

**State of New Hampshire
Physical Therapy Governing Board
Concord, New Hampshire**

In the Matter of:
William R. Dufresne, PT
License No. 3179
(Adjudicatory Proceedings)

Docket No. 03-2015

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 328-F:26; RSA 541-A:30, III, and New Hampshire Physical Therapy Governing Board Administrative Rule (“Phy”) 208.02 authorize the New Hampshire Physical Therapy Governing Board (“Board”) to suspend a license to practice physical therapy for no more than ten (10) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See*, RSA 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 328-F:26 and Phy 208.02. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 328-F:26 and Phy 208.02.

2. William R. Dufresne, PT (“Mr. William R. Dufresne, PT” or “Respondent”), holds an active license, No. 3179, issued on September 20, 2006, to practice physical therapy in the State of New Hampshire. Respondent practiced physical therapy in Littleton, New Hampshire.

3. The Board has received information indicating that the continued practice of physical therapy by Respondent poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Respondent's license to practice physical therapy pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Preliminary Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Board alleges the following facts:

A. Patient 1 began treating with Respondent at the end of July 2013 for an injury to her right shoulder.

B. During one of her sessions, Respondent asked Patient 1 to disrobe from her waist up and lie face down on the treatment table. Respondent proceeded to massage her back starting at the upper back and then progressively went lower and lower on her back. Eventually, the massage went under the waist band and was almost to her tailbone. As the massage progressed, Patient 1 became increasingly uncomfortable. Eventually, Patient 1 mentioned that she had to get going and the massage ended. Treatment notes for Patient 1 do not document massage.

- C. Patient 1 brought her son with her to her to observe her next appointment because she felt uncomfortable being alone with Respondent. After this appointment, Patient 1 stopped treatment with Respondent.
- D. Patient 2 began treatment with Respondent in at the end of January 2015 for lower back injury.
- E. During one of her appointments, Respondent stuck his right hand down Patient 2's jog/sports bra from the top. His hand crossed her right breast and came down and out the bottom of the bra, where he then manipulated her ribs. At the time, Patient 2 was under the impression that this was a necessary and appropriate maneuver for her physical therapy treatment.
- F. On another occasion, Respondent placed his hand on Patient 2's crotch while performing an exercise. Respondent did not explain what he was doing or why it was necessary to place his hand there. Patient 2's treatment records do not document any exercises that would require Respondent to place his hand in Patient 2's crotch area.
- G. At another appointment, Patient 2 she was lying on her right side on the exam table with Respondent in back of her. Respondent helped her up to a seated position. As he helped her up, he embraced her and did not let go once she was sitting upright. Patient 2 told Respondent "Let me

know when this gets inappropriate,” to which he responded “just a few more minutes.” He then proceeded to lightly stroke her hair, and kissed the top of her head twice. This incident made Patient 2 feel uncomfortable.

- H. In another session, Respondent took Patient 2’s hand to shake it but would not let go and instead pulled her close to him. Patient 2 told him to stop and stated, “I can’t do this.” Patient 2 asked him “Where is this going?” and Respondent responded “Good question?” as he looked as his closed door.
- I. On another occasion, Respondent was performing a cranial exercise and had his hands on each side of Patient 2’s head. As he held her head, he proceeded to kiss her head. At the end of that appointment, Patient 2 got upset and started to tear up and cry. Respondent stood with his arms crossed and ordered her to stop crying in a terse manner.
- J. There was another occasion where Patient 2 was lying face down on the treatment table and Respondent positioned his penis very close to her head as he had his hands on her head. At the same time, Patient 2 noticed her hands were close to Respondent’s crotch so she moved and lowered her shoulders to move her hands away from him. Respondent reacted by making a comment like “I guess I am all over the place.”

- K. On another occasion, Respondent asked Patient 2 if she would like to pull or tug on something. Patient 2 stated that the context and manner in which Respondent asked this was purely sexual and not at all related to physical therapy. Patient 2 was shocked and surprised by this comment.
- L. There was another instance where Patient 2 was lying on her right side while Respondent massaged the area of her left sacroiliac joint. At one point, Respondent rested his head on her bare side midriff as he was performing the massage. He asked her if she minded while he rested his head there, which she responded no. Patient 2 assumed that since he was exerting a lot of force in the massage he just needed to rest or that by resting his head it would help him apply more pressure.
- M. At the end of her last appointment with Respondent, Respondent asked Patient 2 if he could kiss her. She told him no and proceeded to grab her jacket that was on a chair. Respondent then crossed the room unexpectedly and kissed her on her mouth.
- N. Patient 3 started treating with Respondent in March of 2013 for lower back pain. As part of her therapy, Respondent had Patient 3 perform an exercise in which he placed his arm in front of her chest and had Patient 3 push down on his arm. At first, this exercise was done without incident. However, at subsequent appointments, Respondent

positioned himself so that when Patient 3 pushed down on his arm his arm would touch her breasts. Respondent did not explain the purpose of this exercise and Patient 3 felt that this exercise took up a significant portion of her appointment and did not do much to help her.

