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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
JOHN H. NEBEKER
TO PRACTICE AS A PHYSICAL THERAPIST
IN THE STATE OF UTAH

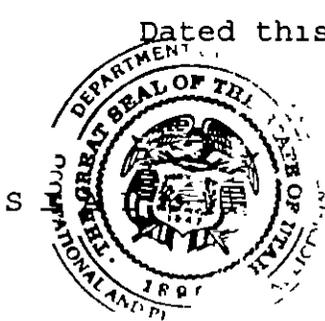
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: ORDER REINSTATING LICENSE
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: Case No. DOPL-2007-221
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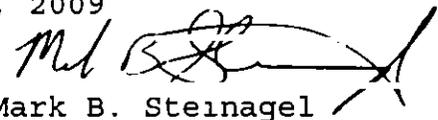
BY THE DIVISION.

Respondent has satisfied the terms and conditions as set forth in the Division's Stipulation and Order, dated October 24, 2007, in the above-referenced case number.

IT IS HEREBY ORDERED the probation and conditions/restrictions on the license of JOHN H NEBEKER to practice as a physical therapist are terminated and said license be reinstated with full privileges effective the date of this Order.

Dated this 1 day of December, 2009




Mark B. Steinagel
Director

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
JOHN H. NEBEKER
TO PRACTICE AS A
PHYSICAL THERAPIST
IN THE STATE OF UTAH

AMENDED ORDER

Case No.
DOPL-2007-221

BY THE DIVISION.

The Division's Stipulation and Order, dated October 24, 2007, in the above-referenced case is hereby amended as follows.

IT IS HEREBY ORDERED the probationary restriction contained in paragraph 8 (1)(1) which reads "Respondent shall not supervise physical therapy aides, or other medical or therapy professionals or students" is amended to read as follows "Respondent shall not supervise physical therapy aides, or other medical or therapy professionals or students unless approved by the Physical Therapy Board and the Division."

All other conditions and restrictions identified in the October 24, 2007 Stipulation and Order shall remain the same and in effect.

Dated this 6 day of December, 2007.


F. David Stanley
Director



L MITCHELL JONES (U S B 5979)
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Salt Lake City, UT 84114-6741
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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF)
JOHN H. NEBEKER) STIPULATION AND ORDER
TO PRACTICE AS A)
PHYSICAL THERAPIST) CASE NO DOPL 2007-- 221
IN THE STATE OF UTAH)

JOHN H. NEBEKER (“Respondent”) and the **DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of the State of Utah (“Division”) stipulate and agree as follows

- 1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action
- 2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily

3 Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter

4 Respondent understands that Respondent is entitled to a hearing before the State of Utah's Physical Therapist Licensing Board ("the Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses Respondent acknowledges that by executing this document Respondent hereby waives the right to a hearing and any other rights to which Respondent may be entitled in connection with said hearing

5 Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter

6 Respondent acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document and may be released to other persons and entities

7 Respondent admits the following facts are true

- a On or about May 9, 2007 Respondent provided in home physical therapy to Jane Doe (identity withheld for reasons of confidentiality) At various times during the procedure, Respondent, without the consent of Jane Doe, maneuvered himself so that the hands of Jane Doe touched Respondent's genitals Respondent did this for his personal gratification

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (k), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) Respondent agrees that an Order, which constitutes disciplinary action against Respondent's

license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2), shall be entered in this matter as follows

- (1) Respondent's license shall be revoked. That revocation shall be immediately stayed and Respondent's license shall be subject to a term of probation for a period of three years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division director signs the Order. During the period of probation, Respondent shall be subject to all of the following terms and conditions. If the Board or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division.
 - (a) Respondent shall practice only under the supervision of a Division and Board pre-approved supervisor during the term of Respondent's probation. Any changes in supervision may be made only with the consent of the Division and Board. Respondent shall deliver a copy of this Order to Respondent's supervisor (within ten days of the establishment of the supervisory relationship) and cause Respondent's supervisor to notify the Division in writing that a copy has been received.
 - (b) Respondent shall meet weekly with Respondent's supervisor. Supervision goals shall include concurrent management, oversight of therapeutic intervention services, and professional relationships and practices. The supervisor shall review 20% of Respondent's current patient files. The supervisor shall choose which files shall be reviewed.
 - (c) If Respondent is self-employed in private practice, Respondent shall hire a supervisor, pre-approved by the Board and Division.
 - (d) The supervisor shall oversee clinical interventions and review records. The supervisor shall also address issues pertaining to boundary violations, and dual relationships with patients, and other issues the supervisor determines are pertinent to ethical practice.
 - (e) Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and ethics. The reports shall be submitted monthly for the first six months and quarterly thereafter, or at such frequency as directed by the Board and Division. The receipt of an unfavorable report may be considered to be a violation of probation.
 - (f) Respondent shall treat female patients only in the company of a chaperone.

pre-approved by the Division and Board. The chaperone shall be provided with a copy of this Stipulation and Order. The chaperone shall submit quarterly reports to the Division and Board summarizing the number of female patients treated, Respondent's professionalism with the female patients, and Respondent's compliance with the terms and conditions of this Stipulation and Order.

