

IN THE MATTER OF
MICHAEL SCHMITT, P.T.
License No. 17700

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

Respondent

* * * * *
* * *

CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board") and subject to the Maryland Physical Therapy Act ("the Act"), codified at Md. Health Occ. ("H.O.") Code Ann. §§ 13-101 *et seq.* (1994 Repl. Vol.), the Board charged Michael Schmitt, P.T., License No. 17700, ("the Respondent") with violating certain provisions of the Act under Health Occupations § 13-316 and Code Md. Regs. ("COMAR") tit. 10 § 38.01 *et seq.*

Specifically, the Board charged the Respondent with violating the following provisions of § 13-316 of the Act:

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:

- (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;
- (13) Willfully makes or files a false report or record in the practice of physical therapy or limited physical therapy;
- (15) Submits a false statement to collect a fee;

- (16) Violates any rule or regulation adopted by the Board; and
- (20) Commits an act of unprofessional conduct in the practice of physical therapy.

The Board also charged the Respondent with violating the following regulations:

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

- F. The physical therapist . . . 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.

COMAR 10.38.03.02-1 Requirements for Documentation.

- A. As established by the American Physical Therapy Association of Maryland, and as approved by the Board, the physical therapist shall document the patient's chart as follows:

- (1) For initial visit:

- (a) Date,
- (b) Condition/diagnosis 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) Plan of care, and
- (i) Signature, title (PT), and license number;

- (2) For Subsequent visits:

- (a) Date,
- (b) Modalities, procedures, etc.,
- (c) Cancellations, no-shows,
- (d) Response to treatment,
- (e) Signature and title (PT), with identifying signatures appearing on the patient's chart, although the flow chart may be initialed,
- (f) Weekly progress or lack of it,
- (g) Unusual incident/unusual response,

- (h) Change in plan of care,
- (i) Temporary discontinuation or interruption of services and reasons,
- (j) Reevaluation, and

* * *

(3) For discharge or last visit:

- (a) Date,
- (b) Reason for discharge,
- (c) Status at discharge,
- (d) Recommendations for follow-up, and
- (e) Signature and title.

COMAR 10.38.04.04. Prohibited Activities.

- B. Treatments other than those listed in Regulation .03 may not be performed by aides.

On September 30, 2003, a Case Resolution Conference was held at the Board's offices to determine whether there existed the possibility of resolving the pending issues without having an evidentiary hearing. Present were Linda Bethman, Esquire, Board counsel; Ann Tyminski, Executive Director of the Board; Penelope J. Lescher, M.A., P.T., M.C.S.P., Board member; John Shober, P.T., Board member; Michael Schmitt, P.T, Respondent; Daniel H. Scherr, Esquire, counsel to the Respondent; and James C. Anagnos, Administrative Prosecutor.

FINDINGS OF FACT

The Board makes the following findings:

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 December 21, 1993, being issued License No. 17700.
2. At all times relevant to the charges herein, the Respondent was employed

as a physical therapist at Germantown Physical Therapy, Inc. [hereafter "Germantown Physical Therapy"], located at 20528 Boland Farm Road, Suite 211, Germantown, Maryland 20876.

Count I - Patient Specific Allegations

3. While employed at Germantown Physical Therapy, the Respondent treated eight patients (Patients A-H) from the period of February 17, 1999 until December 20, 1999, where the billing statements submitted by Germantown Physical Therapy, without the Respondent's knowledge, to the patients and/or the patients' insurance companies included charges for CPT codes that were not documented in the patients' progress notes, which were written and signed by the Respondent.

Patient G

4. Patient G was treated by the Respondent at Germantown Physical Therapy on July 8, 17, 20, and 27, 1999. Patient G's progress notes for treatments performed by the Respondent on those dates contain no documentation indicating that a reevaluation was performed during any of those treatments, even though one was required.

Patient H

5. Patient H was treated by the Respondent at Germantown Physical Therapy on multiple occasions from May 20, 1999, until December 20, 1999. Patient H's chart does not indicate that a discharge summary was completed by the Respondent, even though one was required following Patient H's December 20, 1999 treatment by the Respondent.
6. In addition, Patient H's progress notes for treatments performed by the

Respondent from June 15, 1999, until December 20, 1999, contain no documentation indicating that a reevaluation was performed during any of those treatments, even though they were required.

Count II - Supervising an Unauthorized Person in the Practice of Physical Therapy

7. Employee A, a former physical therapy aide at Germantown Physical Therapy, connected, turned on, and administered electrical stimulation to patients approximately two or three times.
8. Employee A believes that she was told to perform this duty by either the Respondent and/or the Respondent's supervisor, who was the owner of Germantown Physical Therapy.
9. Employee A stopped administering electrical stimulation to patients when Employee B advised Employee A that Employee A could not perform this duty as a physical therapy aide.
10. Administering electrical stimulation to patients is not a treatment that an aide may perform under direct supervision, as listed in COMAR 10.38.04.03.
11. The Respondent denies allowing Employee A to administer electrical stimulation to patients while under his supervision.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated: H.O. §§ 13-316(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); and (16) (violates any rule or regulation adopted by the Board), to wit,

COMAR 10.38.03.02-1 (Requirements for Documentation).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and agreement of the parties, it is this 28th day of October 2003, by a majority of a quorum of the Board

ORDERED that the Respondent shall receive a public reprimand if he successfully completes the following courses on or before March 1, 2004: (a) a Board-approved law and ethics course; and (b) a Board-approved documentation course; and it is further

ORDERED that if the Respondent fails to complete the aforementioned courses on or before March 1, 2004, the Respondent shall be immediately suspended for a period of 30 days, and the Respondent shall serve a probationary period of two years. The Respondent shall not have an opportunity for a hearing and consents to the enforcement of this sanction as a condition of settlement; and it is further

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

ORDERED that the Respondent shall bear all costs associated with the Consent Order, and be it 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.* (1999 and Supp.), this document constitutes the Board's Findings of

Fact, Conclusions of Law, and Order resulting from formal disciplinary proceedings.

10/28/03
Date

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

CONSENT OF MICHAEL SCHMITT.

P.T.

I, Michael Schmitt, P.T., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney.
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 Md. Health Occ. Code Ann. § 13-317 (2000 and Supp.) and the Maryland Administrative Procedure Act, codified at Md. State Govt. Code Ann. §§ 10-201 *et seq.* (1999 and Supp.).
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 that 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 own 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 voluntarily sign this Consent Order after having had an opportunity to consult with an attorney, without reservation, and I fully understand the language, meaning, and terms of this Consent Order.

Date Michael Schmitt Michael Schmitt, P.T.

STATE OF: Maryland

CITY/COUNTY OF: Frederick

I HEREBY CERTIFY that on this 30th day of October 2003, before me, a Notary of the State of Maryland and the City/County of Frederick, personally appeared Michael Schmitt, P.T., License No. 17700, and made oath in due for 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.

Mary J. Toms
Notary Public

My Commission expires: 05/01/05

10/30/03
Date

Mary J. Toms