

**STATE OF VERMONT  
OFFICE OF PROFESSIONAL REGULATION  
PHYSICAL THERAPISTS**

**IN RE:** )  
**NEIL ERIC PRIMACK** ) **Docket No.: PT02-0804**  
**License No: 040-0003480** )

**STIPULATION AND CONSENT ORDER**

**STIPULATION**

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Edward G. Adrian, and Respondent, Neil Eric Primack, P.T., by and through his attorneys, Thomas W. Costello, P.C., who stipulate and agree as follows:

**Authority**

1. The Administrative Law Officer ("A.L.O.") has jurisdiction to hear matters involving allegations of unprofessional conduct by Physical Therapists pursuant to 3 V.S.A. §§122, 129 and 129a; Title 26, Chapter 38 of the Vermont Statutes Annotated; the Administrative Rules for Physical Therapists; and the Office of Professional Regulation's Rules.

**Statement of Facts**

2. The Respondent, Neil Eric Primack, is licensed in the State of Vermont as a Physical Therapist under license number 040-0003480. The Respondent was originally licensed on April 30, 2002 and the Respondent's license is currently inactive per his request.

3. On July 13, 2004, the Office of Professional Regulation received notice from Adverse Actions of the Federation of State Boards of Physical Therapy that the State

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Prosecuting Attorney  
Office of  
Professional Regulation  
Montpelier, VT 05602

of Massachusetts had taken action against the Respondent's Physical Therapy license in Massachusetts.

4. Pursuant to a Consent Agreement entered into by the Respondent and the Massachusetts Board of Registration of Allied Health Professionals with an effective date of April 29, 2004, the Respondent's license was suspended for a minimum period of three years. This discipline was imposed due to the Respondent having made improper and unprofessional overtures and references of a highly personal nature to a patient he was treating in his office. (See Attachment A).

#### **Charges**

5. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondent violated:

- i. 3 V.S.A. §129a(a)(3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

#### **Understandings**

6. Respondent understands that the A.L.O. must review and accept the terms of the Consent Order. If the A.L.O. rejects any portion, the entire Stipulation and Consent Order shall be null and void.

7. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

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8. Respondent waives any notification period and agrees to have this document reviewed by the A.L.O. at the next available date. Respondent specifically waives any claims that any disclosures made to the A.L.O. during his/her review of this agreement have prejudiced the Respondent's rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the A.L.O.
9. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
10. Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
11. Respondent voluntarily waives his right to a contested hearing before the A.L.O.
12. Respondent agrees that the A.L.O. may set forth the order below.

### **CONSENT ORDER**

Based upon the above stipulation, it is **ORDERED AND ADJUDGED** as follows:

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A. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has engaged in unprofessional conduct in violation of:

- i. 3 V.S.A. §129a(a)(3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

B. The Respondent's license to practice physical therapy is hereby **INDEFINATELY SUSPENDED**. If and when the Respondent's license is reinstated in Massachusetts, the Vermont Office of Professional Regulation will consider a request to reinstate Respondent's license with conditions, if any, similar to those that Massachusetts may impose.

C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

D. This Stipulation and Consent Order will remain part of the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

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Prosecuting Attorney  
Office of  
Professional Regulation  
Montpelier, VT 05602

AGREED TO:

Dated:

3/21/05

STATE OF VERMONT  
SECRETARY OF STATE

By:

Edward G. Adrian  
State Prosecuting Attorney

NEIL ERIC PRIMACK  
RESPONDENT

Dated: March 14, 2005

By: Neil Eric Primack  
Neil Eric Primack

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: March 17, 2005

By: Thomas W. Costello  
Thomas Costello, Esq.

APPROVED AND SO ORDERED:

ADMINISTRATIVE LAW OFFICER

Dated: April 1, 2005

By: [Signature]  
Administrative Law Officer

Date of Entry: 4/1/05

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STATE OF VERMONT



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Office of  
Professional Regulation  
Montpelier, VT 05602

**STATE OF VERMONT  
OFFICE OF PROFESSIONAL REGULATION  
PHYSICAL THERAPISTS**

IN RE: )  
NEIL ERIC PRIMACK ) Docket No.: PT02-0804  
License No: 040-0003480 )

**SPECIFICATION OF CHARGES**

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Neil Eric Primack, P.T.:

**Authority**

1. The Administrative Law Officer has jurisdiction to hear matters involving allegations of unprofessional conduct by Physical Therapists pursuant to 3 V.S.A. §§122, 129 and 129a; Title 26, Chapter 38 of the Vermont Statutes Annotated; the Administrative Rules for Physical Therapists; and the Office of Professional Regulation's Rules.

**Statement of Facts**

2. The Respondent, Neil Eric Primack, is licensed in the State of Vermont as a Physical Therapist under license number 040-0003480. The Respondent was originally licensed on April 30, 2002 and the Respondent's license is currently inactive per his request.

3. On July 13, 2004, the Office of Professional Regulation received notice from Adverse Actions of the Federation of State Boards of Physical Therapy that the State of Massachusetts had taken action against the Respondent's Physical Therapy license in Massachusetts.

