

1 **BEFORE THE STATE OF NEVADA**

2 **PHYSICAL THERAPY BOARD**

3 STATE OF NEVADA, PHYSICAL
4 THERAPY BOARD,

5 Petitioner,

6 vs.

7 Bernard L. Miller
8 PT License No. 0801,

Respondent.

Case Nos.: 2021-15

**COMPLAINT
AND
NOTICE OF HEARING**

9 The STATE OF NEVADA, PHYSICAL THERAPY BOARD (“Board”), by and
10 through its counsel, AARON D. FORD, Attorney General of the State of Nevada, and
11 ZIWEI ZHENG, Deputy Attorney General, hereby notifies Respondent, Bernard L. Miller,
12 PT License No. 0801 (“Respondent”), of an administrative hearing, which is to be held
13 pursuant to Chapter 233B, Chapter 622A, Chapter 622, and Chapter 640 of the Nevada
14 Revised Statutes and Chapter 640 of the Nevada Administrative Code. The purpose of the
15 hearing is to consider the allegations stated below and to determine if Respondent should
16 be subject to an administrative penalty as set forth in the above-cited Statutes and
17 Regulations if the stated allegations are proven at the hearing by a preponderance of the
18 evidence.

19 The Board complains about disciplinary action against Respondent Bernard L.
20 Miller, PT License No. 0801.

21 **FACTUAL ALLEGATIONS AND JURISDICTION**

22 1. Respondent was, at the relevant times mentioned in this Complaint, licensed
23 as a physical therapist by the Board under License No. 0801, and is, therefore, subject to
24 the jurisdiction of the Board and the provisions of NRS Chapter 640 and NAC Chapter 640.

25 2. On or about October 15, 2021, the Board received a complaint (Complaint), filed by
26 Melody Deshon (“Deshon”), Action Staff Compliance Officer, alleging Respondent, was repeatedly
27 found sleeping in his car during working hours; repeatedly missed patient appointments;
28 incorrectly charged patient treatments and fraudulently reported his time; smelled of alcohol

1 during work hours.

2 3. At the time of the Complaint, Respondent was contracted through Action Staffing
3 Solutions to provide physical therapy services for NeuroRestorative Nevada, 2785 S. Rainbow
4 Blvd., Suite 130, Las Vegas, Nevada 89126.

5 4. Deshon asserts Respondent worked as a staffing Physical Therapist for Action
6 Staffing and NeuroRestorative Nevada contracted with Action Staffing for Physical
7 Therapist services.

8 5. It is alleged that Respondent worked for Action Staffing for a week from
9 August 26, 2021, to September 3, 2021.

10 6. It is alleged that the alleged violations occurred were reported to Deshon by
11 Stephanie Anderson (“Anderson”) MS OTR/L, the Director of NeuroRestorative Regional
12 Rehabilitation

13 7. It is alleged that Respondent signed the Sleeping Policy during Orientation
14 on August 26, 2021.

15 8. It is alleged that Respondent’s schedule was from 8:00 a.m. to 4:00 p.m., or
16 4:30 p.m. Respondent had an hour lunch break.

17 9. It is alleged that each client was treated for 50 minutes so a therapist had a
18 10-minute break with each client.

19 10. It is alleged that, on September 2, 2021, Respondent missed five (5) patient
20 treatments.

21 11. It is alleged that Respondent’s timesheet from August 23, 2021, to August 27,
22 2021, stated that he had worked 2.5 hours on August 23, 2021. Respondent did not start
23 working on-site until August 26, 2021.

24 12. It is alleged that Respondent’s time sheet for August 30, 2021, documented
25 that he was scheduled for two (2) clients at 50 minutes each, but he only saw them for 30
26 minutes.

27 13. It is alleged that Respondent’s timesheet for August 30, 2021, also
28 documented that he co-treated with two (2) clients scheduled, but he only co-treated one (1)

1 client.

2 14. It is alleged that, on September 2, 2021, two employees at NeuroRestorative
3 Las Vegas reported to Anderson that Respondent failed to resume working at 1:00 p.m.