*

- (g) If Respondent is not currently employed in Respondent's licensed profession, Respondent shall submit the supervisor report form on the date it is due and indicate on the form that Respondent is not currently employed in Respondent's licensed profession, or that Respondent is not currently working.
- (h) Respondent shall notify any employer of Respondent's restricted status and the terms of this Stipulation and Order. Respondent shall provide a copy of this Stipulation and Order to Respondent's employer and cause Respondent's employer to acknowledge to the Division and Board in writing that a copy of the Order has been provided to the employer. The employer shall submit employer reports to the Division and Board on a monthly basis for the first six months and quarterly thereafter, or at such frequency as directed by the Division or Board. The employer shall write the Division and indicate whether the employer will provide the periodic employer reports.
- (i) Respondent shall not supervise physical therapy aides, or other medical or therapy professionals or students.
- (j) Respondent shall complete 20 hours of continuing professional education, pre-approved by the Board and Division, in the area of Respondent's licensed field of practice, with emphasis in the areas of professional ethics, values, boundaries, and transference and counter-transference issues. The 20 hours of continuing professional education shall be completed within eight months from the date of this Stipulation and Order. Respondent shall provide documentation to the Division and Board of successful completion of the 20 hours.
- (k) Respondent shall successfully complete a psychosexual evaluation from a Board and Division approved licensed psychologist. The evaluator shall evaluate Respondent's problems relating to boundary violations, dual relationships, and any other areas the evaluator identifies as concerns. The evaluator must not be known by Respondent professionally or personally and Respondent will cause a report of the evaluation to be sent to the Division and Board along with any recommended treatment plan. Said

evaluation will be completed within ninety (90) days of the date of this Order Respondent shall execute the appropriate written release forms to authorize the evaluating practitioner to report to the Division and Board any report, diagnosis, supporting information, testing and measures administered, interpretation of the tests and treatment recommendations Respondent shall be responsible for all expenses related to the evaluation The Division may provide a copy of this Stipulation and Order and contents of the Division's investigative file to the evaluator to assist the evaluation in his or her evaluation of Respondent

- (l) Respondent shall follow any treatment recommendations made by the evaluator, the Division, and/or the Board A therapist approved by the Division and Board shall conduct any treatment Respondent shall execute any necessary releases to allow the therapist to provide reports to the Division and Board regarding Respondent's progress Respondent's therapy should focus on the areas of concern identified by the evaluator Respondent shall cause quarterly progress reports to be submitted to the Division and Board by the therapist Respondent shall be responsible for all treatment expenses
- (m) Respondent shall notify the Division and Board within one (1) week of any change of employer or employment status This is required regardless of whether Respondent is employed in Respondent's licensed occupation The notification shall be in writing
- (n) Respondent shall meet with the Board and Division within thirty (30) days of signing of the accompanying Order and on a quarterly basis, or at other greater or lesser frequency as determined by the Board and Division for the duration of the probationary period thereafter to assess the progress of Respondent's probation Respondent shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order with a plan for Respondent's probation, including the name(s) of evaluator(s)
- (o) Respondent shall limit Respondent's practice in accordance with the terms of probation, unless the Division and the Board authorize changes
- (p) In the event that Respondent leaves Utah for a period longer than 60 days, Respondent shall notify the Division and the Board in writing of the dates of departure and return The licensing authorities of the jurisdiction to which Respondent moves must be promptly notified of the provisions of this Stipulation and Order Periods of residency or practice outside Utah may apply to the reduction of the probation period if the new state of

residency places Respondent' license on probation with equal or greater terms and conditions

- (q) Periods of unemployment or employment in other fields of practice shall be reported by Respondent to the Division and shall not count toward completion of probation. Should Respondent not be employed in Respondent's licensed occupation during Respondent's probationary period for a consecutive period of more than sixty (60) days, that period shall not apply to the reduction of probation, though the terms of probation shall remain applicable. If the Respondent works less than full-time in Respondent's licensed occupation, the reduction of any remaining probationary time shall occur on a pro-rata basis, in relation to a full-time position of 40 hours worked per week.
- (r) Should other acts of unprofessional conduct come to the attention of the Division or Board which have occurred prior to the entry of the Order in this case or should Respondent violate probation in any respect, the Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation or impose sanctions in accordance with applicable law.
- (s) If a petition is filed against Respondent during Respondent's probation, the period of probation shall be extended until the matters alleged in the petition are fully resolved.
- (t) Respondent shall immediately notify the Division, in writing, of any changes in private or professional address and agrees that written communication by the Division and/or the Board shall be mailed to Respondent at the last address provided to the Division via first class U S Mail, and shall constitute notice to Respondent.
- (u) Failure to pay for any of the costs associated with this probation shall be considered a violation of this Order. Respondent further agrees to complete all conditions of probation in a timely manner. Where a specific time for completion is not stated in this Order, it shall be within the Division and Board's discretion to set a time for completion.
- (v) Respondent agrees to keep Respondent's Utah license current during the period of probation.
- (w) Respondent shall notify the Division immediately if Respondent is charged or arrested with any criminal conduct and understands that a conviction is a violation of this agreement.

- (x) Respondent shall write an essay about the impact Respondent's actions have had upon himself, his client(s), and his profession. The essay shall be submitted within eight months of the effective date of this Stipulation and Order.

9 This Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudice Respondent might have with regard to the Director by virtue of her having reviewed this Stipulation, and this waiver shall survive such nullification.

10 Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

11 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

12 The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall complete all the terms and conditions contained in the Stipulation and Order in a timely manner. If a time period for completion of a term or condition is not

specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

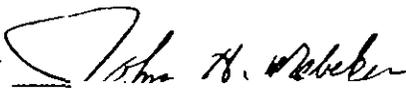
13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT

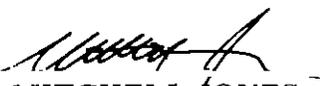
BY 
NOEL TAXIN
Bureau Manager

BY 
JOHN H. NEBEKER

DATE 10 24 07

DATE. 10 10 07

MARK L SHURTLEFF
ATTORNEY GENERAL

BY 
L. MITCHELL JONES
Counsel for the Division

DATE 10 Oct 2007

ORDER

THE ABOVE STIPULATION, in the matter of **JOHN H. NEBEKER**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 24 day of *October*, 2007

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


F DAVID STANLEY
Director

Investigator John Sims