

IN THE MATTER OF
KIMBERLY LOCATI-BOUCHER, OTR/L

Respondent

License Number: 02797

* BEFORE THE MARYLAND
* BOARD OF OCCUPATIONAL
* THERAPY PRACTICE
* Case Numbers: 2008-004,
2011-007 and 2011-008

* * * * *

FINAL DECISION AND ORDER

On or about September 23, 2013, the State Board of Occupational Therapy Practice (the "Board") notified Kimberly Locati-Boucher, OTR/L ("the Respondent") that she was being charged with violations of the Consent Order, dated March 30, 2009, and with violating the Maryland Occupational Therapy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 10-101 *et seq.* and Code Md. Regs. ("COMAR") tit. 10, § 46.02 *et seq.* Specifically, the Board charged the Respondent with violation of the following provisions of her Consent Order:

(a) Ordered that after the conclusion of one year of active suspension, Respondent may petition the Board to lift the active suspension and place her on probation for minimum three years, and until such time, Respondent agrees to the following conditions:

(1) The Respondent understands and agrees that she shall not provide in-home occupational therapy, but shall only provide occupational therapy in a supervised setting, which shall be subject to prior Board approval.

The Board further charges the Respondent with violating the following provisions of the Act § 10-315:

(a) Subject to the hearing provisions of § 10-316 of this subtitle, the Board may ... reprimand any licensee ... place any licensee ... on probation, or suspend or revoke a license ... if the ... licensee ...:

(2) Fraudulently or deceptively uses a license or temporary license;

- (3) Commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy;
- (4) Knowingly violates any provision of this title; [and/or]
- (5) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board[.]

The Board further charges the Respondent with violating the following COMAR provisions:

COMAR 10.46.02 Code of Ethics

10.46.02.01 General Conduct

A. The licensee shall:

- (2) Provide the highest quality services to the client;
- (7) Represent accurately the licensee's skills;
- (11) Function with discretion and integrity in relations with other health professionals; [and/or]
- (15) Comply with all applicable laws dealing with occupational therapy practice[.]

C. The licensee may not:

- (2) Allow financial gain to be paramount to the delivery of service to the client; [and/or]
- (4) Use, or participate in the use of, a form of communication that contains or implies a:
 - (b) False, fraudulent, misleading, deceptive, or unfair statement or claim.

The Board held a hearing on this matter on January 17, 2014. The Board issues this Final Decision and Order based upon its consideration of the entire record,

including the exhibits, witness testimony and oral arguments. Ms. Boucher did not attend the hearing. Prior to the hearing, the Respondent acknowledged the charges in an email and stated that she thought the matter was taken care of. The hearing was conducted in accordance with the APA, the Board's practice act and regulations. A full quorum of the Board was present during the entire hearing and deliberations. The Board unanimously agreed to the Findings of Fact and Conclusions of law in this order. For the reasons set forth below, the Board approves and adopts this Final Decision and order.

SUMMARY OF EVIDENCE

The prosecution introduced twenty-two (22) exhibits, all of which were admitted into evidence:

- No. 1 Snapshot of Boucher's license
- 2-A Consent order, dated 2/16/07
- 2-B Consent order, dated 3/30/09
- 2-C Letter stating suspension lifted
- 3 Complaint, dated March 31, 2011
- 4 Time sheets from Riverview
- 5 Performance improvement plan for Boucher by Riverview
- 6 Boucher's wage earnings during period of suspension
- 7 Interview of Joyce Matson, director of human resources at Riverview
- 8 Interview of Boucher, dated March 19, 2012
- 9 Investigative Report
- 10 Human Resource Records for Boucher
- 11 Patient F.A. records
- 12 Patient M.G.
- 13 Patient B.B
- 14 Interview of Gracie Ann Schroen – dated May 30, 2013
- 15 Transcript of interview of Deborah Lynn Wahl
- 16 Transcript of interview with Heidi Anderson
- 17 Transcript of interview with Dara Faye Gonzalez Alicando
- 18 Transcript of Interview with Lori Whitworth
- 19 Investigative Summary of Findings
- 20 Charging documents
- 21 Green card addressed to Boucher

FINDINGS OF FACT

The Board makes the following findings of fact:

I. BACKGROUND

1. The Respondent was initially licensed to practice occupational therapy in Maryland on or about March 19, 1993, under License Number 02797. The Respondent's license is currently active and on probation through June 30, 2014.

