

IN THE MATTER OF	*	BEFORE THE MARYLAND
LAURA LUBIN, OTR/L.	*	BOARD OF OCCUPATIONAL
License No. 02129	*	THERAPY PRACTICE
Respondent	*	Case Number: 2008-04

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On or about April 17, 2009, the Maryland Board of Occupational Therapy Practice (the "Board") charged **LAURA LUBIN, OTR/L (the "Respondent") (D.O.B. 4/12/1957), License No. 02129** with violations of the Maryland Occupational Therapy Practice Act ("the Act"), Md. Code Ann., Health Occupations ("Health Occ.") §§ 10-101 *et seq.*

The pertinent provisions of the act provide:

Health Occ. § 10-315. Denials, reprimands, suspensions, and revocations – Grounds.

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

- (3) Commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy;
- (4) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board; to wit:

COMAR 10.46.02.01A(2) The licensee shall

provide the highest quality services to the client;

- (8) Provides professional services while: (i) under the influence of alcohol;

In July 2009, the administrative prosecutor and the Respondent's attorney, Leslie A. Pladna, Esquire, entered into negotiations in an attempt to resolve the charges against the Respondent without the need for an evidentiary hearing. As a result of those negotiations, the Respondent agreed to enter into this Consent Order consisting of Procedural Background, Findings of Fact, and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

The Board finds the following:

BACKGROUND

1. The Respondent initially received her license to practice occupational therapy in the State of Maryland on October 9, 1987. The Respondent's license is currently active and is due to expire on June 30, 2010.

2. At all times relevant to the charges herein, the Respondent was employed as an occupational therapist by Amedisys Home Health Care, Inc. ("Amedisys") in Glen Burnie, Maryland providing occupational therapy services to patients in their homes. The Respondent specializes in Neurodevelopmental Therapy Services, which is the treatment of patients with nerve conditions. The Respondent also has specializations in the areas of biomechanics and orthotics.

3. On or about July 18, 2008, the Board received a complaint from the Director of Operations at Amedisys alleging that on July 16, 2008, the Respondent treated patients in the field while intoxicated. The Respondent's actions came to the attention of Amedisys after a co-worker reported a conversation with the Respondent during which the Respondent's speech was slurred and incomprehensible.

4. The Board initiated an investigation into the complaint against the Respondent, which revealed that the Respondent was legally intoxicated when she provided occupational therapy services to two clients.

5. On July 16, 2008, the Respondent was working in the field and had provided occupational therapy services to two clients in their respective homes when she initiated a telephone conversation with Witness A to provide information about a mutual client.¹

6. Witness A had great difficulty understanding the Respondent because her speech was slurred. As a result, Witness A asked the Respondent to repeat herself multiple times. Witness A returned to Amedisys to report this incident to the Director of Operations.

7. After Witness A reported the Respondent's slurred speech during their telephone conversation, the Director of Operations confronted the Respondent and sent her to a lab for a breathalyzer test.

¹ The names of the witnesses in this Notice are confidential, but may be disclosed to the Respondent by contacting the Administrative Prosecutor.

8. The Respondent was tested twice and the results indicated that she was legally intoxicated. The Respondent blew a 0.097 and then a 0.092. Both test results are above the legal limit in Maryland, which is 0.08.

9. When confronted with her test results, the Respondent denied drinking while on the job. The Respondent only admitted to drinking vodka the previous night before going to sleep.

10. Amedisys policy states that drug and/or alcohol abuse on company time can result in immediate termination. Because the Respondent provided occupational therapy services to two patients in the field, which required driving, while legally intoxicated, she was immediately terminated from her employment.

11. The Director of Operations called a taxi cab to drive the Respondent home.

12. During an interview with the Board's investigator, the Respondent admitted that she had recently experienced personal issues at home and began drinking heavily to cope with those issues. The Respondent reported that she often stayed up late and drank as much as one half-pint of Vodka in the evenings.

13. Since April 2008, the Director of Operations received eight separate reports from staff members who allegedly observed an odor of alcohol when in the presence of the Respondent during work hours. However, no adverse personnel actions were taken against the Respondent based upon those reports. In addition, after receiving the first report in April 2008, the Director of Operations observed the

Respondent for any indication of behavioral or impairment issues, but never noticed anything out of the ordinary.

