CERTIFIED TO BE
A TRUE COPY

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
(973) 648-4741

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON October 18, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PSYCHOLOGICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF: NEIL J.LAVENDER, Ph.D. TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action CONSENT ORDER

This matter was opened to the New Jersey State Board of Psychological Examiners ("Board") upon receipt of a complaint from E.L. alleging sexual misconduct by Neil Lavender, Ph.D. ("Respondent"). The Board reviewed the records of the investigation in this matter including information acquired at an investigative inquiry attended by Dr. Lavender and his counsel, Michael Keating, Esq. on January 29, 2001. It appears that on or about November 1990, Dr. Lavender began seeing E.L. in therapy, which therapy continued until December 1993. Dr. Lavender admits that he engaged in a sexual relationship with E.L. commencing on or about some two months after his formal psychotherapeutic treatment of her ended, and continuing until approximately January 1998.

The Board finds that the above described conduct constituted the engagement in gross malpractice, repeated acts of malpractice, and professional misconduct within the meaning of N.J.S.A. 45:1-21(c), (d), and (e) respectively. The Board further finds the aforesaid conduct to be a direct violation of the Board's regulation concerning sexual conduct at N.J.A.C. 13:42-10.9(a) which expressly prohibits the participation in a sexual relationship or engagement in sexual intimacies with a current psychotherapy client or a former client to whom psychotherapy was rendered within the immediately preceding twenty-four months and is therefore a violation of N.J.S.A. 45:1-21(h).

In mitigation of the above described conduct, Dr. Lavender has acknowledged and confirmed to the Board his sexual relationship with E.L. Dr. Lavender advised the Board that he has addressed this wrongful conduct by converting to Christianity, and is now actively involved in his church.

The Respondent being desirous of resolving this matter without resort to formal proceedings, and the Board having determined that the following provisions are adequately protective of the public interest and welfare, and for good cause shown,

IT IS ON THIS 18th DAY OF October, 2002;

HEREBY ORDERED AND AGREED THAT:

1. The license of respondent Neil J. Lavender, Ph.D., to practice psychology in the State of New Jersey is hereby suspended for a period of three (3) years. The first twelve (12) months of

the suspension shall be active and the remaining two (2) years of the suspension shall be stayed and served as a period of probation. The effective date of the active period of suspension shall be the date of filing of this Consent Order.

2. Upon commencement of the active period of suspension, Respondent shall submit to the Board, in writing, a list of all patients (identified by initials only) and an indication of the transfer or referral or other disposition for each patient.

3. During the active period of suspension, Respondent shall engage in ongoing individual therapy at a minimum frequency of once weekly, with a Board-approved psychotherapist. Respondent may submit to the Board names of proposed psychotherapists (with copies of their curriculum vitae) for the Board's approval. Respondent shall certify to the Board that he has no professional or other relationship with the proposed psychotherapist. In the event Respondent is unable to identify a psychotherapist, he may request that the Board identify a psychotherapist for him. All costs associated with this requirement imposed by the Board shall be borne by Dr. Lavender.

Respondent shall cause his approved psychotherapist to submit monthly reports to the Board during the first six (6) months of psychotherapy commencing the first day of the month following the written approval of the psychotherapist by the Board. After the expiration of the first six (6) months of psychotherapy, the

psychotherapist shall provide quarterly reports to the Board concerning the Respondent.

4. As affirmative corrective action, during the active period of suspension, Respondent shall enroll in and successfully complete 20 credits of continuing professional education to include remedial courses in the following areas: ethics, transference/countertransference, boundary issues, and dual relationships. All courses must be approved in writing by the Board prior to attendance. Respondent is to submit brochures and descriptions of courses to the Board for review. Successful completion means that all sessions were attended, all assignments were properly and appropriately completed and a passing grade was achieved that was unconditional and without reservation. All costs associated with this requirement imposed by the Board shall be borne by Dr. Lavender.

5. Respondent shall be assessed the costs to the State in this matter in the amount of $6,885.57. The total costs shall be due and payable no later than thirty (30) days following the entry date of the within Order and shall be submitted to the Board by certified check or money order made payable to the State of New Jersey.

6. Respondent shall be assessed a civil penalty in the amount of $10,000.00. The total penalty shall be due and payable no later than thirty (30) days following the entry date of the within Order and shall be submitted to the Board by certified check or money order made payable to the State of New Jersey.

period of active suspension shall be expressly contingent upon strict compliance with the following terms and conditions:

(a) Respondent shall practice psychology only under the supervision of a New Jersey licensed psychologist approved by the Board. Respondent shall submit to the Board names of proposed supervisors (with copies of their curriculum vitae) and respondent shall not commence the practice of psychology until he has received written approval from the Board of one of the proposed supervisors. In the event Respondent is unable to obtain a supervisor, he may request that the Board make recommendations for an approved supervisor. Respondent shall be required to obtain one (1) hour of supervision for every ten (10) patient hours or any fraction thereof. Said supervision shall continue for the entire period of probation. Respondent shall cause his approved supervisor to submit monthly reports to the Board during the first six (6) months of supervision commencing the first day of the month following the written approval of the supervisor by the Board. The supervisor's report shall provide an informed evaluation of the Respondent's patient treatment and professional practice. After the expiration of the first six (6) months of the supervised period, the supervisor shall provide quarterly reports to the Board concerning the supervision of Respondent's professional practices.

(b) Dr. Lavender shall continue in individual therapy during the period of probation. Dr. Lavender shall cause the therapist to submit to the Board quarterly reports providing the dates of

7. No later than two months prior to the termination of the active period of suspension and before engaging in any professional practice, Dr. Lavender shall submit to a comprehensive psychological evaluation with a Board-approved psychotherapist or psychologist. Respondent may submit to the Board names of proposed psychotherapists or psychologists to perform this evaluation, including the name of the psychotherapist from the active period of suspension (with copies of their curriculum vitae) for the Board's approval. Respondent shall certify to the Board that he has no professional or other relationship with the proposed psychotherapist or psychologist. In the event Respondent is unable to obtain a psychologist to perform the evaluation, he may request that the Board identify a psychotherapist or psychologist for this purpose. The referral for the evaluation shall be made by the Board, and Dr. Lavender shall be responsible for the costs of the evaluation and the written report to be submitted to the Board. If the evaluation recommends any rehabilitative activity such as therapy or limitation on practice beyond that provided for herein, Dr. Lavender shall engage in such recommended activity and comply with such limitations as approved by the Board. All costs associated with any requirements imposed by the Board for the resumption of active practice of licensure shall be borne by Dr. Lavender.

8. The Respondent's authority to practice psychology during the two (2) years of probation following the twelve (12) month

attendance in therapy and a statement as to whether Dr. Lavender is satisfactorily participating in the therapy process. In the event the therapist recommends the termination of therapy, a report to that effect shall be submitted to the Board, and Dr. Lavender shall not terminate therapy until written approval has been received from the Board.

9. It is expressly understood and agreed that continued licensure with restrictions as ordered herein is contingent upon strict compliance with all of the aforementioned conditions. Upon the Board's receipt of any information indicating that any term of the within Order has been violated in any manner whatsoever, a hearing shall be held on reasonable notice, consistent with due process of law, before the Board or before its representative authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue and any defense or mitigation. If sustained, such violation may cause the activation of the remaining period of stayed suspension and other appropriate remedies.

10. Respondent shall comply in every regard with the "Directives Regarding Future Activities of Board Licensee Who Has Been Suspended/Revoked and Use of the Professional Premises," a copy of which is attached to this Order and made a part hereof as if set forth in its entirety.

