

- (2) The physical therapist shall:
- ...
- (g) Reevaluate the patient as the patient's condition requires, but at least every 30 days, unless the physical therapy, consistent with accepted standards of physical therapy, documents in the treatment record an appropriate rationale for not reevaluating the patient[.]

On April 21, 2015, a conference with regard to this matter was held before the Board's Case Resolution Conference ("CRC"). As a result of the CRC, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

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 originally licensed on September 28, 2010. The Respondent's license is scheduled to expire on May 31, 2015. The Respondent also holds an active license in Florida.
2. At all times relevant to the charges herein, the Respondent was employed as a staff physical therapist at a medical center (the "Center") in Silver Spring, Maryland.¹
3. On or about July 23, 2014, the Board received a complaint from a former patient ("Patient A") of the Respondent.
4. Patient A, a female, stated that on May 12, 2014, she had been referred by a physician at the Center for physical therapy to treat "a herniated disc and lower back/buttocks/upper leg pain." Patient A met with, but was not treated by, the Respondent on that date.

¹ Names of facilities, patients and other individuals are confidential.

5. On May 13, 2014, Patient A returned to the Center for treatment by the Respondent. Patient A saw the Respondent in a treatment area surrounded by a closed curtain.
6. Within the first several minutes of Patient A's appointment, the Respondent asked Patient A to describe her pain. Patient A alleged in her Complaint that the Respondent turned his back to her, revealing approximately two to three inches of his intergluteal cleft and the top of his buttocks. Patient A stated that the Respondent then asked Patient A to touch him where her pain was most prevalent. Patient A declined to touch the Respondent. Instead, she verbally described the area of her pain.
7. On or about November 13, 2014, the Respondent was interviewed by Board staff about his initial visit with Patient A on May 13, 2015. The Respondent stated that during the initial evaluation, he diagnosed Patient A as suffering from "back pain; more specifically, disc disease of the lower lumbar spine" and recommended a lower lumbar support. He further explained that he may have unintentionally exposed his lower abdomen and back in an effort to educate Patient A about her diagnosis and the benefits of lumbar support.
8. On May 13, 2014, the Respondent documented that he provided to Patient A manual therapy, exercise, functional training, neuromuscular re-education, electrical stimulation, cryotherapy and ultrasound.
9. The Respondent billed for the following services for Patient A's May 13, 2004 appointment: PT evaluation (CPT code 97001), one unit each of ultrasound (CPT

code 97035) and manual therapy (CPT code 97140) and one lumbar brace (CPT code LO631).

10. When interviewed by Board staff regarding the May 13, 2014 appointment with the Respondent, Patient A stated that she was “stunned,” “embarrassed” and “felt violated” by the Respondent’s conduct.
11. When interviewed by Board staff on November 13, 2014, the Respondent stated that he lifted his shirt to discuss abdominal and spine musculature but did not lower his pants. He further stated that at no time during the initial visit did Patient A express concern, discomfort or embarrassment.
12. On May 14, 2014, Patient A met with a Center chiropractor and co-administrator (“Dr. S”) to discuss her discomfort with the Respondent’s conduct on the previous day.
13. Thereafter, with the exception of Patient A’s final visit on June 20, 2014, Patient A was not treated by the Respondent. Instead, Patient A was treated by Dr. S, a chiropractor who is not authorized to practice physical therapy, and on one occasion by Dr. G, a Center chiropractor who is authorized to practice physical therapy.²
14. Patient A was treated by Dr. S on the following dates: May 20, 23, 27, 28, June 2, 9 and 12, 2014. Billing records for those dates reveal that Patient A was billed for one unit each of: electrical stimulation; ultrasound; manual therapy and self-

² Pursuant to the Maryland Chiropractic Act, H.O. § 3-301, only a chiropractor who holds a license to practice chiropractic with the right to practice physical therapy may practice chiropractic and physical therapy in Maryland.

- care/home management training (CPT code 97535).³ The Respondent's name appears as the provider of services on the billing record for each of these dates.
15. In furtherance of its investigation, Board staff subpoenaed from the Center Patient A's treatment records.
 16. On each of Patient A's treatment notes, the Respondent is documented as the "Provider." All but one of the notes further indicates: "Physical Therapist assisted by: js"⁴ When interviewed by Board staff, Dr. S acknowledged that he treated Patient A on the dates his initials (js) are noted.
 17. When interviewed by Board staff, the Respondent acknowledged that after the May 13, 2014 incident, Patient A no longer wanted to be treated by him. The Respondent further acknowledged that Dr. S treated Patient A, but was "not doing anything but carrying out a treatment plan that I asked him to carry out...He's not designing a treatment, he's not conjuring anything. He's an assistant."
 18. The Respondent further stated that he did not know why he was indicated as the "Provider" on all of Patient A's treatment notes.
 19. The Respondent told Board staff that it was his "morning ritual" to review and approve treatment notes written by Dr. S. Review of the treatment notes revealed however that several notes were not approved by the Respondent until several days after treatment was provided.

