
In the Matter of
MICHAEL J. JOHNSTON, P.T.
License No. 01401
Respondent

* LOUISIANA STATE BOARD OF
* PHYSICAL THERAPY EXAMINERS
* Case Number 2004I15

CONSENT ORDER

A complaint received by the Louisiana State Board of Physical Therapy Examiners (Board) raised several issues regarding the professional conduct of Respondent Michael J. Johnston, a physical therapist licensed by the Board, in the course of his providing professional services to Louisiana Medical Management Corp. (LMMC), d/b/a Metropolitan Health Group (MHG) as a contract therapist. Extensive documentation was provided by complainant, including patient treatment records and depositions taken of patients, the treating physicians, respondent, and other personnel involved in delivery of services to patients. Respondent has consistently asserted that he was providing only "consultant services" at MHG and never provided hands-on physical therapy to the patients who he evaluated there. Respondent terminated his relationship with LMMC clinics approximately two years ago. Respondent was requested to participate in an Informal Conference on April 16, 2004 with Investigating Board Members Chuck Reynolds and Pat Adams, Executive Director Cheryl Gaudin and Board Counsel Glenn Ducote, and Board Special Counsel George Papale participating. Respondent was represented by attorney Robert M. Marionneaux, Jr.. At the conclusion of the informal conference the terms of this Consent Order were agreed to by Board representatives and Respondent.

FINDINGS OF FACT

1. In performing evaluations for patients seen at clinics operated by Louisiana Medical Management Corp., Respondent repeatedly failed to meet the criteria set forth for physical therapy evaluations in R.S. 37:2401(1)(d) and Rules 305 and 323.
2. Respondent engaged in unprofessional conduct by identifying himself to LMMC patients as a physical therapist, using forms with the designation "physical therapy", often resulting in the patients' belief that they were receiving physical therapy when he knew that they would not be receiving physical therapy, all in violation of R.S. 37:2413A(7), Rule 327E(3) and APTA Code of Ethics principles 2 and 8.
3. After evaluating patients at LMMC's facility, Respondent never saw the patient again, but turned the patient over to LMMC personnel for "physical medicine" treatments to be administered by LMMC personnel without his supervision and whose training and experience were unknown to Respondent. Respondent failed to ascertain the qualifications of those persons administering treatment to patients and to determine who would supervise and direct such treatment, thereby effectively abandoning patients constituting negligence or incompetence in the practice of physical therapy, in violation of R.S. 37:2413A(1) and (3) and APTA Code of Ethics principles 4 and 5.
4. By regularly receiving compensation for physical therapy evaluations which did not

conform to legal requirements and which were of no value to your LMMC patients, Respondent received undeserved compensation which constitutes unprofessional conduct under R.S. 37:2413A(7) and APTA Code of Ethics principle 7.

5. By allowing his name and credentials as a physical therapist to be used in a treatment program which did not qualify as physical therapy and which had no right to use such credentials, Respondent violated R.S. 37:2413A(7) and principles 4, 8 and 9 of the APTA Code of Ethics

6. Respondent recommended treatments which were outside the scope of physical therapy practice for LMMC patients who he evaluated as a physical therapist, thereby engaging in practices beyond the scope of the Physical Therapy Practice Act, and violating R.S. 37:2413A(7) and principles 3, 6 and 11 of the APTA Code of Ethics.

CONCLUSIONS OF 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 regarding his practice of physical therapy:

1. The Board has the authority to suspend or revoke a license which it has issued or place probationary conditions upon such license upon proof that the licensee has been negligent or incompetent in the practice of physical therapy. La. R. S. 37:2413 and Board Rule 325.

2. As used in the Physical Therapy Practice Act, "unprofessional conduct" includes: departure from, or failure to conform to the standards of acceptable and prevailing physical therapy practice in the State of Louisiana, regardless of whether actual injury to a patient results therefrom. Rule 327E(1) and (6).

3. Board Rules incorporate the Code of Ethics and Guide for Professional Conduct of the American Physical Therapy Association. Rules 305B and 331.

4. A physical therapist is responsible for the appropriate delegation to, and supervision of, physical therapist assistants and other support personnel. Rule 321A and C.

5. A physical therapist shall never place his/her own financial interest above the welfare of individuals under his/her care. APTA Guide for Professional Conduct 7.1A, B.

6. A physical therapist has no authority to consult regarding physical medicine, but only "with respect to physical therapy." Rule 305A.

DECISION

Pursuant to the foregoing Findings of Fact and Conclusions of Law, and in order to avoid further administrative and judicial proceedings, Respondent and the Board, by vote of quorum, agree as follows:

A. Respondent's license as a physical therapist is placed on probation for a period of three years from the date of final execution of this agreement;

B. Respondent shall during each of the years complete at least twelve hours of continuing education in addition to the continuing education units required for maintaining his license, with those twelve hours being in courses designated by the Board's Executive Director;

C. Respondent shall notify the Executive Director of all employment and/or contractual service arrangements which he has to provide physical therapy services and shall update the Executive Director within five days of any and all changes in such arrangements;

D. Respondent will welcome Board representatives making random, unannounced

monitoring visits to his work sites and shall provide complete access to his employment and/or business records, patient treatment records, and all other documentation and shall reimburse the Board in the amount of \$100 for each such monitoring visit. Respondent shall provide information regarding this obligation to any employer or contractor for whom he provides services so that access by the Board representative will not be impeded;

E. Respondent shall pay to the Board the sum of \$2,500 in partial reimbursement for legal and administrative expenses incurred in this matter, this amount to be paid in equal monthly installments, arranged in advance with the Executive Director, over the first twelve months after final execution of this agreement;

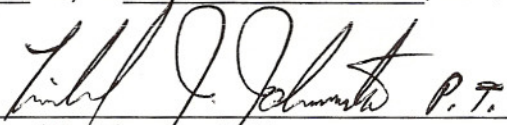
F. Respondent shall cooperate fully with Board representatives in providing information relevant to the compliance issues in the practice setting which gave rise to this complaint and shall cooperate with Board representatives seeking to verify or document that the requirements of this Consent Order have been met and that legal and ethical procedures are in place and being observed;

G. Respondent declares that, before signing this Consent Order, he has carefully read this document, understands the contents, and freely consents to it as valid and binding upon him. He is aware of his right to a notice of hearing, to a formal administrative hearing and to judicial review of an administrative finding, and freely waives those rights. He has been represented by counsel throughout these proceedings and has reviewed this instrument with his counsel;

H. Respondent acknowledges that his failure to comply with any term of this Consent Order is a basis for further disciplinary action by the Board and that the presentation to and consideration by the Board of this Consent Agreement, including presented documentary evidence and information, shall not unfairly or illegally prejudice or preclude the Board, or any of its members, from further participation in hearings or resolution of these proceedings; and

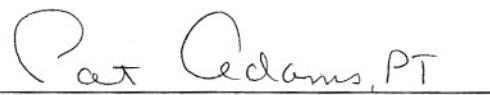
I. Respondent acknowledges that this Consent Order becomes effective only upon signature by the Board Chair.

SWORN TO AND SUBSCRIBED on this 16TH day of JULY, 2004.


Michael J. Johnston, P.T.

AGREED AND ACCEPTED by official action of the Board, the 16TH day of July, 2004,
at Lafayette, Louisiana.

LOUISIANA STATE BOARD OF
PHYSICAL THERAPY EXAMINERS


Pat Adams, P.T., Chair