

**BEFORE THE MINNESOTA
BOARD OF PHYSICAL THERAPY**

In the Matter of the
Physical Therapy License of
Thomas E. Holets, P.T.
Date of Birth: 11/12/46
License Number: 1150

**STIPULATION
AND ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between Thomas E. Holets, P.T. ("Respondent"), and the Complaint Review Committee ("Committee") of the Minnesota Board of Physical Therapy ("Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice physical therapy in the State of Minnesota.

2. Respondent has been advised by Board representatives that he may choose to be represented by legal counsel in this matter. Although aware of his right to representation by counsel, Respondent has knowingly and expressly waived that right. The Committee was represented by Susan E. Damon, Assistant Attorney General, 1400 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101.

FACTS

3. For the purpose of this Stipulation, the Board may consider the following facts as true:

- a. Respondent was licensed to practice physical therapy on June 18, 1973.
- b. In July 2000, Respondent self-reported to Health Professional Services Program ("HPSP") for alcohol abuse.

c. On July 6, 2002, Respondent was admitted to the hospital for injuries sustained in an alcohol-related motor vehicle accident. Respondent's injuries included a pneumothorax, a fractured C2 vertebra, a closed fracture of multiple ribs, traumatic subcutaneous emphysema, open wounds to the upper arms and ear, and a contusion of the lung. Respondent also experienced alcohol withdrawal. Respondent's alcohol level was .263. Approximately three days after his hospital admission, Respondent developed acute delirium with agitation, which was thought to represent delirium tremors.

d. On August 15, 2002, HPSP discharged Respondent for noncompliance based on his failure to respond to HPSP's communications.

e. On September 4, 2002, Respondent reported to Board staff that he was currently not working, not driving and was homebound due to injuries sustained in the July 6, 2002 motor vehicle accident.

f. On November 22, 2002, Respondent entered into a Participation Agreement and Monitoring Plan with HPSP, which included the following requirements:

(1) Obtain a chemical dependency assessment and a neuropsychological evaluation.

(2) Abstain from the use of alcohol or any mood-altering chemicals unless lawfully prescribed or managed by a treating physician or dentist who has been informed of Respondent's diagnosis and history.

(3) Respond to a minimum of six unscheduled bodily fluid screens per quarter.

(4) Meet with a therapist/counselor and with a psychiatrist.

g. On December 18, 2002, Respondent relapsed with alcohol and required hospitalization, as the alcohol reacted with Respondent's medications.

h. On January 30, 2003, Respondent underwent a neuropsychological evaluation. The evaluator concluded that Respondent suffered from alcoholism, significant depression, chronic pain and major psychosocial stress. Recommendations included psychiatric care for chemical dependency, affective disorders and sleep problems. The evaluator's report noted that Respondent had been treated with Prozac, but had stopped taking it.

i. On June 19, 2003, Respondent's urine screen was positive for ethanol at .196 gm/dl. Respondent reported to HPSP that he had gone out drinking the evening of June 18, 2003 and had "a couple brandies."

j. In a June 30, 2003 conversation with his HPSP case manager, Respondent denied other episodes of reuse. Respondent also informed the case manager that he had stopped taking antidepressant medications because of their side effects and cost. Respondent agreed to remain out of practice indefinitely pursuant to HPSP's recommendations.

k. On August 20, 2003, Respondent's urine screen tested positive for ethanol.

l. On September 15, 2003, Respondent met with the Complaint Review Committee, and the Committee recommended that Respondent:

(1) Provide signed releases to HPSP to exchange information with Respondent's treating psychiatrist;

(2) Arrange to have past due quarterly reports sent to HPSP;

(3) Voluntarily undergo a Functional Capacities Evaluation Assessment at a Committee approved facility and sign releases to allow the exchange of information; and

(4) Continue with the HPSP Participation Agreement and Monitoring Plan, including the voluntary no practice agreement, total abstinence, and monitoring.