Victoria Jeffers, Ph.D.

VICTORIA JEFFERS, Ph.D.
President
State Board of Psychological Examiners

I have read and understand
the within Order and agree to
be bound by its terms. Consent is
hereby given to the Board to enter
this Order.

Neil J. Lavender, Ph.D.
Date:

Consent as to the form
of the Order is hereby
given.

Michael Keating, Esq.
Counsel for Dr. Lavender
Date:

License 2000 - NJPS - New Jersey Division of Consumer Affairs

File Licensee Window Help

Compliance For Neil J. Lavender, Ph.D.

Violations | Actions | Citation | Monetary Penalties | Restitution | Limits | Monitoring

From: Board Violation: (none)

Complaint #	Docket #	Cause #	State	Start	End	Action
Practicing Psychologist license #35SI00297600:						
1047				10/18/2003	10/18/2005	Suspension-stay
1047				10/18/2002	11/18/2002	Cost
1047				10/18/2002	11/18/2002	Fine/Penalty-acti
1047				10/18/2002	10/18/2003	Suspension-acti

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Ready

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JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs
Division of Law, 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
Telephone No.: (973) 648-4741

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON January 4, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
DOCKET NO.:

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO.: SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action **COMPLAINT**

John J. Farmer, Jr., Attorney General of New Jersey, by Kathy Stroh Mendoza, Deputy Attorney General, with offices located at 124 Halsey Street, 5th floor, Newark, New Jersey, on the basis of information and belief, by way of complaint says:

GENERAL ALLEGATIONS

1. Complainant, Attorney General of New Jersey, is charged with enforcing the laws in the State of New Jersey pursuant to N.J.S.A. 52:17A-4(h) and is empowered to initiate administrative disciplinary proceedings against persons licensed by the Board of

Psychological Examiners pursuant to Uniform Enforcement Act, N.J.S.A. 45:1-14, et seq.

2. The New Jersey State Board of Psychological Examiners is charged with the duty and responsibility of regulating the practice of psychology in the State of New Jersey pursuant to the Practicing Psychology Licensing Act, N.J.S.A. 45:14B-1, et seq.; the Uniform Enforcement Act, N.J.S.A. 45:1-14, et seq.; and the Board of Psychological Examiners Regulations, N.J.A.C. 13:42-1.1, et seq.

3. From June 1989 to July 1992, under a three-year temporary permit by the Board of Psychological Examiners, Respondent was employed by Sean Evers, Ph.D., Evers Psychological Associates, Rte 71, Brielle, New Jersey.

4. He continued in the practice of psychology under the supervision of Sean Evers, Ph.D. and Anne Evers, Ph.D. through September 30, 1992.

5. Respondent was licensed to practice psychology in the State of New Jersey, License No. SI 2976 on August 24, 1992. Once licensed, he moved to a solo practice at 101 Commons Way, Toms River, New Jersey. He later moved his solo practice to 505 Main Street, Toms River, New Jersey.

6. In or about November 1990, E.L., a 42-year old woman (D.O.B. 12/30/47) became Respondent's patient while Respondent was being supervised by Evers.

7. E.L. sought treatment for various psychological and emotional problems including marital problems, depression and

stress. She reported a history of childhood sexual abuse perpetrated by a male relative.

8. She continued in Respondent's care in his solo practice until August 22, 1998.

9. On or about January 20, 1999, E.L. filed a complaint in Superior Court of New Jersey, Law Division, Docket L-26499 against Respondent, Sean Evers, Anne Evers and Evers Psychological Association alleging professional negligence and medical malpractice. E.L. maintained that Respondent abandoned her care when he crossed the line of professional detachment, flirted with her and had sexual relations with her during treatment and during the months immediately thereafter.

10. Respondent appeared and testified before the Board of Psychological Examiners on January 26, 2001.

COUNT ONE SEXUAL MISCONDUCT

1. The General Allegations of the Administrative Complaint are repeated and realleged as if set forth at length herein.

2. On or about July 19, 1993, the Board regulation on sexual conduct was proposed. On November 1, 1993, the Board regulations on sexual conduct was adopted as N.J.A.C. 13:42-10.9. This regulation parallels the American Psychological Association ethical precept modified in 1992.

3. Respondent has admitted under oath that he engaged in sexual intercourse with E.L. numerous times, dating their first sexual encounter variously in 1994 or January 1995.

4. E.L. alleges Respondent engaged in sexual activity with E.L. during scheduled therapy appointments dating their first sexual intercourse to October 1992.

5. Respondent has admitted under oath he was aware that he should not engage in sex with his patient.

6. During the course of his sexual relationship with E.L., Respondent instructed E.L. not to mention the relationship to anyone and instructed her to come to his office late at night and wait in the parking until the last patient had left.

7. In or about December 1993, E.L. began treatment with Mary Pat McCann, L.C.S.W. who counseled her against continuing a sexual relationship with Respondent.

8. Respondent under oath dated the end of the sexual relationship to the holiday season, December 1997 or January 1998.

9. Respondent's acts have no justification in medical practice and constitute sexual misconduct and an abuse of the psychologist patient relationship.

10. N.J.A.C. 13:42-10.9(a) prohibits a licensee from participating in a sexual relationship or from engaging in sexual intimacies with a current psychotherapy client...or a former client to whom psychotherapy was rendered within the immediately preceding 24 months.

11. N.J.A.C. 13:42-10.9(b) extends this prohibition indefinitely in circumstances where the person is clearly vulnerable by reasons of emotional or cognitive disorder to exploitive influence by the licensee.

12. Respondent's acts violate N.J.A.C. 13:42-10.9(a) and (b) and represent a gross deviation from any acceptable standard of care and constitute inappropriate sexual conduct.

13. The foregoing conduct constitutes gross negligence in violation of N.J.S.A. 45:1-21(c), repeated acts of malpractice in violation of N.J.S.A. 45:1-21(d) and professional misconduct in violation of N.J.S.A. 45:1-21(e).

14. Respondent's behavior evidences an incapacity of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

COUNT TWO TRANSFERENCE

1. The allegations contained in General Allegations and in Count I of this Administrative Complaint are repeated and realleged as if set forth at length herein.

2. Respondent was aware of the nature of E.L.'s psychological and emotional problems and her history of childhood sexual abuse.

3. At all times, by reason of her history and emotional disorders, E.L. was vulnerable to Respondent's exploitative influence.

4. While he was still working under Dr. Sean Evers' supervision, Respondent discussed problems of E.L.'s transference with Evers.

5. On or about December 1993, E.L. obtained a divorce.

6. In September 1995, after she had begun a sexual relationship with Respondent and when she realized Respondent would not leave his wife, E.L. attempted suicide and was hospitalized.

7. Respondent failed to maintain the proper psychological boundaries with E.L. and negligently managed the transference and counter transference phenomena that arose out of the psychologist patient relationship with E.L.

8. By encouraging a sexual relationship harmful to E.L., Respondent aggravated E.L.'s pre-existing emotional disorder.

9. The foregoing conduct constitutes repeated acts of malpractice in violation of N.J.S.A. 45:1-21(d) and/or gross negligence in violation of N.J.S.A. 45:1-21(c). This further evidences an incapacity to discharge the functions of a licensee in a manner consistent with the public's health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

COUNT THREE - RECORD KEEPING VIOLATIONS

1. The allegations contained in General Allegations, Counts I and II of this Administrative Complaint are repeated and realleged as if set forth at length herein.

2. In testimony before the Board, Respondent alleged he had dictated tapes of progress notes, blamed his secretaries for not transcribing the notes and said the tapes were now lost.

