BEFORE THE MINNESOTA

BOARD OF PHYSICAL THERAPY

In the Matter of the
Physical Therapy License
of Melissa Thiry, P.T.
Year of Birth: 1977
License Number: 8043

STIPULATION AND ORDER

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

1. During all times herein, Licensee 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. Licensee has been licensed in Minnesota since October 4, 2007.

2. Licensee was represented by Dennis P. Casey, Casey Law Offices, 15025 Butternut Lane, Burnsville, Minnesota 55306, telephone (612) 220-0500. The Committee was represented by Bryan D. Huffman, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, telephone (651) 757-1439.

FACTS

3. On March 18, 2010, the Board adopted a Stipulation and Order ("2010 Order") based on Licensee's chemical dependency. The 2010 Order suspended her license but stayed the suspension so as long as Licensee fully complied with the Health Professionals Services Program ("HPSP") and fully complied with monitoring, including: (1) abstention from alcohol and all mood-altering chemicals and (2) submission of random toxicology screens as requested by HPSP.

4. Licensee failed to comply with HPSP and her 2010 Order as evidenced by missed toxicology screens and being charged with driving under the influence ("DUI") on November 28, 2011. On January 9, 2012, based on her failure to comply with the 2010 Order, the Complaint Review Committee removed the stay of suspension imposed under the 2010 Order.

5. Licensee met with the Committee and, on March 8, 2012, the Board adopted a Stipulation and Order ("March 2012 Order") indefinitely suspending Licensee's license to practice physical therapy in Minnesota. The March 2012 Order required Licensee to, among other things, participate in a chemical dependency program and successfully complete the terms of her probation stemming from her November 28, 2011, DUI. The March 2012 Order stated that "Licensee may petition for reinstatement of her physical therapy license after eight months of documented, uninterrupted sobriety." The March 2012 Order further stated that Licensee bears the burden of proving that she is capable of practicing physical therapy "in a fit and competent manner."

6. On October 2, 2012, the Committee considered Licensee's petition for reinstatement pursuant to the March 2012 Order. Based on information presented by Licensee, the Committee recommends reinstatement of her license as a physical therapist in accordance with the parameters set forth in the remedy section below.

STATUTES

7. The Committee views Licensee's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 148.75(a)(2) (2010). Licensee agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action under these statutes. Specifically, Licensee has a mental illness or condition based on her use of alcohol, drugs, narcotics, chemicals, or other materials, in violation of Minn. Stat. § 148.75(a)(2).

REMEDY

8. The March 8, 2012, Order and all other orders adopted or issued by the Board are hereby **RESCINDED** and shall have no future force or effect regarding Licensee's license as a physical therapist in Minnesota.

9. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Licensee hereby consents that until further order of the Board, made after notice and hearing upon application by Licensee or upon the Board's own motion, the Board may make and enter an order **SUSPENDING** Licensee's license as a physical therapist in Minnesota. The suspension is **STAYED** so long as Licensee complies with the following **CONDITIONS**:

a. Licensee must contact HPSP and initiate enrollment within 10 days from the date the Board adopts this Stipulation and Order. Licensee must fully comply with her HPSP Participation Agreement and Monitoring Plan.

b. Licensee must completely abstain from alcohol and all mood-altering drugs, unless prescribed by a physician or dentist who has first been informed of Licensee's history of chemical dependency.

c. This Stipulation will remain in effect for a minimum of 24 months from the date that the Board adopts the Order.

d. Licensee may petition the Board for an unconditional license upon successful completion of HPSP and satisfactory compliance with the terms of this Stipulation and Order. Licensee's petition for an unconditional license may be granted, if at all, as the evidence dictates and based upon the need to protect the public. The burden of proof falls upon Licensee to demonstrate by a preponderance of the evidence that she is capable of conducting

herself in a fit and competent manner in the practice of physical therapy and has been sober and free from all mood-altering chemicals during the 24 months immediately preceding her petition for an unconditional license.

e. At the time of Licensee's petition, Licensee may be required to meet with a Complaint Review Committee. If requested by the Committee, Licensee must undergo a chemical dependency evaluation performed by a chemical dependency treatment professional. Licensee must submit, or cause to be submitted, the credentials of the chemical dependency evaluator for review and preapproval by Board staff for purposes of this evaluation. The results of the evaluation must be sent directly to the Board and must include a statement verifying the evaluator has reviewed this Stipulation and Order. Upon hearing the petition, the Board may continue, modify, or remove the conditions set out herein.

