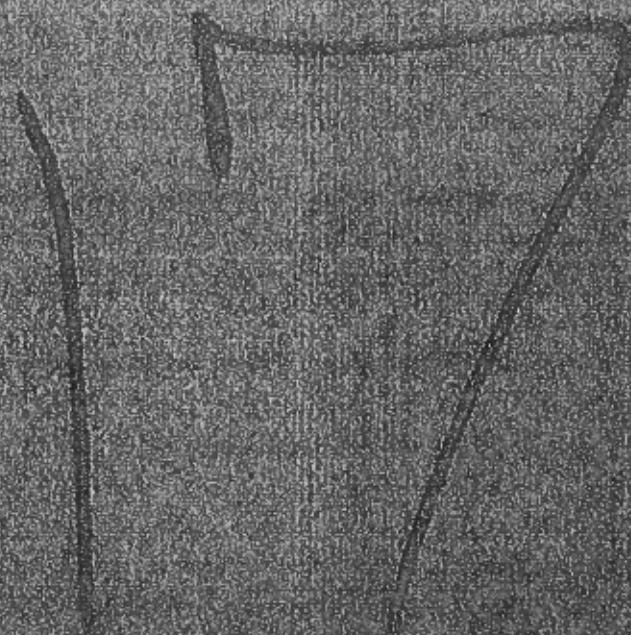


Exhibit 1





Sleeping Policy

In the interest of providing adequate staffing to ensure quality patient care, sleeping by any staff member while on duty will not be tolerated.

In the event that an employee feels they are unable to fulfill these requirements, the Administrator/DON or designee must be notified and alternate arrangements made.

Any staff member aware of an employee sleeping while on duty, and failing to report this, will be subject to disciplinary action, up to and including termination of employment.

I have read and fully understand the above statement.

Bernie Miller
Employee Signature

08/26/2021
Date

Bernie Miller
Employee Name (Print)

08/26/2021
Date

18

Fingerprints

File Tools Help

Workplace



Drug Testing

Packages

Workplace

Report Explorer

Task Manager

Home Reports Report Preview

Print Matrix Compliance Attachments Go Back

Background Check Report

ASURINT

VERIFY EVERY HIRE

800.906.1674

support@asurint.com

Search Information

Candidate: MILLER, BERNIE
SSN: XXX-XX-XXXX
DOB: XX/XX/XXXX
Alias Names: MILLER, BERNARD
MILER, BERNIE
Reference 1:
Reference 2:

Order ID: 43027819
Customer: Action Staffing Solutions
Order Date: 8/17/2021 2:16:19 PM

Completion Date: 8/17/2021 2:17:17 PM
Package: 7 Year Unlimited Package

Summary Information - MILLER, BERNIE (Primary Name)

Final Score: PASS

User: AutoScore

Date: 8/17/2021

Remarks: System Auto Pass

Products	Counties Covered	Status	Expected Date	End Date	Result	Notes
VeriFynd		Completed	8/17/2021	8/17/2021	Completed	
IQR Level I		Completed	8/17/2021	8/17/2021	Completed	
IQR Level II		Completed	8/17/2021	8/17/2021	Completed	
Nevada County Court Criminal	CLARK	Completed	8/19/2021	8/17/2021	Clear	View
National Criminal Information Bureau	OR(Lincoln *)	Completed	8/17/2021	8/17/2021	Clear	

* Based on your candidate's address history, Asurint searched these additional counties that fell outside of your specific recommendations. These counties were included at no additional cost.

Summary Information - MILLER, BERNARD (Alias Name)

Products	Counties Covered	Status	Expected Date	End Date	Result	Notes
Nevada County Court Criminal	CLARK	Completed	8/19/2021	8/17/2021	Clear	View
National Criminal Information Bureau	OR(Lincoln *)	Completed	8/17/2021	8/17/2021	Clear	

* Based on your candidate's address history, Asurint searched these additional counties that fell outside of your specific recommendations. These counties were included at no additional cost.

Summary Information - MILER, BERNIE (Alias Name)

Products	Counties Covered	Status	Expected Date	End Date	Result	Notes
Nevada County Court Criminal	CLARK	Completed	8/19/2021	8/17/2021	Clear	View
National Criminal Information Bureau	OR(Lincoln *)	Completed	8/17/2021	8/17/2021	Clear	

* Based on your candidate's address history, Asurint searched these additional counties that fell outside of your specific recommendations. These counties were included at no additional cost.

Appended Documentation

Type	Status	Notes
Summary of Rights	Completed	View

Scoring History

User	Date/Time	Status
AutoScore	08/17/2021 2:17:19 PM	PASS

Remarks: System Auto Pass

MILLER, BERNIE (Primary Name)

VeriFynd

BERNIE MILLER

Search Criteria

Search Name: BERNIE MILLER - VERIFIED
Date of Birth: XX/XX/XXXX - VERIFIED (month/year)

VeriFynd Option

Setting: Modified Alias
Searched By: SSN

Social Security Administration SSN Verification

Para información en español, visite www.consumerfinance.gov/learnmore o escribe al Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report,
 - you are the victim of identity theft and place a fraud alert in your file,
 - your file contains inaccurate information as a result of fraud,
 - you are on public assistance,
 - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- The following FCRA right applies with respect to nationwide consumer reporting agencies:

Consumers Have The Right To Obtain A Security Freeze

You have a right to place a “security freeze” on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is placed on a consumer’s credit file. Upon seeing a fraud alert display on a consumer’s credit file, a business is required to take steps to verify the consumer’s identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
I. a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates	a. Consumer Financial Protection Bureau 1700 G. Street N.W. Washington, DC 20552

Visit our tips page to learn how to best use the Exclusions Database. If you experience technical difficulties, please email the webmaster at webmaster@oig.hhs.gov.

