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STATE OF WISCONSIN
BEFORE THE PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

PAUL Z. ABLER, P.T.,
RESPONDENT.

:
: FINAL DECISION AND ORDER
: LS0711291PHT
:
:

[Division of Enforcement Case # 07 PHT 012]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Paul Z. Abler, P.T.
36752 Lower Lake Road
Oconomowoc, WI 53066

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Physical Therapists Affiliated Credentialing Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Wisconsin Physical Therapists Affiliated Credentialing Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Paul Z. Abler, P.T., Respondent, date of birth October 30, 1958, is licensed by the Wisconsin Physical Therapists Affiliated Credentialing Board as a physical therapist in the State of Wisconsin pursuant to license number 2334, which was first granted April 13, 1981.

2. Respondent's last address reported to the Department of Regulation and Licensing is 36752 Lower Lake Road, Oconomowoc, WI 53066.

Prior Disciplinary Action

3. On November 4, 2003, the Board issued a Final Decision and Order in case number LS0311041PHT, a Disciplinary Proceeding against Respondent. Respondent stipulated to the issuance of the Final Decision and Order. In that matter, the Board found, among other things:

a. Respondent provided physical therapy to Ms. A on 22 occasions from January 25, 2002 to May 10, 2002. All treatment sessions prior to March 29, 2002 took place at Respondent's office in Hartland. Because Ms. A had purchased some home gym equipment and wanted Respondent's recommendation on how to use it to strengthen her back, sessions on March 29, April 19 and May 10, 2002 were held at Ms. A's home in Waukesha.

b. Respondent's note of February 13, 2002 indicated that, in addition to her other symptoms, Ms. A reported increased urinary urgency and a feeling of decreased control of her bladder. Respondent concluded that the symptoms indicated a lack of strength in her pelvic floor muscles and that her lack of pelvic floor muscle control was a contributing factor to her overall clinical status of spinal and pelvic instability.

c. Ms. A and Respondent discussed exercises and manipulation to improve the strength of the pelvic floor muscles. Respondent had Ms. A perform Kegel muscle strengthening exercises. On several occasions, in order to determine if Ms. A was using the correct muscles and to facilitate their neuromuscular activation, Respondent placed two to three of his fingers against Ms. A's levator ani, pubococcygeus and iliococcygeus muscles from the coccyx to the inferior margin of the external labia, while she performed the exercises. Ms. A contended that Respondent lowered her panties and placed his fingers directly against the skin of her labia. Respondent contended that Ms. A's panties remained in place and were between his fingers and her labia.

d. On May 10, 2002, Respondent went to Ms. A's residence to provide her with treatment. They were the only people in the house. During that treatment session, the following occurred:

(1) Ms. A contended that Respondent touched Ms. A's labia differently than he had during other treatment sessions. Ms. A described the touch as caressing rather than therapeutic. Ms. A contended that for the first time, Respondent inserted his finger between Ms. A's external labia. She described the touching as attempting to sexually stimulate her.

(2) Ms. A contended that while still stimulating Ms. A's labia with one hand, Respondent used his other hand to move Ms. A's sports bra off one breast and then leaned down and touched her nipple with his mouth.

(3) Ms. A immediately pushed Respondent away from her and told him to stop. Respondent asked whether he could touch her "there" indicating the genital area and she said that he could not and asked him to leave. Respondent apologized and left Ms. A's residence.

e. Ms. A reported Respondent's conduct to the Waukesha Police Department and Respondent was charged in Waukesha County Circuit Court case number 02CM2623, with one count of violating § 940.225(3m), Stats., (4th Degree Sexual Assault), a class A misdemeanor. On April 10, 2003, Respondent entered a no contest plea and was convicted of the charge.

4. The Board concluded that Respondent had engaged in conduct which tended to constitute a danger to the health, welfare or safety of a patient in violation of Wis. Adm. Code § PT 7.02(8) [2002] and had been convicted of a crime which related to practice under his license in violation of Wis. Adm. Code § PT 7.02(18) [2003].

5. The Board suspended Respondent's license, which remained suspended until March 17, 2005, when the Board issued him a limited license with terms and conditions. On December 15, 2006, at Respondent's request, the Board removed some of the terms and conditions and the following terms and conditions have remained on Respondent's license:

- "(1) Mr. Abler shall continue in treatment and cooperate with Michael S. Kotkin, Ph.D., and shall have sessions with him at least once a month. Dr. Kotkin may increase the frequency of sessions if needed and shall file signed and dated quarterly reports with the Board regarding Mr. Abler's progress.
- (2) Any request from Mr. Abler for the reinstatement of his license shall be accompanied by a recommendation from Dr. Kotkin that Mr. Abler does not pose a threat to his patients and that he is safe to practice without any limitations on his license.
- (3) Mr. Abler shall continue to meet at least once a month with Michael W. Edwards, P.T., for the purpose of a professional mentoring relationship.
- (4) Mr. Abler shall not treat any patient in a home setting.
- (5) If the Board so requests, Mr. Abler shall appear before it on an annual basis.

Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Board in its discretion may in the alternative impose additional conditions and limitations or other discipline."

6. Ms. B, who was born in 1968, has been credentialed as a massage therapist or body worker since 2004. Ms. B's home and residence is a two-bedroom apartment in Pewaukee. She provides massage therapist services to clients in one of the rooms in her home. Ms. B provided massage therapy to Respondent at her home on several occasions from October 28, 2005 to June 6, 2007.

7. In the spring of 2007, Ms. B was training for a half marathon and began to have hamstring pain. She discussed it with Respondent who said he could treat it. Respondent suggested that he provide physical therapy treatment (PT) to her in return for her providing massage therapy to him. Ms. B had health insurance which would pay for her PT and she expressed her preference that the insurance pay for her PT and Respondent pay her for the massages. Respondent told her she would need to obtain a PT prescription from her physician.

8. On April 30, 2007, Ms. B saw her physician with complaints of bilateral hamstring pain and bilateral shoulder pain. The physician diagnosed hamstring tendonitis and biceps tendonitis, began a trial of anti-inflammatories and wrote an order for physical therapy for the conditions. On the same day, Ms. B took the order for physical therapy to Respondent's practice location and received physical therapy from Respondent. Respondent told Ms. B he did not want to have to deal with her insurer and she acquiesced to the exchange of services. Respondent told her not to schedule PT appointments through his office, but rather to do so directly with him by calling his cell phone. Respondent told Ms. B that he would prefer to provide PT to her at her home rather than at his office.

9. On June 1, 4, 13 and 27, 2007, Respondent provided PT to Ms. B at her home in the room she used to provide her clients with massage therapy. No one else was present at her home at the time of the PT sessions. Respondent did not make any records of the PT he provided to Ms. B.

10. Ms. B has reported to the Division of Enforcement that during the sessions, Respondent did the following without telling Ms. B the purpose for the touching. Respondent has denied touching Ms. B inappropriately.

a. Respondent had Ms. B lie on her back and use her legs and hands to lift and hold her legs in the air with her knees apart and toward her chest. Respondent then stood between her legs, crossed his wrists and placed his fingers of each hand between her leg/abdomen crease and her labia. Respondent's fingers were on the outside of Ms. B's shorts and from that position, he moved his hands in a stoking motion outward toward her thighs.

b. Respondent had Ms. B lie on her stomach with her legs apart. Respondent stood next to the table and placed his hands under her shorts and his hands touched the skin of her buttocks and inner thighs (she wore thong underwear). He touched and manipulated the same area between her leg/abdomen crease and her labia.

c. At the last session on June 27, while Ms. B was on her stomach, Respondent moved Ms. B's underwear to the side and inserted his fingers between Ms. B's labia into her vaginal orifice to a depth which she felt to be approximately his second knuckle. There would have been no legitimate physical therapy purpose for Respondent to insert his fingers between Ms. B's labia and into her vaginal orifice.

CONCLUSIONS OF LAW

1. The Wisconsin Physical Therapists Affiliated Credentialing Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 448.57(2), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stats. §§ 227.44(5) and § 448.57(3)(a).

2. By providing physical therapy to Ms. B in her home on 4 occasions during June 2007, Respondent violated the December 15, 2006 order of the Board, which is unprofessional conduct as defined by Wis. Adm. Code § PT 7.02(2) and subjects Respondent to discipline pursuant to Wis. Stat. § 448.57(2)(f).

3. By inserting his fingers between Ms. B's labia and into her vaginal orifice, Respondent engaged in conduct which tends to constitute a danger to the health, welfare or safety of a patient, which is unprofessional conduct as defined by Wis. Adm. Code § PT 7.02(8) and subjects Respondent to discipline pursuant to Wis. Stat. § 448.57(2)(f).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The SURRENDER of Paul Z. Abler's license to practice physical therapy in the State of Wisconsin is hereby ACCEPTED.

2. Respondent shall, within 90 days from the date of this Order, pay costs of this proceeding in the amount of \$1,425.00. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

3. This Order is effective on the date of its signing.

Wisconsin Physical Therapists Affiliated Credentialing Board

By: Jane L. Stroede
A Member of the Board

11/29/07

STATE OF WISCONSIN
BEFORE THE PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

PAUL Z. ABLER, P.T., :
RESPONDENT. :

STIPULATION
LS _____PHT

[Division of Enforcement Case # 07 PHT 012]

It is hereby stipulated and agreed, by and between Paul Z. Abler, P.T., Respondent; John S. Schiro of Schiro & Zarzynski, attorneys for Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (file 07 PHT 012). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent denies any inappropriate touching of Ms. B, but acknowledges there is evidence from which the Board could find that the touching occurred. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to the Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Paul Z. Abler, P.T.
Respondent
36752 Lower Lake Road
Oconomowoc, WI 53066

Date

John S. Schiro
Schiro & Zarzynski
Attorneys for Respondent
633 W. Wisconsin Avenue #1515
Milwaukee, WI 53203

Date

John R. Zwieg
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date