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GOVERNOR



State of Louisiana
DEPARTMENT OF HEALTH AND HOSPITALS

Louisiana Physical Therapy Board

RECEIVED
MAY 23 2017

BY: CHARLOTTE F. MARTINI, M.P.A.
EXECUTIVE DIRECTOR

IN THE MATTER OF

Elizabeth Winkler-Schmit, PT

LICENSE NO. 02566

CONSENT ORDER

NUMBER: 2017-I-009

CONSENT ORDER

Ms. Elizabeth Winkler-Schmit, PT (“Ms. Winkler- Schmit” or “Respondent”) initially came to the attention of the Louisiana Physical Therapy Board (“LPTB” or “Board”) on or about March 29, 2017 when a complaint was submitted to the Board office therein alleging that the Respondent’s physical therapy clinic was distributing flyers entitled “Quarterly Referring Physician Game” that advertised lunch and a one (1) hour chair message for the medical doctor with the most referrals and his or her staff. Thereafter, an investigative committee was created pursuant to Board Rule §123. On Wednesday, April 19, 2017 Respondent and her legal counsel met with the Investigative Committee at the Board office located in Lafayette, LA at which time Respondent cooperated fully with the Investigative Committee. At the Informal Conference, Respondent admitted to knowledge of the flyer and referral competition. Thereafter, Respondent was offered and accepted a Consent Order acknowledging violations of the LPTB Practice Act and Board Rules, specifically Board Rule §369, abuse of referrals, and agreeing to appropriate disciplinary action.

FACTUAL BASIS FOR CONSENT ORDER

1. Respondent is, and at all times pertinent hereto, is a physical therapist licensed by the Board as evidenced by license number 02566.
2. On or about March 29, 2017 the Louisiana Physical Therapy Board received a complaint that included a copy of a flyer advertising a “Quarterly Referring Physician Game”. The

flyer provided that “[t]he MD with the most referrals will receive lunch and a 2 hour chair massage by our licensed massage therapist for his/her entire staff.” The flyer is attached hereto as Exhibit “A”.

3. An investigative committee was formed which consisted of the Board Executive Director, Charlotte Martin; Board Attorneys, Courtney Newton and George Papale; and Board Investigating Member, Donald Cassano.
4. On Wednesday, April 19, 2017, Respondent and her legal counsel, Bruce A. Cranner, met with the investigative committee at the Board office located in Lafayette, LA. At the Informal Conference, Respondent cooperated fully and answered all questions asked. Respondent admitted to knowledge of the flyer and the “Quarterly Referring Physician Game”. Respondent also informed the Investigative Committee that upon the advice of her attorney the competition had been stopped and that no one had received an award or incentive for referrals.
5. Respondent, through her attorney, informed the Investigative Committee of her willingness to enter into a Consent Order with the Louisiana Physical Therapy Board.

VIOLATIONS RELATED TO RESPONDENT’S CONDUCT

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:

- A. The Board has the authority to suspend or revoke a professional license which it has issued, or place probationary conditions upon such license, upon proof that the licensee has practiced physical therapy in violation of the Practice Act, Board Rules, or standards of practice. La. R.S. 37:2420A(1) and Board Rule §343.
- B. By advertising for and conducting a competition for patient referrals, Respondent violated Board Rule §369 which provides that “[n]o healthcare provider shall offer, make, solicit, or receive payment, directly or indirectly, overtly or covertly, kind as or in-kind, for referring or soliciting patients”.

ORDER

Pursuant to the foregoing Factual Basis for Consent Order and Violations Related to Respondent’s Conduct, and, in order to avoid further administrative and judicial proceedings, Respondent and the Board, by vote of quorum, agree as follows:

1. Respondent shall submit an essay of no fewer than 750 words explaining how offering and promoting a competition for increased referrals violated the Practice Act and Board Rules and what was learned as a result of the disciplinary process. The essay shall be signed by the Respondent and mailed to the board office postmarked no later than July 14, 2017;
2. For a period of one (1) years following the acceptance of this Consent Order by the Louisiana Physical Therapy Board Respondent shall fully cooperate with the Board representatives making random unannounced monitoring visits to her work sites and shall provide complete access to her place of employment, employment and/or business records, patient treatment and billing records, and all other documentation necessary for a full legal compliance review. Respondent shall reimburse the Board \$150.00 for each such monitoring visit;
3. Respondent shall conduct a training for all employee(s), staff, and contractors regarding Board Rule §369, Abuse of Referrals, the American Physical Therapy Associations Code of Ethics for Physical Therapy Assistants, and provide a copy of this Consent Order to her employer(s), staff, and contractors within thirty (30) days of the Louisiana Physical Therapy Board's acceptance of this Consent Order. Within the thirty (30) day period, Respondent shall provide the Executive Director a written summary of all information addressed during the training; a list of all employees, staff, and contractors connected with Magnolia Physical Therapy, and a written certification that all employees, staff, and contractors participated in the training. Respondent shall do this also with any new or subsequent employer(s), staff, or contractors during the one (1) year period following the acceptance of this Consent Order by the Louisiana Physical Therapy Board. For the purpose of this provision, employees, staff, and contractors include only those individuals who perform marketing, communicate with physicians or their staff, communicate with patients or potential patients, are in a management position, or practice as a physical therapist, physical therapist assistant, physical therapist technician, massage therapist, athletic trainer, etc.
4. The one (1) year period for monitoring and mandated employee, staff, and contractor training shall be extended for any period of time in which Respondent is not employed as a physical therapist within the State of Louisiana and regularly working at least *twenty (20) hours* each week as such. If Respondent ceases to be regularly employed as a physical therapist in Louisiana, she shall notify the Executive Director in writing within *ten (10) calendar days* of the last date she has practiced physical therapy in Louisiana. Likewise, if Respondent returns to work as a physical therapist within the State of Louisiana, she shall notify the Executive Director in writing within *ten (10) calendar days* of her return to practice;
5. Respondent shall complete thirty (30) hours of board-approved continuing education courses or activities required in the biennial renewal period under Rule §194 during the one (1) year period following acceptance of this Consent Order by the Louisiana Physical Therapy Board. In addition, Respondent shall complete an additional four (4) hours of