14. The Respondent's conduct of practicing occupational therapy while legally intoxicated constitutes violations of the statutes and regulations referenced herein.

15. On February 23, 2009, the Respondent began full-time employment with Providence Center, Incorporated, where she serves as the Center's first full-time occupational therapist for clients with mental retardation. The position was specifically created for the Respondent. The Respondent is responsible for each clients' occupational therapy needs, as well as assisting program directors in developing appropriate activities and goals for the clients.

16. The Respondent has provided the following to the administrative prosecutor in support of this Consent Order:

- a. An attendance sheet dated June 13, 2009 through August 17, 2009 documenting the Respondent's regular attendance at Alcoholics Anonymous ("AA") meetings. The attendance sheet indicates that the Respondent has attended, on average, two to four AA meetings per week.
- b. An office visit summary note dated July 22, 2009 indicating that the Respondent has sought counseling services through Kaiser Permanente. The summary notes that the Respondent's provider is

assisting the Respondent with finding a different provider closer to the Respondent's home.

- c. A Biopsychosocial Assessment from the Crossroads Centers dated August 10, 2009. In lieu of treatment through a Kaiser Permanente provider, The Respondent has begun treatment consistent with the recommendations of the Crossroads assessment, including but not limited to group therapy.
- d. A toxicology screen conducted by Dominion Diagnostics through the Crossroads Centers on August 10, 2009, which was negative.
- e. A 90-day Review performance evaluation dated May 26, 2009, which states that the Respondent is performing above a satisfactory level. The Respondent received a score of 4/5 in job knowledge, work quality, attendance/punctuality, initiative and dependability. The Respondent received a score of 3/5 in communication/listening skills.

18. The Respondent sought substance abuse counseling and began attending AA meetings on her own initiative, prior to consulting with her attorney.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the Act. Specifically, the Respondent violated the following provisions of § 10-315:

Subject to the hearing provisions of § 10-316 of this subtitle, the Board may deny a license or temporary license to any applicant, reprimand any licensee or holder of a temporary license, place any licensee or

holder of a temporary license on probation, or suspend or revoke the license or temporary license if the applicant, licensee, or holder:

- (3) Commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy;
- (4) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board; to wit:

COMAR 10.46.02.01A(2) The licensee shall provide the highest quality services to the client;

- (8) Provides professional services while: (i) under the influence of alcohol;

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 18, day of ~~August~~ ^{September} 2009, by a majority of the Board considering this case:

ORDERED that the Respondent's license to practice occupational therapy shall be **SUSPENDED** for a **PERIOD OF THREE (3) MONTHS**; and be it further

ORDERED that the period of suspension is hereby **STAYED**; and be it further

ORDERED that effective immediately the Respondent's license to practice occupational therapy in the State of Maryland shall be placed on **PROBATION** for a **PERIOD OF TWO (2) YEARS**, to commence from the date that this Order is executed by the Board, subject to the following terms and conditions:

1. The Respondent shall comply with the treatment recommendations derived from the August 10, 2009 Crossroads Centers Biopsychosocial Assessment, to the extent that it recommends substance abuse

treatment via attendance at weekly support group meetings. The Respondent shall arrange for the substance abuse treatment provider and any other relevant treatment providers to submit written reports to the Board on a quarterly basis regarding her compliance and progress toward rehabilitation during the probationary period.

2. Respondent shall provide random, monthly enhanced urinalysis, breath or blood testing to be performed within 24 hours notice by the Board or the Board's designee. The Respondent shall cause the results to be submitted to the Board. The Respondent agrees that any positive test or missed test shall be reported to the Board and considered a violation of this Order. The Board or the Respondent's employer may also order a drug or alcohol test by urine, breath, or blood at anytime. Respondent's refusal to submit to such a test shall be considered a positive test, and therefore, a violation of this Order. Further any tampering with a test sample or other improper attempt to avoid a positive drug or alcohol test result shall be considered a violation of this Order. It is the Respondent's responsibility to instruct the laboratory to send a copy of all drug test results to the Board, and to notify the Board of a positive or missed drug test.
3. The Respondent shall immediately notify her current occupational therapy employer of the probationary status of the Respondent's license and arrange for her current employer to submit, in writing to the Board,

within ten (10) business days of the effective date of this Order, that they have reviewed this Order. If the Respondent changes employers during the probationary period, the Respondent shall notify that employer of the probationary status of her license and arrange for that employer to submit, in writing to the Board, within ten (10) business days from the date of hire that they have reviewed this Order;

