

IN THE MATTER OF * **BEFORE THE**
VIJAYAKUMAR PALANISWAMY, P.T. * **STATE BOARD**
License No.: 21367 * **OF**
Respondent * **PHYSICAL THERAPY EXAMINERS**

* * * * *

ORDER FOR SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. . 10-226 (c)(2004 Repl. Vol.), the State Board of Physical Therapy Examiners (the "Board") hereby suspends the license to practice physical therapy in Maryland issued to Vijayakumar Palaniswamy, PT, (the "Respondent"), under the Maryland Physical Therapy Act (the "Act"), Md. Health Occ. Code Ann. § 13-101, et seq., (2005 Repl. Vol.). This Order is based on the following investigative findings, which the Board has reason to believe are true:

BACKGROUND

1. At all times relevant hereto, the Respondent was licensed to practice physical therapy in Maryland. The Respondent was first licensed in Maryland on January 3, 2005. The Respondent's license expires on May 31, 2007.
2. At all times relevant hereto, the Respondent practiced physical therapy at the Physiotherapy Associates office located in Greenbelt, Maryland.
3. By a complaint dated April 27, Patient A¹ reported that her primary care physician had referred her to Physiotherapy Associates for treatment of her upper and lower back.

¹ Patients' names are confidential but may be disclosed to the Respondent by contacting the Administrative Prosecutor.

4. Patient A's first appointment was on March 6, 2006 with the Respondent who applied electrical stimulation (e-stim), heat and ultrasound therapy in a private room, followed by exercises in the main room. Thereafter, the Respondent had Patient A do exercises in the main room first, and then began her individual therapy in a private room.

5. On each occasion, the door to the treatment room was always closed and there were no chaperones present. On each occasion Patient A was clothed from the waist down and wore a gown on top, without a bra or with her bra unhooked.

6. After the second appointment, the Respondent asked if he could put his leg up on her while he was administering the ultrasound therapy, which resulted in his almost lying on top of Patient A with one foot on the ground. (Patient A assumed that he took this position in order to gain leverage for treating her upper back problems. Patient A consented to this procedure, because she had had no prior experience with physical therapy.)²

7. On approximately the third appointment, on March 15th, the Respondent began to completely lie on top of Patient A, which made her very uncomfortable. On the fourth appointment, March 17th, the Respondent began rocking his pelvis against Patient A as he lay on top of Patient A. On the fifth appointment, March 28th, the Respondent again laid on top of Patient A, rocking back and forth until Patient A could feel his erect penis against her, while he put his hand under her gown against her breast.

8. On March 30, 2006, the Respondent got on top of Patient A while he was giving her the ultrasound. After he dismounted and started to wipe off the gel that had been placed on her back for the ultrasound procedure, the Respondent again got on top of

Patient A and started "humping" Patient A's buttocks with an erect penis. During this time, the Respondent's hand was on Patient A's breast, his face was touching Patient A's face and he was breathing hard. When someone tried to open the treatment room door, against which he had propped a chair, he jumped off Patient A quickly.

9. As Patient A was leaving the office, she informed a staff member what had happened and was told that closing the door was against office policy. The staff member also expressed the fact that another patient had told her that she was uncomfortable with the Respondent's treatment. Shortly thereafter, Patient A described the Respondent's actions to the office manager, who asked her to provide him with a written statement.

10. Patient A's husband, mother and doctor convinced her to file a police report, which she did. On April 19, 2006, an arrest warrant was issued for the Respondent for sexual offenses committed against Patient A.

11. By complaint dated May 9, 2006, the Board received information from Patient B indicating that the Respondent, on February 24, 2006, as Patient B's treatment session was ending, suggested that Patient B receive ultrasound treatment to her injured shoulder. After going to a back room, the Respondent rested his hand across Patient B's right breast, while administering ultrasound. He then asked Patient B to do her last exercise, a "butterfly lift" wherein she moved both arms while stretched out face-down on the table. As Patient B did this exercise, the Respondent placed his body halfway on hers, in order to "stabilize" her back. 2

12. On May 29, 2006, Patient C filed a complaint with the Prince George's County Police Department which resulted in a further warrant being issued

² Lying on a patient while applying ultrasound is not an accepted mode of physical therapy treatment.

for the Respondent for a sexual offense.

