

**BEFORE THE MINNESOTA  
BOARD OF PHYSICAL THERAPY**

In the Matter of the  
Physical Therapy License  
of Melissa Thiry, P.T.  
Date of Birth: 9/26/77  
License Number: 8043

**STIPULATION AND ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between Melissa Thiry, 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 she holds a license to practice physical therapy in the State of Minnesota.

2. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Although aware of her right to representation by counsel, Respondent has knowingly and expressly waived that right. The Committee was represented by Nathan W. Hart, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, telephone (651) 757-1459.

**FACTS**

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

a. On December 17, 2008, Respondent was referred to the Health Professionals Services Program ("HPSP") for an eligibility assessment for issues related to chemical dependency.

b. On December 31, 2008, HPSP received Respondent's signed Participation Agreement and Enrollment Form.

c. Pursuant to Respondent's Participation Agreement with HPSP, Respondent was subject to random screens for alcohol and drug use.

d. On May 5, 2009, HPSP was notified that a screen provided by Respondent on April 25, 2009, was positive for urine ethanol at 0.101 gm/dL.

e. On May 6, 2009, Respondent's Case Manager at HPSP contacted Respondent regarding the positive screen. Respondent denied using alcohol and suggested it was a mix-up at the laboratory. HPSP requested that Respondent refrain from practicing physical therapy and obtain a chemical health assessment.

f. On May 7, 2009, the HPSP Case Manager was contacted by the Chemical Dependency Assessor, who indicated that when Respondent appeared for her assessment, her eyes appeared to be "glassy and bloodshot." He requested a breathalyzer, and it indicated a blood alcohol level of .048 gm/dL. He also requested that Respondent submit to a urine screen. Results from this screen are pending. Despite the positive breathalyzer, Respondent denied using alcohol.

g. On July 6, 2009, Respondent met with the Committee to discuss her positive test for alcohol use and the status of her recovery. At the conclusion of the conference, Respondent was again referred to HPSP.

h. On November 18, 2009, Respondent was discharged from HPSP after the results of a toxicology screen on November 6, 2009, were suggestive of substituted urine.

## 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)(2) (inability to practice physical therapy with reasonable skill and safety by reason of any mental or physical illness or condition). Respondent agrees that the condition cited above constitutes a reasonable basis in law and fact to justify the 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 as follows:

a. Respondent's license to practice physical therapy is **INDEFINITELY SUSPENDED**. Said suspension shall begin the second day after the Board's approval of this Stipulation and Order. During the period of suspension, Respondent shall not in any manner practice physical therapy in Minnesota.

b. Respondent shall contact HPSP and enter into a Participation Agreement and Monitoring Plan.

c. Upon notification from HPSP that Respondent has entered into a Participation Agreement and Monitoring Plan, the suspension of Respondent's license will automatically be **STAYED**, and Respondent may resume the practice of physical therapy in Minnesota, as long as she complies with the following **CONDITIONS** and **RESTRICTIONS**: 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. Respondent shall fully comply with the HPSP Participation Agreement and Monitoring Plan and any modifications thereto as determined by HPSP. Any noncompliance with the Participation Agreement and Monitoring Plan shall be deemed to be noncompliance with this Stipulation and Order.

6. This Stipulation and Order shall remain in effect until Respondent successfully completes the HPSP Participation Agreement and Monitoring Plan. Upon notification from HPSP that Respondent has been discharged for successful completion, Respondent may petition for reinstatement of an unconditional license. Upon hearing the petition, the Board may continue, modify, or remove the conditions set out herein.

7. Within ten days of the date of this Order, Respondent shall provide the Board with a list of all hospitals, clinical work sites, and skilled nursing facilities at which Respondent currently has 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 420, Minneapolis, Minnesota 55414-3664.

8. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of her residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice physical therapy.

9. It is Respondent's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board pursuant to this Stipulation and Order are timely filed by those preparing the report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Stipulation and Order.

### **CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS**

#### **A. Noncompliance With Requirements for Stayed Suspension**

10. If the Committee has probable cause to believe Respondent has failed to comply with or has violated any of the requirements for staying the suspension as outlined in paragraph 5 above, the Committee may remove the stay of suspension pursuant to the procedures outlined in paragraph 11 below, with the following additions and exceptions:

a. The removal of the stayed suspension shall take effect upon service of an Order of Removal of Stayed Suspension ("Order of Removal"). Respondent agrees that the Committee is authorized to issue an Order of Removal, which shall remain in effect and shall have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph 11 below or until the complaint is dismissed and the order is rescinded by the Committee. The Order of Removal shall confirm the Committee has probable cause to believe Respondent has failed to comply with or has violated one or more of the requirements for staying the suspension of Respondent's license. Respondent further agrees an Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act. Respondent waives any right to a conference or hearing before removal of the stayed suspension.

b. The Committee shall schedule the hearing pursuant to paragraph 11 below to be held within 60 days of service of the Order of Removal.

B. Noncompliance With Stipulation and Order

11. If Respondent fails to comply with or violates this Stipulation and Order, the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 (2008) or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least 20 days before the hearing, the Committee shall mail Respondent a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within ten days after the notice is mailed, Respondent shall submit a written response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. The Committee, in its discretion, may schedule a conference with Respondent prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through agreement.

c. Prior to the hearing before the Board, the Committee and Respondent may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Respondent may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. Unless stated otherwise in this Stipulation and Order, the Committee shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Respondent has failed to submit a timely response to the allegations,

Respondent may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Respondent waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Respondent's correction of a violation prior to the conference, hearing, or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek discipline when it first learns of a violation will not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while Respondent's license is suspended or the suspension is stayed.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional requirements for the stayed suspension, removal of the stayed suspension, an additional period of suspension, or revocation of Respondent's license.

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. This stipulation shall not in any way limit or affect the authority of the Board to temporarily suspend Respondent's license under Minn. Stat. § 148.755 or to initiate contested

case proceedings against Respondent on the basis of any act, conduct, or omission of Respondent justifying disciplinary action occurring before or after the date of this Stipulation and Order which is not related to the facts, circumstances, or requirements referenced herein.

14. 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.

15. Respondent hereby acknowledges that she 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: 2-24-10

Dated: 03/18/2010

SIGNATURE ON FILE

SIGNATURE ON FILE

MELISSA THIRY, 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 18<sup>th</sup> day of March, 2010.

MINNESOTA BOARD OF  
PHYSICAL THERAPY

SIGNATURE ON FILE  
STEPHANIE LUNNING  
Executive Director