4 15. It is alleged that, on September 3, 2021, around 10:30 a.m., Respondent was
5 missing for two hours.

6 16. It is alleged that on September 3, 2021, Respondent missed three (3) patient
7 treatments.

8 17. It is alleged that on September 3, 2021, Respondent came into the office
9 around 8:00 a.m. to see his first patients at 9:00 a.m., but Respondent was nowhere to be
10 found.

11 18. It is alleged that subsequently on September 3, 2021, Respondent appeared
12 at 9:15 a.m. for his 10:00 a.m. patient, but the Patient reported that Mr. Miller only worked
13 with him for 20 minutes.

14 19. It is alleged that for Respondent's 11:00 a.m. patient on September 3, 2021,
15 Respondent was nowhere to be found again.

16 20. It is alleged that Respondent at least slept in his car twice from August 26,
17 2021, to September 3, 2021.

18 21. It is alleged that on September 2, 2021, at around 1:45 p.m., a therapist on
19 site saw Respondent sleeping in his car. She knocked on the window with no response.
20 Anderson then texted Respondent at 1:48 p.m. Respondent responded, "I am here." Then
21 he walked into the office at 1:50 p.m.

22 22. It is alleged that Brittney Morgan, COTA, a staff member reported to Lynette
23 Dean ("Dean"), Program Director at NeuroRestorative that she saw Respondent sleeping
24 in his car. When she knocked on the window, Respondent stated that he was "taking a
25 break."

26 23. It is alleged that on September 3, 2021, at 10:30 a.m., Dean walked to
27 Respondent's car, accompanied by Chuck Clommer ("Clommer"), Maintenance Director.
28 They knocked on the car windows with no response. When Clommer pounded on the roof

1 of the car, Respondent then rolled down his window with his eyes blinking, then stated that
2 he was “taking a break.”

3 24. It is alleged that when Dean noticed Respondent released patients early from
4 treatment, she had Anderson check the charges Respondent logged on his clients.
5 Respondent charged more time than he provided the clients.

6 25. It is alleged that after Respondent’s employment was terminated on
7 September 3, 2021, Cristian Guardudo, a patient, wrote a report in Spanish stating that
8 Respondent had alcohol on his breath during treatment,

9 26. The Board’s Investigator Deborah Dieter (Investigator Dieter) interviewed
10 Respondent on November 3, 2021.

11 27. Respondent stated that he never received a letter from the Physical Therapy
12 Board regarding the Complaint. Executive Director, Mr. Charles D. Harvey, had previously
13 sent two copies of the Complaint to Respondent.

14 28. Respondent denied he had ever received Orientation from NeuroRestorative

15 29. Respondent stated that he could not remember the exact date he was
16 employed at NeuroRestorative, but it was longer than a week.

17 30. Respondent denied he was found sleeping in his car during patient treatment
18 time.

19 31. Respondent stated that he only found sleeping in his car once and it was
20 during his lunch hour break, i.e., unpaid time.

21 32. Respondent stated that he treated each patient for 60 minutes.

22 33. Respondent affirmed that the personnel who terminated Respondent was with
23 NeuroRestorative. Mark was employed at Action Staffing, and he terminated Respondent’s
24 employment.

25 34. It is alleged that Respondent, on three (3) occasions, incorrectly billed Current
26 Procedural Terminology (CPT) codes. The codes Respondent billed were 97510, 98116, and
27 07539, which do not exist in the CPT Code. This is a violation of NAC 640.620, which states
28 that “A licensee shall not engage in any misleading or deceptive billing practice.”

35. It is alleged that Respondent, on three (3) occasions, incorrectly billed units. Respondent billed eleven (11) units, whereas he should have billed only one (1) unit. This is a violation of NAC 640.620(3)¹, which states that “A licensee shall not engage in any misleading or deceptive billing practice.”

36. It is alleged that Respondent failed to write two (2) required quarterly progress reports for scheduled patients. This is a violation of NAC 640.610(1)(c)², which states that “a licensee shall ensure that the record of each patient is clear, legible, complete and accurate, and the record includes an original, legible signature or authenticated electronic signature of the licensee.