CONSEQUENCES OF NONCOMPLIANCE WITH THE STAYED SUSPENSION

10. If the Complaint Review Committee has probable cause to believe Licensee has failed to comply with or has violated any of the requirements for staying the suspension as set forth herein, the Committee may remove the stayed suspension pursuant to the procedures outlined in paragraph 10 below.

a. If HPSP discharges Licensee from the program for any reason other than Licensee's successful completion of the program, there will be a presumption of a preponderance of the evidence that Licensee has failed to comply with the requirements for staying the suspension.

b. The removal of the stayed suspension will take effect upon service of an Order of Removal of Stayed Suspension ("Order of Removal"). Licensee agrees that the Committee is authorized to issue an Order of Removal, which will remain in effect and 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 10 below. The Order of Removal must confirm that the Committee has probable cause to believe Licensee has failed to comply with or has violated one or more of the requirements for staying the suspension. An Order of Removal issued pursuant to this paragraph is deemed a public document under the Minnesota Government Data Practices Act. Licensee waives any right to a conference or hearing before removal of the stayed suspension.

c. The Committee must schedule the hearing pursuant to paragraph 10 below to be held within 60 days of the Order of Removal being served.

CONSEQUENCES OF NONCOMPLIANCE WITH STIPULATION AND ORDER

11. If Licensee 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 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee must schedule a hearing before the Board. At least 20 days before the hearing, the Committee must mail Licensee a notice of the violation(s) alleged by the Committee. In addition, the notice must designate the time and place of the hearing. Within ten days after the notice is mailed, Licensee must submit a written response to the allegations. If Licensee 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 Licensee 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 Licensee may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Licensee may present oral argument. Argument may not refer to matters outside the record. The evidentiary record must be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. The Committee bears the burden of proving by a preponderance of the evidence that a violation has occurred. If Licensee has failed to submit a timely response to the allegations, Licensee may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Licensee 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. Licensee's correction of a violation before the conference, hearing, or meeting of the Board may be taken into account by the Board but does 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 does 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 Licensee's license is in a suspended status.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board must dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including conditions or limitations on Licensee's future practice, an additional period of suspension, or revocation of Licensee's license.

f. Nothing herein limits the Committee's or the Board's right to temporarily suspend Licensee's license pursuant to Minn. Stat. § 148.755, based on a violation of this Stipulation and Order or based on conduct of Licensee not specifically referred to herein.

ADDITIONAL INFORMATION

12. Licensee waives the contested case hearing and all other procedures before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or rules.

13. Licensee waives any claims against the Board, the Minnesota Attorney General, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Order, which may otherwise be available to Licensee.

14. This Stipulation and Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

15. Either party may seek enforcement of this Stipulation and Order in any appropriate civil court.

16. Licensee has read, understands, and agrees to this Stipulation and Order and has voluntarily signed the Stipulation and Order. Licensee is aware this Stipulation and Order must be approved by the Board before it goes into effect. The Board may either approve the Stipulation and Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation and Order will take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the Stipulation and Order, it will be of no effect except as specified in the following paragraph.

17. Licensee agrees that if the Board rejects this Stipulation and Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board, Licensee

will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Order or of any records relating to it.

18. This Stipulation and Order does not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Licensee which constitutes grounds for disciplinary action and which is not directly related to the specific facts and circumstances set forth in this document.

DATA PRACTICES NOTICES

19. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Data regarding this action will be provided to data banks as required by federal law or consistent with Board policy. While this Stipulation and Order is in effect, information obtained by the Board pursuant to this Order is considered active investigative data on a licensed health professional, and as such, is classified as confidential data pursuant to Minnesota Statutes section 13.41, subdivision 4.

20. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

Dated: 10-26-12

SIGNATURE ON FILE

MELISSA THIRY, P.T.
Licensee

Dated: 11-08-2012

SIGNATURE ON FILE

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 8th day of November, 2012.

MINNESOTA BOARD OF
PHYSICAL THERAPY

SIGNATURE ON FILE

STEPHANIE LUNNING
Executive Director

AG: #3099365-v1