3. Respondent failed to maintain adequate patient records that documented the course of symptomatology and treatment of E.L. and cannot today produce Progress Notes for E.L. from 1992 to the end of her treatment in August 1998.

4. Respondent has provided the Board with billing records for E.L. for three sessions, from October 6, 1992 through December 8, 1993, but cannot produce billing records or insurance claims to the end of her treatment.

5. This failure to observe standards for record keeping as to client records is contrary to N.J.A.C. 18:42-7.7 and N.J.A.C. 13:42-8.1, and constitutes repeated acts of negligence in violation of N.J.S.A. 45:1-21(d).

WHEREFORE, Complainant demands judgment against Respondent as follows:

1. The suspension or revocation of the Respondent's license to practice psychology in the State of New Jersey.

2. An Order directing Respondent to undergo a psychological and psychiatric evaluation of his fitness to practice psychology.

3. Imposition of penalties for each separate unlawful act.

4. Restoration to E.L. and/or to her insurance companies (including but not limited to Prudential and Aetna) of any monies

paid to Respondent as fees on account of any unlawful act or practice.

5. Costs, including investigative costs, fees for expert witnesses, costs of trial, including transcripts and attorney's fees and such other and further relief as the Board shall deem just and appropriate.

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY

BY: _____
KATHY STROH MENDOZA
Deputy Attorney General

Dated: 1/3/02

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State Board of Psychological Examiners
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
(973) 648-4741

CERTIFIED TO BE A TRUE COPY

FILED WITH THE BOARD OF PSYCHOLOGICAL EXAMINERS ON January 4, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS

IN THE MATTER OF SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO. SI ~~2876~~ 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action NOTICE OF MOTION AND NOTICE TO FILE ANSWER

TO: NEIL LAVENDER, PH.D.
c/o MICHAEL KEATING, ESQUIRE
DUGHI, HEWITT AND PALALUCCI, P.C.
340 NORTH AVENUE
CRANFORD, NEW JERSEY 07016

TAKE NOTICE that a Complaint, copy annexed hereto, has been made to the New Jersey State Board of Psychological Examiners to consider the matter of the suspension or revocation of your license to practice psychology and surgery pursuant to the authority conferred upon the Board by N.J.S.A. 45:14B-1 et seq., N.J.S.A. 45:1-14 et seq., laws pertinent to your profession and related administrative regulations. The Board requires you to file an answer to the above charges within thirty (30) days from service of the Complaint. You may file an answer by mail to the address below.

An admission that the Complaint is correct will indicate that you do not contest the charges stated, thus rendering unnecessary any hearing in the proceeding. Your case will then be presented to the State Board of Psychological Examiners together with any written matter you may submit with your plea in alleged mitigation of penalty, for a determination as to whether your license to practice should be suspended or revoked or a lesser sanction imposed and whether monetary penalties shall be assessed and, if so, the amount thereof pursuant to the authority conferred upon the Board by N.J.S.A. 45:14B-1 et seq. and N.J.S.A. 45:1-14 et seq.

A denial of the Complaint will result in a formal hearing being conducted at a date, time and place to be determined by the New Jersey Board of Psychological Examiners which, upon notice to you, will hear the Complaint or refer the matter to the Office of Administrative Law. Adjournment will not be granted except upon timely written application to the Board and costs incurred as a result thereof may be taxed to you. You may appear at the hearing either in person or by attorney or both and you shall be afforded an opportunity to make defense to any or all of the charges.

Failure to respond to this Notice of Hearing and Notice to File an Answer or failure to appear as set forth herein may result in the matter being considered in your absence. A decision rendered by the Board may affect your privileges to practice your licensed profession in this State.

STATE BOARD OF MEDICAL EXAMINERS

By: Paul C. Brush

Paul C. Brush,
Executive Director

Dated: January 4, 2002

KINDLY ADDRESS AN ORIGINAL AND ONE COPY OF ALL CORRESPONDENCE TO:

NEW JERSEY STATE BOARD
OF PSYCHOLOGICAL EXAMINERS
POST OFFICE BOX 45017
NEWARK, NJ 07101
Telephone No.: (609) 826-7100

WITH A COPY TO:

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attn: Kathy Stroh Mendoza
Deputy Attorney General
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

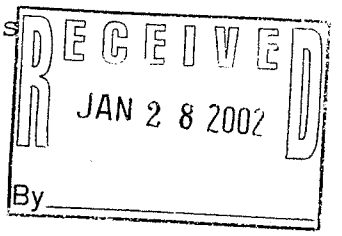
STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
MEMORANDUM

DATE: January 24, 2002

TO: Paul Brush,
Executive Director
Board of Psychological Examiners

FROM: Kathy Stroh Mendoza,
Deputy Attorney General



SUBJECT: Notice of Motion
Neil Lavender, Ph.D.

Attached please find a corrected first sheet of the Notice of Motion. Please re-file with the January 4, 2002 date providing me with the corrected filed copy. Thank you.

K.S.M.

KSM:ds

Attachment

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State Board of Psychological Examiners
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
(973) 648-4741

CERTIFIED TO BE A TRUE COPY

FILED WITH THE BOARD OF PSYCHOLOGICAL EXAMINERS ON January 4, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS

IN THE MATTER OF SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO. SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action NOTICE OF MOTION AND NOTICE TO FILE ANSWER

TO: NEIL LAVENDER, PH.D.
c/o MICHAEL KEATING, ESQUIRE
DUGHI, HEWITT AND PALALUCCI, P.C.
340 NORTH AVENUE
CRANFORD, NEW JERSEY 07016

TAKE NOTICE that a Complaint, copy annexed hereto, has been made to the New Jersey State Board of Psychological Examiners to consider the matter of the suspension or revocation of your license to practice psychology pursuant to the authority conferred upon the Board by N.J.S.A. 45:14B-1 et seq., N.J.S.A. 45:1-14 et seq., laws pertinent to your profession and related administrative regulations. The Board requires you to file an answer to the above charges within thirty (30) days from service of the Complaint. You may file an answer by mail to the address below.

An admission that the Complaint is correct will indicate that you do not contest the charges stated, thus rendering unnecessary any hearing in the proceeding. Your case will then be presented to the State Board of Psychological Examiners together with any written matter you may submit with your plea in alleged mitigation of penalty, for a determination as to whether your license to practice should be suspended or revoked or a lesser sanction imposed and whether monetary penalties shall be assessed and, if so, the amount thereof pursuant to the authority conferred upon the Board by N.J.S.A. 45:14B-1 et seq. and N.J.S.A. 45:1-14 et seq.

A denial of the Complaint will result in a formal hearing being conducted at a date, time and place to be determined by the New Jersey Board of Psychological Examiners which, upon notice to you, will hear the Complaint or refer the matter to the Office of Administrative Law. Adjournment will not be granted except upon timely written application to the Board and costs incurred as a result thereof may be taxed to you. You may appear at the hearing either in person or by attorney or both and you shall be afforded an opportunity to make defense to any or all of the charges.

Failure to respond to this Notice of Hearing and Notice to File an Answer or failure to appear as set forth herein may result in the matter being considered in your absence. A decision rendered by the Board may affect your privileges to practice your licensed profession in this State.