4. Pursuant to a Consent Agreement entered into by the Respondent and the Massachusetts Board of Registration of Allied Health Professionals with an effective date of April 29, 2004, the Respondent's license was suspended for a minimum period of three years. This discipline was imposed due to the Respondent having made improper and unprofessional overtures and references of a highly personal nature to a patient he was treating in his office. (See Attachment A).

**Charges**

5. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondent violated:

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Prosecuting Attorney  
Office of  
Professional Regulation  
Montpelier, VT 05602

- i. 3 V.S.A. §129a(a)(3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

**Relief Requested**

WHEREFORE, the license of Neil Eric Primack should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 5<sup>th</sup> day of December 2004.

STATE OF VERMONT  
SECRETARY OF STATE

By: \_\_\_\_\_

Edward G. Adrian  
State Prosecuting Attorney

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STATE OF VERMONT



Prosecuting Attorney  
Office of  
Professional Regulation  
Montpelier, VT 05602

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
OF ALLIED HEALTH  
PROFESSIONS

In the Matter of )  
Neil E. Primack, PT )  
AH License No. 6263-PT )

Docket No. AH 04-002

CONSENT AGREEMENT

The Massachusetts Board of Registration of Allied Health Professions ("Board") and Neil E. Primack ("Licensee" or "Respondent") (collectively, the "Parties"), a Physical Therapist holding AH License No. 6263-PT ("License") do hereby stipulate and agree to the following:

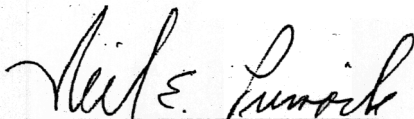
1. This Consent Agreement ("Consent Agreement" or "Agreement") shall take effect upon its execution by both Parties as of the date of the endorsement of the latter signatory ("Effective Date").
2. The Consent Agreement achieves a final resolution of the formal proceeding pending under Docket No. AH 04-002, which sets forth the allegations of a former patient ("Patient") whom the Licensee saw and treated at his Amherst, MA office on two occasions in the spring of 2003.
3. The Licensee admits that while the Patient was in his office undergoing treatment, he made improper and unprofessional overtures and references of a highly personally nature for which he is duly subject to disciplinary action by the Board under GL c. 112, s. 23K (acting in a professionally unethical manner). The Licensee expressly excludes from the scope of said admission any and all actions and/or omissions constituting, or elemental to, a criminal offense.
4. As of the Effective Date, the Board shall discontinue its prosecution of the Licensee under Docket No. AH 04-002.
5. As of the Effective Date, a Suspension of Respondent's License ("Suspension") shall go into effect. The Licensee acknowledges that the Suspension shall continue for not less than a period of three- (3)- years ("Suspension Period"). The Licensee understands that, except as so provided under this Consent Agreement, once the Suspension goes into effect, he may not and shall not be permitted, for compensation or otherwise, to participate in or to perform any act, provide any service and/or engage in any practice in Massachusetts constituting "Physical Therapy," as defined and/or described under Massachusetts law, GL c. 112, s. 23A, 259 CMR 5.01 *et seq.* (Board Regulations).

Attachment A

6. The Licensee acknowledges that the Board may, in its discretion, but shall not be required to count time he may spend outside of Massachusetts in its calculation of the three-year minimum. In making its determination, the Board may consider, among other things, the extent to which the Licensee satisfied his obligations and enlisted the involvement of the out-of-state board in overseeing his performance and compliance.
7. Immediately upon the Suspension of the License, a Stay of the Suspension ("Stay") shall go into effect. The Licensee acknowledges that the Stay shall be subject to summary rescission.
8. Forthwith upon the service of a Notice of Entry of an Order of Immediate and Summary Rescission of the Stay, the Licensee shall cease any and all conduct constituting "physical therapy" in Massachusetts. Notice of the entry of such an Order may be served on the Respondent by any practicable means including, but not limited to, by hand or mail to the Licensee at his address of record and/or to his attorney of record in the instant proceeding.
9. Within thirty (30) days of the Effective Date, the Licensee shall have identified, secured the Board's approval of and retained a qualified forensic mental health professional, to whom he has furnished a copy of this Agreement and the Order to Show Cause. The said mental health professional ("Evaluator") shall perform a psychological evaluation ("Evaluation") of the Licensee and prepare and release a written evaluative report ("Report") to the Board within ninety (90) days of the Effective Date.
10. No Report shall be satisfactory unless it includes, at a minimum: The Evaluator's findings; the Evaluator's professional opinion as to the likelihood of the Licensee's engaging in conduct in the future in the nature of that alleged in the Order to Show Cause; the Evaluator's professional opinion as to the Licensee's potential, willingness and ability to maintain appropriate professional boundaries in the future; and the Evaluator's recommendations for the Licensee's ongoing psychological and/or professional support, monitoring, supervision, and/or restrictions or limitations of the Licensee's practice.
11. The Licensee hereby authorizes and directs the Evaluator to communicate and disclose to the Board and its agents, representatives and employees ("Board Personnel") any and all mental health records of the Licensee including, but not limited to, information and documentation of and/or relating to the Licensee's mental condition and history, diagnoses and prognoses and the Evaluator's findings, conclusions, impressions, opinions and recommendations. The Licensee also hereby authorizes Board Personnel to discuss and disclose the Licensee's mental health records between and among themselves; and further authorizes discussion and disclosure of such records with and to persons who are not Board Personnel if and when warranted to counter a challenge to an action or decision or exercise of authority or discretion by the Board; to enforce the Agreement or an obligation of the Licensee and/or to comply with a court order or other legal obligation. All other discussions and disclosures of the Licensee's mental health records shall be subject to privileges and protections generally applicable to such records under Massachusetts statute and common law including provisions and standards for waiver thereof.
12. The Licensee understands and acknowledges that nothing in this Agreement shall preclude or limit the Board's discussion or disclosure of matters not privileged or protected by law including, but not limited to, the fact of the Evaluation, the existence of a Report, the extent to which the Board relied thereon or any other information or documentation that relates to this proceeding, its disposition or the underlying allegations.