¹ **NAC 640.620 Fees and billing. (NRS 640.050)** A licensee shall:

1. Make arrangements for the payment of fees for the treatment at the beginning of the therapeutic relationship with a patient.
2. Charge for his or her treatment an amount which represents a reasonable fee for the treatment.
3. **Not engage in any misleading or deceptive billing practice. (Emphasis added)**
4. Make billing information available to the patient upon the request of the patient.

² **NAC 640.610 Records; confidentiality. (NRS 640.050)**

1. A licensee shall:
 - (a) Maintain in a secure and confidential manner any record of a patient which shows a medical problem of the patient or the scope of the treatment of the patient administered by the licensee;
 - (b) Within 72 hours after providing treatment to a patient, indicate in the record of the patient the treatment that was provided; and
 - (c) **Ensure that the record of each patient is clear, legible, complete and accurate, and that the record includes an original, legible signature or authenticated electronic signature of the licensee. (Emphasis added)**
 2. Except as otherwise provided by law, a licensee may not release a record of a patient which is confidential, or any information contained therein, except:
 - (a) With the written consent of the patient;
 - (b) If the patient is a minor, with the written consent of the parent or legal guardian of the patient;
 - (c) Upon written request from the attorney of a patient if the written request is accompanied by a release signed by the patient or the parent or legal guardian of the patient, as applicable;
 - (d) In response to a subpoena issued by the Board;
 - (e) Pursuant to an order of a court of competent jurisdiction; or
 - (f) If there is a clear and immediate danger to the patient, another person or to society. If there is such a danger, a disclosure may be made to an appropriate member of the family of the patient, another provider of health care, or an appropriate agent of the Federal Government, the State, a political subdivision of the State or a law enforcement agency, when acting in his or her official capacity.
 3. A licensee shall provide medical records within 5 business days after receipt of a written request received pursuant to subsection 2.
 4. A licensee shall inform his or her patient of any regulation or statute which governs the confidentiality of communications between the patient and the physical therapist.
 5. A licensee shall not falsify a record of health care of a patient.
- (Added to NAC by Bd. of Phys. Therapy Exam'rs, eff. 6-11-90; A by R153-98, 12-18-98; R111-02, 1-24-2003; R059-06, 9-18-2006)

37. It is alleged that Respondent failed to write (3) three progress reports for scheduled patients. This is a violation of NAC 640.610(1)(c), which states that “a licensee shall ensure that the record of each patient is clear, legible, complete and accurate, and the record includes an original, legible signature or authenticated electronic signature of the licensee.

38. Upon information and belief, it is alleged that the factual allegations herein are true and correct.

39. Upon information and belief, it is alleged that Respondent violated NAC 640.620 as described in the above factual allegations.

40. Respondent's actions, as described above constitute grounds for action by the Board pursuant to NRS Chapter 640, including but not limited to NRS 640.050 and NAC Chapter 640, including but not limited to NAC 640.590.

VIOLATIONS OF LAW

First Claim for Relief

(Failing to Comply with Statutes and Regulations)

Respondent, as evidenced by his/her actions as described above in the factual allegations, is guilty of the standards of conduct by failing to comply with all the provisions of the statutes and regulations governing the practice of physical therapy. This is a violation of **NAC 640.550(8)**³ which is grounds for disciplinary action pursuant to Chapter

³ **NAC 640.550 General requirements. (NRS 640.050)** A licensee shall:

1. Maintain and calibrate his or her equipment which is used in a program of physical therapy in accordance with the recommendations of the manufacturer of the equipment.

2. Not use his or her professional relationship with a patient to further the licensee's own personal, religious, political or business interest.

3. Not disparage the qualifications of any colleague, except as otherwise provided in subsection 7.

4. Not diagnose, prescribe for, treat or advise a patient on any problem outside the licensee's field of the practice of physical therapy.