II. PRIOR DISCIPLINARY HISTORY

Consent Order, dated February 16, 2007

2. On or about December 8, 2005, the Respondent violated a series of provisions of the Act: H.O. § 10-315(2), fraudulently or deceptively used a license; H.O. § 10-315(4), knowingly violated any provision of this title [the Act]; and H.O. § 10-315(12), submitted a false statement to collect a fee.

3. The Respondent resolved these charges by entering into a Consent Order with the Board, dated February 16, 2007. Pursuant to the Consent Order, the Board suspended the Respondent's license for six months, and placed her on probation for two years, subject to: submission of a human resources professional development tracking plan to the Board; successful completion of a Board-approved ethics course; and successful completion of the Board's jurisprudence examination.

Consent Order, dated March 30, 2009

4. In or around February 1, 2008, Respondent's employer, a home health care agency (the "Agency") terminated Respondent's employment after complaints from

patients and employees about her clinical practice. Respondent created “visit notes for visits not performed, as well as forging a client member signature for certain visits.” There were also multiple instances where the Respondent documented and received payment for visits which never occurred. The Agency terminated her employment after unsuccessfully attempting to contact her for over three weeks to discuss its concerns.

5. While employed by the Agency, the Respondent failed to see patients as scheduled, submitted clinical notes for visits she did not make, made misrepresentations or recorded false and/or fraudulent information in clinical notes, forged patients’ or caregivers’ names on clinical notes, and attempted to obtain compensation for visits she did not make and services she did not provide. The Respondent’s misconduct occurred during the course of her probation with the Board under the Consent Order, dated February 16, 2007.

6. On or about December 19, 2009, the Board found that the Respondent violated the following provisions of the Act: H.O. § 10-315(3), commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy; H.O. § 10-315(4), knowingly violates any provision of this title; H.O. § 10-315(5), violates any rule or regulation of the Board, including any code of ethics adopted by the Board; H.O. § 10-315(10), willfully makes or files a false report or record in the practice of occupational therapy or limited occupational therapy; and H.O. § 10-315(12), submits a false statement to collect a fee.

7. The Board also found as a matter of law that the Respondent violated the following provisions of COMAR: 10.46.02.01A(2), the licensee shall provide the highest quality services to the client; 10.46.02.01A(11), the licensee shall function with

discretion and integrity in relations with other health care professionals; 10.46.02.01C(2), the licensee may not allow financial gain to be paramount to the delivery of services to the client; and 10.46.02.01C(4)(b), the licensee may not use, or participate in the use of, a form of communication that contains or implies a false, fraudulent, misleading, deceptive, or unfair statement or claim

8. The Respondent resolved these charges by entering into a Consent Order with the Board, dated March 30, 2009. Pursuant to the Consent Order, the Board suspended the Respondent's license to practice occupational therapy in the State of Maryland for one year, effective April 6, 2009. After the suspension, the Respondent was ordered to complete a period of probation for three years, subject to a series of terms and conditions including: the Respondent shall not provide in-home occupational therapy but shall only provide occupational therapy in a supervised setting, subject to prior Board approval (Consent Order, pp. 9-10); and shall obtain a Board-approved supervisor/mentor (Consent Order, p. 10).

9. By electronic mail, dated July 26, 2010, the Respondent petitioned the Board to lift the suspension of her license and place her on probation.

10. By letter to the Respondent, dated July 27, 2010, the Board, effective July 27, 2010, lifted the suspension of the Respondent's license and imposed a probationary period of three years, subject to the following conditions: (a) the Respondent shall not provide in-home occupational therapy but shall only provide occupational therapy in a supervised setting, subject to prior Board approval; and (b) the Respondent shall obtain a Board-approved supervisor/mentor.