³ These codes are included in the Physical Medicine and Rehabilitation CPT category. There is a separate CPT code category for Chiropractic Manipulative Treatment.

⁴A treatment note dated May 27, 2014 states: "Physical Therapist assisted by mg." Board investigation confirmed that Dr. G treated Patient A on that date.

20. During the Respondent's interview, Board staff asked him to review the licenses issued to Dr. S and Dr. G by the Maryland Board of Chiropractic and Massage Therapy Examiners, both of which were hanging on a wall of the Center. The Respondent acknowledged that Dr. G's license indicated that Dr. G had privileges to practice physical therapy while Dr. S's did not.
21. The Respondent stated that he "thought [Dr. S] could work under a plan that I designed, as long as he is not diagnosing or altering in any way. You know, I believe he has the clinical skill in order to do the job."
22. The Respondent further stated that Dr. S "had told [the Respondent] that he [Dr. S] had spoken with his compliance officer and done his homework in this regard, and there was nothing that, you know, that said that they cannot practice this way."
23. In response to Board inquiries, the Respondent stated that he knew of no one at the Center who performed compliance duties and that he had never met the compliance officer referred to by Dr. S.
24. The Respondent acknowledged that he did not independently verify with either the Maryland Board of Chiropractic or Board of Physical Therapy Examiners that a chiropractor without privileges to practice physical therapy could indeed practice physical therapy.
25. Review of Patient A's records reveals that neither the Respondent nor any other practitioner with privileges to practice physical therapy evaluated Patient A's condition after 30 days, as required by Md. Code Regs. 10.38.03.02A(2)(g).

CONCLUSIONS OF LAW

The Respondent's conduct, in whole or in part, constitutes violations of the Act, specifically, H.O. § 13-316 (11), (12) and (15). The Respondent's conduct further violates the Board's Standards of Practice, specifically Md. Code Regs. 10.38.03.02A(2)(g).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 28th day of May, 2015, by a majority of the quorum of the Board:

ORDERED that the Respondent is placed on probation for a minimum of one (1) year; and it is further

ORDERED that within the first 90 days of probation, the Respondent shall successfully complete the Board's closed-book jurisprudence examination with a passing score of at least 90 percent; and it is further

ORDERED that within the first 90 days of probation, the Respondent shall enroll in and complete a Board-approved continuing education course in cultural competency and a continuing education course in mitigating professional risk, both of which may count toward the continuing education hours required for the renewal of the Respondent's license; and it is further

ORDERED that on a quarterly basis, the Respondent shall submit at least three (3) patient records to the Board for review for compliance with standards of practice, including billing practices; and it is further

ORDERED that within the first six (6) months of probation, the Respondent shall pay a fine of \$5,000 to be paid in full to the Board by certified check or bank guaranteed

check made payable to the Maryland State Board of Physical Therapy Examiners; and it is further

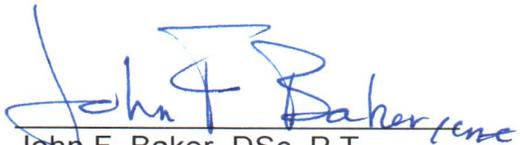
ORDERED that the Respondent is responsible for all costs associated with the Consent Order; and it is further

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

ORDERED that, should the Board receive information that the Respondent has violated the Act or if the Respondent violates any conditions of this Order, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order shall be on the Respondent to demonstrate compliance with the Order or conditions; and it is further

ORDERED that for purposes of public disclosure, as permitted by Md. Code Ann. General Provisions Article, § 4-333(b), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank to which it is mandated to report.

5/28/2015
Date


John F. Baker, DSc. P.T.
Chair
Maryland Board of Physical Therapy
Examiners

CONSENT

I, Jack W. Boling, PT, acknowledge that I have had the opportunity to be represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and 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 any adverse ruling of the Board that I might have filed after any such hearing.

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

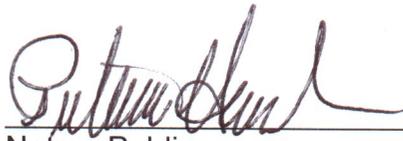
5/18/15
Date

Jack W. Boling, PT
Jack W. Boling, PT
Respondent

STATE OF MARYLAND
CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 18 day of May 2015, before me, a Notary Public of the foregoing State and City/County personally appeared Jack W. Boling, PT, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Notary Public

My commission expires: _____