4. The Respondent shall arrange for her supervisor at the Respondent's place of employment to submit written quarterly reports to the Board evaluating the Respondent's performance. The Respondent understands and acknowledges that it is her responsibility to notify her supervisor that these reports are due and ensure that the quarterly reports are submitted. An unsatisfactory or late report will be considered a violation of this Order;
5. The Respondent shall attend a minimum of three support group meetings (such as NA or AA) weekly and secure a sponsor within sixty (60) days of signing this Order, if the Respondent has not already done so. The Respondent shall provide the Board with written verification of her attendance at these meetings on a quarterly basis;
6. The Respondent shall completely abstain from the use of alcohol, controlled dangerous substances, and mood altering drugs. If the Respondent is prescribed any controlled dangerous substances or mood altering medications, she will notify the Board immediately and cause a

copy of said prescription to be served on the Board within three (3) days.

The Respondent shall show this Order to any health care provider who prescribes for her, including but not limited to, dentists, physicians, nurse practitioners, and physician assistants.

7. The Respondent shall not engage in the conduct that led to the charges before the Board.

ORDERED that the Respondent's execution of this Consent Order shall constitute a release to the Board and to the substance abuse treatment provider of any and all medical health reports, substance abuse treatment and attendance records, and psychological/psychiatric records pertaining to the Respondent; and be it further

ORDERED that the Respondent shall comply with all laws governing the practice of occupational therapy under the Act, and all rules and regulations promulgated there under; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board in the monitoring, supervision, and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and be it further,

ORDERED that if the Respondent fails to follow any of the terms and conditions of this Consent Order, such failure shall be deemed a Violation of Probation and of this Consent Order and the Board may take any action that it deems appropriate under the Act, including but not limited to suspension or revocation, provided said violation is proven by a preponderance of the evidence;

and it is further

ORDERED that two years from the effective date of this Order, the Respondent may petition the Board for termination of her probationary status without any conditions or restrictions whatsoever. If the Respondent has satisfactorily complied with all conditions of probation, including the completion of the entire term of probation, and there are no outstanding complaints regarding the Respondent, the Board shall terminate the probation; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order, including but not limited to the cost of treatment providers and random drug screening; 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.).

9/18/09

Date

Joyce Ford, COTA/L

Joyce Ford COTA/L, Board Chairperson
Maryland Board of Occupational Therapy Practice

CONSENT OF LAURA LUBIN, OTR/L

I, LAURA LUBIN, OTR/L, License No. 02129, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with counsel during the course of these proceedings.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Health Occ. § 10-316 and State Govt. §§ 10-201 *et seq.*
3. I acknowledge the validity 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 provided by law.
4. I voluntarily enter into and consent to the foregoing Findings of Fact, Conclusions of Law, and Order. 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, as set forth in § 10-317 of the Act and State Govt. § 10-201 *et seq.*
5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, and, following proper procedures, I may suffer disciplinary action, which may include revocation of my license to practice occupational therapy in the State of Maryland.
6. 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.

8/31/09
Date

Laura Lubin, OTR/L
Laura Lubin, OTR/L

STATE OF MARYLAND

CITY/COUNTY OF Anne Arundel:

I HEREBY CERTIFY that on this 31st day of August, 2009, before me, Anne Twomey, a Notary Public of the foregoing State and, (Print Name) personally appeared Laura Lubin, OTR/L, License Number 02129, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Anne J. Twomey
Notary Public

Anne J. Twomey
Notary Public - Maryland
Anne Arundel County
My Commission Expires 01/28/2012

My Commission Expires: 01-28-2012