5. Base his or her practice upon the educational requirements adopted by the Board.

6. Keep current with the emerging knowledge in the field of physical therapy.

7. Report to the Board any unlicensed, unauthorized, unqualified or unethical practice of physical therapy by another person.

8. Comply with all of the provisions of the statutes and regulations governing the practice of physical therapy as set forth in this chapter and in [chapter 640](#) of NRS. (Emphasis added)

9. Cooperate with the Board in an investigation relating to the licensee's compliance with the provisions of the statutes and regulations governing the practice of physical therapy as set forth in this chapter and in [chapter 640](#) of NRS. (Added to NAC by Bd. of Phys. Therapy Exam'rs, eff. 6-11-90; A by R153-98, 12-18-98)

233B, Chapter 622A, Chapter 622, and Chapter 640 of the Nevada Revised Statutes and Chapter 640 of the Nevada Administrative Code.

Second Claim for Relief

(Failing to Treat with Professional Skill and Competence)

Respondent, as evidenced by his/her actions as described above in the factual allegations, is guilty of failing to treat his patient with professional skill and competence. This is a violation of **NAC 640.580(1)**⁴ which is grounds for disciplinary action pursuant to Chapter 233B, Chapter 622A, Chapter 622, and Chapter 640 of the Nevada Revised Statutes and Chapter 640 of the Nevada Administrative Code.

Third Claim for Relief

(Engaging in Misleading or Deceptive Billing Practice)

Respondent, as evidenced by his/her actions as described above in the factual allegations, is guilty of engaging in misleading or deceptive billing practices while treating

⁴ **NAC 640.580 Relationship with patient. (NRS 640.050) A licensee:**

1. **Shall treat a patient with professional skill and competence. (Emphasis added)**
 2. Shall not practice, condone, facilitate or collaborate in any type of discrimination toward a patient based on the patient's:
 - (a) Race;
 - (b) Color;
 - (c) Sex;
 - (d) Age;
 - (e) Religion;
 - (f) National origin;
 - (g) Mental or physical disability; or
 - (h) Sexual orientation.
 3. Shall not misrepresent to a patient the efficacy of his or her treatment of the patient or the results to be achieved by a course of treatment of physical therapy.
 4. Shall inform his or her patient of any risk to the patient that may be associated with the proposed treatment of physical therapy.
 5. Shall seek the advice and counsel of colleagues and supervisors whenever such consultation is in the best interest of the patient.
 6. Shall not engage in sexual activities with a patient unless there was a preexisting sexual relationship with that person. The Board will presume that there is a violation of this subsection if the sexual relationship and activity begins during the course of treatment of the patient or within 6 months after the termination of the professional relationship with the patient.
 7. Shall not suggest to a patient who is referred to the licensee by one provider of health care that he or she seek the treatment of another provider of health care without first consulting the referring provider of health care. If there is no referring provider of health care or if the patient does not wish to return to the referring provider of health care, a list containing the names of at least three other providers of health care may be offered to the patient by the licensee.
- (Added to NAC by Bd. of Phys. Therapy Exam'rs, eff. 6-11-90; A by R111-02, 1-24-2003)

1 a patient. This is a violation of NAC 640.620(3) which is grounds for disciplinary action
2 pursuant to Chapter 233B, Chapter 622A, Chapter 622, and Chapter 640 of the Nevada
3 Revised Statutes and Chapter 640 of the Nevada Administrative Code.

4 **Fourth Claim for Relief**

5 **(Failure to Provide Clear, Legible, Complete, and Accurate Records for Patients)**

6 Respondent, as evidenced by his/her actions as described above in the factual
7 allegations, is guilty of failure to provide clear, and accurate records for patients. This is a
8 violation of NAC 640.610(1)(c) which is grounds for disciplinary action pursuant to Chapter
9 233B, Chapter 622A, Chapter 622, and Chapter 640 of the Nevada Revised Statutes and
10 Chapter 640 of the Nevada Administrative Code.