m. On September 22, 2003, Respondent had another positive urine screen for ethanol.

n. On September 29, 2003, HPSP discharged Respondent based on his inability to remain sober in violation of his Participation Agreement and Monitoring Plan.

o. On January 21, 2003, the Board notified Respondent that it was conducting an audit of his continuing education ("CE") for the period January 1, 2001 through December 31, 2002 and requested that Respondent submit documentation substantiating his CE report no later than February 21, 2003. Respondent failed to submit the requested documentation by that date. Additional notices reminding Respondent to comply with the audit were sent on March 14, 2003 and July 7, 2003. To date, Respondent has not submitted the requested documentation.

STATUTES

4. The Committee views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 148.75(a)(1) and (5) (2002). Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify disciplinary action under these statutes.

REMEDY

5. Upon this Stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order SUSPENDING Respondent's license to practice physical therapy in the State of Minnesota. Such suspension shall be STAYED conditioned on Respondent's compliance with the following terms:

a. Respondent shall abstain completely from alcohol and all mood-altering chemicals unless they are prescribed by a physician or dentist who has first been informed of Respondent's chemical dependency history.

b. Respondent shall obtain a treating physician, approved in advance by the Committee or its designee, to monitor and/or manage all medical and other care provided to Respondent by all health care professionals. Respondent shall meet with the treating physician at least annually or as mutually agreed upon by the Board or its designee and the physician. Respondent shall follow the treating physician's treatment and practice recommendations. Respondent shall provide all necessary records releases to enable Respondent's health care professionals to communicate with the treating physician pursuant to this paragraph. The treating physician will be the only prescriber of medications other than psychotropic medications and shall authorize use of all medications other than psychotropic medications, including over-the-counter medications except aspirin, acetaminophen, anti-inflammatory agents, antacids, and topical products. Psychotropic medications, if prescribed, must be prescribed by Respondent's treating psychiatrist, who has been approved by the Committee or its designee under paragraph 5.c.

c. Respondent shall obtain a treating psychiatrist, approved in advance by the Committee or its designee. Respondent shall meet with the treating psychiatrist at least quarterly or as mutually agreed upon by the Board or its designee and the psychiatrist. Respondent shall follow the psychiatrist's treatment and practice recommendations. The treating psychiatrist shall provide quarterly reports to the Board or its designee. The psychiatrist is to act as the only prescriber of psychotropic medications.

d. Respondent shall obtain a therapist/counselor, approved in advance by the Committee or its designee. Respondent shall meet with the therapist/counselor at least once a month, or as mutually agreed upon by the Board or its designee and the therapist. The therapist/counselor shall coordinate patient care with the treating psychiatrist. Respondent shall follow the therapist/counselor's treatment and practice recommendations. The therapist/counselor shall provide quarterly reports to the Board or its designee.

e. Respondent shall be subject, without notice, to unannounced blood and urine tests at the request of Board staff or other Board designee at least six times per quarter. Blood and urine screens may be requested at any time. Respondent shall provide the requested sample within the time period directed by the Board or its designee. The blood and urine screens shall be:

- (1) Collected and tested consistent with protocols established by a Board-designated laboratory;
- (2) Handled through legal chain of custody methods; and
- (3) Paid for by Respondent.

The biological fluid collection and testing shall take place at a Board-designated laboratory as directed by the Board or its designee. Testing shall screen for opiates, cocaine, barbiturates,

amphetamines, benzodiazepines, marijuana, and other drugs of abuse, including alcohol. The laboratory will provide test results directly to the Board or its designee and Respondent's treating physician. Respondent shall abstain from all food products known to interfere with toxicology screens, including the ingestion of poppy seeds, which may cause a positive screen result for opiates. The ingestion of foods containing poppy seeds or other substances known to interfere with toxicology screens will not be accepted by the Board or the Board's designee as reasons for positive screen results. The ingestion of any over-the-counter medications and/or product containing alcohol, unless lawfully prescribed or managed by a treating physician or dentist who has been informed of Respondent's diagnosis and history, will not be accepted as a reason for a positive drug screen.

