



CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. 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



JOHN J. HOFFMAN  
Acting Attorney General

STEVE C. LEE  
Acting Director

February 9, 2016

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

Jose Mendiola, P.T.  
29 Kathleen Place  
Edison, N.J. 08817-5018

Re: Offer of settlement in lieu of formal disciplinary action

Dear Mr. Mendiola:

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 practices performed at Tender Touch Health Care Services, Inc. in Lakewood, N.J. and the specific physical therapy services performed on R.S. on 11/26/2013.

Mr. Mendiola (the "Respondent") appeared at an investigative inquiry of the Board on September 8, 2015 and was represented by Joanne Pietro, Esquire. Mr. Mendiola testified that he performed an initial evaluation on patent R.S. on 11/26/2013. He prescribed a home exercise program for this patient but the patient record did not indicate the specific home exercise program developed for this patient. The patient record reflected that the Respondent diagnosed therapeutic exercises for this patient as result of the initial evaluation. The patient record is devoid of any reference to the type of therapeutic exercises performed by this patient. Respondent further testified that he maintained the specific exercises for particular patients on index cards. Upon discharge of the patient the index cards were discarded and the information regarding the specific patient exercises was not transferred onto the patient's record. This conduct was in violation of the patient record rule at N.J.A.C. 13:39A-3.1(a) which requires that the patient record accurately reflect the care that the patient received.

Respondent also testified that this facility utilized the assistance of rehabilitative aides. Aides were employees who were not licensed as physical therapists or physical therapist assistants but who were permitted to remove hot packs and electrodes from patients. According to the respondent's testimony the aides could also place electrodes on a patient at the request of the therapist. This conduct is in violation of N.J.A.C. 13:39A-2.4(b).

In response to an allegation that R.S., a new patient to the facility was observed by a third party doing exercises on a slant board while attended to by an aide, Respondent testified that he asked the aide to bring the patient to the parallel bars and upon his return he too observed that the aide was showing R.S. how to stretch her calf. Although Respondent alleges that he attempted to prevent the aide from showing the patient how to use the slant board, the State observer wrote both him and the aide up for violations of the rules. Respondent testified he was unaware of what type of training if any the aides received at the facility regarding exercises and the instruction of patients concerning exercise.

Upon review of all available information and your testimony at the inquiry, the Board has preliminarily found that probable cause exists to support a finding that you violated N.J.S.A. 45:9-39.11, N.J.S.A. 45:1-21(h) and N.J.A.C. 13:39A-2.4 that requires that the practice of physical therapy be conducted by licensed physical therapists or physical therapists assistants under the direct supervision of a licensed physical therapist. Aides are not licensed individuals and shall not be involved in the treatment of a patient. Aides should not be removing cold or hot packs from patients nor instructing or evaluation the exercise regimes of patients receiving physical therapy treatment. Based on the documentation and the testimony reviewed the Board finds that the conduct of the aide at this facility exceeded the scope of the duties of an aide.

Based on your testimony and the patient record of RS there is also probable cause to support a finding that you violated N.J.S.A. 45:1-21(h) and N.J.A.C. 13:39A-3.1et. seq. as the patient record fails to adequately reflect the components of the intervention and the patient's response to the intervention as he did not include the actual therapeutic exercises that he prescribed for the patient.

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceeding 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 formal disciplinary proceedings, should you consent to

1. Cease and desist from delegating activities to aides which are permitted within the scope of practice of licensed physical therapists and licensed physical therapists assistants and not delegable to unlicensed individuals.

2. A warning for improper delegation of activities to an unlicensed individual in violation of N.J.S.A. 45:9-37.11 et. seq., and N.J.A.C. 13:39A-2.4.

3. The respondent shall satisfy and complete a defensible record keeping course within six months of the date that this settlement offer is accepted. The course shall be pre-approved by the Board. This course shall be in addition to the continuing education courses required by N.J.A.C. 13:39A-9.1 and shall not be used as credits for required CE courses for renewal of the professional license.

4. Respondent shall pay a penalty in the amount of \$500.00 for violations of improper delegation to an unlicensed individual in violation of N.J.A.C. 13:39A-2.4 and for inadequate record keeping in violations of N.J.A.C. 13:39A-3.1. The full amount of the violation is to be paid immediately upon signing of the acknowledgment at the bottom of this letter by sending a certified check or money order payable to the State Board of Physical Therapy Examiners, attention Lisa Tadeo, Executive Director, P.O. Box 45013, Newark, New Jersey. The Board is also amenable to payment of the civil penalty and costs in the amount of \$1065. in 18 monthly installments commencing on March 15, 2016 in the amount of \$59.16 and the final payment of \$59.28 in September 15, 2017. If the Respondent chooses to pay the penalty and costs in installment payments rather than in full immediately upon accepting this offer he is to contact the Executive Director of the Board and request the installment plan option.

5. Pay costs in the amount of \$565.00. To be paid immediately upon signing of the acknowledging or in 18 monthly installment payments as set forth in paragraph #4 above.

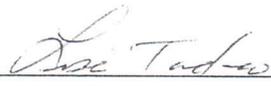
If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it the Board office. Upon your signature, this letter will be a matter of public record.

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 appropriate enforcement 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, Joanne Pietro, Esquire and have her contact Deputy Attorney General, Carmen A. Rodriguez who may be reached at (973) 648-3696.

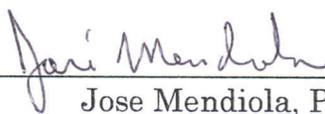
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If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response 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:   
Lisa Tadeo  
Executive Director

ACKNOWLEDGMENT: I, Jose Mendiola, 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 \$ 500.00 plus costs in the amount of \$565.00 which total \$1065.00 (to be paid upon signing of this acknowledgment or by installment payments). I further agree to take a Board approved defensible documentation course under the terms and the time period set forth in the settlement letter.

  
Jose Mendiola, P.T.

c: Joanne Pietro, Esquire  
Carmen A. Rodriguez, DAG