

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE MARYLAND</b>
<b>KIMBERLY L. BOUCHER, OTR/L</b>	*	<b>BOARD OF OCCUPATIONAL</b>
<b>Respondent</b>	*	<b>THERAPY PRACTICE</b>
<b>License Number: 02797</b>	*	<b>Case Number: 2008-004</b>

\* \* \* \* \*

**CONSENT ORDER**

**PROCEDURAL BACKGROUND**

On December 19, 2008, the Maryland State Board of Occupational Therapy Practice (the "Board") charged **KIMBERLY L. BOUCHER, OTR/L** (the "Respondent") (D.O.B. 08/16/62), License Number 02797, with violating provisions under the Maryland Occupational Therapy Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 10-101 *et seq.* and Code Md. Regs. ("COMAR") tit. 10, § 46.02.01.

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 10-315:

**H.O. § 10-315**

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 ...:

- (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;
- (5) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board;
- (10) Willfully makes or files a false report or record in the practice of occupational therapy or limited occupational therapy;

- (12) Submits a false statement to collect a fee.

The Board also charged 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;
- (11)    Function with discretion and integrity in relations with other health professionals;

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.

On February 20, 2009, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order and Consent.

**FINDINGS OF FACT**

The Board makes the following findings:

**BACKGROUND FINDINGS**

1. At all times relevant to these charges, the Respondent was and is licensed to practice occupational therapy in the State of Maryland. 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 through June 30, 2010.

2. On or about December 8, 2005, the Board charged the Respondent with violating certain provisions of the Act. The Respondent resolved these allegations with the Board by entering into a Consent Order, dated February 16, 2007. The Board found as a matter of law that the Respondent: fraudulently or deceptively use a license, in violation of H.O. § 10-315(2); knowingly violated any provision of this title [the Act], in violation of H.O. § 10-315(4); and submitted a false statement to collect a fee, in violation of H.O. § 10-315(12). Pursuant to the Consent Order, the Board suspended the Respondent's license for six months, which it immediately stayed in its entirety; and placed her on probation for two years, subject to a series of conditions, including 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.

3. At all times relevant to these charges, the Respondent was employed as an occupational therapist by Bayada Nurses ("Bayada"), a home health care agency located in Towson, Maryland.

4. The Board initiated an investigation of the Respondent after receiving correspondence, dated March 5, 2008, from Bayada. Bayada reported that it terminated the Respondent's employment, effective on or about February 1, 2008, after

investigating allegations about her clinical practice based on complaints from patients and employees. Bayada reported that it investigated the Respondent's clinical records and documentation and determined that the Respondent created "visit notes for visits not performed, as well as forging a client member signature for certain visits." Bayada stated that it attempted to contact the Respondent for over three weeks without success to discuss its concerns, after which it terminated her employment. Bayada stated that it conducted further investigation into the Respondent's caseload and determined additional instances of where the Respondent "documented and received payment for visits which never occurred."

#### **INVESTIGATIVE FINDINGS**

5. Bayada hired the Respondent as an occupational therapist in or about September 2007. Bayada hired the Respondent to provide in-home occupational therapy services to patients on its behalf. The Respondent's position required that she record and submit initial evaluations and follow-up clinical notes to Bayada after seeing patients. These recorded evaluations and follow-up clinical notes constituted occupational therapy records. In order to receive compensation from Bayada, the Respondent was required to provide occupational therapy services to patients and submit records to Bayada that documented the services she provided on any given patient visit. Bayada relied on the Respondent's representations when providing compensation to her and when seeking compensation from third-party payors.

6. Bayada initiated an investigation of the Respondent after two nurses contacted Bayada on or about January 14, 2008 and reported concerns they had about the Respondent's provision of occupational therapy services to patients to whom they

were also providing care. The nurses reported that the Respondent did not provide occupational therapy services to these patients as scheduled and provided inconsistent accounts about the frequency with which she was going to provide such services.

7. In or about January 2008, 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, as noted above. Examples of these findings include but are not limited to the following:

**Patient A<sup>1</sup>**

8. Bayada directed the Respondent to provide occupational therapy services to Patient A. The Respondent performed an evaluation of Patient A on January 8, 2008. The Respondent then reportedly scheduled her next visit with Patient A for January 14, 2008. A few days after scheduling this visit, the Respondent contacted Patient A's caregiver and cancelled this visit, stating that her daughter was ill. The Respondent then submitted a clinical note and paperwork to Bayada on January 14, 2008, in which she represented that she saw Patient A on January 10, 2008, from 2:00 p.m. to 4:00 p.m. In this clinical note, the Respondent recorded extensive documentation about her observations of Patient A, including her objective findings, the patient's pain level, clinical findings, training provided, response to treatment, outcome, and a plan. The clinical note records the signature of Patient A's caregiver. Bayada's

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<sup>1</sup> To protect confidentiality, patient names will not be used in this Consent Order. The Respondent is aware of the identities of all individuals referenced in this document.

investigation determined that the Respondent did not see Patient A on January 10, 2008, and that the signature of Patient A's caregiver was forged. The Respondent submitted additional paperwork to Bayada in which she falsely represented that she saw Patient A on January 10, 2008. The Respondent sought compensation from Bayada on the basis of these misrepresentations. A nurse who was providing care to Patient A reported the Respondent to Bayada after noting that the Respondent provided inconsistent accounts about the extent of services she intended to provide to Patient A. The Respondent represented to the nurse that she was going to see Patient A two times weekly, but represented to Patient A's caregiver that she was going to see Patient A on only one occasion during that week.

