

**BEFORE THE PHYSICAL THERAPY BOARD
FOR THE STATE OF NEW MEXICO**

**IN THE MATTER OF
DWANENE JORETTA DICKERSON,
License No. A-0650 (expired)
now known as
DWANENE JORETTA CHAMBLEE**

Case Number: PT-07, 12-09

and

Case Number: PT2012-02-DEN

Respondent.

SETTLEMENT AGREEMENT AND WAIVER OF HEARING

WHEREAS, the New Mexico Physical Therapy Board (hereinafter the "Board") and Respondent Dwanene Joretta Dickerson, also known as Dwanene Joretta Chamblee, (hereinafter "Respondent") desire to resolve the matters between them, they hereby agree to the following stipulations and settlement terms:

STIPULATIONS

1. On January 16, 2009, the Board issued Respondent a Physical Therapy Assistant license bearing number A-0650.
2. On or about October 5, 2009, Respondent tested positive for marijuana, and was unable subsequently to establish a legal basis for the positive test result.
3. Respondent's license expired on February 1, 2010.
4. On or about October 29, 2010, the Board issued a Notice of Contemplated Action to Respondent in Case Number PT 07, 12-09, with respect to the issues presented by Stipulation number 2, above.

5. On or about February 9, 2011, Respondent executed with respect to Case Number PT 0712 09 a “Waiver of Hearing and Consent to Discipline” hereinafter (the “Consent Agreement”), a copy of which is attached hereto as Exhibit A. The Board approved the Consent Agreement on March 25, 2011, and the Board Chair signed an Order accepting it on April 13, 2011.

6. The Consent Agreement included requirements regarding drug and alcohol testing, reporting and counseling and a one-year probationary period *during which testing and reporting would occur*. However, the Consent Agreement did not clearly provide a specific date when Respondent’s drug and alcohol testing and reporting should commence.

7. Furthermore, the Consent Agreement set forth as a sanction for non-compliance the surrender of Respondent’s license, though at the time the Consent Agreement was approved, Respondent had no active license that could be surrendered in the event of non-compliance.

8. On April 18, 2011, the Board’s Compliance Liaison officer sent a letter to Respondent indicating that probationary “status [would extend] for one year from the date the license is reinstated.” A copy of this letter is attached as Exhibit B. Respondent further contends that the Board’s Compliance Officer verbally instructed her not to provide information required by the Consent Agreement until *after* her license had been reinstated.

9. On or about November 17, 2011, Respondent sought to have her license reinstated through submission to the Board a Physical Therapy Assistant Application, a copy of which is attached as Exhibit C.

10. On March 8, 2012, the Board voted to deny issuance of Respondent's license application, and Case Number PT-2012-02 DEN was opened with respect to that denial of Respondent's application.

11. The Statement of Complaint in Case Number PT-2012-02 DEN, signed March 13, 2012, refers to the alleged failure of Respondent to comply with the terms of the Consent Agreement. However, the Statement of Complaint includes the allegation that "Respondent was to serve one year probation starting 4/13/2011", which statement is inconsistent with the letter (Exhibit B) that stated the probationary period would not commence until Respondent's license had been reinstated. The Statement of Complaint also included the allegation that "Respondent allowed license to expire without abiding by the Board's Order", when in fact Respondent's license had expired on February 1, 2010, more than a year before the Board's Order, which was not signed until April 13, 2011.

12. On December 18, 2008, Respondent's name was legally changed from Dwanene Joretta Dickerson to Dwanene Joretta Chamblee by an "Order Following Hearing on Petition to Change Name" entered in File No. 08-45764-NC on the docket of the Judicial Circuit Court – Family Division for the County of Eaton, Michigan, a copy of which is attached as Exhibit D.

13. Respondent understands that all Board Complaints, Notices of Contemplated Action, and this Settlement Agreement and Waiver of Hearing are public records within the meaning of the Inspection of Public Records Act, §14-2-6 E NMSA. Further, this agreement is a matter of public record and may be reportable to governmental agencies requiring notice of adverse

action, for example, the National Practitioner's Data Bank, the Health Integrity and Protection Data Bank, and the Federation of State Medical Boards Disciplinary Data Bank.

14. Respondent understands and waives her rights under the New Mexico Physical Therapy Act, §§61-12D-3 et seq., NMSA, and under the New Mexico Uniform Licensing Act, §§ 61-1-1 et seq., NMSA, including without limitation her right to issuance of a Notice of Contemplated Action and to have a hearing in connection with Case Number PT2012-02-DEN.

SETTLEMENT TERMS

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Respondent will submit an updated Physical Therapy Assistant Application, providing all information normally required now as part of such license application. If Respondent was not refunded any fee she that submitted in connection with her application received on November 17, 2011 (Exhibit C), no additional fee shall be charged to Respondent in connection with her new application.

2. In processing Respondent's new application, the Board will not deny issuance of a license to Respondent an any ground based on the positive test result for marijuana on or about October 5, 2009 or based on Respondent's alleged failure to comply with the provisions of the Consent Agreement. The Board may deny issuance of such license for any other legal and sufficient ground that may exist.

3. The issuance of any Physical Therapy Assistant license to Respondent pursuant to her application shall be on a probationary basis, with such period of probation to extend for a period of one (1) year and one (1) month from date of issuance of the license.

4. Within ninety (90) days from the issuance of a Physical Therapy Assistant license to Respondent, Respondent shall provide the Board with satisfactory proof of her successful completion of drug and alcohol counseling. Such drug and alcohol counseling may have been successfully completed at any time after February 9, 2011.