STATE BOARD OF MEDICAL EXAMINERS

By: Paul C. Brush

Paul C. Brush,
Executive Director

Dated: January 4, 2002

KINDLY ADDRESS AN ORIGINAL AND ONE COPY OF ALL CORRESPONDENCE TO:

NEW JERSEY STATE BOARD
OF PSYCHOLOGICAL EXAMINERS
POST OFFICE BOX 45017
NEWARK, NJ 07101
Telephone No.: (609) 826-7100

WITH A COPY TO:

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attn: Kathy Stroh Mendoza
Deputy Attorney General
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

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FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON February 8, 2002

DUGHI, HEWIT & PALATUCCI
340 North Avenue
Cranford, New Jersey 07016
(908) 272-0200
Attorneys for Respondent,
Neil Lavender, Ph.D.

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO.: SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS Administrative Action ANSWER TO VERIFIED COMPLAINT

DUGHI, HEWIT & PALATUCCI, on behalf of Respondent, Neil Lavender, Ph.D., answers the Counts of the Complaint which are directed against Respondent. No response is made to any Counts not directed against Respondent named herein.

8685

GENERAL ALLEGATIONS

1. The allegations contained in paragraphs 3 through 6 and 10 are admitted.

2. The allegations contained in paragraph 7 and 8 are denied.

3. No response is made to the allegations contained in paragraphs 1, 2, and 9 of this Count as they state a legal conclusion.

COUNT ONE

1. The answers to the allegations contained in the preceding Counts are repeated and reiterated as if the same were set forth at length.

2. The allegations contained in paragraph 5 are admitted.

3. The allegations contained in paragraphs 3, 4, 6, and 8 are denied.

4. No response is made to paragraph 7 of this Count as this Respondent is presently without knowledge or information sufficient to form a belief as to the truth of these allegations.

5. No response is made to the allegations contained in paragraphs 2 and 9 through 14 of this Count as they state a legal conclusion.

COUNT TWO

1. The answers to the allegations contained in the preceding Counts are repeated and reiterated as if the same were set forth at length.

2. The allegations contained in paragraphs 2 through 4 and 6 through 9 are denied.

3. No response is made to paragraph 5 of this Count as this Respondent is presently without knowledge or information sufficient to form a belief as to the truth of these allegations.

COUNT THREE

1. The answers to the allegations contained in the preceding Counts are repeated and reiterated as if the same were set forth at length.

2. The allegations contained in paragraph 2 are admitted.

3. The allegations contained in paragraph 3 are denied.

4. No response is made to paragraph 4 of this Count as this Respondent is presently without knowledge or information sufficient to form a belief as to the truth of these allegations.

5. No response is made to the allegations contained in paragraph 5 of this Count as they state a legal conclusion.

CERTIFICATIONS

We hereby certify that the within Answer was served within the time period allowed by Rule 4:6 or within the extension granted.

We hereby certify pursuant to Rule 4:5-1, to the best of our knowledge, information and belief, that this matter is not the subject of any other action in any court or pending

arbitration proceeding, nor is any other action or arbitration proceeding contemplated. To the best of our knowledge at this time, all parties who should have been joined in this action have been joined.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, the Court is advised that Michael J. Keating is hereby designated as trial counsel.

DUGHI, HEWIT & PALATUCCI

Michael J. Keating

Dated: February 6, 2002

CERTIFICATION OF SERVICE AND FILING

I, Genevieve Coon, employed by the law firm of DUGHI, HEWIT & PALATUCCI, hereby certify that the original Answer to the Complaint has been forwarded to the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners.

Genevieve Coon

Genevieve Coon
Legal Assistant

Dated: February 6, 2002

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Board of Psychological Examiners
Division of Law/5th Floor
124 Halsey Street
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
Telephone No: (973) 648-4741

CERTIFIED TO BE
A TRUE COPY

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON May 28, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
DOCKET NO:

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO.: SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action NOTICE OF MOTION FOR SUMMARY DECISION

TO: Michael Keating, Esq.
Dughi, Hewit and Palatucci
340 North Avenue
Cranford, N.J. 07016

COUNSEL:

PLEASE TAKE NOTICE that on July 8, 2002, at 9:00 a.m., or as soon thereafter as counsel may be heard, the Attorney General shall apply to the Board of Psychological Examiners for an Order granting his motion for summary decision.

PLEASE TAKE FURTHER NOTICE that in support of the motion the Attorney General shall rely upon the accompanying brief,

Statement of Materials Facts, Certification of Kathy Stroh Mendoza and proposed form of order.

PLEASE TAKE FURTHER NOTICE, that the Board is asked to seal the exhibits in the interests of confidentiality, as full name of the patient E.L. is known to the Board and to Respondent, and all parties and counsel expressly agree to maintain confidentiality of this individual.

PLEASE TAKE FURTHER NOTICE that, pursuant to R.1:6-2, oral argument is requested.

The following dates have been scheduled in this matter.

Hearing Date: Adjourned from July 8, 2002

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for New Jersey Board
of Psychological Examiners

BY: _____
Kathy Stroh Mendoza
Deputy Attorney General

Dated: July 28, 2002

CERTIFIED TO BE
A TRUE COPY

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Board of Psychological Examiners
Division of Law/5th Floor
124 Halsey Street
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
Telephone No: (973) 648-4741

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
DOCKET NO:

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO.: SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action ORDER

This matter having been presented to the Board by the Attorney General of New Jersey, and the Board having considered the papers submitted in support thereof and in opposition thereto; and the Board having heard oral argument; and for good cause shown;

IT IS on this day of ,2002;

ORDERED that complainant's motion for summary decision be, and hereby is granted and that judgment be and hereby is entered in favor of complainant on all claims, including but not limited to suspension or revocation of license, costs of suit, costs of

investigation, attorney's fees and for such other and further relief as the Board deems just and appropriate.

_____
Kenneth G. Roy, Ed.D.
President

In accordance with the required statement to R. 1:6-2(a), this motion was _____opposed_____unopposed.

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State Board of Psychological Examiners
Division of Law/5th Floor
124 Halsey Street
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
Telephone No: (973) 648-4741

CERTIFIED TO BE
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FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON May 28, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
DOCKET NO:

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO.: SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action STATEMENT OF MATERIAL FACTS IN SUPPORT OF THE ATTORNEY GENERAL'S MOTION FOR SUMMARY DECISION

Pursuant to R. 4:46-2 and N.J.A.C. 1:1-12, Complainant hereby submits the following statement of material facts in support of the motion for summary decision.

1. Neil J. Lavender, Ph.D. ("Respondent") (D.O.B. 8/19/49) cognitive behaviorist, is licensed to practice psychology in the State of New Jersey license No. SI2976. (Board Document)

2. Respondent was permitted to practice psychology pursuant to N.J.S.A. 45:14B-6(f), by which the Board granted him a three-year temporary permit from June 12, 1989 through June 12, 1992. (Board document).

3. Throughout his temporary permit, from 1989 through 1992, Respondent was supervised in the practice of psychology by Sean R. Evers, Ph.D. (Investigative Inquiry, 11:24-25).

4. In August 1992 Respondent was licensed to practice psychology (license SI 2976) and began his own practice that has continued to present. (Investigative Inquiry, 9:8-9).

5. E.L. became the patient of Respondent on November 30, 1990. (Respondent's Progress Notes).

6. Respondent admits that the period of treatment of E.L. extended through December 20, 1993. (Investigative Inquiry, 12:25).

7. On or about May 27, 2000, E.L. filed a complaint with the Board of Psychological Examiners, received and filed by the Board on May 31, 2000. (Board document).

8. On January 26, 2001, Respondent appeared with Counsel, Michael Keating, Esq. and testified before the Board. (Investigative Inquiry).

9. On June 21, 2001, Respondent submitted to an independent psychological evaluation with Frank J. Dyer, Ph.D. (Dyer Report).