13. The Licensee shall be solely and completely responsible for the adequacy and timeliness of performance hereunder including, but not limited to, for timely identifying suitable candidates for the Board to consider for the role of the Evaluator; for securing the Board's timely approval of the Evaluator; and for ensuring the Evaluator's timely completion and release of a satisfactory Report.
14. The Licensee understands that, irrespective of the outcome of his Evaluation, or any finding, opinion or recommendation of the Evaluator, the Board shall have discretion to summarily rescind the Stay, and/or to impose conditions and requirements for continuing the Stay. Such conditions and requirements might include, among other things, limitations and restrictions on the Licensee's practice; compulsory psychotherapy or counseling, ensuring the presence of third-parties while providing certain treatment and/or when treating certain patients; making mandatory appearances before the Board and submitting to its questions on request and/or at designated intervals.
15. The Licensee may not seek to have the Suspension removed and/or his License restored to good standing except by written petition ("Petition"), which he may not submit and the Board shall not consider for a three (3)-year period following the Effective Date.
16. The Licensee understands and acknowledges that a proper Petition must be accompanied by documentation sufficient to support determinations by the Board that he satisfies all requirements for licensure; is willing and able to comply with rules and standards governing his practice of Physical Therapy in Massachusetts; that he poses no threat to the safety and well-being of patients, does not pose a risk to the integrity of the profession and serves the best interest of the general public.
17. The Licensee understands and acknowledges that the decision to grant or deny a such Petition shall be made by the Board in its sound discretion; and that his reinstatement, if any, may be conditional, probationary, subject to Board-imposed requirements and/or subject to restrictions and limitations on professional activities or employment.
18. The Licensee shall be solely and completely responsible for the costs and expenses of compliance hereunder including, but not limited to, costs and expenses of conducting the Evaluation, of preparing and producing the Report of the Evaluation and of satisfying any and all obligations and requirements that the Board may impose after the Effective Date including, but not limited to, provisions for psychotherapy, counseling and/or on-site monitoring and supervision.
19. Within fifteen (15) days of any change of home address or place of residence, the Licensee shall notify the Board thereof.
20. The Licensee understands and acknowledges that the Suspension constitutes disciplinary action taken by the Board against his license pursuant to Docket No. AH-04-002.
21. The Licensee must and shall strictly comply with state and federal statutes and regulations relating to the practice of physical therapy; with generally accepted standards of physical therapy practice; with each and every term and provision of this Consent Agreement; and with each and every condition or requirement that the Board may, in its discretion, impose upon him in the course of the Suspension including any Stay thereof.
22. The Licensee understands that noncompliance with any provision or requirement imposed hereunder and/or pursuant hereto shall constitute a violation of this Consent Agreement and a basis for further disciplinary action by the Board.

23. The Licensee acknowledges and understands that this Agreement and its contents constitute public records and, as such, shall be fully and freely subject to disclosure including, but not limited to, disclosure to the general public, to interested persons, to licensing boards in other jurisdictions, in response to requests or in the absence thereof, and otherwise as permitted or required by law.
24. The Licensee acknowledges that he has read the Agreement and understands its contents; that he was represented by legal counsel during this proceeding and at the time of his endorsement of this Agreement; and that he executes this Agreement voluntarily and fully understanding that it constitutes a final act and shall not be subject to reconsideration or review.
25. The Licensee agrees and acknowledges that by entering into this Surrender Agreement, he knowingly and voluntarily is waiving his rights under the Massachusetts Administrative Procedures Act, G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 *et seq.* including, but not limited to, the right to contest allegations made against him in the Order to Show Cause; rights to a formal hearing on the merits of these allegations, to offer evidence and argument at a formal hearing, to have legal counsel or another representative appear and advocate on his behalf, to summon and question witnesses, to testify on his own behalf, and to cross-examine witnesses who testify against him; and the right to appeal an adverse decision to the courts.

  
Neil E. Primack

  
Board of Registration of Allied  
Health  
By: Paul N Petrone more/  
(Print Name)

Date: April 9, 2004

Date: 4/29/04

EFFECTIVE DATE: 4/29/04