Exclusions Search Results: Individuals

No Results were found for

Bernard , Miller

 **If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation**

[Search Again](#)

Search conducted 8/25/2021 7:42:43 PM EST on OIG LEIE Exclusions database.

Source data updated on 8/10/2021 10:00:00 AM EST

[Return to Search](#)

PTB 0008

Visit our tips page to learn how to best use the Exclusions Database. If you experience technical difficulties, please email the webmaster at webmaster@oig.hhs.gov.

Exclusions Search Results: Individuals

No Results were found for

Miller , Bernard L

 **If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation**

[Search Again](#)

Search conducted 8/25/2021 7:44:27 PM EST on OIG LEIE Exclusions database.

Source data updated on 8/10/2021 10:00:00 AM EST

[Return to Search](#)

PTB 0009



Visit our tips page to learn how to best use the Exclusions Database. If you experience technical difficulties, please email the webmaster at webmaster@oig.hhs.gov.

Exclusions Search Results: Individuals

No Results were found for

L Miller , Bernard

 **If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation**

[Search Again](#)

Search conducted 8/25/2021 7:45:51 PM EST on OIG LEIE Exclusions database.

Source data updated on 8/10/2021 10:00:00 AM EST

[Return to Search](#)

PTB 0010

Visit our tips page to learn how to best use the Exclusions Database. If you experience technical difficulties, please email the webmaster at webmaster@oig.hhs.gov.

Exclusions Search Results: Individuals

No Results were found for

Miller , Bernie

 **If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation**

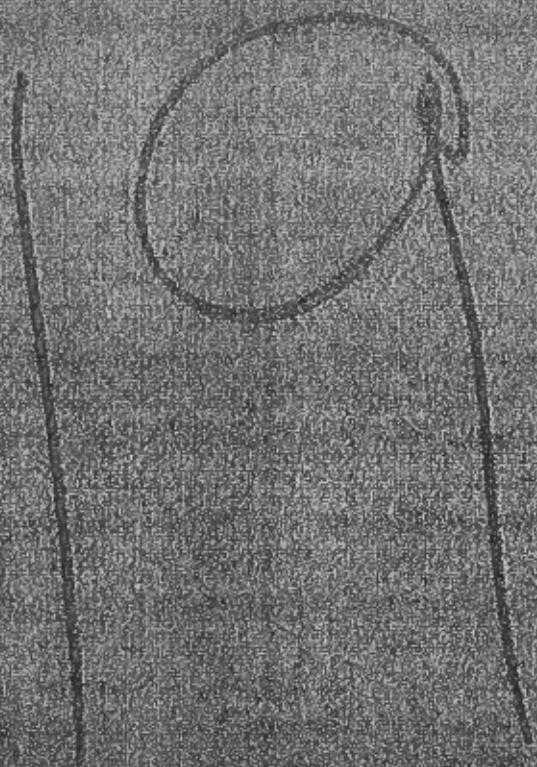
[Search Again](#)

Search conducted 8/25/2021 7:47:06 PM EST on OIG LEIE Exclusions database.

Source data updated on 8/10/2021 10:00:00 AM EST

[Return to Search](#)

PTB 0011





CRIMINAL HISTORY STATEMENT

Statements 1-14 below refer to any criminal conviction which may be either a felony or a misdemeanor.

1. I have never been convicted of murder, voluntary manslaughter, or mayhem.
2. I have never been convicted of assault with intent to kill or to commit sexual assault or mayhem.
3. I have never been convicted of sexual assault, statutory sexual seduction, incest, lewdness or indecent exposure or any other sexually related crime that is punished as a felony (including felony prostitution)
4. I have never been convicted of prostitution, solicitation, lewdness or indecent exposure, or any other sexually related crime that is punished as a misdemeanor, within the immediately preceding 7 years;
5. I have never been convicted of a crime involving domestic violence that is punished as a felony.
6. I have never been convicted of a crime involving domestic violence that is punished as a misdemeanor, within the immediately preceding 7 years.
7. I have never been convicted of abuse or neglect of a child or contributory delinquency.
8. Within the past seven years, I have not been convicted of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS within the immediately preceding 7 years.
9. I have never been convicted of abuse, neglect, exploitation or isolation of older persons or vulnerable persons, or any provision of NRS 200.5091 to 200.5099, inclusive, or a law of any other state or other jurisdiction that prohibits the same or similar conduct.
10. Within the past seven years, I have not been convicted of any provision of law relating to the State Plan for Medicaid or a law of any other state or other jurisdiction that prohibits the same or similar conduct.
11. I have never been convicted of a violation of any provision of NRS 422.450 to 422.590, inclusive, statutory provisions relating to Nevada's State Plan for Medicaid.
12. Within the past seven years, I have not been convicted of a criminal offense under the laws governing Medicaid or Medicare.
13. Within the past seven years, I have not been convicted of any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property.
14. Within the past seven years, I have not been convicted of any felony involving the use or threatened use of force or violence against the victim or the use of a firearm or other deadly weapon or of an attempt or conspiracy to commit any of the offenses listed in this paragraph, within the immediately preceding 7 years.

I affirm that the statements 1-14 above are true and correct. I authorize the submission of my fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its background check report.

Signature

Date

08/26/2021

PRINT NAME

Exhibit 2



Action Staffing Solutions

HealthCare Division

EMAIL timecards@myactionstaffing.com and copy
melody@myactionstaffing.com OR Fax to (720) 442-7728

Timecards must be submitted Monday at 9:00 AM MST to guarantee pay on time.

