

IN THE MATTER OF	*	BEFORE THE STATE BOARD
ANDREW SIMMES, P.T.A.	*	OF PHYSICAL THERAPY
License No. A02405	*	EXAMINERS
Respondent	*	Case Number: 03-06

* * * * *

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., (the "Act") (2000 Repl. Vol.), the Board charged Andrew Simmes, P.T.A., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions 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:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license, temporary license, or restricted license for the applicant, licensee, or holder or for another;
- (2) Fraudulently or deceptively uses a license, temporary license, or restricted license;
- (6) In the case of an individual who is authorized to practice limited physical therapy under this title;
 - (i) Practices physical therapy other than as authorized by this title;
- (8) Is convicted of a violation of a narcotic law;

- (11) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;
- (16) Violates any rule or regulation adopted by the Board;
- (20) Commits an act of unprofessional conduct in the practice of physical therapy [;].

The Board further charged that the Respondent violated the following provision of the Act, § 13-101 (h) (3):

- (3) "Practice limited physical therapy" does not include:
 - (i) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;
 - (ii) Planning treatment programs that are based on test findings [;].

The Board also charged that the Respondent violated the following regulation, Code Md. Regs. tit. 10 § 38.03 (January 1, 1996):

.02-1 Requirements for Documentation.

B. The physical therapist assistant shall adhere to the Board-approved requirements for documentation to the extent that the requirements are applicable to an assistant's scope of practice. The physical therapist assistant shall document the patient's chart for progress notes following the initial visit as follows:

- (1) Date;
- (2) Modalities, procedures, etc;
- (3) Cancellations, no shows;
- (4) Subjective response to treatment;
- (5) Objective functional status; and

- (6) Signature, title (PTA), and license number with identifying signatures appearing on the patient's chart, although the flow chart may be initialed.

and 10 § 38.03 (March 18, 2002)

.02-1 Requirements for Documentation.

C. The physical therapist assistant shall document the patient's chart each time the patient is seen by the physical therapist assistant following the physical therapist's initial evaluation or reevaluation by including the following:

- (1) Date;
- (2) Cancellations and no-shows;
- (3) Subjective response to previous treatment;
- (4) Modalities, procedures, or both, including parameters involved, and areas of body treated;
- (5) Objective functional status;
- (6) Response to treatment;
- (7) Continuation of plan as established by the physical therapist or change of plan as authorized by the physical therapist; and
- (8) Signature, title (PTA), and license number, although the flow chart may be initialed.

The Respondent was given notice of the issues underlying the Board's charges by letters dated March 22, 2004, and May 24, 2004. Accordingly, a Case Resolution Conference was held on June 9, 2004 and was attended by Shirley L. Leeper, P.T.A., Board member, Ann Tyminski, Executive Director of the Board, and Linda Bethman, Counsel to the Board. Also in attendance were the Respondent, who voluntarily appeared without an attorney, and Roberta Gill, Assistant Attorney General, Administrative Prosecutor.

Following the Case Resolution Conference, 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

1. At all times relevant to the charges herein, the Respondent was licensed to practice as a physical therapy assistant in the State of Maryland. The Respondent was first licensed on October 8, 1999. The Respondent's license expired on May 31, 2003; the Respondent failed to renew his license.

2. At all times relevant hereto, the Respondent worked at Total Health Family Clinic (Total), which operated three offices in Prince George's County. Total was a multi-specialty clinic, which employed a physician, a chiropractor, a physical therapist and a physical therapist assistant.

ALLEGATIONS WITH RESPECT TO PATIENT A¹

3. By letter dated September 26, 2002, the Board received a report from a Claim Specialist from State Farm Insurance Companies regarding the care given to Patient A, inquiring whether the Respondent: "was treating within the scope of practice afforded to him under his physical therapy license; providing treatment based on the supervision and direction of a physical therapist; (whether in Maryland)... a medical doctor or chiropractor (could) direct the treatment and/or supervision of a physical therapy assistant; and, (did) the records reflect the documentation required for...the physical therapist assistant to support the treatment rendered to the patient in accordance with Maryland law?"

¹ The patient's name is confidential.