III. CURRENT VIOLATIONS

The complaint

11. While her license was suspended, Respondent provided occupational therapy at the rehabilitation and skilled nursing center ("Center A")¹ in Maryland. Respondent also provided occupational therapy to patients at another rehabilitation and skilled nursing center ("Center B") without supervision. Respondent also made threatening comments and behaved irrationally when her manner of providing treatments was questioned while working at Center B.

Practicing occupational therapy while under suspension at Center A

12. On or about March 16, 2009, Center A hired the Respondent to be its Director of Rehabilitative Services (the "Director").

13. On or about March 30, 2009, the Respondent entered into a Consent Order with the Board to resolve pending disciplinary charges against her, in which she agreed to the suspension of her occupational therapy license by the Board for one year, effective April 6, 2009.

14. Despite entering into this Consent Order, which mandated the suspension of her license, the Respondent worked as Director at Center A during the period of her suspension.

15. The minimum requirements for the position of Director required the Respondent to have graduated "from a physical therapy or occupational therapy

¹ For confidentiality purposes, the names of all health care facilities, patients or other individuals referenced herein will not be disclosed in this charging document. The Respondent may obtain the identity of all entities or individuals referenced herein by contacting the assigned administrative prosecutor.

program and current state licensure required” and be in “good standing with State Board of Physical Therapy or Occupational Therapy Examiners.”

16. During the period of the suspension of her license, from on or about April 6, 2009, to the date of her resignation from Center A, which occurred on or about December 9, 2010, the Respondent practiced occupational therapy, in violation of the Consent Order, dated March 30, 2009, the Act and related COMAR regulations. In her capacity as Director, the Respondent was responsible for the daily management of the activities of Center A’s rehabilitation department “to assure proper utilization of resources.” Among other tasks as Director, the Respondent: supervised occupational therapists, physical therapists and speech pathologists; assessed functional needs of patients, including provision of direct care; established goals and evaluation of progress; designed and implemented patient care plans based on assessment results; consulted with specialists regarding patient care and progress; conducted reassessment of patient needs and care plan adjustments; documented evaluations and treatment goals/plans; maintained established facility and departmental policies and procedures; participated in educational programs; and providing direction and leadership to Center A staff.

17. The Respondent impermissibly practiced occupational therapy during the course of her suspension through her employment as Director at Center A, and through the performance of duties described above, during the period from April 6, 2009 through December 9, 2010. The Respondent’s actions constitute a violation of her Consent Order, dated March 30, 2009, in that she practiced occupational therapy during the period of her suspension.

18. The Respondent's actions, as described above, also constitute a violation of the following provisions of the Act: fraudulently or deceptively uses a license, in violation of H.O. § 10-315(2); commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy, in violation of H.O. § 10-315 (3); knowingly violates any provision of this title, in violation of H.O. § 10-315(4); and/or violates any rule or regulation of the Board, including any code of ethics adopted by the Board, in violation of H.O. § 10-315(5).

19. The Respondent's actions, as described above, also constitute a violation of the following provisions of COMAR 10.46.02.01: A(15), comply with all applicable laws dealing with occupational therapy practice; C(2), allow financial gain to be paramount to the delivery of service to the client; and/or C(4), use, or participate in the use of, a form of communication that contains or implies a (b) false, fraudulent, misleading, deceptive, or unfair statement or claim.

Practicing in-home occupational therapy at Center B while on probation

20. While employed at Center B, the Respondent left the main treatment building at Center B and visited patients in their apartments located on Center's B campus and provided in-home occupational therapy to them.

21. The Board found documentation in three cases ("Patients A, B and C") where the Respondent generated notes that she provided in-home occupational therapy to patients.

22. In the case of Patient A, the Respondent generated occupational therapy treatment notes and billed for occupational therapy services provided on or about

February 15, 2011, which included an occupational therapy evaluation and therapeutic activities.