☐ RN ☐ LPN ☐ CNA ☐ QMAP ☒ Other: <u>PT</u>								WEEKLY TIME SHEET		
Employee Name: <u>Miller, Bernard PT</u>							Week Ending Date: <u>08/27/2021</u>			
Facility/ Department: <u>Neuro Restorative NV</u>					Unit Manager:		Supervisor Name:			
Day	Date	Start Time	Lunch Out	Lunch In	End Time	Regular Hours	OT Hours	Supervisor Signature	Notes	
SUN								<u>Michael Macayan</u>		
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday										
MON	<u>08/23/2021</u>	<u>1000</u>	<u>-</u>	<u>-</u>	<u>1230</u>	<u>2.5</u>				
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday										
TUES	<u>08/26/21</u>	<u>900</u>	<u>-</u>	<u>-</u>	<u>1430</u>	<u>3M</u>				
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday										
WED										
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday										
THURS	<u>08/26/21</u>	<u>900</u>	<u>-</u>	<u>-</u>	<u>1430</u>	<u>-</u>	<u>-</u>	<u>Michael Macayan</u>		
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday										
FRI	<u>08/27/21</u>	<u>0800</u>	<u>1200</u>	<u>1300</u>	<u>1630</u>	<u>-</u>	<u>-</u>			
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									<u>Michael Macayan</u>	
SAT										
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday										
Please use the quarter hour rule when calculating total hours. 15 MIN = .25HRS 30MIN = .50HRS 45MIN = .75HRS										
Employee Signature: <u>Bern Miller</u>					Total Approved Hours:		Regular	OT	Supervisor Signature: <u>[Signature]</u>	Overtime Approved? ☐ YES ☐ NO
Employee Signature: I certify that the hours showed above represent my total hours, are true and correct, and that they were properly verified by the client or an authorized representative. I understand that falsification of this document is against Company policy and is grounds for immediate termination.									Date:	
					Client Approval: I have audited this timecard and my signature above authorizes Action Staffing Solutions to pay this employee and bill our facility for the hours recorded					

PTB 0015

Action Staffing Solutions will invoice CLIENT for services provided under this Agreement on a weekly basis. Payment is due on receipt of invoice. Invoices will be supported by the pertinent time sheets or other agreed system for documenting time worked by the Assigned Employees. SUPERVISOR's signature or other agreed method of approval of the work time submitted for Assigned Employees certifies that the documented hours are correct and authorizes STAFFING FIRM to bill CLIENT for those hours.



Action Staffing Solutions

HealthCare Division

EMAIL timecards@myactionstaffing.com and copy
melody@myactionstaffing.com OR Fax to (720) 442-7728

14.5
6.5
5
21.5

22.5

6.5

1.5

29.5

Timecards must be submitted Monday at 9:00 AM MST to guarantee pay on time.

WEEKLY TIME SHEET									
☐ RN ☐ LPN ☐ CNA ☐ OMAP ☐ Other:									
Employee Name: <u>Sernie Miller</u>						Week Ending Date:			
Facility/ Department: <u>Neuro Restorative</u>						Unit Manager: <u>Mike</u>			
Supervisor Name: <u>Mark/Lynette</u>									
Day	Date	Start Time	Lunch Out	Lunch In	End Time	Regular Hours	OT Hours	Supervisor Signature	Notes
SUN									TX
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
MON	08/30	0800	1200	1:00	4:30			See	TX
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
TUES	08/31	0800	1200	1:00	4:30			See	TX
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
WED	09/01	0800	1200	1:00	4:30			See	TX
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
THURS	09/04	0800	1200		4:30			Not approved	TX
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
FRI	09/05	0800			1100			Not Approved	TX
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
SAT									
Mark what apply for the shift above: ☐ On Call ☐ Cancelled ☐ Volunteered to leave ☐ Sick ☐ Holiday									
Please use the quarter hour rule when calculating total hours. 15 MIN = .25 HRS 30 MIN = .50 HRS 45 MIN = .75 HRS									
Employee Signature: <u>[Signature]</u>						Total Approved Hours: <u>X</u>	Regular	OT	Supervisor Signature: <u>[Signature]</u>
Employee Signature: I certify that the hours showed above represent my total hours, are true and correct, and that they were properly verified by the client or an authorized representative. I understand that falsification of this document is against Company policy and is grounds for immediate termination.						Client Approval: I have audited this timecard and my signature above authorizes Action Staffing Solutions to pay this employee and bill our facility for the hours recorded			
Overtime Approved? ☐ YES ☐ NO						Date:			

(Weekend)
Did not sign in COVID
book for symptom
screening.

Again, did not
sign in.
Should be
9/2 & 9/3

9/2 8:30 - 12:00
1:30 - 4:30pm

9/3 9:00 - 9:30am

Total Hours Approved: 21.5
29.5 corrected
9/14/21

Action Staffing Solutions will invoice CLIENT for services provided under this Agreement on a weekly basis. Payment is due on receipt of invoice. Invoices will be supported by the pertinent time sheets or other agreed system for documenting time worked by the Assigned Employees. SUPERVISOR's signature or other agreed method of approval of the work time submitted for Assigned Employees certifies that the documented hours are correct and authorizes STAFFING FIRM to bill CLIENT for those hours.

PTB 0016

Exhibit 3

From Fax Number: (720) 442-7728

Action Staffing Solutions

Fax

To: Nevada Physical Therapy Board

From: Action Staffing Solutions

Fax: (702) 876-2097

Subject: Complaint Form - Bernard Miller

Phone:

Date: 10-15-2021

Comments:

PTB 0018

Nevada Physical Therapy Board



3291 North Buffalo Drive, Suite 100 · Las Vegas, NV 89129
Phone (702) 876-5535 · Facsimile (702) 876-2097

COMPLAINT FORM

(Please type or print)

Name and address of the Physical Therapist or
Physical Therapist's Assistant against whom you
are filing this complaint:

Bernard Miller

6409 Adobe Summit Ave

Las Vegas, NV 89110

Name, address and phone numbers of person
filing this complaint:

Action Staffing Solutions (Employer)

Melody Deshon - Compliance

Day Phone: (970) 667-4202

Evening Phone: _____

Complainant/Client Name: Action Staffing Solutions (Employer)

Describe your complaint, including dates and locations. Please provide as much detail as possible with regard to the conduct or actions of the licensed individual and/or facility that form the basis of your complaint. Also, please describe any harm or injury that you believe resulted from the licensee's conduct or actions. Please provide any paperwork in support of this complaint. Continue on the back of this page if necessary. Please see attached statements & details

Mr. Miller was employed by Action Staffing as a physical therapist at NeuroRestorative in Las Vegas from 08/26/21 until 09/03/21. During this time the staff on-site provided ample orientation and training.

