

IN THE MATTER OF * **BEFORE THE**
IRA SILVERSTEIN, P.T. * **MARYLAND BOARD OF PHYSICAL**
LICENSE NO. 15007 * **THERAPY EXAMINERS**
RESPONDENT * **Case Nos. PT-12-25**

* * * * *

FINAL ORDER

Procedural Background

On September 10, 2012, the Maryland Board of Physical Therapy Examiners (the “Board”) issued a Notice of Intent to Revoke Physical Therapy License against the Respondent, Ira Silverstein, P.T. The Respondent submitted a timely request for a hearing. On September 17, 2013, the Board held an evidentiary hearing before a quorum of the Board, in accordance with Maryland Administrative Procedure Act, Md. Code Ann., State Gov’t § 10-201 *et seq.*, and the Board’s regulations, COMAR 10.38.05.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence.

- State’s Exhibit No. 1 - Adverse Action Report, May 15, 2012
- State’s Exhibit No. 2 - Government of the District of Columbia, Department of Health, Board of Physical Therapy Investigative Report (with attachments), In the Matter of Ira Silverstein, April 13, 2011
- State’s Exhibit No. 3 - District of Columbia Health Professional Licensing Information, May 16, 2012

- State's Exhibit No. 4 - Government of the District of Columbia, Department of Health Board of Physical Therapy, Decision and Final Order of the Board, In re: Ira Silverstein, May 11, 2012
- State's Exhibit No. 5 - Maryland Board of Physical Therapy Examiners, Online License Renewal Form, April 2, 2011
- State's Exhibit No. 6 - Investigative Report, August 17, 2012
- State's Exhibit No. 7 - Notice of Intent to Revoke Physical Therapy License, September 10, 2012

B. Witness Testimony

State's Witnesses:

John Bull, Compliance Manager and Investigator,
Board of Physical Therapy Examiners

Respondent's Witnesses:

Ira Silverstein, P.T., Respondent

FINDINGS OF FACT

Based upon the documentary and testimonial evidence admitted into the administrative record in this matter, the Board finds the following:

1. At all times relevant herein, the Respondent was licensed to practice physical therapy in the State of Maryland under License Number 15007, although he has not practice in Maryland for approximately 30 years. The Respondent did not renew his Maryland license, which expired on May 31, 2013. (T. 27)
2. The Respondent is also licensed to practice physical therapy in the District of Columbia under License Number PT740. (State's Ex. 3)

3. At all times relevant herein, the Respondent was a licensed physical therapist practicing in D.C. (State's Ex. 2, 5)

DISTRICT OF COLUMBIA DISCIPLINARY ACTION

4. On or about May 15, 2012, the Board received information that the Respondent's D.C. physical therapist license was reprimanded pursuant to an order dated May 11, 2012. (State's Ex. 6; T. 14)
5. The Board obtained a copy of the D.C. Order, which indicated the D.C. Board of Physical Therapy disciplined the Respondent based primarily on sexual misconduct with a female patient and failing to abide by a previous, non-disciplinary order. (State's Ex. 4)¹
6. Specifically, the D.C. order included the following pertinent findings of fact:
 - a. During the therapeutic massage, Respondent asked to remove KD's bra. (Finding #9)
 - b. During the therapeutic massage, KD's sheet dropped below her chest exposing her breasts. (Finding #10)
 - c. During the therapeutic massage, KD felt an object on the nipple area of her breasts which she described as feeling "feather-like", like a "paint brush", or like the tip of a "felt tip marker". (Finding #11)
 - d. When KD opened her eyes, the Respondent asked her if she would like to take off her underwear and go further, to which KD responded, "No, I'm done here." (Finding #13)
 - e. Respondent stood in the doorway and watched KD put on her bra and gown. (Finding #15)
 - f. Respondent did not document a treatment plan or any progress notes in his medical records for the February 7, 2011 appointment with KD. (Finding #18)
 - g. Respondent did not submit a bill to KD or her insurance carrier for the February 7, 2011 appointment. (Finding #19)

¹ The Respondent entered into a non-public, non-disciplinary order with the DC Board which required that he have a female chaperone, approved by the Board, present with him at all times during any examination or treatment of a female patient. The DC Board issued this order as an interim stopgap to protect the public because the Respondent requested a postponement of the DC Board's pending action to obtain legal counsel, which would result in at least a three month delay. (State's Ex. 4)

- h. KD Reported the incident that evening to her husband, her mother, and her cousin who is her best friend. (Finding #20)
- i. KD filed a formal complaint with the [D.C.] Board the following day on February 8, 2011. (Finding #21)
- j. Respondent entered into a non-disciplinary agreement with the [D.C.] Board effective September 30, 2011, which required him to have a female chaperone present with him at all times during any examination, treatment, or rendering of professional services to a female patient, and to maintain appropriate documentation of such in the applicable patient records. (Finding #24)
- k. On December 9, 2011, the [D.C.] Board investigator observed the Respondent alone with a female patient in an examination room without the presence of a female chaperone. (Finding #25)

(State's Ex. 4)

- 7. The D.C. Board of Physical Therapy issued a sanction of a reprimand and a fine of \$10,000. In addition, the D.C. Board ordered that, for one year, the Respondent must have a Board-approved female chaperone present inside the examination room with him at all time during any examination, treatment, or rendering of professional services to a female patient.

