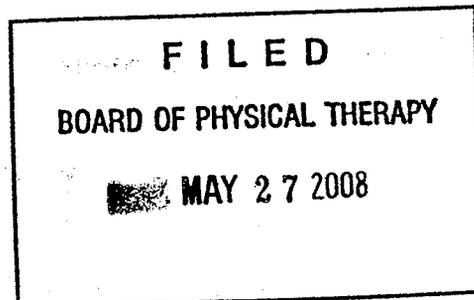


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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PHYSICAL THERAPY EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

JOSEPH MCDIVITT, P.T.
License No. 40QA0053800

Administrative Action

CONSENT ORDER

TO PRACTICE PHYSICAL THERAPY
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Physical Therapy Examiners (hereinafter "the Board") upon receipt of information questioning the physical therapy services that were provided to patient C.L. Specifically, the complaint alleged incompetence and malpractice for an injury to the patient due to a burn obtained by a hot pack placed on the patient's right knee on June 16, 2004.

On January 9, 2007, Respondent appeared with counsel, David S. Barnak, Esq., at an investigative inquiry into the matter held by the Board. Respondent testified that he provided physical therapy services to C.L from June 2, 2004, through June 21, 2004, upon

the referral by an orthopedist for treatment of the cervical spine with therapeutic modalities three times a week for four weeks, due to injury sustained in an automobile accident. The patient was 84 years old at the time physical therapy was provided and had suffered a stroke in 1987, which left her without the ability to speak and wheel chair bound. Respondent further testified that he obtained the patient's medical history from her son-in-law, who brought her to the facility for treatment. Upon review of the patient record, specifically, the initial evaluation, the Board found that the medical history was incomplete, as it failed to list any medications that the patient was taking, and respondent did not make any findings of functional limitations or functional goals. The patient record also did not contain a physical therapy diagnosis, nor did the initial evaluation address physical therapy diagnosis, findings and treatment protocols to be implemented by the Respondent for the treatment of the right knee as required by the records regulation, pursuant to N.J.A.C. 13:39A-3.1. While the evaluation noted a home exercise program was to be provided to the patient, the record did not include a copy of the exercises given or a description of the home exercise program itself.

Respondent's testimony and submissions demonstrated that he prepared a flow chart for each patient. C.L.'s flow chart was completed at the first visit, but Respondent informed the Board, that the flow chart did not accurately portray the physical therapy services that he provided. Respondent stated that the billing record depicted the actual services that he performed on this patient. The flow chart, which is part of C.L.'s patient record, indicated that ultrasound and electric stimulation were provided at each visit, but Respondent testified that he did not provide those modalities.

Respondent did not document the treatment to the patient's right knee in the patient record nor in the initial evaluation. Respondent testified that he did not bill for the treatments because it was his experience that as a PIP claimant, the services to the knee, which were not included in the physician's referral, would not be covered by the insurance carrier. He testified that his plan of care for the right knee consisted of moist heat applied by using a hydrocollator that was wrapped in terry cloth towels and applied over the patient's clothing, followed by manual therapy consisting of patella mobilization and gentle stretching of the hamstring muscle.

Regarding the treatment on June 16, 2004, Respondent confirmed that he placed moist heat on the cervical spine and simultaneously put moist heat on the right knee. He testified that he recollected that he removed the heat to the cervical spine after ten or fifteen minutes had elapsed but he forgot to remove the moist heat to the knee. Respondent also testified that he did not recall how long the moist heat was on the patient's right knee, nor did he inspect the knee at the time of the removal of the hot pack. He further testified that he did not notice a burn on June 16, but when he examined the knee on June 21, 2004, he observed an intact blister on the knee. This was the last time that he saw the patient as she discontinued treatment with him on June 25, 2004.

Having reviewed the entire record, including the testimony and submissions of Respondent at the investigative inquiry, it appears to the Board that Respondent's repeated use of therapeutic modalities on a patient with deficient sensation, lack of testing to determine sensation to the right lower extremity, failure to measure the impairment of the right knee, failure to adequately time the modality and use of a thermal agent, when contraindicated, constitute repeated acts of negligence, in violation of N.J.S.A. 45:1-21(d).

