



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, 6<sup>th</sup> Floor, Newark, NJ 07102



ANNE MILGRAM  
Attorney General

STEPHEN B. NOLAN  
Acting Director

July 31, 2007

### By Certified and Regular Mail

Robert Witt, P.T.  
104 Stockton Avenue  
Ocean Grove, New Jersey 07756

**Mailing Address:**  
P.O. Box 45014  
Newark, NJ 07101  
(973) 504-6455

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

Dear Mr. Witt:

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 you provided to patients Alicia Clark and Elizabeth Clark at Fitness In Therapy, located in Brick, New Jersey between December 1, 2005 and January 12, 2006. Specifically, the information reviewed included the following: 1) a complaint filed with the Board by Alicia Clark, on behalf of herself and Elizabeth Clark, on or about February 13, 2006; 2) the patient records of both Alicia and Elizabeth Clark; and 3) the testimony that you provided at the investigative inquiry held on September 12, 2006, which you attended represented by your attorney, James Hundley, Esquire.

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(e), in that you engaged in professional or occupational misconduct. The Board has also preliminarily found that probable cause exists to support a finding that you violated N.J.S.A. 45:1-21(h) and specifically N.J.A.C. 13:39A-3.6, in that you charged excessive fees for your services and that you violated N.J.A.C. 13:39A-3.1, in that the patient records you maintained on each of these patients did not accurately reflect the patient treatment as both records failed to contain specific goals, re-evaluations of the patients and failed to record any progress made by either patient.

It appears from the Board's review that these patients were referred to you for physical therapy by a Dr. Steven Berkowitz subsequent to an automobile accident on or about October 26, 2005. Upon questioning, you confirmed that you completed the initial evaluation, you determined that Alicia Clark's complaints were pain in the cervical and lumbar spine, pain in both hands, vertigo, and feeling light-headed. You further determined that Elizabeth Clark's complaints were pain in the cervical spine to the right shoulder and down the right upper extremity, pain in the thoracic region, and pain in the lumbar region. You also determined that for both women, cervical spine range of motion was limited 50%, that there was no loss of movement in the lumbar spine, and that there was some tenderness mainly in the left upper trapezius area.

The medical history does not appear to contain any indication of injuries that occurred, any hospitalization, or any x-rays that were taken and you did not recall whether any of these had occurred prior to the patients seeing you. Upon questioning, you confirmed that when you did test Alicia Clark's upper and lower extremities at her initial evaluation, you found no deficits but did not document this information in her patient record. Further, according to both the record and your testimony, it appears that you did not perform any tests on Alicia Clark's lower back to provide a measurement for future therapy, such as differentiating what activities cause pain. It also appears that you based your treatment of her lower back on her subjective complaint of lower back pain but there are no indications in the patient record of progress or a reduction in pain for subsequent visits. However, it also appears that you continued to treat her lower back with physical therapy. Your failure to support your evaluations and reevaluations with proper documentation is considered engaging in professional or occupational misconduct, in violation of N.J.S.A. 45:1-21(e).

Also, according to the patient records, after the initial visit on or about December 1, 2005, neither Elizabeth nor Alicia Clark was seen again in your office until on or about December 20, 2005. Upon questioning, you stated that you did reevaluate them, however, considering this gap in time, there is no written information in your patient records supporting a reevaluation of either patient or the results of a reevaluation. Also, for the visits following the initial evaluation, there is nothing in the record regarding the patient's subjective complaints such as pain or change in function. Your testimony also confirmed that you made no indication in the record that Alicia Clark was a difficult patient regarding the performance of exercises, such that she required at least twenty-four minutes to complete them and required your full supervision and instruction at all visits. You also failed to note inconsistencies with the patient's complaints of pain such as that Alicia Clark complained of general pain in both hands, however, she did not express any pain in doing exercises involving her hands. Your failure to note these observations at both the initial evaluation and at subsequent evaluations is also considered engaging in professional or occupational misconduct in violation of N.J.S.A. 45:1-21(e).

Alicia Clark's billing records indicate that for her initial visit, on or about December 1, 2005, she was billed \$75 for her initial evaluation. You testified that this evaluation includes taking her history, examining the patient, palpating and measuring the patient, and performing other tests such as evaluating the patient's cervical range of motion. However, her billing records indicate that she was also billed \$60 for manual muscle testing and \$50 for range of motion testing. This is called unbundling of fees, which is a violation of N.J.S.A. 45:1-21(h) and specifically N.J.A.C. 13:39A-3.6, which prohibits you from charging excessive fees for your services. Although she was charged for these additional tests, Alicia Clark's records for her initial visit contain no results for any muscle testing and the only result for a range of motion test is that her cervical rotations were limited 50%. Billing for services not reflected in the patient record as being rendered is also a violation of N.J.A.C. 13:39A-3.6.