5. Within thirty (30) days after the issuance of a Physical Therapy Assistant license to Respondent, Respondent must commence a course of random drug and alcohol testing at her own expense, to be conducted at least once a (calendar) month and continuing for twelve consecutive (calendar) months, with provision made by Respondent permitting and directing the testing entity to transmit reports of test results directly to the Board as soon such are obtained.

6. If any test result is (a) positive for any drug prohibited by law for use by Respondent in the State of New Mexico, or (b) positive for any drug requiring a prescription for which Respondent does not have a prescription, Respondent shall immediately surrender her license by letter to the Board. Alternatively, with respect to any drug identified in a test result and when requested by certified mail, return receipt, by the Board or its representative, Respondent shall bear the burden of proof and production to the Board, within thirty (30) days of mailing of the request, of evidence necessary and satisfactory to the Board Chair to establish that the test result was erroneous, that Respondent was not prohibited from using the drug, and/or that Respondent had a valid prescription for the drug.

7. If the Board Chair finds at that Respondent has failed timely to provide required and satisfactory evidence of completion of drug and alcohol counseling and/or explaining any drug test result, the Board Chair may immediately issue, without the necessity of issuance of a

new Notice of Contemplated Action or compliance with any other requirements of the Uniform Licensing Act or the Physical Therapy Act, an order revoking the Respondent's license and directing that a license not be renewed or re-issued to Respondent without further action of the Board.

Respondent:

11/8/13
Date

D. Joretta Chamblee
DWANENE JORETTA CHAMBLEE
(formerly Dwanene Joretta Dickerson)

New Mexico Physical Therapy Board

11-19-13
Date

By: [Signature]
Robert Pattillo, Chairman

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:)
)
DWANENE JORETTA DICKERSON)
 Aka Dwanene Joretta Chamblee)
)
LICENSE NO.: A 0650 expired 02-01-10) **CASE No. PT 07, 12-09**
)
 Respondent.)
)
_____)

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Physical Therapy Board (“the Board”) has sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board suspending or revoking the New Mexico Physical Therapy license of DWANENE JORETTA DICKERSON who is also known as Dwanene Joretta Chamblee (“Respondent”), or assessing fines and/or penalties against Respondent pursuant to the *Physical Therapy Act* and the *Uniform Licensing Act*. If the Respondent is not currently licensed in New Mexico, sufficient evidence exists which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board denying Respondent a license to practice.

APPLICABLE LAW

The Board has sufficient evidence to take disciplinary action against Respondent pursuant to the *New Mexico Physical Therapy Act*, NMSA 1978 61-12D-13 which incorporates the American Physical Therapy Association *Code of Ethics*. The New Mexico Physical Therapy Board has adopted the current American Physical Therapy Association *Code of Ethics* as per NMSA (1978) § 61-12D-13L.

For the purposes of this contemplated action, the *New Mexico Physical Therapy Act* in pertinent part states:

§ 61-12D-13: Grounds for Disciplinary Action

The following conduct, acts or conditions constitute grounds for disciplinary action:

G. practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the habitual or excessive use of controlled substances, other habit-forming drugs, chemicals or alcohol;

L. failing to adhere to the recognized standards of ethics of the physical therapy profession;

SUMMARY OF THE EVIDENCE AGAINST RESPONDENT

1. On or about October 5, 2009, Respondent tested positive for an illegal substance and was unable to supply legitimate documentation to justify the positive result.

2. On or before October 5, 2009, Respondent engaged in unethical and illegal conduct, to wit: the use of marijuana.

The formal hearing, if requested, will be conducted pursuant to the *New Mexico Uniform Licensing Act*, NMSA 1978, § 61-1-1 through 61-1-31 (Repl. Pamp. 1999). Pursuant to NMSA 1978, § 61-1-8 the licensee is specifically advised as follows:

61-1-8. Rights of person entitled to hearing

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any

documents or items which the other party will or may introduce in evidence at the hearing. The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

CONCLUSION:

Unless the allegations are explained or rebutted at a formal hearing, such allegations are justification for the Board to suspend, revoke or deny Respondent's license to practice as a physical therapist in the State of New Mexico and to impose such other penalties as may be permitted by law.

IF YOU WOULD LIKE THE OPPORTUNITY FOR A FORMAL HEARING ON THIS MATTER, YOU MUST RESPOND TO THIS NOTICE WITH A REQUEST FOR A HEARING WITHIN TWENTY (20) DAYS.

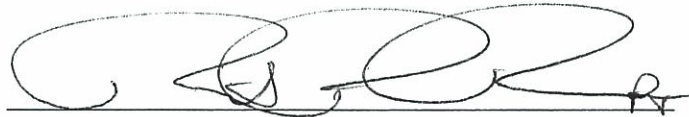
THE RESPONSE MUST BE SENT TO THE BOARD IN WRITING, BY CERTIFIED RETURN RECEIPT REQUESTED LETTER TO THE ADDRESS BELOW.

**FAILURE TO RESPOND WILL RESULT IN THE BOARD TAKING
THE CONTEMPLATED ACTION AND THIS ACTION WILL BE FINAL.**

PLEASE SEND YOUR REPOSE TO:

**Ms. Velma Rodriguez,
Board Administrator
Physical Therapy Board
2550 Cerrillos Road
Santa Fe, New Mexico 87505
Phone (505) 476-4827**

Date 10/29/10



Chairperson
Physical Therapy Board
2550 Cerrillos Road
Santa Fe, New Mexico 87505

Administrative Prosecutor:
William J. Moon,
Assistant Attorney General
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 827-6079

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Contemplated Action to the Respondent on November 10, 2010, via certified mail, return receipt requested.


Physical Therapy Board

Administrative Prosecutor:

William J. Moon
Assistant Attorney General
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87102
(505) 827-6079