
In the Matter of

* LOUISIANA PHYSICAL THERAPY BOARD

*

SAMUEL FORESTER, PT

*

PTA License No. 04559

*

Case Number 2012-I-028

Respondent

*

CONSENT ORDER

The Louisiana Physical Therapy Board (“Board”) received a complaint which asserted that Samuel Forester, PT (“Mr. Forester” or “Respondent”), saw the complainant on September 4, 2012 on referral from her OB/GYN physician for evaluation of left hip pain and frequent falling. The complainant, a 32-year-old female patient who was 25 weeks pregnant, asserted that during the examination, the Respondent performed a vaginal examination which Mr. Forester represented to the patient was necessary to check her Kegel muscles. The complainant further asserted that she did not consider the examination to be related to her hip complaints and was performed without anyone else in the room. The complainant reported her concerns to the referring physician. The Respondent provided the complainant’s physical therapy records to the Board.

Respondent was informed of this complaint and was requested to participate in an Informal Conference on December 12, 2012. Respondent and his legal counsel, Victor H. Sooter, appeared at the first Informal Conference at the office of Board Member, Gerald Leglue, M.D., with Advisory Committee Member, Peggy Wilson, PT, and the Board’s attorney, George M. Papale also attending (jointly “Attendees”).

At this first Informal Conference Respondent acknowledged that, as part of his evaluation of the patient’s complaints, he had begun performing a vaginal examination which was not completed due to complaints of the patient. Respondent also acknowledged that there was no attendant in the room and that he did not document the event in the patient’s physical therapy record. Respondent acknowledged performing vaginal exams to evaluate pelvic floor musculature on other female patients prior to the evaluation of the complainant. Respondent claimed that the examination was indicated and that such examinations were in the scope of Physical Therapy Practice.

Following the discussion of the complaint during this first Informal Conference, the committee asked Mr. Forester if he had any interest in resolving the pending complaint by a Consent Order and Mr. Forester responded affirmatively. Thereafter, the investigation of the complaint continued and Respondent fully cooperated with the investigation.

Thereafter, and at the request of Respondent, a second Informal Conference was held at Dr. Leglue’s office on May 30, 2013 to provide an additional opportunity to discuss the

complaint and its potential resolution through a Consent decree. All Attendees from the first Informal Conference, Mr. Forester and his counsel were present.

FACTUAL BASIS FOR CONSENT ORDER

The investigating committee reviewed the evidence gathered in the investigation of the complaint, including all of the materials submitted in response to the Board Subpoenas of November 17, 2012 and January 23, 2013 as well as the materials submitted by Respondent through his legal counsel in response to Board correspondence. Based on this review, the committee has concluded that there is reasonably reliable information which could support complaint allegations against Respondent in the following particulars:

1. That on September 4, 2012, Mr. Forester evaluated and treated a 32-year-old pregnant patient on referral from her treating obstetrician. The patient was referred because of complaints of severe left hip pain and neuropathy with diminished sensation in her left leg and foot with episodes of her left leg giving way, resulting in multiple falls. The patient also gave a history of these symptoms worsening during pregnancy.
2. During his physical therapy evaluation and treatment, Mr. Forester, while he was advising the patient that a vaginal examination was indicated, represented to the patient that he had successfully treated other pregnant women. He requested that the patient change into a gown and cover the lower body with a sheet. He requested that the patient lower her undergarments under the sheet for the examination. Mr. Forester performed a vaginal examination on the patient, requesting that the patient squeeze down on his fingers at several intervals. The Committee is of the view that an appropriate physical therapy evaluation of the patient's complaints did not require a vaginal exam.
3. Mr. Forester performed a vaginal examination on the patient without another attendant in the room and he did not document that he had performed a vaginal examination in the patient's physical therapy record.
4. At the time of the examination, the patient was in her sixth month of pregnancy. The examination performed by Mr. Forester was not performed under sterile conditions and unnecessarily exposed the patient to the risk of infection and possible complications with her pregnancy.
5. In the period of 18 months prior to September 4, 2012, Mr. Forester had performed only two (2) documented vaginal examinations to assess pelvic floor musculature. Both patients, with complaints of urinary incontinence, were seen by Mr. Forester in May of 2011 on referral by the same physician for physical therapy evaluation and for instructions in Kegel exercises. Neither patient was pregnant.
6. While the Physical Therapy Practice Act does not address the degree of education, training, certification or clinical experience required for vaginal examinations performed on pregnant patients, the Committee is of the view that Respondent's level of expertise on

September 4, 2012, was insufficient and Mr. Forester did not possess the requisite education, training or experience to perform a vaginal examination to assess pelvic floor musculature, even if such assessment had been clinically indicated.

