of the treatment system at PMRC: "Once the patient has been deemed essentially independent in their exercises, the-the physical therapist will-will deem them independent to where an aide can supervise them through their-their workout."

19. The Board's investigator then asked Employee E: "so the patient no longer has to see a physical therapist, they're then seen by an aide and they go through their exercises and so forth working with an aide, is that correct?" Employee E answered: "Yes."

20. When asked if the physical therapy aide could be treating a patient while the physical therapist is in another treatment area treating another patient, Employee F answered: "Yes."

21. Physical therapy aides who were not licensed by the Board to practice physical therapy or limited physical therapy were nevertheless unlawfully practicing physical therapy at PMRC while the Respondent was concurrently employed there as a licensed physical therapist. However, the Respondent

failed to report to the Board the illegal and unsafe practice of physical therapy by unlicensed individuals at PMRC.

Patient-Specific Findings of Fact

Patient A

22. Patient A sought treatment at PMRC for a foot injury sustained on May 30, 2003.
23. The Respondent performed an initial evaluation of Patient A on June 9, 2003, and re-evaluations on July 7, 2003, August 11, 2003, and September 12, 2003.
24. The July 7, 2003 re-evaluation demonstrated no objective measures or progress of the patient to justify medical necessity or further physical therapy intervention.
25. The August 11, 2003 re-evaluation was almost verbatim of the July 7, 2003 re-evaluation and did not justify medical necessity or further physical therapy intervention.
26. The September 12, 2003 re-evaluation lacked objective measurements or assessment of the foot injury except for mention of pain and tenderness.
27. The Respondent failed to do a discharge summary.
28. Among other visits for treatment at PMRC, Patient A treated at PMRC on June 13, 2003, June 23, 2003, June 25, 2003, June 30, 2003, July 2, 2003, July 30, 2003, August 5, 2003, August 6, 2003, August 8, 2003, August 20, 2003, and August 22, 2003. Patient A's treatment notes for those visits were written

and signed by Employee A.⁵ Employee A also initialed the flow sheets for those visits. The Respondent co-signed the treatment notes for those visits.

29. Patient A's billings for those visits indicate that she was billed under Current Procedural Terminology ("CPT") code 97110 for all visits, as well as CPT code 97530 for several of those dates. Both of these codes are for therapeutic procedures and require the therapist to have "direct (one on one) patient contact." However, Patient A did not have direct (one on one) contact with the Respondent on the aforementioned visits, as Employee A, who was not a licensed physical therapist or physical assistant, treated Patient A on those visits.

30. Patient A was interviewed by the Board's investigator and advised: "At first I started out with different therapist. But the one that mainly worked with me was [Employee A]".

31. Patient A further advised the Board's investigator that there were days when she was treated by Employee A and no one else was present to directly supervise Employee A.

32. Patient A was asked by the Board's investigator if she was also seen by the Respondent on the days that she was treated by Employee A, to which Patient A responded: "On some days. Not every day."

Patient B

33. Patient B sought treatment at PMRC as a result of a disability due to an injury on his right hand, and an initial evaluation was performed by the

⁵ As noted in Paragraph 4, above, Employee A has never been licensed by the Board as a physical therapist or physical therapist assistant.

Respondent on July 7, 2003.

34. The Respondent performed re-evaluations on Patient B on August 4, 2003, September 3, 2003, October 6, 2003, December 8, 2003, and January 1, 2003.

35. The re-evaluations after September 3, 2003 failed to demonstrate the need for medical necessity or further therapeutic intervention.

36. Patient B also received physical therapy referrals on November 24, 2003, and January 9, 2004, for lumbar spine disc syndrome, but the Respondent did not perform evaluations for these referrals nor was treatment administered in response to these referrals.

37. The Respondent failed to do a discharge summary for Patient B.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that the Respondent violated H.O. §§ 13-316(5), (12), (15), (16), (21), and (26), and COMAR 10.38.02.01 F, COMAR 10.38.03.02 A(2)(h) and COMAR 10.38.03.02-1.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 18th day of September, 2007, by a majority of a quorum of the Board,

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of one (1) year, subject to the following conditions:

1. The Respondent shall successfully complete a Board-approved college level ethics course; and

2. The Respondent shall successfully complete the Board-approved law course, ~~and~~ (Respondent has already successfully completed the law course), and

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

4. The Respondent shall pay to the Board a fine of two thousand dollars (\$2,000.00) due in full within one (1) year of the effective date of the Consent Order; and it is further

