

IN THE MATTER OF	*	BEFORE THE MARYLAND BOARD
WENDY ANN MERRY	*	OF PHYSICAL THERAPY EXAMINERS
License No. A1402	*	Case No. 04-5
Respondent	*	

* * * * *

CONSENT ORDER

The State Board of Physical Therapy Examiners (the "Board") charged **WENDY ANN MERRY, P.T.A.** (the "Respondent"), License No. A1402, with violating certain provisions of the Maryland Physical Therapy Act ("the Act"), codified at Md. Health Occ. ("H.O.") Code Ann. §§ 13-101 *et seq.* (2000 and Supp. 2003).

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

**§ 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, 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:

- (12) Practices physical therapy or limited physical therapy with an unauthorized person or supervises or aids an unauthorized person in the practice of physical therapy or limited physical therapy; (or)
- (16) Violates any provision of this title or rule or regulation adopted by the Board[.].

The Board charged the Respondent with violating the following regulations:

Code Md. Regs. ("COMAR") tit. 10 § 38.02.01 Code of Ethics (2002).

- F. The physical therapist and physical therapist assistant shall report to the Board of Physical Therapy Examiners all information that indicates a

person is allegedly performing, or aiding and abetting, the illegal or unsafe practice of physical therapy.

On February 16, 2006, a Case Resolution Conference ("CRC") was held in an attempt to resolve the Charges pending against the Respondent prior to a hearing. Present at the CRC were the Respondent; Katherine Karker-Jennings, Esquire, counsel for the Respondent; James C. Anagnos, Assistant Attorney General/Board Prosecutor; Richard Bloom, Assistant Attorney General/Acting Board Counsel; Ann Tyminski, Executive Director; Peter Schon, Assistant Executive Director; Margery Rodgers, Board Chairperson; and Lois Rosedom-Boyd, Board Member. As a result of negotiations between the parties and the CRC, the parties agreed to enter into the following Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds:

1. At all times relevant to the charges herein, the Respondent was licensed to practice limited physical therapy in the State of Maryland. The Respondent was first licensed on August 15, 1989, being issued License Number A1402.
2. At all times relevant to the charges herein, the Respondent was employed as a physical therapist assistant at Physical Medicine Rehabilitation Center of the Metropolitan Washington Orthopaedic Association [hereinafter "PMRC"], which had several offices in the State of Maryland. The Respondent worked at PMRC for fifteen years before leaving her employment at PMRC on April 2, 2004

3. Employee A¹ was employed at PMRC as a physical therapy aide from 2002 until 2004.
4. Employee A has never been licensed by the Board as either a physical therapist or a physical therapist assistant.
5. A physical therapy aide is "a person who performs certain physical therapy duties under the direct supervision of a licensed physical therapist."²
6. "Direct supervision" means that a licensed physical therapist is personally present and immediately available within the treatment area to give aid, direction, and instruction when physical therapy procedures or activities are performed.³
7. The Respondent worked with Employee A at PMRC's Oxon Hill, Maryland location.
8. Employee A advised the Board's investigator that while she was employed at PMRC her duties included whirlpool, transverse friction massage, and progressing patients (i.e., showing patients how to do exercises and then increasing the weight and/or the number of repetitions).⁴
9. Employee A further advised the Board's investigator that she frequently performed these duties without a licensed physical therapist being personally present and immediately available in the treatment area.

¹Employees' and patients' names are confidential.

²See COMAR 10.38.04.01B (2001).

³See COMAR 10.38.01.01B(7) (2001).

⁴Activities that physical therapy aides are permitted to perform under direct supervision are enumerated at COMAR 10.38.04 (2001).

10. Employee A would perform the aforementioned treatments on patients without the direct supervision of a physical therapist, write the patient treatment note, and complete a billing slip, which was referred to as a "charge ticket" at PMRC.

11. Thereafter, a physical therapist would "co-sign" the treatment note even though the "co-signing" physical therapist did not treat the patient or supervise the therapy provided by Employee A.

12. The Board's investigator interviewed the Respondent, who acknowledged that physical therapy aides wrote treatment notes that were later co-signed by physical therapists.

13. The Respondent also stated that physical therapy aides: "Mostly treated exercise patients, sometimes did cleaning and things like that, assist therapists, you know, maybe with the setup or something like that."

14. The Board's investigator interviewed Employee B, a physical therapist assistant who has worked at PMRC since June 1999, and who stated that physical therapy aides at PMRC perform unauthorized duties: "[aides] usually do the exercise programs and they supervise the patient, they follow them, make sure that that patient is performing all the exercises, and they also do whirlpools. . . ."

15. The Board's investigator interviewed Employee C, a physical therapist who began working at PMRC on May 14, 2001, and who confirmed that physical therapy aides at PMRC write patient treatment notes and complete fee sheets.

16. Employee C also described the extent to which physical therapy aides are involved in treating patients when she told the investigator: "when [the manager at PMRC] hires the

aides, we were—we trained aides, they shadow us and we instruct them and show them how—what they need to do and—as far as supervising patients, how to do exercises. And after they see the patient, we told them that, call the therapist.” The physical therapist then co-signs the treatment note.

17. The Board’s investigator interviewed Employee D, a physical therapist employed at PMRC from 2001 until 2004. The Board’s investigator asked Employee D if physical therapy aides at PMRC had their own patient loads. Employee D answered, “yeah.”