Staff on-site reported Mr. Miller repeatedly missing client appointments, seeing clients for 30 instead of 50 minutes and was found sleeping/passed out in his car. In addition a client stated he smelled of alcohol.

Any witnesses or other individuals with knowledge of the occurrence? Please provide names, titles, complete addresses and phone numbers. Stephenie Anderson - Regional Director & on-site supervisor NeuroRestorative (720) 401-1994

I hereby verify that the above information is true and accurate to the best of my knowledge. I agree to provide information to the Board in support of this complaint, including documentation, interviews and testifying at hearing, as necessary. I understand that without my cooperation, the Board may not be able to pursue this complaint.

Signature: *Melody Deshon*

Date: 10/14/2021

Rev. 2/21/2019

PTB 0019



NeuroRestorative – Las Vegas
2785 S. Rainbow Blvd. Suite 130
Las Vegas, NV 89126
Phone: (702) 685-6004
Fax: (702) 778-7729

9/7/2021

To whom it may concern,

Bernard 'Bernie' Miller, PT, was dismissed from our work location around 12:00pm PST on Friday, 9/3/21 after multiple incidents of non-compliance with our expectations.

Timeline of Events:

Thursday, August 26, 2021 – First day of orientation

- Completed NR policies/procedures for orientation
- Participated in client conference to meet patients and get updated status reports
- Shadow/transition of PT caseload from previous PT

Friday, August 27, 2021 – Time sheet

Received time sheet from Bernie for week 8/23-8/27. He had claimed 8/23/21 2.5 hours. This is a fraudulent time claim, as he his first day on site was not until 8/26/21.

Monday, August 30, 2021 – Reported/identified concerns from peers

- Scheduled for 2 clients at 50 minutes each; saw them for 30 minutes only
- Co-treat with 2 clients scheduled; he only saw 1
- Educated to include CPT codes on notes; was not compliant
- Documentation not being completed by the end of the day

Additional training was provided by staff completed on Monday and Tuesday.

Thursday, September 2, 2021 – Missing PT

Stephanie Anderson, Regional Director of Rehabilitation, received phone calls from two employees stating that Mr. Miller had not returned from lunch yet (scheduled to resume work at 1:00pm PST). 1:46pm - A therapist on site noted that Mr. Miller's car was in the parking lot, she went out and knocked on the windows with no response. 1:48pm – Stephanie texted Mr. Miller to see if he was ok. He responded at 1:50pm stating "I'm here." Lynette confirmed she saw Mr. Miller walk past her office (moving from front door to PT gym) at 1:50pm.

Email sent to Mr. Miller from Stephanie to re-iterate employee expectations of this program.

Friday, September 3, 2021 – Missing PT

Mr. Miller came into the office around 8:00am. He was scheduled to see patients at 9:00am. At that time, other staff looked for him in the clinic, checking bathrooms and smoking areas, and he was nowhere to be found. He appeared at 9:15am for the patient. For his 10:00am patient, the patient reported that Mr. Miller only worked with him for 20 minutes. For 11:00am patient, it was noted he was nowhere to be found in the facility again. The Program Director (Lynette Dean) and Director of Rehabilitation were notified around

PTB 0020



NeuroRestorative – Las Vegas
2785 S. Rainbow Blvd. Suite 130
Las Vegas, NV 89126
Phone: (702) 685-6004
Fax: (702) 778-7729

11:50am. Lynette and the Maintenance Director (Chuck Clemmer) located his car in the company parking lot, which was running. They knocked on the windows and banged on the roof, fearful that there was something wrong. With no response, staff was ready to call 911. Eventually, Mr. Miller rolled down the window and claimed he had fallen asleep and his alarm did not wake him up; he physically appeared like he had been sleeping. Lynette excused Mr. Miller for the remainder of the day due to fatigue and notified him that NR would be in contact with Action Staffing.

Patient reports:

9/3/21: Later in the day, the 10:00am patient had mentioned that Mr. Miller was rude to him and yelled at him, "Look at me when I'm talking to you." This particular patient has severe visual perceptual issues and oculomotor control deficits. A comment like this is highly inappropriate.

9/7/21: Message from staff: "[patient name CG] states, 'When Bernie was stretching me last week, his eyes were falling asleep. And he smelled of alcohol.'"