ORDERED that if the Board receives information that the Respondent has violated any condition of this Order, the Board will, unless emergency action is required as delineated in Md. State Govt. Code Ann. § 10-226(c)(2) (2004 Repl. Vol.), give the Respondent twenty (20) days to respond in writing to the allegation. Upon receipt of the Respondent's written response to the allegation, or, in the absence of a written response, the Board may, after giving the Respondent an opportunity to be heard, impose any penalty that it could have imposed under the Act for the offense that has already been proven or admitted in this case, including a reprimand, probation, probation for a longer period of time and/or with additional conditions, an imposition of a monetary penalty, suspension, and/or revocation. If the Board receives information that the Respondent's practice requires emergency action as delineated in Md. State Govt. Code Ann. § 10-226(c)(2) (2004 Repl. Vol.), the Board may take immediate action against the Respondent, providing notice and an opportunity to be heard

are provided in a reasonable time thereafter. The burden of proof for any action brought against the Respondent as a result of a violation of the conditions of this Order shall be upon the Respondent to demonstrate compliance with the Order and its conditions; and it is further

ORDERED that the Consent Order is effective as of the date on which it is signed by the Board's Chair; and it is further

ORDERED that the Respondent may petition for early termination of probation provided that she has fully complied with all conditions of probation and has paid the fine in full; 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 his license, provided that he can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and it is further

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

ORDERED that for the purposes of public disclosure, as permitted by the Maryland Public Information Act, codified at Md. State Govt. Code Ann. §§ 10-611 *et seq.* (2004 and Supp.), this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order resulting from formal disciplinary

proceedings, and that the Board may also disclose same to any national reporting data bank to which the Board is mandated to report.

Sept. 18, 2007
Date

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

CONSENT OF CARY PERALTA, P.T.

I, Cary Peralta, P.T., License No. 20583, by affixing my signature hereto, acknowledge that:

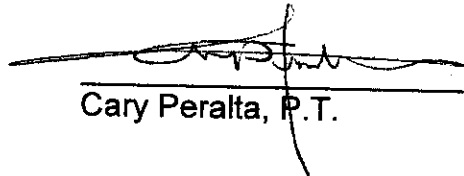
1. I am represented by counsel and have reviewed this Consent Order with my attorney, Donald L. Noble, Esquire.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board pursuant to Md. Health Occ. Code Ann. § 13-317 (2005 Repl. Vol.) and Md. State Govt. Code Ann. §§ 10-201, *et 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 the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.
4. I voluntarily enter into and agree to abide by the foregoing Findings of Fact, Conclusions of Law, and Order, and submit to 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 such hearing.

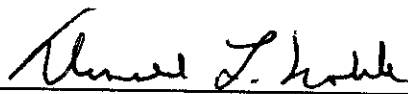
5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may suffer disciplinary actions, which may include revocation of my license to practice limited physical therapy in the State of Maryland.

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

9/14/07
Date


Cary Peralta, P.T.

Reviewed and approved by:

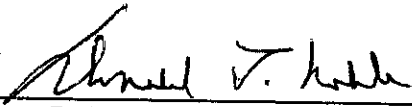

Donald L. Noble, Esquire
Attorney for the Respondent

STATE
OF: MARYLAND

CITY/COUNTY OF: PRINCE GEORGE'S

I HEREBY CERTIFY that on this 14TH day of SEPTEMBER
200~~8~~⁷, before me, a Notary of the State of MARYLAND ^{IN} and the
City/County of PRINCE GEORGE'S, personally appeared Cary Peralta,
P.T., License No. 20583, and made oath in due form of law that signing the
foregoing Consent Order was his voluntary act and deed, and that the
statements made herein are true and correct.

AS WITNESS my hand and notarial seal.



Notary Public

My Commission expires: 01/01/11

IN THE MATTER OF
CARY PERALTA, P.T.
LICENSE NO. 20583

*
*
*

BEFORE THE MARYLAND
BOARD OF PHYSICAL
THERAPY EXAMINERS

* * * * *

ORDER OF MODIFICATION

The Maryland Board of Physical Therapy Examiners is in receipt of a request from Cary Peralta, License No. 20583, requesting modification of the terms of probation as set forth in a Consent Order, dated September 18, 2007. Specifically, Mr. Peralta requests amending the probationary requirement that he complete a Board-approved college level ethics course as Mr. Peralta has been unable to locate a course that would satisfy this requirement. Upon consideration of Mr. Peralta's request, the Board voted to modify the terms of probation as ordered below.

ORDER

It is this 19th day of February, 2008, by an affirmative vote of the Maryland Board of Physical Therapy Examiners, hereby,

ORDERED that, in lieu of the probationary requirement that Mr. Peralta successfully complete a college-level ethics course, Mr. Peralta may substitute: (1) successful completion of the continuing education course entitled "Ethics and Professional Responsibility in Physical Therapy" sponsored by the American Physical Therapy Association ("APTA"); AND (2) successful completion of .4 CEU's, or 4 contact hours, in another Board-approved continuing education course focusing on healthcare ethics; and be it further,

ORDERED that all of the other terms of the September 18, 2007, Consent Order remain in full force and effect; and be it further,

ORDERED that this is a modification to a formal order of the Maryland Board of

Physical Therapy Examiners and as such is a public document pursuant to the Maryland Annotated Code, State Government Article, Section 10-617(h).

February 27, 2008
Date

Ann Tyminski
Ann Tyminski, Executive Director
for
Margery Rodgers, P.T., Chair