18. Employee E, a physical therapist assistant employed at PMRC since November 1997, advised the Board’s investigator that while an aide is working with a patient a physical therapist is “in the same vicinity,” but that the physical therapist could at the same time be treating another patient.

19. Employee F, a physical therapist assistant employed at PMRC since 1993, provided the following description of the treatment system at PMRC: “Once the patient has been deemed essentially independent in their exercises, the—the physical therapist will—will deem them independent to where an aide can supervise them through their—their workout.”

20. The Board’s investigator then asked Employee F: “so the patient no longer has to see a physical therapist, they’re then seen by an aide and they go through their exercises and so forth working with an aide, is that correct?” Employee F answered: “Yes.”

21. When asked if the aide could be treating a patient while the physical therapist is in another treatment area treating another patient, Employee F answered: “Yes.”

22. Physical therapy aides who were not licensed by the Board to practice physical therapy or limited physical therapy were nevertheless performing physical therapy at PMRC while the Respondent was concurrently employed there as a physical therapist assistant. However, the Respondent failed to report to the Board the illegal and unsafe practice of physical therapy by unlicensed individuals at PMRC.

CONCLUSIONS OF LAW

The Board finds that the Respondent violated H.O. §§ 13-316(12) and (16), and COMAR 10.38.02.01.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and agreement of the parties, it is this 21st day of March 2006, by a majority of a quorum of the Board

ORDERED that the Respondent is **REPRIMANDED**; and be it further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of One (1) Year, subject to the following conditions:

1. The Respondent shall take and pass a Board-approved college level ethics course, which shall be in addition to any other required continuing education courses mandated for continued licensure; and
2. The Respondent shall take and pass the next available Board-approved law course, which shall be in addition to any other required continuing education courses mandated for continued licensure; and

3. The Respondent shall practice in accordance with the laws and regulations governing the practice of limited physical therapy in the State of Maryland; and it is further

ORDERED that if the Board receives information that the Respondent has violated any condition of this Order, the Board will, unless emergency action is required as delineated in Md. State Govt. Code Ann. § 10-226(c)(2) (2004 Repl. Vol.) give the Respondent twenty (20) days to respond in writing to the allegation. Upon receipt of the Respondent's written response to the allegation, or, in the absence of a written response, the Board may, after giving the Respondent an opportunity to be heard, impose any penalty that it could have imposed under the Act for the offense that has already been proven or admitted in this case, including a reprimand, probation, probation for a longer period of time and/or with additional conditions, an imposition of a monetary penalty, suspension, and/or revocation. If the Board receives information that the Respondent's practice requires emergency action as delineated in Md. State Govt. Code Ann. § 10-226(c)(2) (2004 Repl. Vol.), the Board may take immediate action against the Respondent, providing notice and an opportunity to be heard are provided in a reasonable time thereafter. The burden of proof for any action brought against the Respondent as a result of a violation of the conditions of this Order shall be upon the Respondent to demonstrate compliance with the Order and its conditions; and it is further

ORDERED that the Consent Order is effective as of the date on which it is signed by the Board's Chair; and it is further

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on her license, provided that she can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and it is further

ORDERED that the Respondent shall bear the expenses associated with this Consent Order; and it is further

ORDERED that for the purposes of public disclosure, as permitted by the Maryland Public Information Act, codified at Md. State Govt. Code Ann. §§ 10-611 *et seq.* (2004 and Supp.), this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order resulting from formal disciplinary proceedings, and that the Board may also disclose same to any national reporting data bank to which the Board is mandated to report.

MARCH 21, 2006
Date

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

CONSENT OF WENDY ANN MERRY, P.T.A.

I, Wendy Ann Merry, P.T.A., License No. A1402, by affixing my signature hereto, acknowledge that:

1. I am represented by counsel and have reviewed this Consent Order with my attorney, Katherine Karker-Jennings, Esquire.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board pursuant to Md. Health Occ. Code Ann. § 13-317 (2005 Repl. Vol.) and Md. State Govt. Code Ann. §§ 10-201, *et seq.* (2004 Repl. Vol.).

3. I acknowledge the validity and enforceability of this Consent Order as if entered into after a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.

4. I voluntarily enter into and agree to abide by the foregoing Findings of Fact, Conclusions of Law, and Order, and submit to the terms and conditions set forth herein as a resolution of the Charges against me. 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 or any adverse ruling of the Board that might have followed such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may suffer disciplinary actions, which may include revocation of my license to practice limited physical therapy in the State of Maryland.

6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order.

2-28-06
Date

Wendy Ann Merry PTA
Wendy Ann Merry, P.T.A.

Reviewed and approved by:

Katherine Karker-Jennings
Katherine Karker-Jennings, Esquire
Attorney for the Respondent

STATE OF: Virginia

CITY/COUNTY OF: Fairfax

I HEREBY CERTIFY that on this 28th day of February 2006,
before me, a Notary of the State of Virginia and the City/County of
Fairfax, personally appeared Wendy Ann Mezey,
P.T.A., License No. A1402, and made oath in due for of law that signing the foregoing
Consent Order was her voluntary act and deed, and that the statements made herein are
true and correct.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public Cheryl E. Morrison

CHERYL E. MORRISON
Notary Public
Commonwealth of Virginia
My Comm. Exps. 10/31/2007

My Commission expires: 10/31/2007