

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
PHYSICAL THERAPY,)
)
Petitioner,)
)
vs.) Case No. 05-3128PL
)
MICHAEL G. WESTROPE, P.T.A.)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 25, 2006, in Clearwater, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lynne A. Quimby-Pennock, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Louis Kwall, Esquire
Kwall, Showers, Coleman
& Barack, P.A.
133 North Fort Harrison Avenue
Clearwater, Florida 33755

STATEMENT OF THE ISSUES

Whether Respondent violated Subsection 486.125(1)(e), Florida Statutes (2004),¹ and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On June 15, 2005, Petitioner, Department of Health, Board of Physical Therapy (Department), filed an Administrative Complaint against Respondent, Michael G. Westrope, P.T.A., alleging that he violated Subsection 468.125(1)(e), Florida Statutes. Mr. Westrope requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on August 29, 2005, for assignment to an Administrative Law Judge. On September 30, 2005, Mr. Westrope filed a Motion for Brief Continuance, which was granted by order dated October 5, 2005. The hearing was rescheduled for January 25, 2006.

Prior to the final hearing, the parties submitted a Joint Prehearing Stipulation, which contained facts to which the parties agreed. Those facts, which are contained in Section E of the Joint Prehearing Stipulation, are incorporated into this Recommended Order to the extent relevant.

At the final hearing, the Department called the following witnesses: D.D.; Michelle Hulse; Catherine Page, P.T., Ph.D., M.P.H.; Gaspard de Laaf, P.T.; Tammy Hain, R.N.; and

Robert Hudson, O.T. Petitioner's Exhibits 1 through 8 were admitted into evidence.

Mr. Westrope testified on his own behalf and presented Tammy Hain and Robert Hudson as witnesses. Mr. Westrope did not offer any exhibits into evidence.

The official Transcript was filed on February 13, 2006. The parties timely filed their Proposed Recommended Orders, which have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with the regulation of medicine pursuant to Chapters 20, 456, and 458, Florida Statutes.

2. Mr. Westrope is, and was at all times material to this proceeding, a licensed physical therapy assistant in the State of Florida, having been issued license number PTA1170.

3. Beginning in or about September 2004, D.D. was being provided physical therapy services through Girling Health Care, Incorporated (Girling). Girling contracted with Rehab Action, Incorporated (Rehab) to provide home health physical therapy to patients. Rehab contracted with Mr. Westrope to perform the physical therapy in the patients' homes.

4. In or about September 2004, Mr. Westrope was assigned to provide physical therapy to D.D., who had undergone a complete knee replacement. D.D. had been assessed by

Mr. Westrope's supervising physical therapist, Gaspard de Laaf, on September 29, 2004, prior to Mr. Westrope beginning his physical therapy services on September 30, 2004.

5. Mr. Westrope was required by Rehab to complete a visitation slip at the end of each physical therapy session. Mr. de Laaf had provided instruction to Mr. Westrope on how to complete the form. Mr. Westrope would send the completed form to Mr. de Laaf, who reviewed the form and sent it to Girling for reimbursement.

6. When Mr. Westrope provided physical therapy to D.D., she would lie on her bed and perform therapy exercises, and then move into the kitchen where Mr. Westrope would measure the bend in her knee. When each session was over, Mr. Westrope would complete a visit slip for the treatment, and D.D. signed them to verify that she received the services. D.D. is visually impaired and can only see light. In order to sign the forms, D.D. requested Mr. Westrope to place the forms near the end of the kitchen table so that she could align her arm with the table edge so that her signature would be in a straight line. D.D. always signed her signature as "D.A.D." D.D. prided herself on her independence and did not allow anyone else to sign the visit slips for her.

7. Mr. Westrope provided physical therapy services to D.D. on September 30 and October 1, 5, 6, 8, 12, 15, and 22, 2004.

Mr. de Laaf evaluated D.D. and provided physical therapy services to her on October 25, 2004. Mr. Westrope provided services to D.D. on October 28, 2004.

8. Mr. Westrope completed and submitted visit slip documentation for physical therapy treatment of D.D., which he claimed to have provided on October 16, 2004; October 18, 2004; October 20, 2004; October 30, 2004; and November 1, 2004. However, Mr. Westrope did not provide services to D.D. on those dates.

