

FEB 16 2011

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

IN THE MATTER OF THE ISSUANCE OF) **MEMORANDUM OF**
A PROBATIONARY LICENSE TO) **UNDERSTANDING AND ORDER**
JAMES CHARLES NACKOS TO PRACTICE)
AS A PHYSICAL THERAPIST IN THE STATE)
OF UTAH) **CASE NO. DOPL- 2011-65**

JAMES CHARLES NACKOS (“Respondent”) submitted an application for relicensure as a physical therapist in the State of Utah on or about December 14, 2010. In the applicant questionnaire, Respondent answered “yes” to questions 4, 9, 22, 23, and 25. Documentation received by the Division of Occupational and Professional Licensing of the Utah Department of Commerce (“Division”) verified the following:

- (1) On or about September 26, 2007, Respondent was arrested by deputies of the Utah County Sherriff’s Office and later charged in Fourth District Court with three counts of vehicle burglary and four counts of unlawful possession of a controlled substance.
- (2) On or about December 18, 2007, Respondent pleaded guilty to three counts of unlawful possession of a controlled substance; one is a second degree felony and two are third degree felonies, and pleaded guilty to two counts of attempted vehicle burglary; each a Class B misdemeanor. Respondent successfully completed his criminal probations for the above referenced offences in March 2009.
- (3) Respondent committed the above referenced offenses while licensed as a physical therapist in Utah. The victim of the offences was a patient of respondent.

- (4) On August 19, 2008, Respondent surrendered his physical therapist license in Utah.

Based upon Respondent's conduct described above, Respondent and Division, as evidenced by their signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as physical therapist in the State of Utah. Respondent shall be subject to the following terms and conditions, which shall be in effect as long as Respondent is licensed as a physical therapist, commencing upon the date this Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature.

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(c). Respondent understands the issuance of the Order in this matter is disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2)(a).
2. Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement.
3. Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter.
4. Respondent acknowledges that this Memorandum of Understanding and Order, if adopted by the Division Director, will be classified as a public document. The Division may release this Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.
5. Respondent shall successfully complete and satisfy the following terms and conditions:
 - (a) **Meeting with Compliance Specialist.** Respondent shall contact Division Compliance Specialist Connie Call within two weeks of the effective date of this Order to schedule a meeting for the purpose of discussing the terms and conditions of the Order. An appointment with Ms. Call can be scheduled by contacting her by phone at (801) 530-6295 or by email at cscall@utah.gov.

- (b) **Meetings with Board and Written Plan.** Respondent shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order. Prior to the first scheduled Board meeting, Respondent shall submit to the Division a written plan that summarizes how Respondent will comply with the terms of the probation. Respondent shall meet with the Board and Division on a quarterly basis or at other greater or lesser frequency as determined by the Board and Division.
- (c) **Supervised Practice.** Respondent shall practice only under the supervision of a Division and Board pre-approved supervisor during the term of Respondent's probation. Supervisor shall be licensed as a physical therapist. 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. Supervisor shall also submit a written statement to the Division to confirm his or her understanding of the terms of the Order.
- (d) **Meetings with Supervisor.** Respondent shall meet on a weekly basis with Respondent's supervisor unless otherwise approved by the Board and Division. Supervision goals shall include concurrent case management and oversight of physical therapy services and professional relationships. The supervisor shall review Respondent's patient records on an ongoing basis.
- (e) **Practice Limitations.** Respondent is prohibited from working in a clinical setting unless approved in writing by the Division and Board. Respondent must work only in an academic setting unless approved to do so in writing by the Division and Board.
- (f) **Supervisor Reports.** 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 professional 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.
- (g) **Non-Employment in the Profession.** 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) **Notification of Employer of Terms of Probation.** Respondent shall notify any employer in the profession of Respondent's restricted status and the terms of this Order. Respondent shall provide a copy of this 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.
- (i) **Limits on Supervision Responsibilities.** Respondent shall not be responsible for supervision of licensed physical therapists, physical therapists assistants, or other licensed health care professionals.
- (j) **Psychological and/or Chemical Dependency Evaluation.** The Division and Board may request in writing that Respondent successfully complete a psychological and/or a chemical dependency evaluation provided by a Division-approved licensed provider within ninety (90) days of the request. Respondent shall contact the Division-approved licensed professional for an initial appointment within 30 days of the written request. Respondent shall schedule the initial appointment to be held within 60 days of the effective date of the written request. Respondent shall attend all appointments and follow-up appointments in a timely manner. Respondent shall cooperate fully with the evaluator to ensure a fair and complete evaluation. Respondent shall notify the Division immediately after successfully completing the evaluation and inform the Division that Respondent has successfully completed the psychological evaluation. Respondent agrees to cause the evaluation report to be sent to the Division within 120 days of the written request.
- (k) **Ongoing Therapy and Release of Information.** Respondent shall successfully complete any therapy or treatment recommended by the evaluation report in a timely manner. Respondent shall follow any treatment recommendations made by the evaluator, the Division, and/or Board. 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 progress reports to be submitted to the Division and Board by the therapist pre-approved by the Division. The report shall be submitted on a quarterly basis, or at a greater or lesser frequency as determined by the Division and Board. Respondent shall be responsible for all treatment expenses.
- (l) **Drug and Alcohol Limitations.** Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form. Respondent agrees to abstain from the personal use or possession of

controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions. Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.

- (m) **Drug and Alcohol Testing.** Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division shall determine when and where Respondent is to submit for testing. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing. Any report from a drug testing company that indicates that Respondent failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug analysis is diluted to an extent that it cannot be analyzed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions.
- (n) **Division Approval of Physician and Pharmacy.** Unless otherwise approved by the Division, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy. Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of Respondent's addiction/abuse problems. Respondent shall provide a copy of this Order to Respondent's primary prescribing practitioner. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval.
- (o) **Prescription Reporting.** Respondent shall provide the Division with a copy of Respondent's prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within 48 hours after the prescription has been written.

- (p) **Participation in Support Group Meetings.** Respondent shall participate in alcohol anonymous, narcotics anonymous, or other substance abuse support group. Documentation that confirms Respondent's regular attendance at such support group meetings shall be provided to the Division on a quarterly basis. "Regular attendance" means Respondent shall attend the support group at least two times per week or a lesser or greater frequency as determined by the Board and Division.
- (q) **Notification of Division Upon Employment Changes.** 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.
- (r) **Division's Authority to Make Changes to Terms of Probation.** Respondent shall limit Respondent's practice in accordance with the terms of probation unless the Division and the Board authorize changes.
- (s) **Notification of Division if Leaving Utah for More than 60 Days.** 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 Order.
- (t) **Periods of Unemployment.** Periods of unemployment or employment in other fields of practice shall be reported by Respondent to the Division and Board.
- (u) 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.
- (v) 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.
- (w) Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this agreement, including probation or parole. If Respondent has not successfully completed all terms and conditions or Respondent's criminal probation at the time

Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all conditions of Respondent's criminal probation have been successfully completed.

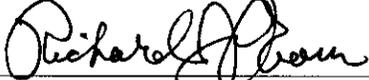
- (x) **Notification of Address Changes.** Respondent shall immediately notify the Division, in writing, of any changes in private or professional address and agrees that written communication by the Division and/or the Board shall be mailed to Respondent at the last address provided to the Division via first class U.S. Mail, and shall constitute notice to Respondent.
- (y) **Failure to Cover Costs Associated with Probation.** 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.
- (z) Respondent agrees to keep Respondent's Utah license current during the period of probation.
- (aa) 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.

6. Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's licensed field of practice.
7. Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative review of that partial denial of licensure.
8. If Respondent violates any term or condition of this Memorandum of Understanding 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.
9. The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Division Director signs the Order page of this Memorandum of Understanding and Order. The Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for

completion of a term or condition is not specifically set forth in this Memorandum of Understanding 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 Memorandum of Understanding and Order and may subject Respondent to revocation or other sanctions.

10. 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. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.
11. Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY: 
RICHARD J. OBORN
Bureau Manager

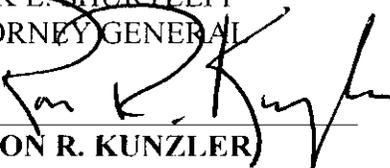
DATE: 2/16/11

RESPONDENT

BY: 
JAMES CHARLES NACKOS

DATE: 2-10-11

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
RON R. KUNZLER
Counsel for the Division

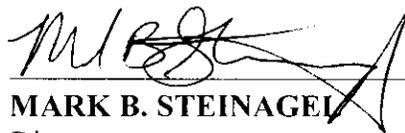
DATE: 2/16/11

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **JAMES CHARLES NACKOS**, is hereby approved by the Division of Occupational and Professional Licensing. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2)(a). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute my final Order in this case.

DATED this 16 day of February, 2011.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



MARK B. STEINAGEL
Director