IN THE MATTER OF	*	**BEFORE THE MARYLAND**
MARWAN KHAYAT, P.T.	*	**STATE BOARD OF**
LICENSE No: 21674	*	**PHYSICAL THERAPY EXAMINERS**
Respondent	*	**CASE NUMBER: PT-10-06**

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ORDER FOR SUMMARY SUSPENSION

The Maryland Board of Physical Therapy Examiners (the "Board") hereby **SUMMARILY SUSPENDS** the license of **MARWAN KHAYAT, P.T.** ("Respondent") (D.O.B. 02/02/1979), to practice physical therapy in the State of Maryland. The Board takes such action pursuant to its authority under Md. State Gov't Code Ann. § 10-226(c)(2009 Repl. Vol.) concluding that the public health, safety or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS

Based on information received by, and made known to the Board, and the investigatory information obtained by, received by and made known to and available to the Board, including the instances described below, the Board has reason to believe that the following facts are true:[1]

I. Background

1. The Respondent is licensed to practice physical therapy in the State of Maryland under License Number 21674. The Respondent's license is currently active and scheduled to expire on May 31, 2010.

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[1] The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the suspension. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

2. At all times relevant to the statements herein, the Respondent practiced physical therapy at Bethesda Physiocare located at 7830 Old Georgetown Road, Suite C-15, Bethesda, Maryland 20814-2440. The Respondent specialized in a technique called trigger point dry needling ("dry needling"), which is an invasive procedure in which a solid filament needle is inserted into the skin and muscle at various myofascial trigger points.

3. On or about September 8, 2009, the Board received a complaint from the Respondent's then-employer ("Dr. A, PT") alleging that the Respondent engaged in inappropriate sexual contact with two female patients ("Patient A" and "Patient B")[2] during treatment sessions.

4. As a result of the complaint, the Board opened an investigation into the allegations.

5. During the course of the Board's investigation, the Respondent also admitted to having a brief sexual relationship with a patient ("Patient C").

II. Findings of Fact Supporting Summary Suspension

A. Patient A

6. Patient A was a 50-year-old woman who suffered from chronic pain. She began dry needling treatment with the Respondent in Spring 2008. Patient A had approximately 20 to 30 treatments with the Respondent from Spring 2008 until the date of the incident that gave rise to the complaint.

7. On or about September 21, 2009, Board staff interviewed Patient A.

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[2] Patient names are confidential. The Respondent may obtain the names from the Administrative Prosecutor.

8. According to Patient A, on July 29, 2009, she presented at the Respondent's office for a scheduled appointment, during which the Respondent used the dry needling technique. Patient A recalled that she was lying on her back, wearing a patient gown and underwear, and the Respondent was seated on a stool on Patient A's right side. At the conclusion of the session, the Respondent leaned over and kissed her by putting his closed mouth on her mouth.

9. Patient A stated that she immediately sat up and questioned the Respondent's conduct. Patient A attempted to end the session by standing up, gathering her belongings and putting on her watch. According to Patient A, the Respondent came around the table and put his hands on Patient A's shoulders from behind. Patient A stated that the Respondent's touch was "too gentle" and she pulled away from him. According to Patient A, the Respondent then stated, "do you feel this is 'blank' or is this a tease?"[3] According to Patient A, when she heard the Respondent use the word "tease," she realized that he was not joking and that he had "crossed the line."

10. The following week, Patient A had four missed telephone calls on her cellular telephone from Bethesda Physiocare, and one missed telephone call from a number that was later identified as the Respondent's cellular telephone. No one left a message.

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[3] During her interview with Board staff, Patient A inserted the word "blank" into the sentence as a placeholder for a word she could not understand and/or recall from the incident with the Respondent.

11. On August 3, 2009, Patient A received an email from the Respondent asking if she wanted him to schedule her for another appointment with him. Patient A responded to the email on August 8, 2009 stating that "because of [the Respondent's] unprofessional conduct in making inappropriate physical contact with [her] during [her] last dry needling treatment," she could not continue seeing the Respondent for treatment. Patient A also asked that the Respondent not contact her again in the future. The Respondent did not respond to Patient A's email.