9. On or about November 3, 2004, D.D. contacted Girling complaining that she had not received physical therapy from Mr. Westrope in a while. On or about November 4, 2004, Mr. de Laaf was notified by Girling regarding the complaint it received from D.D. Mr. de Laaf then prohibited Mr. Westrope from seeing any Girling patients after Girling indicated that it did not want Mr. Westrope performing any of its services. Mr. de Laaf then resumed the treatment of D.D.

10. On or about November 5, 2004, Tammy Hain, R.N., and Rob Hudson, O.T., who are supervisors employed by Girling, visited D.D. to verify that she had not been receiving physical therapy from Mr. Westrope on October 16, 2004; October 18, 2004; October 20, 2004; October 30, 2004; and November 1, 2004. D.D. verified that she had not received services on those dates.

11. D.D.'s daughter has been assisting D.D. with her financial transactions for 15 years and is familiar with D.D.'s signature. At the final hearing, D.D.'s daughter reviewed for the first time the visit slips submitted by Mr. Westrope for services to D.D. After reviewing the visit slips, D.D.'s daughter concluded that the signatures on the visit slips for October 16, 2004; October 18, 2004; October 20, 2004; October 30, 2004; and November 1, 2004, were not written by D.D. D.D.'s daughter verified that D.D. always uses her middle initial "A" when signing her signature. The signatures on the disputed dates do not contain D.D.'s middle initial and are different in appearance from the signatures on the visit slips on which Mr. Westrope documented services that he did provide to D.D.

12. On five occasions during the time that Mr. Westrope was providing services to D.D., Robert Hudson also provided occupational therapy services to D.D. on five occasions. At the end of the therapy sessions with Mr. Hudson, D.D. signed the visit slips "D.A.D."

13. The parties stipulated that if Mr. Westrope did not provide the services to D.D. on the dates he indicated on the visit slips, then Mr. Westrope violated the rules of the Department and Subsection 486.125(1)(e), Florida Statutes.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2005).

15. The Department has the burden to establish by clear and convincing evidence the allegations in the Administrative Complaint. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). The Department has alleged that Mr. Westrope violated Subsection 486.125(1)(e), Florida Statutes, which provides that the following act constitutes grounds for disciplinary action:

Failing to maintain acceptable standards of physical therapy practice as set forth by the Board in rules adopted pursuant to Chapter 486, Florida Statutes.

16. Florida Administrative Code Rule 64B17-6.001(2)(e) provides:

[P]hysical therapy assistants shall not use or participate in the use of any form of communication containing false, fraudulent, misleading, deceptive, unfair, or sensational statement or claim, nor use bribery in any form, nor use false advertising, nor misrepresentation of services or self, nor engage in other unprofessional conduct, including, but not limited to,

1. Inaccurately recorded, falsified, or altered patient records[.]

17. The Department alleged that Mr. Westrope violated Subsection 486.125(1)(e), Florida Statutes, when he "falsely documented physical therapy treatments to Patient D.D. when he failed to perform the treatment modalities." The Department has established this allegation by clear and convincing evidence. The documentation presented by the Department demonstrates that the visit slips did not contain D.D.'s authentic signature for the treatment dates October 16, 2004; October 18, 2004; October 20, 2004; October 30, 2004; and November 1, 2004. Mr. Westrope did not provide services on those dates, but submitted visit slips showing that he did provide services on those dates. Thus, Mr. Westrope failed to maintain acceptable standards of physical therapy practice by falsifying D.D.'s patient records in violation of Florida Administrative Code Rule 64B17-6.001(2)(e)1. and Subsection 486.125(1)(e), Florida Statutes.

18. Florida Administrative Code Rule 64B17-7.001(1)(e) provides a range of penalties for violations of Subsection 486.125(1)(e), Florida Statutes, and states:

Section 486.125(1)(e) or 456.072(1)(b), F.S.: Failure to maintain acceptable standards of practice as set forth in rules- from a minimum fine of \$1,000 and a letter of concern, up to a maximum fine of \$6,000 and/or two years of suspension followed by two years of probation. . . .

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that a final order be entered finding that Michael G. Westrope, P.T.A., violated Subsection 486.125(1)(e), Florida Statutes, and imposing a penalty of a \$2,000 fine and a six-month suspension followed by one year of probation with the terms to be set by the Department at the conclusion of the suspension period and requiring Respondent to complete five hours of Continuing Education in physical therapy medical records documentation.

DONE AND ENTERED this 7th day of April, 2006, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of April, 2006.

ENDNOTE

1/ Unless otherwise indicated, all references to the Florida Statutes shall be to the 2004 version.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.