Timeliness of documentation (audit)

First day of independent work 8/27/21

Friday, 8/27/21

- 9am – MA (complete, 3 days late)
- 10am – EB (complete, 3 days late)
- 11am – KV (complete, 3 days late) and JH (missed treatment)
- 1pm – BC (complete, 3 days late)
- 2pm – CG (complete, 3 days late)

Monday, 8/30/21

- 9am – MA (complete)
- 10am – CG (complete)
- 11am – KV Quarterly (training with PT staff) (treatment only, completed)
- 1pm – EB (complete)
- 2pm – KV (complete)

Tuesday, 8/31/21

- 9am – RL (complete)
- 10am – DG (complete)
- 11am – RD (complete)
- 1pm – KG (complete)
- 2pm – DG (complete)

Wednesday, 9/1/21

- 9am – JH (complete)



NeuroRestorative - Las Vegas
2785 S. Rainbow Blvd. Suite 130
Las Vegas, NV 89126
Phone: (702) 685-8004
Fax: (702) 778-7729

- 10am - MA (complete)
- 11am - CG (complete)
- 1pm - Conference (treated KV, complete)
- 2pm - Conference (no documentation)

Thursday, 9/2/21

- 9am - RL (missed treatment) & DG
- 10am - AB (missed treatment)
- 11am - AB (missed treatment)
- 1pm - RD quarterly (missed quarterly)
- 2pm - KD (quarterly complete; treatment missed)

Friday, 9/3/21

- 9am - DM (missing documentation/minutes)
- 10am - CG & JH (missing documentation/minutes)
- 11am - KV (missed treatment)
- 1pm - KD (missed treatment)
- 2pm - KG (missed treatment)

Thank you for your responsiveness with this employee. His action by no means reflect the values that your agency upholds, and we hope to continue working together in the future.

Respectfully submitted by,

Stephanie Anderson, MS, OTR/L
Regional Director of Rehabilitation
NeuroRestorative - Nevada & Arizona

the right person. Deane did not respond via email.

What is the day to day for a PT with you? I was looking for an idea of how much time is spent with clients, then with charting and what other tasks are assigned/expected.

Typical day:

- 8-9am prep for the day
- 9-12pm 10-minute treatments each hour (could be between client groups)
- Lunch 12-1pm
- 1-4pm 30-minute treatments each hour (could be individual or group)

Additional time for documentation is allocated after 4pm. The 10 minute gaps in between treatments are to allow the therapist to sanitize the area and materials used in preparation for the next client.

I see a couple of notes that documentation was incomplete or not completed in time. Am I correct that he has ample time to complete charting between clients/at the end of the day and that the expectation is that charting and notes etc. be completed same day?

Yes, he had ample time.

Between the orientation and additional training on Monday and Tuesday do you believe the training was sufficient for Mr. Miller to perform the assigned duties with little or no supervision?

Yes. Our supervisor had given us feedback that there were not given enough orientation. Following their recommendations, we were provided a full day of orientation/shadowing with our provider/therapist before. Given that he has been a provider for 20+ years, it would be expected for him to begin working independently. However, we want it to provide a solid foundation.

Timeline & Timecard --

- First timecard Monday & Tuesday -- It is correct that he did not work these days. We will continue to review this along with the additional information we receive to see if this was a mistake, or an attempt at timecard fraud.
- 08/26/21 -- 0900-1430 was noted on the timecard with no meal break. Can you confirm this is correct?

Correct - he did not work these days.

- This shift is greater than 5 hours, which requires a meal break. Am I correct that this is also a requirement by your policies?

Yes, we provide a 1 hour window for meal breaks 100% of the time.

08/27/21 0800-1630 with a 1-hour meal period was listed. Can you confirm this is correct?

We have not received his final timecard yet, so it's possible we'll have more questions. Do you have record of when he was there week ending 9/4?

I've also attached the first timecard; can you confirm that the signatures are from supervisors/those approved to sign on timecards? It appears that Michael's name is written on Sunday, then possibly signed on Thursday and Friday, it's unclear who might've signed for the week at the bottom.

Michael is authorized to sign off as the DOR. It is his signature at the bottom. The "Thursday" signature was an error.

Care ~

There were comments in the statement that lead to concern about the safety and quality of care given by Mr. Miller. Was the care that Mr. Miller was providing appropriate to the care plan of the patient, mindful of the needs of the patient, and meeting the expectations of the facility?

The same concerns were not brought to my attention until after we had dismissed him. Based on his documentation, he provided appropriate treatment per the plan of care.

Documentation ~

Regarding Timeliness of documentation (audit)

- Friday 8/27 --
 - o The documentation completed three days later. Is this indicating that notes/charting etc. was not completed until Monday 8/30?
 - o JH (missed treatment): Was this missed by Mr. Miller or the patient?
- Wednesday 9/1 -- Was there documentation required for the conference @ 2pm?
- Thursday 9/2 -- There were 5 listed as missed, were these missed by Mr. Miller? If so, it appears that he may have missed the entire day? If there's documentation of what was completed in the day that would be helpful.
- Friday 9/3 -- It is noted earlier that Mr. Miller was dismissed for the day after being found in his car sometime after approx. 11:50am. Were treatments fully completed earlier in the day, or were there reports of the time being shorted like there had been on 8/30?

a house to sleep in his car, after that day almost and someone
 have own patients, it appears that the treatments were
 incomplete.

Billing –

The short timing and missing of treatments brought a concern of fraudulent billing to my mind. Was Mr. Miller responsible for billing insurance/Medicare/Medicaid etc., or was time he reported in treatment used in the billing? We of course want to make sure that no one is paying for services not provided, but also want to be sure that no trouble is caused for you regarding false billing either.

There were a few Medicaid patients.

Statements –

There was a mention of a patient stating that Mr. Miller smelled of alcohol. Has anyone else come forward with the same/similar concern?

We did not hear of any more complaints regarding the alcohol concern.

If any questions are unclear or you have anything else to add of course please feel free to reach out. Once again, thank you so much for your help in this matter. We value our relationship with you and your facility and look forward to continuing to work with you as well!

Thank you for your time,

Stephanie Anderson, MS, CTR/L | Regional Director of Rehabilitation

NeuroRestorative – Nevada & Arizona

www.NeuroRestorative.com

P: 702-401-1894

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"Few things in the world are more powerful than a positive push. A smile. A world of optimism and hope. A 'you can do it' when things are tough."