The Board also found that the inaccurate flow chart constitutes a misrepresentation of the treatment and treatment plan developed in this matter and violates N.J.S.A. 45:1-21(b). Additionally, a review of the patient record indicates that the documentation maintained on patient C.L. was grossly incomplete and inaccurate, falling to comply with the Board's patient record regulation as set forth in N.J.A.C. 13:39A-3.1. The Respondent provided physical therapy treatment to the patient's right knee, but failed to document any of this treatment in the patient record. Additionally, the Board found several violations of the records regulation, which included: failure to adequately document the medical history of the patient (N.J.A.C. 13:39A-3.1(c)); failure to establish functional goals (N.J.A.C. 13:39A-3.1(c)7); and failure to provide a physical therapy diagnosis (N.J.A.C. 13:39A-3.1(c)5); failure to record the physical therapist's name or initials on the flow chart (N.J.A.C. 13:39A-3.1(c)10); and, finally, failure to include a description of the home exercise program that was provided to the patient.

These facts establish basis for disciplinary action pursuant to N.J.S.A. 45:1-21(b), (d), and (h). It appearing that Respondent desires to resolve this matter without admissions and without recourse to formal proceedings and for good cause shown;

IT IS ON THIS 27th DAY OF May, 2008

HEREBY ORDERED AND AGREED THAT:

1. Respondent's license to practice physical therapy is suspended for one year. The suspension shall be completely stayed on the condition that the Respondent obtains

supervision of his practice by a Board-approved licensed physical therapist for a minimum period of one year.

2. The physical therapy supervisor shall be pre-approved by the Board before being engaged by the Respondent. Respondent shall submit three resumes to the Board of New Jersey licensed physical therapists, in good standing, who are willing to supervise his practice on entry of this Consent Order. The Respondent shall reimburse the supervisor for his services. The supervisor must meet with Respondent a minimum of one hour per week to review patient treatment, patient records and shall submit written reports to the Board on a monthly basis for the first quarter following entry of the Order, and thereafter, the supervisor must submit quarterly written reports to the Board regarding the progress made by the Respondent concerning issues raised in this Order which include, but are not limited to, review of the preparation and maintenance of patient records and review and discussion of patient treatment files. No sooner than the completion of one year of supervision, the Respondent may apply to modify or terminate supervision. On such application, Respondent shall appear before the Board or a committee of the Board to determine whether the supervision requirement of this Order has been satisfied or must be continued.

3. Within six months of the filing date of this Order, Respondent shall successfully complete a comprehensive record keeping course of a minimum of three credits to be administered and provided by an approved and accredited physical therapy school, which shall encompass all aspects of patient record documentation. Respondent must obtain Board approval in writing, prior to attendance, and this course shall not be used for credit toward continuing education requirements for license renewal.

4. Respondent is hereby formally reprimanded for all of the violations set forth in this order.

6. Respondent is hereby assessed civil penalties in the amount of \$30,000 including a penalty in the amount of \$10,000.00 for a violation of N.J.S.A. 45:1-21(b) for misrepresentation of the patient treatment plan by using a flow chart that does not accurately depict the services provided, a penalty of \$10,000.00 for repeated acts of negligence for using modalities without giving consideration to the patient's deficient sensation, failing to test sensations of the right lower extremity, failing to adequately time the modality, and use of a thermal agent, when contraindicated in violation of N.J.S.A. 45:1-21(d), and, a penalty in the amount of \$10,000.00 for failing to maintain proper patient records in violation of N.J.A.C. 13:39A-3.1. The total amount of the penalty is payable no later than thirty (30) days from the entry of this Consent Order. Payment for the civil penalties, totaling \$30,000.00, shall be submitted in by certified check or money order made payable to the State of New Jersey and shall be sent to the attention of the Executive Director of the Board of Physical Therapy Examiners, at P.O. 45014, Newark, New Jersey, 07102.

8. Respondent is hereby assessed the costs of the investigation to the State in this matter in the amount of \$ 970.00. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board no later than thirty (30) days from the entry of this Consent Order. Payment shall be sent to the attention of the Executive Director of the Board of Physical Therapy Examiners, at P.O. 45014, Newark, New Jersey, 07102.

7. Failure to remit any payment required by this Order will result in the filing of a certificate of debt, and may result in further disciplinary proceedings.

NEW JERSEY STATE BOARD OF
PHYSICAL THERAPY EXAMINERS

By: D. Q. K. O., P.C., D.P.C., Ph.D.
Nancy Kirsch
Chairperson 40 QP00099100

I have read and understand the
within Consent Order and agree
to be bound by its terms. Consent
is hereby given to the Board to
enter this Order.

Joseph B. McDivitt
JOSEPH MCDIVITT, P.T.

Consent as to the form and entry
of the Order is hereby given by:

David Barmak Esq.
David Barmak, Esquire