4. As a result of the receipt of the claim, the Board launched an investigation which disclosed the following:

- A. Patient A first presented to Total on February 6, 2002, as a result of injuries received in a motor vehicle accident two days earlier.
- B. Patient A complained of headaches, and neck and back pain.
- C. The chiropractor conducted his initial examination on February 6, 2002 and prescribed and applied physical therapy modalities on that date.
- D. The chiropractor specifically prescribed a course of treatment, consisting of joint manipulations and mobilizations, electrical stimulation, moist heat applications, intersegmental traction, myotherapy, ultrasound and rehabilitative exercises.
- E. On February 7, the physician and the physical therapist conducted their respective initial examinations of Patient A. The physician prescribed "P.T. and chiropractic therapy 3-5 times a week."
- F. The physical therapist purportedly documented a physical therapy evaluation which called for 3-5 weeks of physical therapy at twice a week, to include therapeutic exercise, mobilization, STM (soft tissue massage) heat/cold, E-stim Ultrasound, HEP (home exercise program), functional activities and craniosacral therapy. In essence, the physical therapist followed the same treatment plan used by the chiropractor on the previous day, with the exception of eliminating one modality/exercise, which is illegible and not detailed in the patient's notes by the

chiropractor.² The physical therapist added craniosacral therapy in his evaluation. However, he also included intrasegmental traction in his treatment, which was not listed in his plan.

- G. On February 8, the chiropractor again treated Patient A, applying the same modalities he had applied on February 6, and adding an illegible treatment.³
- H. The Respondent first treated Patient A on February 11, 2002. The Respondent discontinued the electrical muscle stimulation, and heat and ice, even though there was no order by a physical therapist to do so. Otherwise, the Respondent continued the treatment prescribed by the chiropractor, including the upper trapezius exercise. The Respondent did not follow the physical therapist's plan of craniosacral therapy.
- I. The Respondent's notes failed to contain all of the information required by the Board or to meet the standards of documentation set by the Board. For example, in the Subjective part, the Respondent failed to refer to the effects of the previous treatments. In the Objective part, the Respondent notes that he applied "ther Ex" (therapeutic exercise), without stating the type of exercise. For the A/P portion, the Respondent noted "Cont per PT," however, it appears that the Respondent was not following the plan set forth by the P.T., but the plan of the chiropractor, inasmuch as the chiropractor used SKC and bridging, and the physical

2 A telephone discussion between the chiropractor and the Administrative Prosecutor in March 2004 disclosed that SKC means "single knee to chest," an exercise.

3 The chiropractor informed the Administrative Prosecutor in March 2004 that that exercise was "U. Traps" or upper trapezius stretch.

therapist did not. Likewise the chiropractor used lumbar sacral stabilization (quads), which the Respondent followed, but which the physical therapist did not use.

In addition, the P.T. used craniosacral therapy, but the Respondent did not.

J. The Respondent treated Patient A on the following subsequent dates: February 12, 13, 14, 19, 21, 25, and March 13 and 21, 2002.

K. The physical therapist and the Respondent both stated that they would contact each other on an "as needed basis." There are no documented contacts or evidence of supervision by the physical therapist regarding the Respondent. It is incumbent that the Respondent be supervised by a physical therapist and take his direction in treatment from him, not from a chiropractor.

4. As set forth above, by following the physical therapy plan set forth by the chiropractor, by failing to be supervised by the physical therapist, by practicing outside his scope of practice by discontinuing treatment without authority, and, by failing to maintain appropriate treatment notes, the Respondent violated the Act and regulations thereunder.

ALLEGATIONS REGARDING THE RESPONDENT'S LICENSE APPLICATIONS

5. On March 19, 1998, the Respondent was arrested for Driving While Intoxicated (DWI). On June 16, 1998, the Respondent received probation before judgment, and on July 8, 1999, the Department of Motor Vehicles (MVA) placed an alcohol restriction on his license. By application dated and signed on May 28, 1999, but notarized on July 15,

1999, the Respondent submitted an application for initial licensure as a physical therapist assistant to the Board. On Part 7 thereof, Question "a" asked: Are you presently charged with the commission of a crime? Question "b" asked "Have you ever been convicted of a crime?" To both of these questions, the Respondent answered "no."

6. Based upon the Respondent's false responses to the above questions, the Board issued the Respondent a temporary license on July 20, 1999, and subsequently issued to the Respondent a permanent license after he passed the examination. That license expired May 31, 2001.

7. On March 11, 2001, the Respondent was arrested by the Montgomery County Police Department for DWI and possession of marijuana, as well as possession of paraphernalia. On January 8, 2002, the Respondent was found guilty and was given a sentence of one year, which was suspended, on the CDS (marijuana possession) charge; the charge of possession of paraphernalia was nolle prossed, as was the charge of failing to obey an official red signal and the charge of license restriction violation; and the Respondent was found guilty of DWI and received a sentence of two years, of which two years were suspended, and the Respondent was given probation for three years with restriction and conditions.