23. In the case of Patient B, the Respondent generated occupational therapy treatment notes and billed for occupational therapy provided for the period on or about May 2, 2011, through on or about May 6, 2011, which included therapeutic activities.

24. In the case of Patient C, the Respondent generated occupational therapy treatment notes and billed for occupational therapy provided for the period on or about March 1, 2011, through on or about March 7, 2011, which included an occupational therapy evaluation, massage, therapeutic activities and neuromuscular re-education.

25. The Respondent impermissibly provided in-home occupational therapy during the course of her probation, as described above, which constitutes a violation of Probationary Condition One (1) of the Consent Order, dated March 30, 2009, which prohibited her from providing in-home occupational therapy services.

26. The Respondent's actions, as described above, also constitute a violation of the following provisions of the Act: fraudulently or deceptively uses a license, in violation of H.O. § 10-315(2); commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy , in violation of H.O. § 10-315 (3); knowingly violates any provision of this title, in violation of H.O. § 10-315(4); and/or violates any rule or regulation of the Board, including any code of ethics adopted by the Board, in violation of H.O. § 10-315(5).

27. The Respondent's actions, as described above, also constitute a violation of the following provisions of COMAR 10.46.02.01: A(15), comply with all applicable laws dealing with occupational therapy practice; C(2), allow financial gain to be

paramount to the delivery of service to the client; and/or C(4), use, or participate in the use of, a form of communication that contains or implies a (b) false, fraudulent, misleading, deceptive, or unfair statement or claim.

Respondent's failure to attend the hearing

28. Under H.O. §10-316(H), which specifically provides that, "If, after due notice, the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine this matter".

29. On or around September 23, 2013, copies of the charges were sent via certified mail and first class mail to Respondent. The certified mail was returned as unclaimed, but the first class copy was never returned as undeliverable and believed delivered.

30. On or around October 10, 2013, the Board emailed Respondent at her email address of record, informing her of the mailed charges. This email was not responded to.

31. On or around October 15, 2013 the Board sent another email, which went un-replied as well.

32. On January 16th, Respondent corresponded with the Board via email, which summarized her surprise at learning of the hearing scheduled for January 17th.

33. Respondent responded to another email sent by the Board on January 16th, stating that she was out of state and strongly implied she would not attend the hearing.

CONCLUSIONS OF LAW

Based upon the foregoing, the Board finds that the Respondent violated the Consent Order, which stated that Respondent was suspended for a period of one year, and could then petition to lift her active period of suspension and be placed on a three year minimum probation, during which she agreed she would not provide in-home occupational therapy. Ms. Boucher, during the period in which she was suspended, oversaw and collaborated with occupational therapists, which constitutes the practice of occupational therapy. Further, Ms. Boucher went into individual residences and provided in-home occupational therapy, explicitly violating her probation.

The same conduct above violated the Board's standards, regulations, and code of ethics. See Occupation Therapy Practice Act H.O. § 10-315 (2). Ms. Boucher violated the Act by deceptively and knowingly violating the terms of her probation.

Ms. Boucher also violated COMAR 10.46.02.01(A)(2),(A)(7), (A)(11), (A)(5), and (C)(2), (C)(4)(b). In violating the Consent Order, Ms. Boucher violated the Code of Ethics by providing services in a fraudulent manner.

The Board made this decision in accordance with its sanctioning guidelines. The Board placed a great deal of weight on the fact that the Respondent had a prior disciplinary record. Additionally, the Respondent did not appear to dispute the charges. The Board finds that the number and the severity of the violations merits the revocation of the Respondent's license.

ORDER


Based on the foregoing Findings of Fact and Conclusions of Law, the Board hereby:

ORDERED that the Respondent's occupational therapy license is hereby REVOKED; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (2009 Repl. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Order is final and a public document pursuant to Md. State Govt. Code Ann. §§10-601 *et seq.* (2009 Repl. Vol.).

7-18-14
Date



Christine Moghimi, ScD., MAS, OTR/L
Chairperson, Maryland State Board of
Occupational Therapy Practice

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., § 10-317, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.