- O. At her last appointment, Respondent instructed Patient 3 to lay on her back while Respondent sat on a stool behind her. Respondent had her stretch her arms over her head while she lay on her back. While doing this, one of Patient 3's hands felt Respondent's erect penis. When she attempted to pull her hand away, Respondent grabbed her hand and placed it back in his groin area. Respondent then asked, "Do you know what this is?" Patient 3 stated no and pulled her hand away to which Respondent replied, "You don't know what this is?" Patient 3 stated again that she did not know. Patient 3 stopped treatment with Respondent after this appointment.
- P. In March of 2015, it was reported to Respondent's employer that he had held a patient in a long embrace and then kissed her during a physical therapy session. Respondent was confronted by his employer and he was immediately able to identify the patient. Respondent admitted that he had kissed her on the top of her head and stated that that the time he felt like she needed it.

- Q. In Respondent's written response dated May 20, 2015 to the Board, he denies that any of his contact with Patient 2 was sexual in nature. He also stated that his treatment of Patient 2 was appropriate given her individual treatment needs.
- R. On May 20, 2015, Respondent contact one of the administrative coordinators at his previous employer and asked her to write him an email detailing a conversation she had with Patient 2. The administrative coordinator did not provide an email.
- S. On May 29, 2015, Respondent called the administrative coordinator again and asked her if she had had a chance to send him the email/letter. The administrative coordinator told Respondent she could not send him an email/letter. Respondent stated that he was just looking for something in writing indicating whether Patient 2 was happy with him as a therapist. The administrative coordinator refused again stating it would be a HIPAA violation.

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 328-F:26, 541-A:30, III and Phy 208.02.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 328-F:23, II and RSA 328-F:26, which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether, on or about August 2013, Respondent committed professional misconduct by inappropriately touching Patient 1 during a treatment session in violation of RSA 328-F:23, II (c), (d), (e), (f), (j), Phy 405.01 (e), Phy 501.02, and/or APTA Code of Ethics Principle 4; and/or
- B. Whether, Respondent committed professional misconduct by inappropriately touching Patient 2 on multiple occasions during treatment sessions between January 2015 and April 2015 in violation of RSA 328-F:23, II (c), (d), (e), (j), Phy 405.01 (e), (f), Phy 501.02, and/or APTA Code of Ethics Principle 4; and/or
- C. Whether, Respondent committed professional misconduct by inappropriately touching Patient 3 during a treatment sessions in April 2013 in violation of RSA 328-F:23, II (c), (d), (e), (j), Phy 405.01 (e), (f), Phy 501.02, and/or APTA Code of Ethics Principle 4; and/or
- D. Whether, on or about May 20, 2015, Respondent committed professional misconduct by providing inaccurate or untruthful information to the Board in violation of RSA 328-F:23, II (a); and/or

E. Whether, on or about May 20 and 29, 2015, Respondent committed professional misconduct by asking a former co-worker to provide confidential patient information in violation of RSA 328-F:23, II (c), (j), Phy 405.01 (d), Phy 501.02, and/or APTA Code of Ethics Principle 5; and/or

F. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 328-F:23, IV.

7. RSA 328-F:26, 541-A:30, III and Phy 208.02 require the Board to commence an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.

8. Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See* RSA 328-F:26, 541-A:30, III and Phy 208.02.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice physical therapy is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 328-F:23, 328-F:24, 328-F:26, 541-A:30, III and Phy 208.02. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that William R. Dufresne, PT shall appear before the Board on August 12, 2015 at 2:30 p.m., at the Board's office located at 121 South Fruit Street, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 328-F:23, IV; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Michelle Heaton, Esq., 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Lea Bruch, Chair or any other person whom she may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and five (5) copies, and with an additional copy mailed to any party to the proceeding, and to Assistant Attorney General Brian Buonamano, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301.

All responses or objections to such motions or other documents are to be filed in similar fashion within three (3) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least three (3) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. A shorthand court reporter shall be provided at the hearing and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Tina Kelley, N.H. Physical Therapy Governing Board, 121 South Fruit Street, Concord, New Hampshire 03301; and

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Tina Kelley, N.H. Physical Therapy Governing Board, at (603) 271-8390, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application as well as Respondent's attorney. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: July 30, 2015



Tina Kelley
Authorized Representative of the
NH Physical Therapy Governing Board

/* Nicole Lavoie, Board member, did not participate