MARYLAND MISCONDUCT

- 8. On April 2, 2011, the Respondent submitted an Online License Renewal with the Board for renewal of the Respondent's Maryland physical therapist license.
(State's Ex. 5)
- 9. The Respondent answered "no" to all of the character and fitness questions on the renewal application, including the following: "Has a state, federal, or foreign licensing or disciplinary board or agency (including Maryland, D.C. and Puerto Rico), or a comparable body in the armed services, filed any complaints or charges against you, or investigated you for any reason?" (State's Ex. 5)

10. The Respondent was interviewed by the D.C. Board's investigator on February 7, 2011, regarding the complaint filed against him by KD, and thus had direct knowledge of the D.C. Board's investigation against him. (State's Ex. 6; T. 22)
11. The Respondent affirmed on the Board's renewal application that "the information I have given in answer to these questions is true and correct to the best of my knowledge and belief." (State's Ex. 5)
12. The Respondent willfully submitted a false application to the Board.
13. The Respondent also failed to notify the Board of the D.C. Board's May 11, 2012 disciplinary action against him, as required by the Board's regulations. (T. 29)

OPINION

As the facts found above show, the Respondent was formally disciplined in the District of Columbia for engaging in sexual misconduct with a patient. After a full evidentiary hearing, the D.C. Board found that the Respondent engaged in sexual misconduct with a female patient, in a private treatment room, during a treatment session in which he was ostensibly providing therapeutic massage. At the hearing before this Board, the Respondent demonstrated no remorse or concern for the patient, and continued to quibble with minor findings of the D.C. Board without ever addressing his primary offense. Despite the rather forceful language in the D.C. Board's Order regarding the Respondent's actions and failure to accept responsibility, it chose to sanction the Respondent merely with a reprimand and a fine. The Respondent's misconduct warrants substantially different discipline in Maryland. The Board takes a strong position regarding sexual misconduct and finds that the sexual misconduct involved in this case warrants the most stringent sanction of revocation. Indeed, if the

facts established that a licensed physical therapist engaged in similar misconduct in Maryland, the physical therapist's license would most likely be revoked. The Respondent should not benefit merely because he committed his misconduct outside of Maryland. Furthermore, there is no mitigating or extenuating factors in this case that warrant a sanction less than revocation. This sanction is especially appropriate given that the Respondent has already demonstrated to the D.C. Board that he cannot be trusted to abide by restrictions placed on his license.

From the Board's perspective, it is also an egregious violation that the Respondent submitted false information to the Board when he renewed his physical therapist license in Maryland. The Respondent's failure to provide the Board with truthful information thwarted the Board's ability to make an informed decision in processing his renewal application, and possibly take earlier action. In similar fashion to the Respondent's failure to take responsibility for his sexual misconduct with Patient KB, he again refuses to acknowledge his willful failure to correctly complete his renewal application in Maryland. Specifically, the Respondent testified as follows:

Q: Dr. Silverstein, you said you did not maliciously – did not intend to answer dishonestly on your application. Did you read the question?

A: Technically, no, because I've gone through it so many times before that at this point, because I was in survival mode, I just filled out the application as I always had in the past.

Q: So you were aware – were you aware that when you checked the box and provided your signature, that you were attesting to the truth of the questions that you answered?

A: I was attesting to the truth of them but did I fully read the questions?
No.

(T. 28-29) The Board does not find Respondent's testimony to be credible or persuasive. The Respondent admits to having completed the Board's application "so many times before", and thus, the Board finds that he was familiar with the nature and content of the Board's character and fitness questions despite not having "fully read" them. In addition, the Respondent states that he was in "survival mode", attempting to save his D.C. license. Therefore, the Respondent had very real motivation to intentionally withhold information from the Board regarding the D.C. Board's active investigation. Additionally, three separate character and fitness questions on the Board's application begin with, "Has a state, federal, or foreign licensing or disciplinary board or agency (including Maryland, D.C. and Puerto Rico)..." (State's Ex. 5) Therefore, unless the Respondent was completing the application blindfolded, he was clearly aware that the D.C. Board's action against him was within the purview of these questions, particularly since he had completed the same or similar application numerous times over the past 30 years. The Board does not need to find that the Respondent incorrectly answered the questions with malice or deceit, but it does find that the Respondent knowingly answered "no" to Question 3 when he should have answered in the affirmative. As a result, information of critical importance was not provided to the Board.

Physical therapists are trained to provide care and rehabilitative services to individuals who are suffering from painful and sometimes debilitating physical injuries or impairments. The public must be able to trust that a physical therapist will be not only competent, but ethical in the provision of physical therapy services. Physical therapy is a "touching profession" and often involves palpating sensitive areas of the body. That a

physical therapist would take advantage of this opportunity to satisfy personal sexual desires is beyond the pale.

The Respondent grossly violated the public's trust by touching Patient KB in a sexual manner under the guise of treatment, as found in the DC Board's disciplinary order. The Respondent further violated the Board's and the public's trust by willfully submitting a false record to the Board withholding information regarding the active investigation of his sexual misconduct by the D.C. Board.

The Board believes that the Respondent, through his actions, has forfeited his right to practice physical therapy in Maryland. Although the Respondent has not practiced in Maryland for some time, and has opted to not renew his license, the Board finds that the revocation of the Respondent's Maryland license is a necessary catharsis for the profession. The Respondent's sexual misconduct is inexcusable, and his subsequent actions and lack of accountability further demonstrate his inability to practice physical therapy in an ethical manner. Through this Order, the Board is attempting to redress the irreparable harm caused by the Respondent to the public and the physical therapy profession.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and opinion, the Board concludes that the Respondent is subject to discipline pursuant to Maryland Code Annotated, Health Occupations Article §§ 13-316(10) and (12) and COMAR 10.38.02.01H.

ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusions of Law, by a unanimous decision of a quorum of the Board, it is hereby:

ORDERED that the Respondent's license to practice physical therapy in Maryland is **REVOKED**; and be it further,

ORDERED that this is a final order of the Maryland Board of Physical Therapy Examiners and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't §10-617(h).

1/3/14
Date

John Baker
John Baker, PT, DScPT
Chair
Board of Physical Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 13-318, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.