



JON S. CORZINE
Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
New Jersey State Board of Physical Therapy Examiners
124 Halsey Street, 6th Floor, Newark, NJ 07102



ZULIMA V. FARBER
Attorney General

KIMBERLY S. RICKETTS
Director

May 25, 2006

By Certified and Regular Mail

Michael Uss, P.T.
432 Little Brook Road
Glen Gardner, N.J. 08826

Re: Offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Mr. Uss:

This letter is to advise you that the New Jersey State Board of Physical Therapy Examiners (the "Board") has had an opportunity to review information concerning the physical therapy services provided to patient, P. R. at the Hudson- Novacare facility located in New Providence, New Jersey from October 15, 2002 -January 2, 2003. Specifically, the information reviewed included the patient record of P.R. and the testimony that you provided at the investigative inquiry held on March 8, 2005 which you attended Pro. Se.

Upon review of all available information, the Board has preliminarily found that probable cause exists to support a finding that you violated N.J.S.A. 45:1-21(h) and N.J.A.C. 13:39A-3.1 (a) in that the patient record does not support the treatment interventions provided to his patient and the billing charges were excessive in violation of N.J.A.C. 13:39A-3.4.

The Board's review has determined that this patient was referred for physical therapy for the shoulder but was also treated for the hip. You provided treatment to this patient on November 27, 2002, December 2, 4, 16 and 30, 2002 and you supervised the treatment of this patient by a physical therapist assistant on October 21, 2002. Upon questioning, you confirmed that the initial evaluation was prepared by Gwen Fulco, P.T. In the initial evaluation, Ms. Fulco determined that the patient's postural problems were affecting the range of motion of the shoulder and thus she instructed the patient to perform hip exercises. However, the patient record and specifically the initial evaluation did not contain any references to a postural problem or hip involvement. The flow chart which indicated the exercises and therapy to be performed on this patient contained a diagnosis of "subacromial bursitis" and indicated isokinetic exercises to the hip abductor. Your testimony confirmed that you also treated this patient's hip area and never addressed the cervical spine, thoracic spine or the scapular musculature in the patient record in violation of N.J.A.C. 13:39A-3.1 (a) and N.J.S.A. 45:1-21(h). A review of the patient record from December 13 through January 2 indicates a diagnosis of subacromial bursitis which is a shoulder diagnosis.

The patient record does not discuss any other pathology in the evaluations. All of the interventions documented in the patient record are for the lower extremity and lower back, i.e. "iso hip abduction and adduction", "myofascial" releases both hips, "Mobs for lumbar spine" and "sacral spring." The progress note for November 27, 2002 failed to indicate goals for the treatment provided. Additionally, the interventions noted in this note do not relate to the narrative describing the treatment. The December 16, 2002 progress note also does not reference anything pertaining to lower extremity interventions. Upon further review this note lacks specific goals and is devoid of any references to the goals in the narrative and fails to determine the appropriate interventions or the overall objectives to the course of care that was performed on the patient.

The re-certification form which you prepared on December 30, 2002 and submitted for approval of additional treatments demonstrates that the patient had almost achieved complete range of motion. The patient's strength was "almost" normal and the patient had achieved relatively low pain, yet the recommendation to the insurance carrier was for an additional eight (8) to ten (10) visits which in the Board's opinion is not supported by the objectives provided which was to "prevent supinatus tendon breakdown." Additionally, the submission of the request for additional treatments was inconsistent with the summary discharge three days later that was prepared by Gwen Fulco, P.T. Thus, the Board finds that this documentation is not supported by the findings reflected in the patient record in violation of N.J.A.C. 13:39A-3.1.

Additionally, the patient's billing records reflect that he was billed an average of one and a half (1.5) to two hours (2) per visit and the total costs for this length of treatment was between \$448.16 per visit which you testified was not a usual and customary billing charge. You also testified that the company established the fees charged to the patients and that in your opinion the billing of \$450 for a visit was excessive. A further review of the patient record indicated that the patient was billed on October 22, 2002 in the amount of \$307.16 and on October 24, 2002 in the amount of \$448.16. A review of the billing record further demonstrated that the patient was billed \$74 for therapeutic activity on October 22, 2002 and \$148.00 for therapeutic activity on October 24, 2002. Upon review of the patient record for an explanation as to why the billing for therapeutic activity was higher for the October 24, 2002 treatment date the record supports the addition of upper trunk rotations of 50 repetitions which added approximately ten (10) minutes to the treatment session and an additional 8 minutes of retro rotations. Therefore, the charge for therapeutic activity was doubled as a result of 18 additional minutes of activity. The Board finds this charge to be another example of excessive billing in violation of N.J.A.C. 13:39A-3.4(a) and N.J.A.C. 13:39A3.6. It was your testimony that you and Ms. Fulco at some point in time made a determination that the billings were high at the facility and decided to reduce them. One of the changes that were made to the billings were to cease billing for two charges for therapeutic exercises.

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of disciplinary proceedings, should you consent to:

1. Cease and desist from maintaining patient records that do not accurately reflect the treatment interventions performed in the treatment of the patient in violation of N.J.A.C. 13:39A-3.1 et. seq. For example, performing interventions treating the hip when the patient record includes a sole diagnosis for the treatment of the shoulder and submitting a request for additional treatment to the insurance carrier which are not supported by the patient record.

2. Cease and desist from charging excessive fees for services in violation of N.J.A.C. 13:39A-3.4(a) and 13:39A-3.6.

3. Pay a penalty in the amount of \$2000.00 consisting of \$1000.00 for the violation of N.J.A.C. 13:39A-3.1 and \$1000.00 for violation of N.J.A.C. 13:39A-3.4 and 13:39A-3.6 and (to be paid immediately upon your signing of the acknowledgment at the bottom of this letter) Payment is to made by certified check or money order and made payable to the Board of Physical Therapy Examiners and sent to the attention of Susan Gartland, Executive Director, P.O. Box 45014, Newark, New Jersey 07101.

4. Pay costs incurred by the Board in the amount of \$288.00 which represents investigative costs as documented in the attached certification of Susan Gartland, Executive Director.

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of formal disciplinary action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order, requiring you to reimburse certain monies and/or requiring you to pay costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General Carmen A. Rodriguez, who may be reached at (973) 648-3696.

If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of formal disciplinary action.

NEW JERSEY STATE BOARD OF
PHYSICAL THERAPY EXAMINERS

By:


Susan Gartland
Executive Director

ACKNOWLEDGMENT: I, Michael Uss, P.T. , hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of \$2000 and costs in the amount of \$288.00 for a total of \$2288.00 (to be paid upon signing of this acknowledgment).


Michael Uss, P.T.

Dated: 7/7/06

cc: Carmen A. Rodriguez, Deputy Attorney General