13. Patient C complained that, in January 2008, she was referred to Physiotherapy Associates for treatment for her lower back and that the Respondent provided her initial evaluation and treatment. During that evaluation, the Respondent asked Patient C to remove her top so that he could access her back for the attachment of the TENS unit and for massage therapy. The Respondent failed to provide a gown for Patient C, making her uncomfortable.
14. During the second session, the Respondent again asked Patient C to remove her top, which she did. Her discomfort level increased because the Respondent closed the treatment room door.
15. During Patient C's last session, the Respondent mounted Patient C's back and she felt his body pressing against her buttocks. Patient C stated that she felt uncomfortable with what he was doing and asked if this particular position was necessary, to which the Respondent replied "yes, because this way I can really get to your problem areas and give a better massage." Patient C stated that she did not believe him and asked him to stop because she was feeling more pain by the motions of his hip grinding and pressing on her back.
16. When the Respondent left the room and the PT Assistant came in, Patient C asked her about this technique, which she said should be reported, which Patient C did, as well as inform the manager about prior sessions where the Respondent had positioned himself behind her and pressed his hips into her

buttocks under the premise of using a therapy technique. When the Respondent found out that Patient C had made a complaint, he apologized and asked her not to tell the manager that he had not offered her a gown.

FINDINGS OF FACT

1. As set forth above, by engaging in sexual assault and/or inappropriate and non-therapeutic touching of Patients A, B and C, the Respondent is a threat to the public health, safety or welfare of Maryland's citizens.

2. The above actions also constitute violations of the Act. Specifically, the Respondent violated the following provision of § 13-316:

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:

- (15) Violates any provision of this title or rule or regulation adopted by the Board;
- (17) Is professionally, physically, or mentally incompetent;
- (19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy;
- (25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

In addition, the Board charges the Respondent with a violation of its regulations found in Code Md. Regs. tit. 10 § 38.02 (2006):

.01 Code of Ethics.

- B. The physical therapist and the physical therapist assistant shall respect the dignity of the patient.

.02 Sexual Misconduct.

- A. A physical therapist or physical therapist assistant may not engage in sexual misconduct.

B. Sexual misconduct includes, but is not limited to:

- (1) Sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or service to the client or patient, regardless of the setting in which the professional service is rendered;
- (2) Sexual behavior with a client or patient under the pretext of diagnostic or therapeutic intent or benefit;
- (5) Therapeutically inappropriate or intentional touching of a sexual nature;
- (7) Physical contact of a sexual nature with a patient [;].

10.38.03:

.02 Standards of Practice.

- (2) The physical therapist shall:
 - (a) Exercise sound professional judgment in the use of evaluation and treatment procedures [;].

CONCLUSIONS OF LAW

Based on the foregoing, the Board finds that the public health, safety or welfare imperatively requires emergency action, pursuant to Md. St. Govt. Code Ann. , 10-226(c) (2) (2004 Repl. Vol.).

ORDER

Based on the foregoing, it is therefore this 16th day of May, 2006, by a majority vote of a quorum of the State Board of Physical Therapy Examiners, by authority granted by the Board by Md. St. Govt. Code Ann. . . 10-226(c) (2) (2004 Repl. Vol.), the license held by the Respondent to practice physical therapy in Maryland, License No. 21367, is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED, that upon the Board's receipt of a written request from the Respondent, a Show Cause Hearing shall be scheduled within thirty days of said request, at which the Respondent will be given an opportunity to be heard as to whether the Summary Suspension should be lifted/terminated, regarding the Respondent's fitness to practice physical therapy and the danger to the public; and be it further

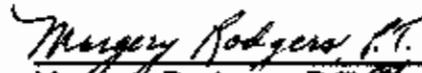
ORDERED, that the Respondent shall immediately turn over to the Board his wall certificate and wallet-sized license to practice physical therapy issued by the Board; and be it further

ORDERED that, if the Respondent requests an evidentiary hearing before the Board, Respondent must make the request in writing within thirty (30) days from the date of the Show Cause Hearing. If a request for hearing is not received within thirty (30) days from the date of the Show Cause Hearing, the Respondent waives all rights now and in the future to any hearing with respect to this Order, or to any proceedings that would contest the validity of the factual allegations of this Order for Summary Suspension and to any appeals; and be it further

ORDERED that, in the event the Respondent requests an evidentiary hearing, the proceeding before the Board will be conducted in accordance with the Administrative

Procedure Act ("APA"), Md. Code Ann., State Govt. Article, §§ 10-201 et seq., § 13-317 of the Act and regulations promulgated by the Board at Code Md. Regs. tit. 10 § 38.05 (2006). The APA gives the Respondent the right to be represented by counsel authorized to practice law in Maryland, to request subpoenas for evidence and witnesses, to call witnesses, to present evidence, to cross examine every witness called by the Board, to obtain a copy of the hearing procedure upon written request, and to present summation and argument. Unless otherwise prohibited by law, the Respondent may agree to the evidence and waive her right to appear at the hearing; and be it further

ORDERED that this document constitutes a final Order of the Board and is therefore a public document for purposes of public disclosure, as required by Md. State Govt Code Ann. , 10-617(h) (2004 Repl. Vol.).



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

NOTICE OF HEARING

A Show Cause hearing to determine whether the Summary Suspension shall be lifted/terminated will be held before the Board at 4201 Patterson Avenue, Baltimore, 21215 following a written request by the Respondent for same.