SEX ADMITTED:

10. A personal relationship of a sexual nature outside a therapeutic relationship between Respondent and E.L. existed no later than June 1994. (Investigative Inquiry, 22:16-17, see also

Respondent's deposition May 12, 2000, 177-178 and E.L.'s deposition November 29, 1999, 88-89.

11. Six months after termination of the professional relationship between Respondent and E.L. (in or about June 1994), the sexual relationship between them involved oral sex. (Investigative Inquiry 22:16-17 and Respondent's deposition May 12, 2000, 37:21).

12. Eighteen months after termination of the professional relationship between Respondent and E.L. (in or about June 1995), the sexual relationship between them involved sexual intercourse. (Investigative Inquiry, 23:24-25 and 47:4-10 and Respondent's deposition May 12, 2000, 38:21-22).

13. During the "cooling off" period following the termination of treatment, Respondent and E.L. had sexual intercourse numerous times, always in his office. (Respondent's deposition May 12, 2000, 161).

BOUNDARY VIOLATIONS ADMITTED:

14. E.L. gave Respondent various gifts, including a framed poem on August 18, 1992 and various letters. (Respondent's deposition May 12, 2000, 27-32, E.L.'s deposition December 3, 1999, 145-148; Deposition of Son Neal D.L. Aug. 2, 2000, 72).

15. Respondent gave E.L. various gifts, including sending her flowers for her birthday (after 1996), giving her earrings (post therapy), a coffee mug and $100. Respondent gave

these gifts after he ceased being her therapist. (Deposition of Respondent May 12, 2000, 33-36:11).

16. Before 1995, E.L. gave Respondent chairs from her store that she closed. Respondent came to her house to pick up these chairs (Deposition of son Neal D.L. August 2, 2000, 40, 72).

NEGLIGENT HANDLING OF TRANSFERENCE:

17. On occasions, Respondent and E.L. had drinks together in his office (date unknown; "when he was using attorney's office"). (Dyer report, 4; E.L.'s deposition November 29, 1999, 68:7-11).

18. During therapy, Respondent noted transference issues when E.L. reported to him she had dreams in which he was a guiding figure. (Respondent's Progress Notes, particularly April 15, 1992, May 6, 13, 19, 26, 1992, June 2, 16,1992 and August 19, 1992; Investigative Inquiry, 36).

19. During therapy, E.L. told Respondent she had a sexual fantasy about him and asked what kind of underwear he wore and he showed her he was wearing Jockey underwear. (Respondent's Progress Notes; E.L.'s deposition, February 18, 2000, 18-19).

20. During therapy, Respondent noted transference when E.L. asked him out for coffee. (Investigative Inquiry, 13:19-23 and 36; see also Respondent's deposition, May 12, 2000, 110; E.L.'s deposition, February 18, 2000, 16).

21. During therapy, Respondent permitted E.L. to sit on his lap. (Investigative Inquiry, 33-34; E.L.'s deposition, February 18, 2000, 5-6).

22. During therapy, Respondent engaged in touching of E.L. including hugs, placing his hand on her back, reaching over her shoulder and squeezing her on the shoulder while they were walking side by side from his office. (Investigative Inquiry, 19:2-9 and 34:17-23).

23. While still in therapy with Respondent, E.L. served as President of the Honor Psychology Club at Ocean Community College, while Respondent served a faculty advisor to the club (E.L.'s deposition December 3, 1999, 108).

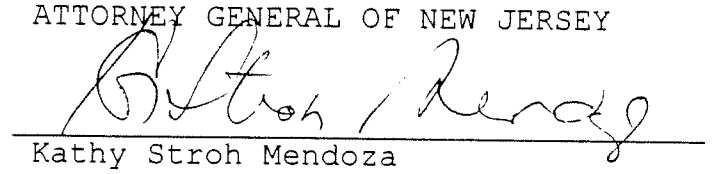
24. Respondent's progress notes contain few references to faulty cognition on the part of E.L. (Investigative Inquiry, 37-38).

RECORD KEEPING VIOLATIONS:

25. Respondent maintained progress notes for each office visit of E.L. until September 1992, but none thereafter. (Respondent's Progress Notes).

26. Respondent cannot produce progress notes for E.L. from October 1992 through December 1993 (Affidavit of Respondent; Investigative Inquiry, 30:32), a period of time during which Respondent admits to treating E.L.

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By: 
Kathy Stroh Mendoza
Deputy Attorney General

Dated: Aug 28, 2002

CERTIFIED TO BE
A TRUE COPY

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State Board of Psychological Examiners
Division of Law/5th Floor
124 Halsey Street
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
Telephone No: (973) 648-4741

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON May 28, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
DOCKET NO:

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO.: SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action **CERTIFICATION OF KATHY STROH MENDOZA**

I, Kathy Stroh Mendoza, of full age hereby certify as follows:

1. I am a Deputy Attorney General duly admitted to practice law in the State of New Jersey. I represent petitioner Board of Psychological Examiners ("Board") in the above named petition.

2. Attached hereto as Exhibit A is a true copy of Board documents, including Complaint filed with the Board May 31, 2000, and licensing documents of Respondent.

3. Attached hereto as Exhibit B is a true copy of the Complaint filed January 4, 2002 by the Attorney General on behalf of the Board of Psychological Examiners.

4. Attached hereto as Exhibit C is a true copy of Respondent's Answer to the Complaint filed February 8, 2002.

5. Attached hereto as Exhibit D is a true copy of Respondent's Admissions, including

a. Transcripts of deposition of Respondent taken April 7 and May 12, 2000 in civil suit E.L. v. Neil Lavender, et al, Superior Court of New Jersey, Law Division Ocean County Dkt No. OCN-L-264.99.

b. Progress notes

c. Cover letter from Respondent's counsel Michael Keating Esq. dated Nov. 3, 2000

d. Affidavit explaining missing progress notes and transcript of Respondent's testimony before the Board.

e. Bills from Respondent for E.L.'s treatment

f. Transcript of Respondent's testimony at the Investigative Inquiry before the Board on January 29, 2001.

6. Attached hereto as Exhibit E is the report of Frank Dyer, PhD dated July 5, 2001.

7. Attached hereto as Exhibit F is a true copy of the Certification of E.L. including:

a. Complaint to the Board of Psychological Examiners

b. Complaint in the civil suit, E.L. v. Neil Lavender, et al, Superior Court of New Jersey, law Division Ocean County Dkt No. OCN-L-264-99

c. Transcripts of deposition of Complainant taken November 29, 1999, December 3, 1999 and February 18, 2000 in the civil suit.

d. Answers to Interrogatories Form A., A-1 Supplement Interrogatories and Supplemental Answers to Interrogatories prepared for the civil suit.

e. Copies of poems, letters and an article authored by E.L. and given or sent to Respondent

f. Copies of 3 photographs of E.L.

g. Copies of explanation of benefits from insurance company

h. Copies of claim form information submitted for E.L.'s treatment by Respondent

8. Attached hereto as Exhibit G is a true copy of the records of Kimball Medical Center.

9. Attached hereto as Exhibit H is a true copy of the records of Mary Pat McGeehin, L.C.S.W., St. Francis Counseling Center.

10. Attached hereto as Exhibit I is a true copy of the records of Thomas PlaHovinsak, Ph.D.

11. Attached hereto as Exhibit J is a true copy of the records of Rumiana Radic, M.D.

12. Attached hereto as Exhibit K is a true copy of the academic records of E.L. from Ocean Community College and Monmouth University.

13. Attached hereto as Exhibit L is a true copy of the certification of E.L.'s son Neal in the civil suit.

14. Attached hereto as Exhibit M is a true copy of the printouts of the claims submitted by Respondent for services rendered to E.L.

