IN THE MATTER OF	*	**BEFORE THE STATE BOARD**
STEPHEN SMITH, P.T.	*	**OF PHYSICAL THERAPY**
License No. 20664	*	**EXAMINERS**
Respondent	*	**CASE NUMBER: 07191A**

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FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Physical Therapy Examiners (the "Board"), and subject to Md. Health Occ. Ann. § 13-101, et seq., (2005 Repl. Vol.) (the "Act"), the Board charged Stephen Smith, P.T., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with various violations of § 13-316, including the following:

> 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:
>
> (14) Submits a false statement to collect a fee;
>
> (25) Fails to meet accepted standards in delivering physical therapy or limited physical therapy care.

The Respondent was given notice of the issues underlying the Board's charges by letter dated July 31, 2009. However, because the Respondent had moved out of State and was no longer practicing in Maryland, the Charges were sent to the last known address that the Board had. Someone at that abode signed for the mail on August 10, 2009. However, the Respondent had moved to another location and did not receive the mail.

Consequently, the Respondent failed to appear at the Case Resolution Conference held on September 3, 2009. As a result of speaking to some former colleagues, the Respondent called the Board to find out whether he, too, had been charged with violations of the Act, as had some of his former colleagues. He was then referred to the Administrative Prosecutor, Roberta Gill, Assistant Attorney General, who sent him copies of various documents, including the Charges. Subsequently, another Case Resolution Conference took place on December 1, 2009. Present at that Conference were Board Members Marjorie F. Rodgers, P.T., Chair, and Lois V. Rosedom-Boyd, Consumer Member, Ann Tyminski, Executive Director, and, Linda Bethman and Francesca Gibbs, Board Counsel. Also present were the Respondent and his attorney, Robert Joyce, and Roberta Gill, Administrative Prosecutor. The parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

BACKGROUND

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 first licensed on August 6, 2002. The Respondent's license expired on May 31, 2008.
2. At some of the time relevant to the charges herein, the Respondent was practicing physical therapy at The Water's Edge, a privately owned physical therapy practice located in Stevensville, Maryland. The Respondent was employed as the

Rehabilitation Director at The Water's Edge from August 21, 2006 to June 15, 2007. The Water's Edge is owned and operated by Owner A1, who is not licensed by any health occupation licensing board.

3. On or about September 28, 2006, the Board received a complaint from Physical Therapist A, a Staff Physical Therapist previously employed at The Water's Edge. Physical Therapist A alleged in her complaint that The Water's Edge was billing her services to insurance companies and Medicare under Physical Therapist B's name after he had terminated his employment, effective August 18, 2006.

4. As a result of the complaint received from Physical Therapist A, the Board opened an investigation into the allegations in the complaint.

5. During the above investigation, in addition to Physical Therapists A and B, and Owner A and Officer Manager A, other employees were interviewed, including the Respondent.

FINDINGS PERTINENT TO THE RESPONDENT

6, While the Board was already conducting an investigation of The Water's Edge, as a result of Physical Therapist A's complaint, it received a complaint from the Respondent, dated May 31, 2007, which indicated that, on 5/24/07, his charges entered on the SOAP note, exercise flowsheet and "superbill" or billing document, all had three direct one-on-one codes and a group code billed for each patient. On 5/25/07, he found

[1]The names of the owner, complainants or patients are confidential. The Respondent is aware of their

that all three superbills had been altered and changed from what he had billed to four direct one-on-one codes for each patient. The Respondent indicated that he had copies of two of the three changes made. The Respondent further indicated that he tried to get the alterations changed back to the original and then called the Board's investigator to alert him.

7. The Investigator indicated that he returned a telephone call to the Respondent who stated that he had received a call from a front desk worker who told him that The Water's Edge had received a Board subpoena for three patient files and, that on the days that a particular employee did billing, the billing records were altered for each of his patients. The Respondent said that, since he had already filed a complaint regarding the same thing, he did not return the call and was advised not to by the Investigator.

8. The Board received a second complaint from Complainant A, the former billing employee referred to as the front desk worker who called the Respondent. Complainant A had called the Maryland Insurance Administration, Insurance Fraud Division to report insurance fraud at The Water's Edge.