**Patient B**

9. Bayada directed the Respondent to provide occupational therapy services to Patient B. The Respondent performed an evaluation of Patient B on January 8, 2008. A field nurse contacted Bayada after concerns that the Respondent had not visited Patient B after this evaluation. The Respondent then submitted a clinical note and paperwork to Bayada on January 14, 2008, in which she represented that she saw Patient B on January 10, 2008, from 11:00 a.m. to 11:30 a.m. In this clinical note, the Respondent recorded extensive documentation about her observations of Patient B, including her objective findings, the patient's pain level, training provided, response to treatment, outcome, and a plan. The clinical note records the signature of Patient B. Bayada's investigation determined that the Respondent did not see Patient B on January 10, 2008, and that the signature of Patient B on the clinical note was forged. The Respondent submitted additional paperwork to Bayada in which she falsely

represented that she saw Patient B on January 10, 2008. The Respondent sought compensation from Bayada on the basis of these misrepresentations. The Respondent also submitted a schedule to Bayada in which she represented that she intended to see Patient B on additional visits during the week of January 14, 2008 to January 20, 2008, but Bayada determined that Patient B's caregiver had no visits scheduled for that week for occupational therapy.

### **Patient C**

10. Bayada directed the Respondent to provide occupational therapy services to Patient C. Patient C reported that the Respondent saw her on one occasion, January 10, 2008, and performed an evaluation, which Patient C signed. The Respondent, however, submitted two additional notes to Bayada and other paperwork associated with these visits. The first note, dated January 7, 2008, is an Occupational Therapy Assessment and Care Plan, and contains historical and diagnostic information pertaining to Patient C, an evaluation, goals, and a plan. This note has Patient C's signature on it. The second note, dated January 8, 2008, is a clinical note in which the Respondent recorded extensive documentation about her observations of Patient C, including her objective findings, the patient's pain level, clinical findings, training provided, response to treatment, outcome, and a plan. The clinical note records the signature of Patient C on the note. Bayada determined that Patient C did not sign the notes dated January 7, 2008 or January 8, 2008. The Respondent submitted additional paperwork to Bayada in which she falsely represented that she saw Patient C on January 7, 2008 and January 8, 2008. The Respondent sought compensation from Bayada on the basis of these misrepresentations.

11. The Respondent's conduct, as set forth above, constitutes the following violations 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/or H.O. § 10-315(12), submits a false statement to collect a fee.

12. The Respondent's conduct, as set forth above, constitutes the following violations of COMAR 10.46.02.01: 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/or 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.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board finds as a matter of law 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.

In addition, the Board finds as a matter of law that the Respondent violated the following violations of COMAR 10.46.02.01: 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.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 30<sup>th</sup> day of March, 2009, by a quorum of the Board considering this case:

**ORDERED** that the Respondent's license to practice as an occupational therapist in the State of Maryland shall be and hereby is **SUSPENDED** for a period of **THREE (3) YEARS**, with all but **ONE (1) YEAR** of said suspension **STAYED**, to commence effective April 6, 2009; and be it further

**ORDERED** that after the conclusion of the entire **ONE (1) YEAR** period of **ACTIVE SUSPENSION** set forth above, the Respondent may petition the Board to **LIFT** the **ACTIVE PERIOD of SUSPENSION** and place her on **PROBATION** for a minimum

period of **THREE (3) YEARS**, and until such time as the Respondent successfully completes the following terms and 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.

2. The Respondent shall obtain a Board-approved supervisor/mentor (the "Mentor"), who shall meet with the Respondent twice per month on an unannounced basis to review her performance of occupational therapy. The Respondent shall submit proposed candidates for mentoring to the Board for purposes of satisfying this condition. After the first year of probation, the Respondent may petition the Board to decrease the frequency of her supervision by the Mentor. The Mentor shall submit written reports beginning six (6) months after the Respondent undergoes supervision, and shall thereafter submit written reports at six (6) month intervals, for a total of six (6) written reports during the **THREE (3) YEAR** period of **PROBATION**. In these reports, the Mentor shall assess the Respondent's performance of occupational therapy and compliance with all applicable codes of ethics pertaining to occupational therapy.

**AND BE IT FURTHER ORDERED** that after the conclusion of the entire **THREE (3) YEAR PERIOD OF PROBATION**, the Respondent may file a written petition for termination of her probationary status without further conditions or restrictions, but only if she has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the **THREE (3)**

**YEAR PERIOD OF PROBATION**, and if there are no pending complaints regarding her before the Board; and be it further

**ORDERED** that if the Respondent violates any of the terms or conditions of this Consent Order, the Board, after notice, opportunity for a hearing and determination of violation, may impose any other disciplinary sanctions it deems appropriate, including but not limited to, revocation or suspension, said violation being proven by a preponderance of the evidence; and be it further

**ORDERED** that the Respondent shall be responsible for all costs incurred 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 *et seq.* (2004 Repl. Vol.).

3/30/09  
Date

Joyce Ford, COTAL/RA  
Joyce Ford, COTAL  
Chairperson, Maryland State Board of  
Occupational Therapy Practice

### **CONSENT**

I, Kimberly L. Boucher, OTR/L, acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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 also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

032409

Date

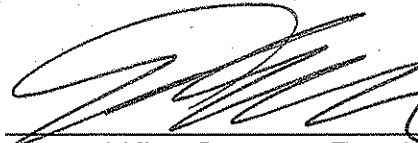


Kimberly L. Boucher, OTR/L  
Respondent

Read and approved:

3/24/2019

Date



Gerard King Stevens, Esquire  
Counsel for Kimberly L. Boucher

**NOTARY**

STATE OF Maryland  
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 24<sup>th</sup> day of March, 2009, before me, a Notary Public of the State and County aforesaid, personally appeared Kimberly L. Boucher, OTR/L, and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

**AS WITNESS**, my hand and Notary Seal.

Eileen E. Gotcher  
Notary Public

My commission expires: 4/20/2010