f. Respondent shall attend meetings of a self-help program such as AA in support of abstinence at least two times per week. Quarterly reports shall be submitted to the Board or its designee from Respondent's designated sponsor(s) regarding attendance and participation.

g. Within ten days of the date of this Order, Respondent shall re-enroll in HPSP. Respondent shall sign a Participation Agreement within the time period specified by HPSP.

h. Respondent shall fully comply with his HPSP Participation Agreement and Monitoring Plan and any modifications thereto, as determined by HPSP. The terms and conditions of the Participation Agreement and Monitoring Plan shall include the terms set forth in paragraphs 5.a through 5.f above, and any other terms deemed appropriate by HPSP, which may include a no practice agreement for specified period of time.

i. Respondent shall not practice physical therapy until he is authorized to do so in accordance with his HPSP Participation Agreement and Monitoring Plan and until the following occurs:

(1) Respondent must undergo an FCE (Functional Capacities Evaluation) or FCA (Functional Capacities Assessment) at a facility approved in advance by the Committee, and the Committee determines, based on the FCE or FCA, that Respondent is physically able to return to practice. If the FCE or FCA indicates that Respondent is physically able to practice but only with conditions or limitations, Respondent's HPSP Participation Agreement and Monitoring Plan shall be modified to incorporate such conditions or limitations. Respondent is responsible for all of the costs associated with the FCE or FCA.

(2) Respondent shall submit documentation substantiating his CE compliance for the period January 1, 2001 through December 31, 2002. If the Respondent has not completed the CE for the period January 1, 2001 through December 31, 2002 then he shall complete 20 contact hours of CE as required under Minn. R. 5601.2200 to 5601.2600, and shall submit the required documentation within 60 days of the date of this Order. These 20 hours shall constitute the required CE only for the January 1, 2001 through December 31, 2002 period.

j. Upon request by the Board or its designee, including HPSP, Respondent shall provide signed releases authorizing the Board or its designee to obtain Respondent's medical, mental health or chemical abuse/dependency records from any treating professional or facility, including the facility that performs the FCE or FCA referenced in paragraph 5.i, and from HPSP.

6. No sooner than two years from the date of this Order, Respondent may petition the Committee, in writing, for reduced monitoring based on documented evidence of his

uninterrupted sobriety during the period starting from the date of this Order. Upon consideration of Respondent's petition, the Committee, after consultation with Respondent's treating health care providers, may reduce the frequency of required meetings, reports and/or biological fluid screens required by the terms and conditions of this Order.

7. This Stipulation and Order shall remain in effect for a minimum of three years or until Respondent successfully completes his HPSP Participation Agreement and Monitoring Plan, whichever is later. At the end of this period, Respondent may petition for reinstatement of an unconditional license, upon proof, satisfactory to the Board of at least three years of documented, uninterrupted sobriety and compliance with the terms of this Order. Upon hearing the petition, the Board may continue, modify, or remove the conditions set out herein.

8. Within ten days of the date of this Order, Respondent shall provide the Board with a list of all hospitals, clinics and skilled nursing facilities at which Respondent currently has employment privileges, a list of all states in which Respondent is licensed or has applied for licensure, and the addresses and telephone numbers of Respondent's residences and all work sites. Within seven days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Stephanie Lunning, Minnesota Board of Physical Therapy, University Park Plaza, 2829 University Avenue S.E., Suite 315, Minneapolis, Minnesota 55414-3222.

9. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of his residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's conditional license in Minnesota unless Respondent demonstrates that

practice in another state conforms completely with Respondent's Minnesota license to practice physical therapy.

