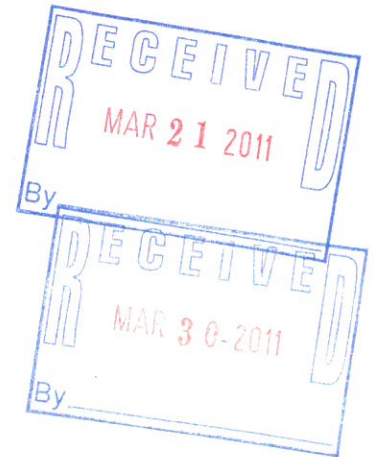


BEFORE THE WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY

WEST VIRGINIA BOARD OF
OCCUPATIONAL THERAPY,
Complainant,

v.

BILLIE J. SMITH,
Respondent.



CONSENT AGREEMENT AND ORDER

After due investigation of a written complaint, the West Virginia Board of Occupational Therapy (hereinafter "Board") determined that there was probable cause to believe that Billie J. Smith (hereinafter "Respondent") has exhibited unprofessional and unethical conduct in the practice of occupational therapy, in violation of the provisions of W. Va. Code § 30-28-1 *et seq.* and the Rules of the Board, 13 C.S.R. § 1 *et seq.* The Respondent was provided with

CONSENT AGREEMENT AND ORDER

written notice of the allegations against her pursuant to the rules of the Board and the laws of this State.

Now, in lieu of a hearing, the parties have reached an agreement for the resolution of this case matter and the parties agree to entry of the following Order in disposition of this case matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. That the Board is a State entity created by W. Va. Code § 30-28-1 *et seq.* and is empowered to regulate the practice of occupational therapy.
2. That the Respondent, Billie J. Smith, is a licensee of the Board, possessing License No. C1591, and is therefore subject to the license requirements of said Board.
3. That the Board is empowered to investigate allegations of unprofessional or unethical conduct and to suspend, restrict, revoke or refuse to issue a license to practice occupational therapy under the authority granted to it by W. Va. Code § 30-28-1 *et seq.*

4. That Respondent was, at all times material hereto, employed as an occupational therapy assistant with Gentiva Home Health in Bluefield, WV.

5. That in November 2010 the Board received a complaint against the Respondent, alleging that the Respondent had fraudulently billed for services not rendered to a home care patient, forged signature of the patient or patient's guardian, and falsified treatment notes for the fraudulently billed service date.

6. That Respondent's employment with Gentiva Home Health was terminated.

7. That in January of 2011, the Board conducted an investigation, during which time the complainant, the Respondent and other relevant parties were interviewed and various documents relevant to the complaints were obtained.

8. That the Board's assigned complaint investigator did review all the information obtained during the investigation and based upon that review, did make a recommendation to the Board for a finding of probable cause.

9. That the Respondent's actions constitute multiple violations of W. Va. Code § 30-28-1 *et seq.* and 13 C.S.R. § 1 *et seq.* and may be grounds for disciplinary action by the Board.

10. That the Board, by vote at its February 4, 2011 meeting, made a finding of probable cause for violations of W. Va. Code § 30-28-1 *et seq.* and 13 C.S.R. 1 *et seq.*

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of unprofessional or unethical conduct set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice occupational therapy, pursuant to W. Va. Code § 30-28-16(g) (3) and (4).

CONSENT OF LICENSEE

I, Billie J. Smith, by affixing my signature hereto, acknowledge the following:

1. That I have had the opportunity to consult with counsel and execute this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.

2. That no person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth herein.

3. That I acknowledge that I am aware that I may pursue this matter through appropriate administrative and/or court proceedings, and I am aware of my legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.

4. That I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.

5. That I admit that my actions were unprofessional and unethical and a violation of the statutory Act and Rules of the Board.

The Respondent, Billie J. Smith, by affixing her signature hereon, agrees to the following:

ORDER

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. The Respondent may continue to practice as an occupational therapy assistant in West Virginia on a probationary basis for a period of five (5) years, effective upon the signature date of this agreement hereto.

2. In addition to all of the requirements and duties regularly required of licensees of the Board, the Respondent, Billie J. Smith, shall be subject to the following conditions during her probationary period:

a. At all times in which she is practicing as an occupational therapy assistant, the Respondent will be under the direct close supervision of a licensed occupational therapist for the first two (2) years of her probationary period. For purposes of this requirement, "direct close supervision" has the same meaning as this term is defined in the Administrative Rules of the Board of Occupational Therapy, 13 CSR 1, §13-1-2.4, with the express provision that the Respondent shall be supervised in the same manner and to the same degree as a limited permit holder under that Rule. The supervising therapist or

therapists must be approved by the Board and sign a supervisory statement to be filed with the Board. The supervising therapist(s) shall review all of the therapy records and documentation completed by the Respondent and, as evidence of the review and collaboration, shall co-sign all of the Respondent's clinical documentation.

b. The Respondent herself may not supervise any other person in the provision of occupational therapy services for the first two (2) years of the probationary period. This includes, but is not limited to, students, aides, or limited permit holders.

c. During the five (5) year probationary period, the Respondent shall not work in settings where other therapists are not present. This includes, but is not limited to, home care services and early intervention.

d. The Respondent shall provide the Board with the name and address of her employer, as well as the name of her immediate supervisor. The Respondent has the duty to update this information, in writing, in the event of any change.

3. The Board will periodically review her compliance with these conditions. Members of the Board, or an investigator appointed by the Board, may periodically inquire with

her employer and may investigate any and all aspects of her professional practice to evaluate her compliance with this Order and the Rules of the Board.

4. The Board retains the authority and discretion to review this decision and order at any time and, upon a determination of probable cause to believe that the Respondent has not complied with one or more of the terms stated herein, or that the Respondent has demonstrated other unprofessional conduct as defined by the Rules of the Board, the Board may suspend the Respondent's license without a hearing in order to protect the health, safety and welfare of the public. A hearing would be scheduled as soon as possible thereafter.

5. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting in the Healthcare Integrity and Protection Data Bank.

6. That this document is a public record as defined in W. Va. Code § 29B-1-2(4).

7. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

In recognition of this Agreement and these terms, we hereby affix our signatures.

WEST VIRGINIA BOARD OF
OCCUPATIONAL THERAPY

By:

Kathy Quisenberry

KATHY QUESENBERRY, CHAIRPERSON

Entered:

3/26/11

DATE

Reviewed and agreed to by:

Billie Smith

Billie J. Smith, Respondent



Sworn to and subscribed before me this 18 day of

March, 2011.

My Commission expires:

2/10/2019

*Notarized Billie J. Smith's signature only.

Dannette P. Parker

Notary Public