Exhibit 4

Date

August 27,2021

0900 97110, 97530, 97112, 97116
0900 97110, **97510**, 97112, 97116
0910 97110, **98116**, 97530, 97116
1300 97110,97112, 97116
1400 No treatment

August 28,2021

No patients charged

August 29,2021

No patients charged

August 30,2031

0900 97110(1), 97530 (2), 97112 (1), 97116 (1)
1300 97110 (1), **97539** (2), 97112 (1)
1400 97110 (1), 97530 (2) , 97116 (1)
1100 97530 (2), 97110 (2)

August 31,2021

0900 97110 (1), 97530 (1), 97116 (2)
1000 97110 (1), 97530 (2), 97116 (2)
1400 97110 (4)
1300 97110 (1), 97530 (1), 97116 (2)

September 1,2021

1000 **97530 (11)**, 97112 (1), 97116 (1)
1400 **97530 (11)**, 97112 (1), 97116 (1)
1100 97530, 97110 (2), 97530 (2)
0900 **97530 (11)**, 97112 (2), 97116 (2)

No progress reports for 8/27/9/3

No progress report for

No progress report for

No quarterly report for

CPT Codes

97110 Therapeutic exercise
97112 Neuro muscular re-education
97116 Gait Training
97530 Therapeutic activity

Incorrect CPT Codes

97510
97539
98116

No quarterly report 8/31/2021

Exhibit 5

Cristian Guardado

Hago constar que un día de
estos mi terapeuta se miraba
borracho y golía a alcohol-
quando me estaba estirando
en la cama.

Exhibit 6

From: [Anderson, Stephanie](#)
To: [Time Cards](#)
Cc: [AP](#)
Subject: RE: [EXTERNAL] B. Miller Timecard
Date: Friday, August 27, 2021 3:48:27 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Hello,

He did not work on Monday the 23rd, as we didn't have his clearance until the 24th.

Thank you for your time,
Stephanie Anderson, MS, OTR/L | Regional Director of Rehabilitation
NeuroRestorative – Nevada & Arizona
www.NeuroRestorative.com
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*****END EMAIL SYSTEMATIC MESSAGE*****

From: Time Cards [mailto:timecards@myactionstaffing.com]
Sent: Friday, August 27, 2021 1:46 PM
To: Anderson, Stephanie <Stephanie.Anderson@neurorestorative.com>
Cc: AP <AP@myactionstaffing.com>

PTB 0032

Subject: [EXTERNAL] B. Miller Timecard

Good afternoon,

I've received Bernard Miller's timecard for week ending 8/28/21 and I have a clarification question. I understand that on Tuesday he wrote the incorrect date which is why it was crossed out and re entered on Thursday. However, I'm confused on Monday 8/23 as the 2.5 hours was crossed out. Could you please confirm he worked 8/23 10am – 12:30pm?

Thank you!

Sincerely,

Mikiva Lewis

Accounting Support

Action Staffing Solutions

883 N Cleveland Ave, Loveland, CO 80537

Office Hours: M-F 8:30am-5pm

P:[970-667-4202](tel:970-667-4202) F:[970-667-1036](tel:970-667-1036)

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Exhibit 7

NEVADA STATE PHYSICAL THERAPY BOARD

INVESTIGATIVE REPORT

ATTORNEY CLIENT PRIVILEGE

Case Number: #2021-15

February 20,2022

Licensee: Bernard Miller PT #0801

Basis for Allegation:

A complaint from Melody Deshon, Compliance Officer for Action Staffing Solutions was received by the Nevada Physical Therapy Board on 10/15/2021. Bernard Miller PT was contracted through Action Staffing Solutions to provide physical therapy services for Neuro Restorative, 2785 S Rainbow Blvd, Suite 130, Las Vegas, Nevada 89126. The complaint alleged that Bernard Miller PT repeatedly missed patient appointments; incorrectly charged patient treatments; was found sleeping in his car during working hours; and smelled of alcohol during work hours.

Subpoena: A subpoena was requested for all the PT documentation for all the patients on Bernard Miller's schedule from August 28,2021 through September 3,2021.

Previous disciplinary actions

Bernard Miller was investigated for fraudulent patient billing previously. Case number 2017-31.

Inspector: Deborah A Dieter

Case 2021-16 – Interviews with complainants

Melody Deshon Action Staff Compliance – 970-667-4202

On October 25, 2021, Melody and I spoke. Bernard Miller PT #0801 worked as a staffing PT for Action Staffing. NeuroRestorative Las Vegas contracted with Action Staffing for PT services. Action Staffing provided Bernard Miller's services through the contract. Bernard worked for Action Staffing for 1 week from August 26, 2021 until September 3, 2021. She stated Bernard had good references and his employment verification was positive. Melody stated she had no direct knowledge of the incidents with Bernard. She stated the NeuroRestorative Regional Rehabilitation Director, Stephanie Anderson MS OTR/L, was the person involved in the incidents. She gave me Stephanie's contact information.

Stephanie Anderson MS OTR/L – 702-401-1994 (cell)

Stephanie and I spoke on October 25, 2021. Stephanie is the regional director for 4 states. She interviewed Bernard Miller PT. She stated that Bernard Miller was employed at NeuroRestorative for 1 week. He had a full day of orientation on August 26, 2021. She was not involved with the termination of Bernard Miller's employment. Mark at Action Staffing conducted the termination of Bernard's employment.

I asked Stephanie if there was evidence that Bernard Miller charged more treatment time than he provided. She stated she would have to review the billing records and would let me know. I asked Stephanie about the sleeping policy mentioned in the complaint. She stated that all employees sign it at hire. It was primarily written for staff who work night shifts but all employees sign it. I asked her if their company would require a subpoena for billing records. She stated that she would check with the legal department. NeuroRestorative charges a daily inclusive cost. They serve Medicaid patients and commercial insurance.