continuing education courses with an emphasis on anti-kickback and Stark Law to be completed a single time within the one (1) years following the Board's acceptance of this Consent Order. The additional four (4) hours of continuing education courses shall be submitted in writing to the Board Executive Director for approval prior to taking the course. Respondent shall also attend one (1) live Jurisprudence Seminar within one (1) year. Respondent shall provide documentation in the form of a course completion certificate to the Executive Director within five (5) calendar days of receipt of such documentation;

6. Respondent shall pay the Board the sum of \$560.00 in partial reimbursement for legal and administrative expenses incurred in this matter, this amount may be paid in a lump sum, or monthly installments, if arranged in writing in advance with the Executive Director, over the during the one (1) year period following acceptance of this Consent Order by the Louisiana Physical Therapy Board. In the event that the Respondent reimburses the Board in monthly installments, payment shall be submitted to the Board Executive Director no later than the 15th day of the month. Failure to provide payment by the 15th day of the month three times is a basis for further disciplinary action by the Board;
7. Respondent shall comply with Board Rule §363 and notify the Executive Director of the Louisiana Physical Therapy Board in writing and prior to a change of residence to another country, state, or jurisdiction. Upon relocation, all provisions of this Consent Order, except Paragraph "6" pertaining to reimbursement of legal and administrative expenses, are suspended until Respondent again resides within Louisiana, notifies the Executive Director of her Louisiana residence, and receives written confirmation from the Executive Director;
8. Respondent shall meet with the Board, or with the Board's representative, whenever requested during the one (1) year period following the Board's acceptance of this Consent Order, and shall fully cooperate in providing information and documents requested in such meetings;
9. Respondent shall have reliable access to a computer, internet, and telephone. In accordance with Board Rule §385 Respondent shall provide to the executive director their preferred telephone number and/or email address in writing for expedited communications regarding compliance with board order within forty-eight (48) hours of signing the Consent Order. Respondent shall reply to Board emails and telephone calls within four (4) hours of such communication. Respondent shall notify the Executive Director in writing of any change to their preferred telephone number and/or email address immediately upon change;
10. Respondent declares that, before signing this Consent Order, she is of sound mind has carefully read this document, understands the contents, and freely consents to it as valid and binding upon her. She is aware of her right to a notice of hearing, to a formal administrative hearing and to judicial review of an administrative finding, and freely waives those rights. As is her right, she has been represented by legal counsel;

11. Respondent acknowledges that her failure to comply with any term of this Consent Order is a basis for immediate summary suspension of her license and for further disciplinary action by the Board;
12. Respondent acknowledges that this Consent Order only addresses the specific violations outlined above;
13. Respondent authorizes the Investigating Board Member, Donald Cassano, PT, and legal counsel assisting the Investigating Board Member, to present this Consent Order to the full Board for its consideration and to fully disclose and discuss with the Board the nature and results of the investigation. Respondent waives any objection to such disclosures under La. R.S. 49:960 and expressly acknowledges that the disclosure of such information to the Board shall be without prejudice to the Investigative Board Member's authority to file a formal Administrative Complaint against her, 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, her right to have notice of any allegations or charges against her, to administrative adjudication of such allegations or charges, and to a subsequent final decision rendered upon written findings of fact and conclusions of law;
14. Respondent acknowledges that 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 to these proceedings; and
15. Respondent acknowledges that this Consent Order becomes effective only upon signature by the Board Chair.
16. Respondent acknowledges that 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 proof of compliance or commitment. Respondent acknowledges that it is the responsibility of the Respondent to fully comply with the Consent Order and proactively communicate with the Board Executive Director.

REMAINDER OF THE DOCUMENT INTENTIONALLY LEFT BLANK.

Elizabeth Winkler Schmit

Elizabeth Winkler Schmit

Elizabeth Winkler-Schmit, PT

SWORN TO and subscribed before me, Notary Public ___ day of 5, 22
2017, Louisiana.
Hatchee

[Signature]

OFFICIAL SEAL
JAMES F. EZELL
NOTARY PUBLIC - LOUISIANA
NOTARY #53735
PARISH OF JEFFERSON
My Commission Is For Life

Notary Public

AGREED AND ACCEPTED by official action of the Board, the 24th day of
May, 2017, at Lafayette, Louisiana.

Louisiana Physical Therapy Board

[Signature]

Donald Cassano P.T., Chair