12. Patient A reported the Respondent's conduct to her physician ("Dr. B") because he was the referring physician and she felt that she needed to provide an explanation to Dr. B as to why she would not be seeing the Respondent for treatment any longer. Dr. B and Bethesda Physiocare share office space and Dr. B refers many patients to Bethesda Physiocare.

13. On October 6, 2009, the Respondent was interviewed by Board staff. During his interview, the Respondent admitted to attempting to kissing Patient A on her lips. The Respondent stated that he believed that Patient A was "hitting on him" when she discussed her status post-mastectomy breast reconstruction, and because she looked at his eyes and lips.

B. Patient B

14. Patient B, a 41-year-old female who suffered from fibromyalgia, was a resident of New Jersey who traveled to Maryland to see the Respondent specifically for his use of dry needling. Patient B was also experiencing

problems in her personal life of which the Respondent was aware. The Respondent began treating Patient B in March 2009 and saw her approximately 13 times.

15. On September 21, 2009, Patient B was interviewed by Board staff.

16. Patient B recalled that the first four or five appointments with the Respondent were without incident. However, beginning in May 2009, the Respondent began to discuss personal matters, such as his marital troubles, loneliness due to his wife's frequent traveling, and an affair that he once had with a Russian woman.

17. At approximately this time, the Respondent began emailing Patient B. They exchanged friendly emails, wherein she would share pictures of recent trips she took or restaurant recommendations.

18. According to Patient B, at her May 20, 2009 appointment, the Respondent suggested that they should meet privately outside the office to get to know one another better.

19. In July 2009, the Respondent initiated inappropriate physical contact during a treatment session. In particular, the Respondent kissed the areas that he was dry needling, while murmuring, "mmm, mmm, mmm."

20. In addition, Patient B stated that the Respondent put his arms around her and said, "you let go first," even though Patient B was not holding onto him at all. Patient B stated that at first she was confused and thought it might be a cultural difference because the Respondent is Israeli.

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17. At approximately this time, the Respondent began emailing Patient B. They exchanged friendly emails, wherein she would share pictures of recent trips she took or restaurant recommendations.

18. According to Patient B, at her May 26, 2009 appointment, the Respondent suggested that they should meet privately outside the office to get to know one another better.

19. In July 2009, the Respondent initiated inappropriate physical contact during a treatment session. In particular, the Respondent kissed the areas that he was dry needling, while murmuring, "mmm, mmm, mmm."

20. In addition, Patient B stated that the Respondent put his arms around her and said, "you let go first," even though Patient B was not holding onto him at all. Patient B stated that at first she was confused and thought it might be a cultural difference because the Respondent is Israeli.

21. Patient B stated that she voiced her discomfort with the Respondent's actions, but he told her to "loosen up" and "relax". Patient B also stated that the Respondent threatened to influence her disability status if she told Dr. B about his conduct.

22. Despite the Respondent's advances, Patient B continued to attend her treatment sessions with the Respondent because they were beneficial to her recovery. On one occasion, Patient B asked the Respondent if she could see a different therapist, but the Respondent stated that he was the only therapist available who could provide her treatment.

23. Patient B stated that on one occasion the Respondent hugged her and attempted to kiss her in celebration of Patient B's divorce being granted. When Patient B resisted, the Respondent told her to relax and that hugging and kissing was part of her therapy. According to Patient B, the Respondent made her swear not to tell her physician, Dr. B, or anyone else in the practice.

24. According to Patient B, her last appointment with the Respondent was on August 25, 2009. At that appointment, the Respondent again attempted to kiss her. In addition, Patient B stated that the Respondent reached around her, put his hands under her gown and fondled her breasts. Then, the Respondent pulled Patient B against him so that his private area was level with her abdomen. Patient B stated that she could feel that the Respondent had an erection. According to Patient B, the Respondent forcibly rubbed up against her abdomen until he climaxed. The

Respondent's pants were unzipped, but his penis remained inside his pants and was never visible to Patient B. The Respondent's arms were around Patient B while this occurred. Patient B recalled that the Respondent said, "do I have something on my pants?" Patient B interpreted his comment and the wet spot on his pants to indicate that the Respondent ejaculated. After the incident, the Respondent told Patient B to get dressed, but did not leave the room.

25. Subsequently, Patient B reported the Respondent's conduct to Dr. B

26. During his interview with Board staff, the Respondent admitted to "making the mistake of crossing the line with [Patient B]." The Respondent also admitted to not leaving the room to allow Patient B to dress in private.