15. Attached hereto as Exhibit N is a true copy of the costs incurred by the Enforcement Bureau in the investigation of this matter for the Board.

16. Attached hereto as Exhibit O is a true copy of unreported cases IMO Raveis, IMO Marlin, IMO Galinsky, IMO Levine, IMO Huddy and IMO Forti.

I certify that the foregoing statements made by me are true to the best of my knowledge. If any of the foregoing statements are wilfully false, I am aware that I am subject to punishment.

Kathy Stroh Mendoza
Deputy Attorney General

Dated: May 28, 2002

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State Board of Psychological Examiners
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

By: Kathy Stroh Mendoza
Deputy Attorney General
(973) 648-4741

CERTIFIED TO BE
A TRUE COPY

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON May 28, 2002

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS

IN THE MATTER OF SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL LAVENDER, PH.D. LICENSE NO. SI 2976 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action CERTIFICATION OF SERVICE

I, Rebecca Amos, hereby certify that the original and one (1) copy of the within notice of motion, certification of service, brief, statement of material facts and accompanying certification of Kathy Stroh Mendoza were filed with the Board of Psychological Examiners. I further certify that copies of said papers were served by overnight mail upon the following counsel of record in accordance with R.1:5:

Michael J. Keating, Esq.
Dughi, Hewit & Palatucci
340 North Avenue, Cranford, N.JJ 07106

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

_____ _____

Dated: Rebecca S. Amos

CERTIFIED TO BE
A TRUE COPY

RECEIVED
JUN 24 2002
By

DUGHI, HEWIT & PALATUCCI
340 North Avenue
Cranford, New Jersey 07016
(908) 272-0200
Attorneys for Respondent/Licensee,
Neil J. Lavender, Ph.D.

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON June 24, 2002

IN THE MATTER OF SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL J. LAVENDER, PH.D., LICENSE NO. SI 2976, TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PSYCHOLOGICAL EXAMINERS : : Administrative Action : : NOTICE OF CROSS MOTION AND : OPPOSITION TO PENDING NOTICE OF : MOTION FOR SUMMARY DECISION

TO: David Samson, Esq.
Attorney General of New Jersey
Attorney for State Board of Psychological Examiners
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

Attn: Kathy Stroh Mendoza, Esq., Deputy Attorney General

S I R S:

PLEASE TAKE NOTICE that DUGHI, HEWIT & PALATUCCI, attorneys for the Respondent/Licensee, Neil J. Lavender, Ph.D., hereby cross moves for relief before the State Board of Psychological Examiners and submits the enclosures in opposition to the State's pending Notice of Motion for Summary Decision. This motion is returnable Friday, July 8, 2002. Oral Argument is requested.

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In support of the within application, reliance will be placed upon the annexed Statement of Material Facts, Statement of Disputed Material Facts, and Legal Brief on behalf of Respondent.

DUGHI, HEWIT & PALATUCCI
Attorneys for Respondent/Licensee,
Neil J. Lavender, Ph.D.

Michael J. Keating

DATED: June 21, 2002

DUGHI, HEWIT & PALATUCCI
340 North Avenue
Cranford, New Jersey 07016
(908) 272-0200
Attorneys for Respondent Licensee,
Neil J. Lavender, Ph.D.

IN THE MATTER OF SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL J. LAVENDER, PH.D., LICENSE NO. SI 2976, TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PSYCHOLOGICAL EXAMINERS : : Administrative Action : : STATEMENT OF MATERIAL FACTS :

STATEMENT OF MATERIAL FACTS IN OPPOSITION TO ATTORNEY GENERAL'S MOTION FOR SUMMARY DECISION

Pursuant to R. 4:46-2, and N.J.A.C. 1:1-12, Respondent hereby submits the following statement of material facts in opposition to the pending motion for Summary Decision, filed with the Psychology Board.

1. Neil J. Lavender, Ph.D. ("Respondent") is licensed to practice psychology in the State of New Jersey and has been licensed since 1989.

2. Respondent initially was permitted to practice psychology pursuant to N.J.S.A. 45:14(b)-6(f), by which Respondent was granted a three-year temporary permit, from June 12, 1989 through June 12, 1992.

3. During the time period that he had a temporary permit, Respondent was supervised by Sean R. Evers, Ph.D. In August 1992, Respondent was granted an unrestricted license to practice psychology and began private practice, and has practiced up until the present time.

4. E.L. became a patient of the Respondent on November 30, 1990, at a time period when Respondent was still under supervision by Sean R. Evers, Ph.D.

5. Treatment of E.L. by Respondent continued from November 30, 1990 until December 20, 1993.

6. Respondent started treating E.L. 2-3 months after he started working in the Evers' office (Respondent deposition: Page 9, Lines 17-19).

7. During the course of treatment, on August 18, 1992, E.L. gave Respondent a birthday card. (Respondent deposition: Page 36, Lines 23-25).

8. Respondent never gave E.L. any gifts during the course of treatment. Respondent did give E.L. gifts after the therapist/patient relationship had been terminated. (Respondent deposition: Page 39, Lines 6-10).

9. A friendship relationship began between Respondent and E.L. approximately six months after the therapist/patient relationship had been terminated on December 20, 1993. (Respondent deposition: Page 37, Lines 21-23).

10. Respondent never gave E.L. a birthday card or any other gift while he was her therapist. (Respondent deposition: Page 39, Lines 6-10).

11. During the course of treatment, E.L. began to develop feelings of positive transference toward Respondent. This was documented in Respondent's progress notes. (Respondent deposition: Pages 93-94, Lines 25-01).

12. During the course of treatment, Respondent had several discussions with E.L. regarding her transference toward him. He asked her on numerous occasions if she might feel better if she started treatment with a different therapist. (Respondent deposition: Pages 98-99, Lines 24-06).

13. During the course of treatment, Respondent counseled E.L. regarding the issue of transference in an effort to keep the relationship professional. (Respondent deposition: Page 102, Lines 1-4).

14. On one occasion, E.L. sat on Respondent's lap during a therapeutic session at the Evers' office. (Respondent deposition: Page 151, Lines 22-23).

15. Respondent commenced a sexual relationship with E.L. approximately six months following termination of the therapist/patient relationship. (Respondent deposition: Pages 159-160, Lines 20-08).

STATEMENT OF MATERIAL FACTS IN DISPUTE

16. E.L. contends that physical contact between her and Respondent would occur while in his office, during the patient/therapist relationship. E.L. contends that they would hug each other, and that she would sit on his lap. (E.L. deposition: Pages 4-5, Lines 12-21).

17. E.L. contends that she and Respondent would discuss sexual fantasies during treatment sessions. (E.L. deposition: Page 8, Lines 5-16).

18. E.L. contends that Respondent showed her his underwear while the two were discussing a sexual fantasy. (E.L. deposition: Pages 18-19, Lines 23-10).

19. E.L. contends that sexual relations between Respondent and E.L. started immediately after Respondent moved into his new office at Commons Bay, on or about October 1992. (E.L. deposition: Page 30, Lines 11-24).

20. E.L. contends that Respondent kissed her in his office on or about October 7, 1992, and that Respondent "initiated the kiss." (E.L. deposition: Page 31, Lines 2-20).

21. E.L. contends that within the next two to three visits (two to three weeks), there was genital contact between E.L. and Respondent during office therapy sessions. (E.L. deposition: Pages 34-35, Lines 20-10).