11 **DISCIPLINE AUTHORIZED**

12 Pursuant to NRS 640.160, upon proof by a preponderance of the evidence that an
13 applicant or licensee has engaged in activity that is grounds for disciplinary action as
14 described in NRS 640.160, the Board may refuse to issue or renew the person's license,
15 suspend the person's license, revoke the person's license, impose a fine of not more than
16 \$5,000, or place the person on probation.

17 If discipline is imposed, the Board may order those costs of this proceeding, including
18 investigative costs and attorney's fees, to be awarded to the Board pursuant to NRS
19 622.400⁵. Therefore, the undersigned requests that the Board imposes such discipline as

20 **⁵ NRS 622.400 Recovery of attorney's fees and costs incurred by regulatory body in certain 21 regulatory proceedings.**

22 1. Except as otherwise provided in this section, a regulatory body may recover from a person reasonable
23 attorney's fees and costs that are incurred by the regulatory body as part of its investigative, administrative
24 and disciplinary proceedings against the person if the regulatory body:

25 (a) Enters a final order in which it finds that the person has violated any provision of this title which
26 the regulatory body has the authority to enforce, any regulation adopted pursuant thereto or any order of the
27 regulatory body; or

28 (b) Enters into a consent or settlement agreement in which the regulatory body finds or the person
admits or does not contest that the person has violated any provision of this title which the regulatory body
has the authority to enforce, any regulation adopted pursuant thereto or any order of the regulatory body.

2. A regulatory body may not recover any attorney's fees and costs pursuant to subsection 1 from a
person who was subject to an investigative, administrative or disciplinary proceeding of the regulatory body
unless the regulatory body submits an itemized statement of the fees and costs to the person.

3. As used in this section, "costs" means:

(a) Costs of an investigation.

(b) Costs for photocopies, facsimiles, long distance telephone calls and postage and delivery.

1 it determines is appropriate under the circumstances and to award the Board its costs and
2 attorney's fees for this proceeding.

3 PLEASE TAKE NOTICE that a disciplinary hearing has been set to consider
4 this Administrative Complaint against the above-named Respondent in accordance with
5 Chapter 233B, Chapter 622A, Chapter 622, and Chapter 640 of the Nevada Revised
6 Statutes and Chapter 640 of the Nevada Administrative Code.

7 THE HEARING WILL TAKE PLACE at the **Board Meeting on July 25, 2024 at**
8 **9:00 a.m. The Board Meeting will be held remotely. See Agenda for details.**

9 STACKED CALENDAR: This hearing is one of several matters scheduled at
10 the same time as part of a regular meeting of the Board. Thus, this hearing may be
11 called at any time after the meeting is called to order. It is Respondent's responsibility to
12 be present when this matter is called. If Respondent is not present when this matter
13 is called, a default may be entered against Respondent and the Board may decide the
14 case as if all allegations in the complaint were true.

15 PURSUANT TO NRS 622A.320⁶, Respondent may, but is not required to, file an
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- 17 (c) Fees for hearing officers and court reporters at any depositions or hearings.
18 (d) Fees for expert witnesses and other witnesses at any depositions or hearings.
19 (e) Fees for necessary interpreters at any depositions or hearings.
20 (f) Fees for service and delivery of process and subpoenas.
21 (g) Expenses for research, including, without limitation, reasonable and necessary expenses for
computerized services for legal research.

(Added to NRS by [2003, 3417](#); A [2019, 540, 981](#))

22 **6 NRS 622A.320 Answer; amendment of charging document; continuance; inclusion of**
23 **pleadings in record.**

24 1. After being served with the charging document, the licensee may, but is not required to, file an answer
25 to the charging document. The licensee may file such an answer not later than 20 days after the date of
26 service of the charging document.

27 2. The prosecutor may amend the charging document at any time before the hearing. If the prosecutor
28 amends the charging document before the hearing, the prosecutor shall:

- (a) File the amended charging document with the regulatory body or hearing panel or officer; and
(b) Serve the licensee with the amended charging document.

3. After being served with an amended charging document, the licensee may do any or all of the
following:

(a) File an answer to the amended charging document. The licensee may file such an answer not later
than 20 days after the date of service of the amended charging document or not later than the date of the
hearing, whichever date is sooner.

