

IN AND BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,
STATE BOARD OF MEDICAL
EXAMINERS,

Plaintiff,

SILAS P. MASIH, R.P.T.,)
License No. 1001,)
)
Defendant.)

FINAL ORDER

This cause comes on for hearing before the Oklahoma Board of Medical Examiners en banc on January 15, 1987, at 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Daniel J. Gamino, Attorney, appeared for the Plaintiff, and Stephen B. Cabbage, Attorney, and the Defendant Silas P. Masih appeared on behalf of the Defendant.

The Board of Medical Examiners en banc heard the testimony and reviewed exhibits and being fully advised in the premises, the Board of Medical Examiners therefore finds as follows:

FINDINGS OF FACT

1. That Silas P. Masih, R.P.T., holds Oklahoma License No. 1001.
2. That the Physical Therapy Advisory Committee and the Oklahoma Board of Medical Examiners have jurisdiction over the subject matter herein and that service of process has been given in all respects as required by law and the rules of the Board.
3. That during calendar years 1983, 1984, and 1985, the Defendant did establish a policy or rule that his employees who were physical therapists and/or physical therapy aides were to spend time with and report gait 2 and exercise 2 on each nursing home patient.
4. That the exact amount of time spent by the physical therapist or the aide with each patient would vary as to each visit depending on the condition and physical stamina of the patient and the schedule of the individual physical therapist or physical therapist aide.
5. There was no evidence from any patient or from Medicare or from any insurance carrier alleging any overcharging by the Defendant, Silas P. Masih.
6. That there was no specific proof of overcharging by the Defendant, Silas P. Masih, in light of the time and effort required by the physical therapist or the aide to review the patient's chart, to work with the patient in direct hands-on services and to make and transmit necessary progress notes.
7. That during calendar years 1983, 1984, and 1985, the Defendant, Silas P. Masih, and other personnel in the employment of his business corporation did perform auriculotherapy on a total of twenty-five patients for weight control and to stop smoking when there were no physician's orders or referral on file for those patients.

8. Auriculotherapy uses electricity and puts electricity to different points in the ear.

9. Auriculotherapy is a recognized physical therapy modality and technique.

10. That the Defendant stopped performing auriculotherapy when that suggestion was made in a voluntary meeting in September, 1985, by the Physical Therapy Advisory Committee and there was no evidence that the Defendant has performed any auriculotherapy or directed the performance of same after the meeting or during calendar year 1986.

11. That during calendar years 1983, 1984, and 1985, that at least on occasions, aides employed by the business corporation did perform physical therapy services on nursing home patients without any direct or on-site supervision by the Defendant or other employed physical therapists. And on one occasion a graduated but unlicensed occupational therapist, working for the business corporation in an aide capacity, did perform physical therapy services without a previous evaluation by a registered physical therapist.

12. Physical therapy aides are not physical therapists or physical therapy assistants and there is no specific Oklahoma law or rule as to the method or degree of supervision necessary for an aide.

13. The Defendant worked in a rural area of Oklahoma and the use of physical therapy aides without direct, visual control or on-site supervision is a common practice because of the lack of qualified personnel outside metropolitan areas.

14. Some genuine questions were raised by other physical therapists as to the proper use of physical therapy aides employed in the Defendant's rehabilitation agency, a licensed business corporation.

15. That direct and on-site supervision of a physical therapy aide by a registered physical therapist is recommended and beneficial, but it is not legally required by any provision of the Physical Therapy Practice Act where the rules and regulations relating to physical therapy as enacted by the Oklahoma Board of Medical Examiners are set out.

CONCLUSIONS OF LAW

1. That the facts relating to billing or charging patients, Medicare or insurance carriers for physical therapy at the amount of exercise 2 and gait 2 did not constitute a violation of 59 O.S. 1981, §887.13G, to-wit:

"The Board may...after notice and hearing in accordance with its rules and regulations, may suspend or revoke the license of any person who has"

"G. Been guilty of conduct unbecoming a person licensed as a physical therapist or physical therapy assistant or detrimental to the best interest of the public or his profession."

2. The facts set forth above relating to administration of auriculotherapy did constitute violation of Oklahoma Physical Therapy Practice Act, 59 O.S. 1981, §887.2 and §887.13A, and §887.17, to-wit:

"Physical therapy means the treatment of human beings by the use of...radiant energy

electricity...for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability."

"The Board may...after notice and hearing in accordance with its rules and regulations, may suspend or revoke the license of any person who has

A. Practiced physical therapy other than under the referral of a physician or surgeon duly licensed to practice medicine and surgery in this state...

Any person licensed under this act as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the referral of a person licensed in this state as physician or surgeon with unlimited license."

3. Evidence relating to patients being treated by aides without any kind of direct or on-site supervision by the licensed physical therapist does not constitute any violation of the Oklahoma Physical Therapy Practice Act, 59 O.S. 1981, §887.13G, to-wit:

"The Board may...after notice and hearing in accordance with its rules and regulations, may suspend or revoke the license of any person who has

G. Been guilty of conduct unbecoming a person licensed as a physical therapist or physical therapy assistant or detrimental to the best interest of the public or his profession."

ORDER

IT IS THEREFORE ORDERED by the Board of Medical Examiners of Oklahoma as follows:

1. That the Defendant, Silas P. Masih, R.P.T., holding License No. 1001, be and is hereby placed on probation to the Oklahoma State Board of Medical Examiners for a period of one (1) year beginning on January 15, 1987, under the following terms and conditions:

(a) That inspectors of the Oklahoma Board of Medical Examiners will make quarterly, unannounced visits to the Defendant's offices and check on:

1. Staffing patterns to find out if the Defendant still has coverage of seven or eight different facilities or practice settings and one or two registered physical therapists;

2. What guidelines the Defendant has put in place regarding the use of unlicensed personnel to perform physical therapy services; and


3. Inspectors will make random interviews of Defendant's employees and investigate on matters and with questions communicated by the Physical Therapy Advisory Committee.

(b) The Defendant shall report on a quarterly basis as to his current pricing structure and billing procedure.

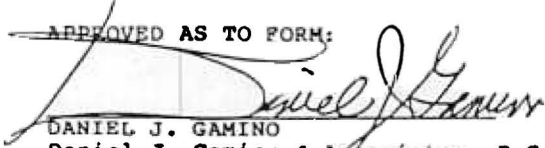
(c) The Defendant shall appear before the Physical Therapy Advisory Committee or the Oklahoma Board of Medical Examiners when requested by any member thereof.

(d) Any violation of any of the terms and conditions of probation shall be grounds for removal of probation and shall subject the Defendant to additional liability for suspension or revocation of his license and any violation shall be pursued after giving Defendant advance notice and hearing as required by the Oklahoma Medical Practice Act.

DATED this 30 day of January, 1987.


MARK R. JOHNSON, M.D., Secretary
State Board of Medical Examiners

APPROVED AS TO FORM:


DANIEL J. GAMINO
Daniel J. Gamino & Associates, P.C.
3315 NW 63
Oklahoma City, OK 73116
(405) 840-3741
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 1987, I deposited in the U.S. Mails, postage prepaid, a true and correct copy of the above and foregoing Final Order addressed to:

Stephen B. Cabbage
Cabbage & Cabbage
123 Moses Street
P.O. Box 550
Cushing, OK 74023
Attorney for Defendant