7. Mr. Forester's examination of the patient on September 4, 2012 failed to conform to the minimal standards of acceptable and prevailing physical therapy practice.

CONCLUSIONS LAW

Respondent's conduct described above and otherwise reviewed in this action is subject to and/or in violation of the following provisions of law and Board Rules regarding his practice of physical therapy:

1. The Board has authority to suspend or revoke a license which it has issued, or place probationary conditions upon such license, upon proof that conduct of the licensee is violative of the Louisiana Physical Therapy Practice Act or Rules of the Board. La. R. S. 37:2420 A and Rule § 343.
2. Pursuant to Board Rule § 341 B a licensee shall maintain accurate patient treatment and billing records and violation of this Rule subjects a physical therapist to disciplinary action under La. R. S. 37:2420 A 1.
3. Pursuant to Board Rule § 345, a physical therapist who engages in unprofessional conduct, as further specified in Rule §345 B 1 and as provided for by the APTA Code of Ethics, by the commission of any act contrary to honesty, justice, good morals, patient safety or the best interest of the patient, whether committed in the course of the licensee's practice or otherwise, regardless of whether actual injury to the patient results therefrom; including failure to use sound professional judgment and performing procedures for which the licensee lacks competence is subject to disciplinary action under La. R. S. 37:2420 A 1 & 7
4. Respondent's conduct, as specified in the Factual Basis for Consent Order, violates Board Rules §§ 341 B and 345 B 1 and constitutes unprofessional conduct; and, accordingly, violates La. R. S. 37:2420A (1) and (7) of the Practice Act.

DECISION AND ORDER

Pursuant to the foregoing Factual Basis for Consent Order and the Conclusions of Law based thereon, and in order to avoid further administrative and judicial proceedings, Respondent and the Board, by vote of a quorum, agree as follows:

A. Respondent's license as a physical therapist assistant is placed on probation for a period of three years ("probationary period"), beginning with the date of the Boards acceptance. During which probationary period, Respondent's physical therapy his employment patient treatment and billing records will be subject to random inspection and review for full legal

compliance by a designated Board representative. In the event that Respondent, during the probationary period, provides physical therapy services as an employee, Respondent and his employers are required to cooperate fully with these monitoring visits. During this three-year probationary period, Respondent shall remit to the Board \$150 as reimbursement for the expenses of each such monitoring visit to his practice.

B. Respondent shall notify the Executive Director in writing of all employment and/or contractual service arrangements which he has to work as a physical therapist and shall update the Executive Director in writing within five (5) days of any and all changes in such arrangements.

C. Respondent shall provide a copy of this Consent Order to his employer(s) before providing services to that employer and shall have the employer(s) notify the Executive Director in writing that he/she has received and reviewed a copy of this Consent Order; Respondent shall do this also with any new or subsequent employer(s) during his probationary period.

D. The three-year probationary period shall be extended for any period of time in which the Respondent is not actively practicing physical therapy as a physical therapist within the State of Louisiana and regularly working at least 20 hours per week as such. If Respondent ceases to be actively practicing as a physical therapist in Louisiana, he shall notify the Executive Director in writing within 10 days of the last day on which Respondent has practiced physical therapy in Louisiana. Likewise, if Respondent returns to the practice of physical therapy within the State of Louisiana, he shall notify the Executive Director in writing within 10 days of his return to practice.

E. In addition to the usual continuing education required to maintain licensure, Respondent, during each of the three years of license probation, shall successfully complete continuing education courses on professional ethics (2 hours minimum) and on professional boundaries related to physical therapy treatments (2 hours minimum), which additional courses on ethics and boundaries have been approved in advance by the Board Executive Director. At least once during her probationary period, Respondent shall attend the Jurisprudence Course presented by the Board.

F. Respondent shall write an essay of no less than 750 words explaining how his conduct violated the Practice Act and Board rules and what he may have learned as a result of this disciplinary process. This essay shall be submitted to the Board Executive Director within forty-five (45) days from the Board's approval and execution of the Consent Order.

G. Respondent shall reimburse the Board in the sum of \$2,500 for legal and investigative expenses arising out of this matter. Payment of this amount may be made in installments over Respondent's probationary period, provided installment payments are arranged in advance on terms acceptable to the Executive Director.