10. If the Committee determines that Respondent has failed, neglected, or refused to fully comply with any term, provision, or condition herein, the Committee shall be authorized to suspend Respondent's license to practice physical therapy in Minnesota without a hearing. The suspension shall become effective upon personal service on Respondent of a written Order of Immediate Suspension or three days after the Order is mailed to Respondent at his last known address. The suspension shall remain in full force and effect until the Board issues a final order after a hearing in accordance with paragraphs 10.a, c, and d below; or until the suspension becomes an order of the Board based on Respondent's failure to request a hearing within 30 days in accordance with paragraph 10.d or until the matter is resolved by agreement of the parties. The Order for Immediate Suspension is deemed public under the Minnesota Government Data Practices Act.

a. The Committee's Order of Immediate Suspension shall state the evidence of noncompliance on which the suspension is based. Respondent may request a hearing before the Board on the suspension within 30 days of the date of the Order of Immediate Suspension. Any request for a hearing shall be in writing and shall be submitted to Stephanie Lunning, Board of Physical Therapy, University Park Plaza, 2829 University Avenue S.E., Suite 315, Minneapolis, Minnesota 55414-3222. The hearing shall take place at the Board's next regularly scheduled meeting following the Committee's receipt of the hearing request, provided that the Committee receives the hearing request at least 10 days before the Board's next regularly scheduled meeting. If the hearing request is received fewer than 10 days before the Board meeting then the hearing shall take place at the Board's first meeting following that Board

meeting. Respondent shall submit a written response to the evidence of noncompliance at least three days before the hearing. If Respondent fails to submit a timely response, the evidence of noncompliance shall be deemed admitted.

b. After service of an Order of Immediate Suspension and before the hearing or before expiration of the time to request a hearing, Respondent may submit to the Committee for its consideration any affidavits or authenticated documents that refute the evidence of noncompliance stated in the Order of Immediate Suspension. Following Respondent's submission of such affidavits or authenticated documents, the Committee may, in its discretion, schedule a conference with Respondent to discuss the evidence of noncompliance, the affidavits or authenticated documents and/or to attempt to resolve the matter.

c. At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

d. At the hearing, the Board will determine whether to uphold, modify, or terminate the suspension or to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice, or revocation of Respondent's license. The Board's decision shall be final and not subject to appeal or additional procedures under Minn. Stat. chs. 14 and 214.

e. If Respondent fails to submit a written request for a hearing within 30 days of the date of the Order of Immediate Suspension, Respondent's right to a hearing shall be

deemed waived, and the evidence of noncompliance shall be deemed admitted. At its next scheduled meeting, the Board shall review the Order of Immediate Suspension and uphold or modify it by order. The Board's order and the facts and conclusions of law on which it is based shall be set forth in writing and deemed public under the Minnesota Government Data Practices Act, final and not subject to appeal or additional procedures under Minn. Stat. chs. 14 and 214.

11. If the Board upholds the suspension of Respondent's license either after a hearing or because of Respondent's failure to submit a written request for a hearing, Respondent may petition the Board to reinstate the stay of suspension no sooner than one year from the date of the Board's order upon submission of satisfactory evidence of at least one year of documented uninterrupted sobriety. Satisfactory evidence shall include, but not be limited to, random urine and/or blood screens, satisfactory completion of chemical dependency treatment programs, and written documentation of regular attendance and participation at meetings of a self-help group in support of recovery, and a report from Respondent's treating physician that Respondent is fit and competent to resume the practice of physical therapy with reasonable skill and safety to patients.

12. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto.

13. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

14. Respondent hereby acknowledges that he has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: 1-14-04

Dated: 1-15-04

SIGNATURE ON FILE

SIGNATURE ON FILE

Thomas Holets, P.T.
Respondent

For the Committee

ORDER

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 15th day of January, 2004.

MINNESOTA BOARD OF
PHYSICAL THERAPY

SIGNATURE ON FILE

STEPHANIE LUNNING, P.T.
Executive Director

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