9. Effective June 15, 2007, the Respondent resigned his position at The Water's Edge, shortly after being interviewed by the Board's Investigator, as a result of the first complaint, by Physical Therapist A. Complainant A's employment was terminated by Owner A on May 29, 2007, the day the Board's Investigator first interviewed Complainant A as a result of the first complaint. Complainant A was told her position was being eliminated.

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identities.

10. As a result of receiving the two additional complaints which both alleged illegal billing practices at The Water's Edge, the Board launched a more extensive investigation into the practice..

11. The Board's investigation disclosed the following:

A. With regard to aquatic therapy, the Respondent and other therapists at the facility billed patients for aquatic therapy as a separate unit of therapy plus as a unit of group therapy, when treating patients simultaneously in groups in the pool. They billed Medicare and other insurers for aquatic therapy as separate units;

B. As a result of this disclosure, the Board retained a Physical Therapist expert to review patient records, who determined the following:

(1) Employees testified that the Respondent had instructed the therapists how to code for pool therapy when treating multiple patients, as follows: multiple patients could be treated at the same time in the pool; one patient from the group would be taken aside or worked on while the aide was working with the other patients: thus, individual units plus a group unit was billed for each patient.

(2) The Board's Investigator also analyzed the three files to set forth the names of the therapists who provided treatment on the dates the Expert based his report on.

(3) Combining the Expert's opinion and the analysis provided by the

Investigator, the following occurred with regard to Patient A, who went to The Water's Edge 24 times for treatment for lumbosacral sprain;

(a) On 3/29/07, the Respondent performed the initial evaluation;;

(b) On 5/7/07, the Respondent treated Patient A and the daily note indicated that three units of aquatic therapy and one unit of group therapy were performed, which is inappropriate coding;

(c) For the treatment of 5/10/07 of Patient A by the Respondent, the daily note/superbill indicated three units of aquatic therapy, which is inappropriate coding;

(d) When Patient A was treated by the Respondent on 5/24/07, the daily note indicated three units of aquatic therapy and one unit of group therapy; the superbill had four units of aquatic therapy and does not have a unit of group therapy. The coding was inappropriate;

(e) On 4/26/07, three patients were all scheduled for the Respondent for 60 minutes of aquatic therapy each, including Patient A. Patient A was charged three units of aquatic therapy and one unit of group therapy, which is difficult to accomplish with two other patients scheduled in the pool at the same time;

(f) On 5/3/07, three patients were scheduled at 10:30 AM for 50 minutes of aquatic therapy with the Respondent, including Patient A, who was charged three units of aquatic therapy and one unit of group therapy. As above, it is difficult to accomplish this with two other patients scheduled in the pool at the same time;

(g) On 5/10/07, four patients, including Patient A, were all scheduled at 10:30 AM for 60 minutes each of aquatic therapy. Patient A was charged four units of aquatic therapy and one unit of group therapy. It is difficult to perform with two other patients scheduled in the pool at the same time;[3]

(h) On 5/24/07, four patients, including Patient A, were all scheduled at 10:30AM with the Respondent for 60 minutes of aquatic therapy each. Patient A was charged three units of aquatic therapy and one unit of group therapy, which the Respondent could not physically perform with three other patients at the same time;

(i) The Expert opined that the above procedures/billings evidenced inconsistencies with the physical therapy services rendered and the charges submitted for payment, including: the number of units charged for that date of service, as well

[3]One patient cancelled.

as the double, triple and quadruple booking of patients for aquatic therapy. The Expert based this opinion on the fact that the therapist must be one-on-one in attended therapy with the patient between eight to 22 minutes. Most of the

patients that were grouped together, like Patient A, were overcharged for attended units.