27. The Respondent further admitted to kissing Patient B on July 6 and August 25, 2009, but denied rubbing up against her until he climaxed. The Respondent stated that at Patient B's August 25, 2009 appointment, he did have an erection, he did kiss her mouth and neck, but he did not fondle her breasts.

C. Patient C

28. During his interview with Board staff, the Respondent also admitted to having an affair with a patient ("Patient C"). Patient C was a 44-year-old female who was being treated by Dr. A. The Respondent treated Patient C on approximately 12 occasions when "Dr. A, PT") was out of town or otherwise unavailable.

29. The Respondent stated that he was invited over to Patient C's house twice, and on both occasions, they engaged in sexual intercourse. The Respondent stated that he ended the relationship with Patient C.

30. The Respondent stated that his relationship with Patient C began while he was treating her as a patient.

31. The Respondent stated that his last communication with Patient C was approximately in August 2009.

32. During her interview, Patient C stated that she was the Respondent's patient before their relationship began and after it ended. However, Patient C later recanted her testimony in a letter to Board staff, stating that her relationship with the Respondent took place before she was his patient.

33. As a result of the complaints made by Patients A and B regarding the Respondent's misconduct, the Respondent was terminated from his employment with Bethesda Physiocare effective October 21, 2009.

34. In his statement to the Board regarding the allegations against him, the Respondent admitted to having "wrongly read the situation when [he] leaned in to kiss [Patient A]." The Respondent admitted to hugging and kissing Patient B on two separate occasions. The Respondent made no mention in his letter regarding his affair with Patient C. Further, the Respondent stated that he "accept[s] fully responsibility for [his] actions," which he characterized as "immature and wrongful."

INVESTIGATIVE CONCLUSIONS

Based on the foregoing facts, the Board has reason to determine that there is a substantial likelihood of a risk of serious harm to the public health, safety, or welfare by the Respondent. The Respondent engaged in a pattern of inappropriate sexual contact with female patients in a therapeutic setting. The Respondent violated his fiduciary responsibility to the patients, placing them in vulnerable and exposed positions and exploiting them for his personal gratification. The Respondent's conduct constitutes actual harm to public health, safety or welfare and undermines the integrity and dignity of the physical therapy profession.

In addition, the Respondent's conduct as set forth above constitutes, in whole or in part, violation of the following provisions of the Physical Therapy Act and the Board's regulations:

H.O. § 13-316. Denials, reprimands, probations, suspensions and revocations – Grounds

> Subject to the hearing provisions of § 13-317 of this subtitle, the Board may deny a license...to any applicant, reprimand any licensee...place any licensee...on probation, or suspend or revoke a license...if the licensee...:
>
> (15) Violates any provision of this title or rule or regulation adopted by the Board;
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> (19) Commits an act of unprofessional conduct in the practice of physical therapy or limited physical therapy.

The Respondent violated the following provisions of the Board's regulations:

Code Md. Regs. tit. 10, § 38.02.02 – 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;

(3) Solicitation of a sexual relationship, whether consensual or non-consensual, with a patient;

(4) Sexual advances requesting sexual favors;

(5) Therapeutically inappropriate or intentional touching of a sensual nature;

(6) A verbal comment of a sexual nature; and

(7) Physical Contact of a sexual nature with a patient[.]

CONCLUSION OF LAW

Based on the foregoing facts, the Board concludes that the public health, safety or welfare imperatively requires emergency action in this case, pursuant to State Gov't § 10-226(c)(2)(i) (2009 Repl. Vol.).

ORDER

Based on the foregoing, it is this 5th day of November, 2009, by a majority of the Board:

ORDERED that pursuant to the authority vested by State Gov't § 10-226(c)(2), the Respondent's license to practice physical therapy be and hereby is **SUMMARILY SUSPENDED**; and it is further

ORDERED that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's Investigator his original Maryland license number 21674; and it is further

ORDERED that this is a Final Order of the Board and, as such, is a **PUBLIC DOCUMENT** pursuant to State Gov't §§ 10-611 *et seq.*

November 5 2009
Date

Ann E. Tyminski
Ann E. Tyminski,
Executive Director for
Margery Rodgers, P.T.,
Chairperson
Maryland Board of Physical
Therapy Examiners