8. By renewal application received by the Board on May 11, 2001, the Respondent answered "no" to the following questions: 1. Have you been addicted to the use of drugs or alcohol with the result that your ability to practice your profession has been impaired?; 6. Have you pled guilty, nolo contendere, or been convicted of, or received probation before judgment of driving while intoxicated or of a controlled dangerous substance offense?"

9. By failing to disclose the charge of DWI on his initial application, and by failing to disclose the DWI conviction/probation before judgment on his license renewal, the Respondent obtained a license and a renewal thereof in violation of the Act.

ALLEGATIONS REGARDING THE VIRGINIA BOARD ORDER

10. By Order dated October 31, 2002, the Respondent entered into a Consent Order with the Commonwealth of Virginia, Department of Health Professions, Board of Physical Therapy (Virginia Board). The Consent Order was based upon the Respondent's conviction on January 8, 2002, in Montgomery County, Maryland of Driving While Intoxicated and Possession of Marijuana, which resulted in the Respondent's sentencing to a term of two years' incarceration with an additional year to be served concurrently, which sentence was suspended and the Respondent assessed a \$1000 fine and placed on probation for a period of three years with one year supervised and two years unsupervised.

11. The Virginia Board ordered that, *inter alia*, the Respondent provide, within fifteen days of the date of entry of this Order, written documentation from his court-appointed probation officer indicating his anticipated date of release from probation and that he is in compliance with the terms of said probations. Thereafter the Respondent was to submit a report to the Board on a quarterly basis until such time as he is released from probation.⁴ The Respondent was also required to comply with Virginia laws regarding the practice of physical therapy assisting and to cooperate with the Virginia Board in an investigation or inspection of his practice.

⁴ The Respondent sent the Virginia Board a letter, dated March 31, 2004, indicating that he was still on unsupervised probation in the State of Maryland and would be until January 8, 2005. The Respondent further informed the Virginia Board that he worked in home health with the geriatric population.

12. By being disciplined in Virginia for conduct that is grounds for discipline in Maryland, the Respondent violated the Act.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated Md. Health Occ. Code Ann. § 13-316 (1), (2), (6), (8), (11), (16), and (20), and, §13-101 (h) (3) (i) and (ii). The Board also finds that the Respondent violated Code Md. Regs. tit. 10 § 38.03.02-1 B and .02-1C.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of July, 2004, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice as a physical therapist assistant is hereby **SUSPENDED**, and that Suspension is immediately **STAYED**; and, be it further

ORDERED that the Respondent shall be placed on **PROBATION** for one (1) year, subject to the following conditions:

1. During Probation, the Respondent shall have random drug testing at a lab approved by the Board and paid for by himself, no less than once every three (3) months during the Respondent's probationary period;
2. The Respondent shall attend AA or NA meetings during the term of Probation and maintain a record proving his attendance;

3. The Respondent shall take and pass the Law and Ethics course approved by the Board; and,
4. The Respondent shall take and complete a Board-approved documentation course.

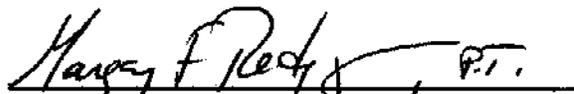
ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including lifting the Stay of Suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice as a physical therapist assistant in Maryland; and be it 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 his license, provided that he 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;

ORDERED that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 1999), 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 Rodgers, P.T., Chairperson
State Board of Physical Therapy

CONSENT OF ANDREW SIMMES, P.T.A.

I, by affixing my signature hereto, acknowledge that:

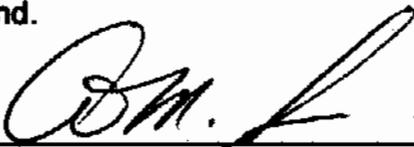
1. I am not represented by an attorney and have voluntarily waived the right to be so represented;

2. I am aware that without my consent, my license to practice as a physical therapy assistant in this State cannot be limited except pursuant to the provisions of Md. Health Occ. Code Ann. § 13-316 (2000 Repl. Vol. and 2003 Supp.) and the Administrative Procedure Act (APA), Md. State Govt. Code Ann. §10-201, et seq. (1999 Repl. Vol. and 2003 Supp.).

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

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. 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 as a physical therapy assistant in the State of Maryland.

7/8/04
Date


Andrew Simmes, P.T.A.

STATE OF VIRGINIA

CITY/COUNTY OF FAIRFAX:

I HEREBY CERTIFY that on this 13th day of July, 2004, before me, ANDREW SIMMES, a Notary Public of the foregoing State and (City/County),
(Print Name) personally appeared Andrew Simmes, License No. A02405, 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.

Aziza Mojadedi
Notary Public

My Commission Expires: 1/31/2008