(4) With regard to the Respondent's treatment of Patient B who went to The Water's Edge 11 times for treatment related to multiple Immune Deficiencies related to Scleroderma, and whose initial evaluation by another therapist occurred on 5/23/07, the following combined Expert's opinion and Investigator's analysis applies:

(a) The Respondent noted that, on 5/24/07, the Respondent initiated activities with Patient B in an aquatic environment. The aquatic flowsheet also illustrated aquatic exercises; yet, on the progress note, the Respondent wrote three units of therapeutic exercises and one unit of group therapy. On 5/24/07, Patient B and two others were scheduled at 10:30 AM for 60 minutes of aquatic therapy with the Respondent; although no "land" flow sheet is filled out, Patient B most likely had aquatic exercises, which would be difficult for the Respondent to perform with two other patients at the same time, since the exercises are to be one-on-one;

(b) For 5/30/07, although the flow sheet of exercises shows no indication that therapeutic exercises were performed, there is a written aquatic exercise note; thus, there is a discrepancy between the charges and the actual flow sheet of exercises. Patient B was scheduled for aquatic therapy at 6:00 PM with the Respondent, along with another patient at the same time. The Respondent charged Patient B for three units of therapeutic land exercises and one unit of group therapy, creating a discrepancy between the therapy note and charges, when compared to the aquatic flow sheet and appointment schedule.

(5) Patient C was seen 11 times at The Water's Edge for left knee degenerative joint disease. Following is the Expert's opinion regarding her treatment, as well as the Investigator's analysis:

(a) On 5/24/07, the Respondent saw the patient for a total of 60 minutes and performed three units of aquatic therapy and one unit of group therapy, which is inappropriate coding;

(b) On 5/24/07, there were four patients scheduled for aquatic therapy at the same time with the Respondent, including Patient C. As such, it was physically impossible to deliver three units of aquatic therapy and one unit of group therapy, as indicated in the patient's documentation for that date; thus,

the coding is inaccurate.

18. As set forth above, by failing to accurately code for his sessions, and by setting up a manner of billing not in accord with acceptable standards, the Respondent violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 13-316 (14), and (25).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 16th day of February, 2010, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice physical therapy is hereby hereby REPRIMANDED; and, it is further

ORDERED that the Respondent shall:

1. Take and pass, with the requisite percentage, a Board-approved ethics and law course and examination;[4]
2. Take and successfully pass a Board-pre-approved coding and billing course.
3. The above courses shall be completed within one year of the effective

date of the Order.

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that, if the Respondent again practices in Maryland, the Respondent shall practice in accordance with the laws and regulations governing the practice of physical therapy in Maryland; and be it further

ORDERED that, if the Respondent violates any condition of this Order, he shall be charged with unprofessional conduct. The burden of proof as a result of a breach of the conditions of the Order shall be on the Respondent to demonstrate compliance with the Order or its conditions; and be it further

ORDERED that, for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 2004), 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 that it is mandated to report to.

Margery F. Rodgers P.T.
Margery Rodgers, P.T., Chair
State Board of Physical Therapy Examiners

[4] The Respondent indicated that he has already taken such a course, which he must submit to the Board to ensure that it is comparable to the course which the Board regularly approves.

CONSENT OF STEPHEN SMITH, P.T.

I, Stephen Smith, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Andrew Joyce, and have been advised by him of the legal implication of signing this Consent Order;

2. I am aware that, without my consent, my license to practice physical therapy in this State cannot be limited except pursuant to the provisions of § 13-316 of the Act and the Administrative Procedure Act (APA), Md. State Govt. Code Ann. §10-201, et seq., (2004 Repl. Vol.).

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent to the foregoing Findings of Fact, Conclusions of Law and Order, although, if I had gone to a hearing, I would have provided a defense to each and every allegation, including calling witnesses and demanding strict proof thereof. By doing so, I waive my right to a formal hearing as set forth in § 13-317 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 13-318 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order, and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice physical therapy in the State of Maryland, should I ever seek to reinstate my license here.

2.9.10
Date

Stephen Smith, P.T.

STATE OF Florida:

CITY/COUNTY OF Santa Rosa:

I HEREBY CERTIFY that on this 9th day of February, ~~2009,~~ 2010 before me, Susan Reininger (Print Name), a Notary Public of the foregoing State and (City/County), personally appeared Stephen Smith, License No. 20664, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Susan Reininger
Notary Public

My Commission Expires: 3/4/2011

SUSAN REININGER
My comm. exp. Mar. 4, 2011
ID# 1177990 DD# 646555
( ) Personally Known (X) Other ID