Stephanie stated that the Program Director, Lynette Dean, 661-374-9898 was the management person, along with the Plant Maintenance Director, who found Bernard in his car on Friday September 3, 2021. This occurred at 10:30 AM. Lynette sent Bernard home when they found him in his car. Bernard's employment was terminated the following Monday. Bernard was told not to return to the hospital but he did return the next week to retrieve his back pack.

I asked Stephanie about the patient report that Bernard had alcohol on his breath during treatment. The report was made after Bernard left employment. They do have a written patient statement. No lab screening was done.

Stephanie stated one of the reasons they submitted the complaint (through Action Staffing) was that Bernard Miller told them that he also works in Home Health PT. They were concerned that his behavior could go unnoticed in Home Health.

Interview with Lynette Dean, Program Director NeuroRestorative – 661-374-9898

On November 2, 2021, I spoke with Lynette. She is the onsite Program Director at the facility where Bernard Miller PT worked. Lynette provided Bernard his orientation which included an orientation binder and onsite facility training.

I asked Lynette how she knew Bernard was sleeping in his car. She stated that another staff member, Brittney Morgan COTA, saw Bernard sleeping in his car. She knocked on the window and Bernard stated he was “taking a break”. Lynette stated that Bernard worked 8:00 am to 4:00 or 4:30 pm. He had an hour lunch break. Each client was treated for 50 minutes so a therapist had a 10 minute break with each client. I asked Lynette how many episodes of sleeping in the car occurred and she stated “at least two”.

On Thursday September 2, 2021, Bernard reported for work late. Lynette assumed he treated all his clients. Bernard charged for more time than he spent with patients (see complaint).

On Friday September 3, 2021, Bernard was missing for two hours. Lynette walked to his car. His windows were tinted and she could not see inside. She feared that Bernard had a medical issue. She got the facility maintenance man to accompany her back to Bernard’s car. They knocked on the car windows with no response. The maintenance man pounded on the roof of the car. Bernard then rolled down his window. His eyes were blinking and he stated he was “taking a break”. Lynette stated he missed at least one to two hours of patient care. Lynette sent Bernard home from the parking lot. She told him that they would hold his belongings.

Bernard returned on Monday September 6,2021 to retrieve his belongs. The staffing agency terminated Bernard's employment with NeuroRestorative.

I asked Lynette if she was aware of any type of impairment on the part of Bernard including alcohol or other substances. She stated she did not worked closely with Bernard so she did not know. I asked her how she knew that Bernard had charged for more time than he provided the clients. She stated she made rounds in the clinic treatment gym to see how patients were doing and if the staff needed any help. She noticed that Bernard released patients early from treatment. Stephanie Anderson, the Regional Director then checked the charges Bernard logged on his clients.

Interview with Licensee Case 2021-15 - Bernard Miller PT # 0801 702-506-6819

On November 3,2021, I spoke with Bernard. He stated that he had not received a letter from the Board regarding the complaint. The ED actually sent two copies of the letter to Bernard.

Bernard could not remember when he was employed at NeuroRestorative. It was the first time he had worked there. He stated that he thought it was September 2021. I asked him what his job there was and he stated a "staff PT". I asked him why he left his employment there. He stated that He quit. I asked him why he quit and he stated they were "unfair" to him. I asked him what was unfair and he stated that he was told that he was found sleeping in his car. I asked him if this was true. He stated he was "sleeping on his lunch hour" which was his own time ie. unpaid time. I asked him if he was ever found sleeping in his car during patient treatment time and he denied it. I stated that I understood that he had worked at NeuroRestorative a week. He stated he couldn't remember how long he was there but it was longer than a week. Documentation from NeuroRestorative stated that he began his employment on Friday August 27,2021 and they terminated his employment on Friday September 3,2021 when he was found sleeping in his car mid-morning. I asked him again how many times he was found sleeping during his employment and he stated one time.

I asked him who found him sleeping in his car and he stated it was the rehab director. I asked him when he quit his employment and he stated that it was the day he was found sleeping in his car. He then stated he quit the day after he was caught sleeping when he returned to pick up his backpack (that was a Saturday).

Documentation stated he returned Monday September 6, 2021 and picked up his back pack. I asked Bernard who he informed he was quitting. He stated it was an individual named Mark. I asked him if Mark was employed by NeuroRestorative and he stated "yes". Mark is employed by Action Staffing and did terminate Bernard's employment.

I asked him if there was ever a conversation with NeuroRestorative regarding patient charges. He stated "no". He then stated that he treated very patient on his schedule. I asked how long he treated each patient and he stated 60 minutes. I asked him if he treated patients in patient rooms or in the therapy gym. He stated he treated in the therapy gym. I asked him if other staff members were present when he treated patients and he stated "yes".

I asked him where he was working now and he stated "Home Health". I asked what the name of the agency was and he stated Dependable. I asked him how long he had worked there and he stated 1 year. I asked why he was working at NeuroRestorative when he was employed at Dependable and he stated it was "supplementary".

Bernard stated that he enjoyed working at NeuroRestorative until "they gave him a hard time". I asked what a hard time meant and he stated it was the hard time they gave him about sleeping in his car. He stated he did "nothing wrong". I asked Bernard if he received an orientation to his job at NeuroRestorative. He stated "no".

Bernard was reluctant in his answers and hesitated when he answered my questions. He was somewhat hostile about responding to my questions. His answers differed greatly from the documentation that NeuroRestorative provided as evidence.

Discussion

An alcohol test was not conducted. Therefore there is no objective evidence that Bernard Miller PT was under the influence of alcohol during working hours.