The billing records for Alicia Clark's visit on or about December 26, 2005 indicate that she was billed \$55 for therapeutic activities. However, according to her patient records and your testimony, no exercises were performed by Alicia Clark at that visit. A further review of the billing record for Alicia Clark indicates that during her visits on or about January 2, 2006 and January 10, 2006, she was charged \$50 for reevaluation. However, no evaluative findings were noted in the patient records for those visits, such as re-measuring or substantiating her progress. These billing practices are considered billing for services not reflected in the patient record as having been rendered. This was also in violation of N.J.S.A. 45:1-21(h) and specifically N.J.A.C. 13:39A-3.6, which prohibits you from charging excessive fees for your services.

Upon questioning, you confirmed that in your patient records for Alicia Clark there is no indication of any limitations or problems the patient has, related to her injuries, such as with her ability to work or play. However, in your initial evaluation of Alicia Clark, one of your goals was to restore function. Without functional limitations, your stated goal of restoring function is not related to a specific problem and is thus ineffective. The other goal listed in your initial evaluation was to decrease pain. Specifically, one area of pain was listed as the cervical spine and both hands. However, no specific description of this pain is present in the patient's record. Therefore it appears to the Board that without an adequate measure of the patient's pain, the goal of reducing that pain is not effective. Although you testified that you asked the patient to describe her pain and that generally you record such information, you were unable to recall her answer and did not record it in the patient record. Further, according to both your records and your testimony, you did not record any progress made by either patient at any subsequent visit with you, either as part of a re-evaluation or as part of your treatment. Maintaining patient records that contain non-specific goals and that do not reflect any recordings of progress is in violation of N.J.S.A. 45:1-21(h), and specifically N.J.A.C. 13:39A-3.1, which requires that the patient records maintained accurately reflect the patient contact with the physical therapist.

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. A formal reprimand for failing to support your evaluations with proper documentation of your findings and continuing to treat the patient over 24 visits in violation of N.J.S.A. 45:1-21(e).

2. Cease and desist from failing to support your evaluations and reevaluations with proper documentation of your findings, in violation of N.J.S.A. 45:1-21(e).

3. Cease and desist from charging excessive fees for services in violation of N.J.S.A. 45:1-21(h) and specifically N.J.A.C. 13:39A-3.6 by charging for separate services which are part of the initial evaluation for example manual muscle testing and range of motion are part of the initial evaluation and should not be billed for separately.

4. 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.S.A. 45:1-21(h), and specifically N.J.A.C. 13:39A-3.1 by including goals, indicating the patient's progress

5. Pay a penalty in the amount of \$7,500 consisting of \$2,500 for the violations of N.J.S.A. 45:1-21(e), \$2,500 for the violations of N.J.S.A. 45:1-21(h) and specifically N.J.A.C. 13:39A-3.6, and \$2,500 for violations of N.J.S.A. 45:1-21(h), and specifically N.J.A.C. 13:39A-3.1, to be paid immediately upon your signing of the acknowledgment at the bottom of this letter. Payment is to be made by certified check or money order and made payable to the Board of Physical Therapy Examiners and sent to the attention of the Executive Director, P.O. Box 45014, Newark, New Jersey 07101.

6. Pay costs incurred by the Board in the amount of \$468.00 which represents investigative costs as documented in the attached certification and are to be paid by certified check or money order as set forth paragraph 4.

7. Document successful completion of a one hour post professional course in ethics. The course is to be pre-approved by the Board.

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.

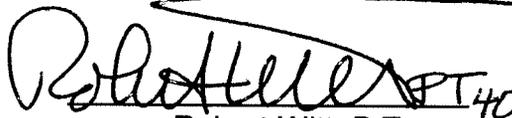
In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of formal disciplinary action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed 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 your attorney Mr. Hundley who can then 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:   
Lawrence DeMarzo  
Division of Consumer Affairs

ACKNOWLEDGMENT: I, Robert Witt, 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 \$7,500 and costs in the amount of \$468.00 for a total of \$7968.00, to be paid upon signing of this acknowledgment.

  
Robert Witt, P.T. 409A 00167800

Dated:

cc: James Hundley, Esquire  
Carmen A. Rodriguez, Deputy Attorney General