(b) Move for a continuance of the hearing. The regulatory body or hearing panel or officer shall grant
the continuance if the licensee demonstrates that:

- (1) The amendment materially alters the allegations in the charging document; and

1 answer to this Complaint with the Board.

2 PURSUANT TO NRS 622A.330⁷, Respondent may seek limited discovery from the
3 Board.

4 RESPONDENT'S RIGHTS AT THE HEARING: Except as mentioned below, the
5 hearing is an open meeting under Nevada's Open Meeting Law and may be attended by
6 the public. After the evidence and arguments, the Board may conduct a closed meeting to
7 discuss Respondent's alleged misconduct or professional competence. A verbatim record
8 will be made by a certified court reporter. Respondent is entitled to a copy of the transcript
9 of the open and closed portions of the meeting, although Respondent must pay for the
10 transcription.

11 Respondent is specifically informed that he/she has the right to appear and be heard
12 in his/her defense, either personally or through his/her counsel of choice. At the hearing,
13 the undersigned has the burden of proving the allegations in the complaint and will call
14 witnesses and present evidence against Respondent. Respondent has the right to respond
15 and to present relevant evidence and argument on all issues involved. Respondent has the
16 right to call and examine witnesses, introduce exhibits, and cross-examine opposing
17 witnesses on any matter relevant to the issues involved.

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20 (2) The licensee does not have a reasonable opportunity to prepare a defense against the amended
charging document before the date of the hearing.

21 4. The prosecutor may amend the charging document at the time of the hearing if the amendment is not
considered material and the substantial rights of the licensee would not be prejudiced by the amendment.

22 5. The charging document, any amended charging document and any answer filed by the licensee must
be made part of the record at the hearing.

23 (Added to NRS by [2005, 746](#))

24 **7 NRS 622A.330 Discovery; limitations on interrogatories and depositions.**

25 1. At any time after being served with the charging document, the licensee may file with the regulatory
body or hearing panel or officer a written discovery request for a copy of all documents and other evidence
intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.

26 2. The investigative file for the case is not discoverable unless the prosecutor intends to present
materials from the investigative file as evidence in support of the case. The investigative file for the case
includes all communications, records, affidavits or reports acquired or created as part of the investigation of
the case, whether or not acquired through a subpoena related to the investigation of the licensee.

27 3. A party may not serve any interrogatories on another party or take any depositions relating to the
case, unless permitted by the regulations of the regulatory body.

28 (Added to NRS by [2005, 746](#))

Respondent has the right to request that the Board issue subpoenas to compel witnesses to testify and/or evidence to be offered on Respondent's behalf. In making this request, Respondent may be required to demonstrate the relevance of the witnesses' testimony and/or evidence. Other important rights Respondent has been listed in NRS Chapter 233B, NRS Chapter 622, NRS Chapter 622A, NRS Chapter 640, and NAC Chapter 640.

The purpose of the hearing is to determine if Respondent has engaged in activity that is grounds for disciplinary action pursuant to NRS 640.160, and, if the allegations contained herein are proven by a preponderance of the evidence, to further determine what administrative penalty is to be assessed against Respondent, if any, pursuant to NRS 640.160 and/or NRS 622.400.

Pursuant to NRS 233B.121(5), informal disposition of this case may be made by stipulation, agreed settlement, consent order, or default. Any attempt to negotiate this case should be made through Ziwei Zheng, Deputy Attorney General at (702) 486-3898 or by e-mail to zzheng@ag.nv.gov.

Pursuant to NRS 241.033(2)(b) and NRS 241.034, the Board may, without further notice, take administrative action against Respondent's license to practice physical therapy within the State of Nevada if the Board determines that such administrative action is warranted after considering Respondent's character, alleged misconduct, professional competence, or physical or mental health.

DATED this 14th day of June 2024.

AARON D. FORD
Attorney General

By: /s/ Ziwei Zheng
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Bernard L. Miller
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/s/ Debra Turman
An employee of the State of Nevada,
Office of the Attorney General