During the review of the subpoenaed patient records the following issues were found:

1. There were three instances where Bernard Miller PT billed in correct CPT (billing) codes. The codes were 97510, 98116, and 97539. These codes do not exist in the CPT code book. (Summary sheet. Instances are in bold print)
2. There were three instances where Bernard Miller billed eleven units when he should have billed one unit. (See summary sheet. Instances are in bold print)
3. Bernard Miller PT failed to write two required quarterly progress reports for scheduled patients. (See summary sheet. Instances are in bold print)
4. Bernard Miller PT failed to write three progress reports for scheduled patients. (See summary sheet. Instances are in bold print)

Recommendations and violations:

I recommend going forward with of this complaint for the following reasons:

1. NAC 640.620 Fees and billing (NRS 640.050) A licensee shall:
 3. Not engage in any misleading or deceptive billing practice. Subpoenaed records showed 6 instances of incorrect billing. (Number 1 and 2 above).

Note: This was also the grounds for the complaint against Bernard Miller PT in Case 2017-31
2. NAC 640.610 Records; confidentiality. (NRS 640.050)
 1. A licensee shall:
 - (c) 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. (Number 3 and 4 above).

Exhibit 8

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,

9 Respondent.

Case Nos.: 2021-15

**COMPLAINT
AND
NOTICE OF HEARING**

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

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

22 **FACTUAL ALLEGATIONS AND JURISDICTION**

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

26 2. On or about October 15, 2021, the Board received a complaint (Complaint), filed by
27 Melody Deshon (“Deshon”), Action Staff Compliance Officer, alleging Respondent, was repeatedly
28 found sleeping in his car during working hours; repeatedly missed patient appointments;
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 December 8, 2023**
8 **at 9:00 a.m. The Board Meeting will be held remotely.**

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

28 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.

(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 3rd day of October 2023.

AARON D. FORD
Attorney General

By: /s/ Ziwei Zheng
Ziwei Zheng
Deputy Attorney General
555 E Washington Ave #5100,
Las Vegas, NV 89101
Telephone: (702) 486-3898
Email: zzheng@ag.nv.gov
*Attorneys for the State of Nevada,
Physical Therapy Board*

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Bernard L. Miller, PT, License No. 0801
6409 Adobe Summit Avenue
Las Vegas, NV 89110

Certified Mail Receipt No.: 7020 0640 0000 7651 9142

/s/ Debra Turman
An employee of the State of Nevada,
Office of the Attorney General

Exhibit 9

10-04-23

Bernard Miller
Physical Therapist
6049 Adobe Summit Avenue
Las Vegas, NV. 89110
(702) 762-3339

To: Physical Therapy Board (State of Nevada)
3291 North Buffalo Drive, Suite 100
Las Vegas NV. 89129

Re: Complaint

This correspondence is a reply to the accusations levied against me by Action Staffing Solutions in September of 2021. I would like to enumerate my response to these baseless allegations in this document and assert that all accusations are baseless and without merit. In order to do that, I will address each claim separately and enumerate each and every accusation accordingly. I appreciate the board's attention to this matter and look forward to the resolution as quickly as possible. Herein are my replies to these fallacious claims.

Missed client Appointments

During the time of my employ, I was given a patient caseload and saw every individual on my assignment. Every day as per the expectation. I never received an admonition that I missed any treatments. Ever. I did my due diligence in treating all of the patients under my care and never was told that I 'missed' any assigned individuals.

Failure to see patients for full treatment time

I dutifully keep abreast of treatment time spent with a patient. I am usually faulted by employers that I treat longer than is what is scheduled/expected. This claim is baseless. Was there an individual with a stopwatch monitoring my treatment times? I declare that I treat fully and to the requirements posited by Medicare and Medicaid guidelines.

Incomplete Documentation

There is no justification for this false claim. When I was hired, there was no orientation whatsoever to documentation standards. Moreover, I never received any feedback that my documentation was in any way deficient. Since I did not receive any proper orientation as to documentation standards, I reverted to my former training (longstanding) and documented in a S.O.A.P. Format. Once again, this claim has absolutely no basis in fact.

Suspected intoxication on the job/Found sleeping/passed out in personal vehicle during work shift.

This claim is not only inaccurate but insulting. I did sleep in my car during the allocated lunch period. It is something I have done over my career. Furthermore, I do not imbibe in alcoholic beverages. Whatsoever. To make such an accusation is not only scurrilous but defamatory. I was not, nor ever would be, intoxicated when treating patients. My question is, if they suspected me of being under the influence, why did they allow me to drive off of the property? Furthermore, I suspect that they have a policy that states an employee submit to a toxicology test if suspected of being under the influence of intoxicants. Neither of those interdictions were suggested or performed. This claim is baseless, unfounded and professionally offensive.

Unprofessional patient treatment

Once again, there is no merit to this accusation. Two fold. I never once received a complaint from any patient I treated regarding their treatment or the patient protocols for treatment I employed. I was in a gym with other staff members and patients well within a visible realm. I never received a complaint from any patient whatsoever. I never received a report from any staff that there was a complaint from a patient or any staff about my professional conduct. Furthermore, I never heard from administrative staff that I treated any patients in an 'unprofessional' manner.

In summation, I accepted this position as a short term assignment while I was in between full time positions. I had significant concerns about this clinics' operations. When I was hired, I was given a bare bones orientation and then an assignment. The leadership was poor in that they were not available for consultation or guidance. I frequently went to the director's office to ask questions and was rebuffed stating she was on a call. I did not receive an appropriate orientation so I was left to suffice on my experience (decades) and my training. I did not even receive any badge for identification purposes to patients and/or caregivers even though I requested it numerous times. There was no other P.T. In the building (as I was filling in for someone on PTO) so I did not have a peer to consult. The other P.T. Staff members were PTA's. The patients I treated were convivial and without complaint. These claims, as I have detailed, are false, misleading and without any tangible proof.

I appreciate the opportunity to reply to these false allegations.

Respectfully,

Bernard Miller
Physical Therapist (0801)