22. E.L. contends that there were sexual relations between she and Respondent during the course of treatment sessions, while at the Respondent's office from 1992 until December 1993. She contends that therapy sessions did not terminate in December of 1993, but that therapy sessions continued until 1998, and that she and Respondent often had sexual relations during these therapy sessions. (E.L. deposition: Page 75, lines 13-25).

23. E.L. contends that Respondent was having sexual relations with his secretary, Anna, at or about the same time he was having an affair with E.L. (E.L. deposition: Page 183, Lines 6-7).

24. E.L. contends that Respondent wanted some therapy sessions to be strictly for therapy, and other ones to be strictly for sexual intercourse. (E.L. deposition: Page 200, Lines 13-18).

IN THE MATTER OF SUSPENSION OR REVOCATION OF THE LICENSE OF NEIL J. LAVENDER, PH.D., LICENSE NO. SI 2976, TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PSYCHOLOGICAL EXAMINERS : : Administrative Action : : :

BRIEF IN OPPOSITION TO MOTION FOR SUMMARY DECISION

DUGHI, HEWIT & PALATUCCI
340 North Avenue
Cranford, New Jersey 07016
(908) 272-0200
Attorneys for Respondent/Licensee,
Neil J. Lavender, Ph.D.

On the Brief:
Michael J. Keating, Esq.

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STATEMENT OF FACTS

This is an administrative action before the Board of Psychological Examiners. Respondent, Neil Lavender, Ph.D., is a Psychologist licensed to practice psychology in the State of New Jersey. The Attorney General's office, representing the interests of the Psychology Board, has filed a Complaint against Respondent, alleging sexual misconduct. The Complaint was initiated by information provided by E.L., a former patient. The State has filed a Motion for Summary Decision/Summary Judgment, and is seeking among other forms of relief, suspension or revocation of Respondent's license to practice psychology.

On or about November 30, 1990, Dr. Lavender was practicing psychology under the supervision of Sean Evers, Ph.D. The patient E.L. was referred to Dr. Lavender for psychological evaluation and treatment. A therapist/patient relationship commenced at or about that time.

There is a significant discrepancy as to what occurred thereafter. E.L. contends that she and Dr. Lavender had a sexual relationship during the course of the therapy relationship. Respondent denies that any sex occurred during the treatment sessions. He has admitted to starting a sexual relationship with E.L. approximately six months following termination of the therapist/patient relationship. The therapist/patient relationship was terminated on December 20, 1993.

E.L. subsequently filed a civil action against Respondent. That matter was resolved by settlement. E.L. also filed a Complaint with the Psychology Board, alleging sexual misconduct. An investigation was commenced.

On January 4, 2002, a Complaint was filed on behalf of the Psychology Board, based upon the allegations of sexually inappropriate conduct. An Answer was subsequently filed by Respondent denying the allegations in the Complaint. The Complaint seeks various forms of relief, including revocation/suspension of the doctor's license, civil costs and penalties, and counsel fees. The State has now moved for Summary Judgment with respect to the allegations in the Complaint. This application is opposed by the Respondent.

POINT I

THE STATE'S APPLICATION FOR SUMMARY DECISION MUST BE DENIED, AS THERE ARE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE IN THIS MATTER.

The pending application for Summary Decision is an effort by the Attorney General's office to "streamline" the disposition of this case, and presumably to avoid the time, effort and resources required for an administrative hearing. The rationale for this, it appears, is that while there is a significant factual dispute between E.L. and Respondent as to what occurred and when, the Board should nevertheless retain jurisdiction and impose the sanction of license revocation because Respondent has admitted to having done something wrong (i.e., having sexual relations with E.L. after termination of the therapist/patient relationship, but prior to the conclusion of the two year mandatory "cooling off" period N.J.A.C. 13:35-6.3) The State is arguing, essentially, that the due process rights of the Respondent, in a case where he could lose his professional license, should be waived because he was candid, and admitted wrongdoing before an Investigative Panel.

The problem with this approach is that there is no mechanism for the Board to resolve the central credibility disputes in the case that go to the core issue of culpability and sanction. These are significant factual disputes as to what occurred. The Board cannot fairly resolve these disputes on the basis of the review of deposition transcripts and expert reports from the civil case. Without a fair process which resolves what occurred, there is no meaningful way for the Board to impose a penalty, if one is deemed appropriate. Respondent is entitled to a fair hearing process in order to resolve the credibility issues, fully develop and argue mitigating

factors, and to create a complete and full record on these issues. This case should not be decided on a motion.

The standard for disposition for an application for Summary Decision pursuant to N.J.A.C. 1:1-12 is set forth in New Jersey Court Rules 4:46-2, and discussed in detail in Brill v. The Guardian Life Insurance Company of America, 142 N.J. 520 (1995). Under the standard set forth in Brill, Summary Judgment is not appropriate when there exists genuine issues of material fact. The essence of this inquiry is whether or not there exist material facts in the matter in dispute, so as to require submission of the case to a jury or tribunal for disposition.

As noted above, the Attorney General is moving for Summary Decision based upon the fact that there is acknowledged sexual misconduct by the Respondent. There is, however, a significant dispute as to when the inappropriate sexual behavior occurred. E.L. contends that Respondent initiated a sexual relationship during the course of the therapist/patient relationship, and that she and Respondent had sexual relations on numerous occasions from October 1992, until December 20, 1993, and that the sexual relations continued for years thereafter. She contends that Respondent gave her gifts, jewelry, cards and money during the professional relationship, and that she and the Respondent discussed sexual fantasies and engaged in sexual relations on numerous occasions while she was a patient.

The Respondent denies that he had sexual relations with E.L. during the therapist/patient relationship. He admits that E.L. brought the subject of transference up to him during treatment, but contends that he advised E.L. against any inappropriate personalization of the therapy relationship, and offered to have her transfer her care to another therapist. Respondent contends that the therapy relationship ended in December 1993, and that approximately six months later, that he and E.L. commenced a sexual relationship, which

involved occasional episodes of sexual intercourse at the doctor's office over the period of the next several years.

The essence of this case has to do with when the sexual relationship between Respondent and E.L. occurred, and the circumstances leading up to that sexual relationship. There are two entirely different versions of what occurred in this regard. The fair outcome of the case, to a large extent, will depend upon which version of events is found to be more credible.

If Respondent is more credible, and the Board finds that the sexual relationship started after termination of the professional relationship, then Respondent is entitled to argue that as a significant mitigating matter. The Attorney General's Office would have this Board resolve this major credibility dispute by reviewing deposition transcripts from the underlying civil case, and the transcript of Respondent's appearance before the Board Panel investigating the matter. This cannot be done fairly, and this approach would deny Respondent his due process rights to a fair hearing.

N.J.S.A. 52:14(b)-11 establishes that in any agency action seeking to revoke a professional license, the Licensee must be afforded an opportunity for a hearing under the provisions of the Administrative Procedure Act applicable to contested cases:

> No agency shall revoke or refuse to renew any license unless it has first afforded the Licensee an opportunity for a hearing in conformity with the provisions of this act applicable to contested cases.

N.J.S.A. 52:14(b)-10(c) prescribes the standard procedure for contested cases:

> All hearings of a state agency are required to be conducted as a contested case under this act or any other law shall be conducted by an Administrative Law Judge assigned by the director and the chief administrative law judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. . .

In this instance, where the probable outcome of this case is going to depend upon a resolution of numerous credibility conflicts, the Respondent is entitled to a hearing so that witnesses may be cross-examined, and so that evidence may be presented in his favor. N.J.S.A. 52:14(f)-8(b) does provide for this agency as a matter of discretion to retain jurisdiction and conduct a hearing, but that does not mean that the Psychology Board can essentially eliminate the Respondent's due process rights, by reading a series of depositions, waiving civil procedures such as cross-examination and the right to present evidence, and deciding this case as by way of a Summary Judgment motion. Matter of Cole, 194 N.J. Super. 237 (App. Div. 1984).