H. Respondent further agrees that he shall not perform any vaginal examination for the purposes of examining pelvic floor musculature except upon the following terms and conditions:

- (a) Completion by Respondent of a specialist certification in Women's Health by the American Board of Physical Therapy ("ABPT"). Written evidence of such certification shall be provided to the Board.
- (b) In the absence of specialist certification, Respondent shall receive prior written approval from the Board to perform such vaginal exams to examine pelvic floor musculature following his satisfactory completion of Level 1 training as set forth by the American Board of Physical Therapy, Women's Section. In the interim, Respondent agrees not to perform vaginal examinations for the purpose of evaluating pelvic floor musculature.
- (c) Respondent agrees that any vaginal examination for the purpose of evaluating pelvic floor musculature will be performed subject to the following:
 - (1) Prior to the examination the patient will have signed a specific written and witnessed consent for pelvic floor evaluation and/or treatment which includes a written description of the condition for which such examination is indicated, a detailed description of the examination and/or treatment, the patient's acknowledgment that the risks and benefits of the evaluation and/or treatment have been explained by the physical therapist, that the patient has a right to terminate the procedure at any time, that the patient is responsible to tell the examiner immediately if discomfort or other unusual symptoms are experienced and that the patient has the right to have a second person present in the room during the procedure.
 - (2) No such examination will be performed without the authorization of the patient's physician if the patient is pregnant, has received radiation treatment to the pelvic area or is within eight weeks of childbirth or vaginal surgery. No such examinations will be performed in the presence of active infectious lesions, infections of the vagina or bladder, absence of a previous pelvic exam (pediatric) or without a written consent signed by the patient or guardian.

I. Respondent declares that, before signing this Consent Order, he has carefully read the document, that he has had ample opportunity for review of same with legal counsel, that he understands the contents, and freely consents to it as valid and binding upon him. Recognizing his right to have notice of allegations or charges asserted against him in a written administrative complaint, to have administrative adjudication of such allegations or charges pursuant to La. R. S. 49:955-958, and to a subsequent final decision rendered upon written findings of fact and conclusions of law, judicial review and appeal; Samuel Forester, PT, nonetheless waves all of these rights and proceedings and, pursuant to La. R. S. 49:955 D and Board Rule § 335, agrees to the entry of this Consent Order.

J. Respondent authorizes the Board Member, Gerald Leglue, M.D. and legal counsel assisting the Board Member, to present this Consent Order to the full Board for its consideration

and to fully disclose to, and discuss with, the Board the nature and results of the investigation. Respondent waives any objection to such disclosure under La. R. S. 49:960 and expressly acknowledges that the disclosure of such information to the Board shall be without prejudice to the Board Member's authority to request the filing of a formal Administrative Complaint against him, or to the Board's capacity to adjudicate such Complaint should the Board decline to approve this Consent Order. Should the Board decline to approve this Consent Order, Respondent retains all rights to due process including, but not limited to, his right to have written notice of any allegations or charges asserted against him, to administrative adjudication of all such allegations or charges, and to a subsequent final decision rendered upon written findings of fact and conclusions of law and thereafter to judicial review and appeal as in civil cases.

K. Respondent acknowledges that this Consent Order becomes effective only upon signature by the Board Chair. Respondent further acknowledges that his failure to comply with any of the terms and conditions of this Consent Order shall, upon proof of such failure, be deemed adequate and sufficient cause for further disciplinary action by the Board, including, the revocation and cancellation of his license to practice physical therapy in the state of the Louisiana or for such other action as the Board may deem appropriate, as if such failure was enumerated among the causes provided in La. Rev. Stat. § 37:2420.

L. All communication regarding compliance with and/or fulfillment of the requirements of this Consent Order shall be in writing between Respondent and the Board Executive Director. No verbal communication shall be considered as proof of compliance with or fulfillment of any term or condition of this Consent Order.

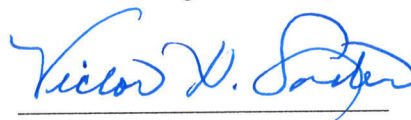
M. Respondent further agrees to appear before the Board relative to any question of compliance with this Order during the probationary period and as may be requested by the Board prior to the completion of the probationary period.

N. This Consent Order shall be deemed to be a public record.



Samuel Forester, PT

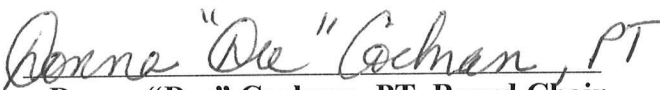
SWORN TO AND SUBSCRIBED but for me the undersigned Notary Public on this 13th day of September, 2013.



Notary Public

AGREED AND ACCEPTED by official action of the Board, this 26th, September 2013, at Lafayette, Louisiana.

LOUISIANA PHYSICAL THERAPY BOARD


Donna "Dee" Cochran, PT, Board Chair