In addition, Respondent has the right to present evidence at a hearing and to argue mitigation regarding these circumstances. Even if the Board members were to accept his version of events, based on the deposition testimony submitted, the Respondent still has a right to present evidence in mitigation. In Re Polk License Revocation, 90 N.J. 550 (1982).

What the Attorney General's Office is essentially trying to do by way of this application is to eliminate a hearing, and to have the Psychology Board enter a sanction against the Respondent, without allowing him any due process rights whatsoever, and without explaining in the moving papers how the Board members are going to resolve factual disputes between Respondent and E.L. They cannot merely review transcripts and make a factual determination. In civil cases, Appellate Division judges routinely defer to the trial judges on the issue of the assessment of the credibility of witnesses. This is an acknowledgment that credibility cannot be assessed from a record. It is a longstanding principle that our courts cannot resolve issues of credibility disputes by review of a deposition or trial transcript. Deference is paid to the tryer of fact because he/she can observe the witnesses, and make assessments regarding their demeanor, candor and credibility. This is a fundamental right in any disputed case. In this instance, Dr.

Lavender should have those due process rights as required by applicable State law. This case is not an appropriate matter for Summary Decision.

POINT II

VENUE IN THIS MATTER SHOULD BE TRANSFERRED TO THE OFFICE OF ADMINISTRATIVE LAW FOR A FULL AND FAIR HEARING.

Under ordinary circumstances, a Complaint filed with a professional board seeking professional license revocation as a sanction, should be transferred to the Office of Administrative Law for discovery, case management, and hearing. The primary reason for this is to provide the Respondent with full access to due process procedures and rights, in light of the potential severity of the sanction. N.J.S.A. 52:14B-11 establishes that in any agency seeking to revoke any professional license, the Licensee must be afforded an opportunity for a fair hearing under the provisions of the Administrative Procedure Act applicable to contested cases.

The Board has the authority under N.J.S.A. 52:14F-8(b) to retain jurisdiction and conduct a hearing, but in this case, the more fair and appropriate procedure is for the Board members to transfer this matter to the O.A.L. for a full and fair hearing. This should be done so as to avoid the potential for bias, and to ensure that the Respondent has a full and fair opportunity to contest certain facts in the matter, and to present matters in mitigation with respect to the case.

This case is somewhat unusual in that there is acknowledged sexually inappropriate conduct. Respondent candidly acknowledges that he had sexual relations with E.L. after termination of the therapist/patient relationship, in violation of N.J.A.C. 13:35-6.3. He disputes, however, the version of events as recalled by the patient E.L. E.L. maintains that the doctor committed numerous ethical and boundary violations during therapy, that he openly discussed sexual fantasies with the patient, and that he and the patient engaged in an ongoing active sexual relationship during treatment, and for several years thereafter. Given the fact that

there is a significant factual dispute as to what occurred, and given the importance of credibility resolution in the overall fair outcome of this matter, the case should be transferred to the O.A.L. for impartial judicial review of the presentation of evidence, and a fair and deliberate fact-finding process.

The appropriate sanction, if any, will depend in large part upon which version of the events is accepted by the fact finder. There is a significant difference between the two stories, and a substantial likelihood that any remedial measures and/or sanction would be affected by which version of events is believed. This is substantiated by the anecdotal cases submitted in the State's Brief. In all of those cases, revocation occurred in instances where the sexual relationship occurred during the physician/patient relationship. In the only case cited to the Board similar to this case, the Board found it acceptable to resolve the case without any period of active suspension. (Exhibit A) Accordingly, it is fair to argue that the outcome of this case depends in large part upon the credibility of the Respondent and E.L., and the timing of the sexual relationship.

It puts the Board in an unfair position to have to resolve credibility disputes in an objection fashion, after it has conducted an investigation of this case during which time the Respondent openly admitted sexually inappropriate behavior. This is why disposition by an administrative law judge would be more appropriate. Our courts have long recognized that when prosecutorial and adjunctive functions are concentrated in the same body and exercised in a quasi-judicial setting, there is increased danger and risk that the disposition may be arbitrary. See General Motors Corp. v. Blair, 129 N.J. 412 (App. Div. 1974).

Here, as the Respondent's license is at stake, a hearing must be conducted under the Contested Hearing Rules of the Administrative Procedure Act. Generally, the O.A.L.

acquires jurisdiction over a matter when it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2. A case is contested if it is:

> a proceeding... in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right, or by statute to be determined by an agency by decisions, determinations, orders, addressed to them or disposing of their interests after opportunity for an agency hearing...

N.J.S.A. 52:14B-2(b).

This matter should be properly before the Office of Administrative Law. This will give the Respondent full rights to longstanding due process procedures to contest this matter, challenge the credibility of witnesses offered against him, and to present proofs in a full and unrestricted fashion that go to mitigating circumstances, the most important of which is his contention that this relationship occurred after termination of the therapist/patient relationship.

Accordingly, the defendant respectfully requests that this Board enter an Order recusing itself or transferring venue to the Office of Administrative Law as a contested case.

POINT III

THE FACTS IN THIS MATTER DO NOT JUSTIFY THE SANCTION OF REVOCATION OR SUSPENSION OF RESPONDENT'S LICENSE TO PRACTICE PSYCHOLOGY.

The brief submitted by the Attorney General's Office seeks, among other things, the revocation and/or suspension of Respondent's license to practice psychology based upon sexual impropriety. Ignoring the credibility conflict between E.L. and Respondent, the State is essentially contending that since there is acknowledged sexually inappropriate conduct by Respondent, under N.J.A.C.13:35-6.3, that the Board should therefore revoke or suspend Respondent's license. As a rationale for this request, the State cites to several anecdotal cases, in which a Psychologist had a license revoked for sexual misconduct. Very little detail regarding these cases is provided in the State's brief. The State is asking for the most severe penalty available, license revocation, based upon what the Board did in seven unrelated anecdotal cases with no real factual information provided.

Nevertheless, based upon the information that is provided, it is clear that the sanction of revocation in the cited cases was imposed for sexual misconduct far worse than what occurred in this case. The cases cited by in the State's brief all involve therapists having sex with patients <u>during</u> the therapist/patient relationship. In four of the cited cases, the practitioner had sex with multiple patients; none of the cases cited in the State's brief involve facts similar to those in this case, that is, a therapist who commenced a sexual relationship with a former patient, six months following termination of the therapist/patient relationship.

The Board should be aware of and consider another case where the facts were similar to this case. <u>In the matter of the Suspension and Revocation of the license of John H.</u>

Rathauser, Ph.D. (Attached as Exhibit A). That case involved a Psychologist who had an inappropriate sexual relationship with a patient days following termination of the doctor/patient relationship. In that case, the Board members accepted as a settlement a disposition that involved no period of active license suspension.

To summarize, the State has, in support of its application for sanctions, cited the Board to seven cases involving sexually inappropriate conduct by Psychologists. In all seven instances, the sexual relations occurred during the treatment relationship; in several of those instances multiple patients were involved. In the Rathauser case, where the sex occurred after termination of the professional relationship, the Board saw fit to settle the matter with no period of active suspension. If the Board is going to rely upon anecdotal cases in resolving the question of appropriate sanction, then it should follow the standard established by the Rathauser matter, which is very similar to the instant case.

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Dated: June 21, 2002