

**BEFORE THE MINNESOTA
BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS**

In the Matter of
David E. Carlson, LNHA
License No. 2291

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by David E. Carlson, LNHA (“Licensee”), and the Minnesota Board of Examiners for Nursing Home Administrators Standards of Practice Committee (“Committee”) as follows:

I.

JURISDICTION

1. The Minnesota Board of Examiners for Nursing Home Administrators (“Board”) is authorized pursuant to Minn. Stat. Ch. 144A to license and regulate nursing home administrators and to take disciplinary action as appropriate.

2. Licensee holds a license from the Board to practice as a licensed nursing home administrator in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Consent Order.

II.

FACTS

3. Licensee has been the Administrator of Record for a nursing home (“Facility”) in Osakis since April 5, 1988.

4. On November 24, 2014, the Minnesota Department of Health (“MDH”) completed a survey and compliance review and determined the Facility provided substandard quality of care in the prior two successive MDH compliance surveys. In both surveys, the

Facility had Code of Federal Regulation violations (F 224, S/S L—42 483.13 (c), F 225, 483.13 (c)(1)(ii)(iii),(C)(2)-4, F 226—483.13(C)). MDH recommended the imposition of Civil Money Penalties for the aforementioned tags.

5. Licensee failed to adequately oversee and monitor care and services related to the development, implementation, and evaluation of the abuse prohibition policies and procedures and to ensure that residents were free from accidents. Licensee also failed to develop and implement policies to ensure residents were safe from abuse and neglect.

6. Licensee met with the Committee on April 16, 2014, and articulated the changes that he has implemented in order to have more direct oversight of Facility policies and practices, staff responsibilities, and daily activities.

III.

REGULATIONS

7. The Board views Licensee's practices as described in paragraphs 4 and 5 above to be in violation of statutes and rules enforced by the Board and constitutes a reasonable basis in law and fact to justify the disciplinary action provided for in this Stipulation and Consent Order. Licensee agrees that the conduct cited above constitutes the following violations:

a. Failure to comply with Minnesota Statutes, section 626.557, the Vulnerable Adult Act, in violation of Minnesota Rules 6400.6900, subpart 1(D).

b. Violation of a statute, rule, or order that the board issued or is empowered to enforce or that pertains to administration of a nursing facility or to the responsibilities of a nursing home administrator, in violation of Minnesota Rules 6400.6900, subpart 1(E).

c. Failure to exercise true regard for the safety, health, or life of a resident, in violation of Minnesota Rules 6400.6900, subpart 1(J).

IV.
REMEDY

8. Upon this stipulation and all the files, records, and proceedings herein, and without further notice or hearing, the Board enters an order as follows:

a. The Board **CONDITIONS** Licensee's license as follows:

1) Licensee's Action Plan: Licensee must provide, within 30 days of the date of this Stipulation and Consent Order, an Action Plan that lays out specific steps Licensee has taken and plans to take in order to address the violations noted in paragraphs 4 and 5. The Action Plan should address topics including, but not limited to, vulnerable adult reporting, task delegation, Licensee's engagement in day-to-day activities, and statutory compliance. The Action Plan should include 3-month and 6-month benchmarks in order to evaluate whether Licensee's plans are successful within the first few months of implementation.

2) Self-Reports: Licensee must provide two self-reports to the Committee evaluating Licensee's progress regarding the benchmarks identified in his Action Plan and identifying needed improvements and strategies to achieve such improvements. One report shall be due within 3 months of the date of this Stipulation and Consent Order, and a second report shall be due within 6 months of the date of this Stipulation and Consent Order.

3) Independent Consultant: Within 30 days of the date of this Stipulation and Consent Order, Licensee must propose to the Committee the name of an Independent Consultant to provide reports to the Committee that address the effectiveness of Licensee's Action Plan.

4) Independent Consultant Reports: Licensee must ensure that the Committee receive two self-reports from the Independent Consultant, evaluating Licensee's

progress regarding the benchmarks identified in his Action Plan and identifying needed improvements and strategies to achieve such improvements. One report shall be due within 3 months of the date of this Stipulation and Consent Order, and a second report shall be due within 6 months of the date of this Stipulation and Consent Order.

5) Within six months of the date of this Stipulation and Consent Order, Licensee must take 24 credits of continuing education classes covering all of the following topics: executive leadership on systems, root cause analysis processing, critical thinking, and delegation. The continuing education must be in-person and preapproved by the Committee. In order to obtain preapproval, Licensee must submit written documentation, such as measurable learning objectives and qualifications of the instructor. These hours of continuing education may not be applied to the continuing education requirements for license renewal.

9. Upon completing the requirements set forth in paragraph 8, Licensee shall submit a petition to the Committee requesting that the conditions on Licensee's license be administratively lifted. Licensee may be required to meet with the Committee at the time of his petition.

V.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

10. It is Licensee's responsibility to ensure all documents, reports, or other materials required to be filed with the Board pursuant to this Stipulation and Consent Order are timely filed by those making the payment or preparing the report, evaluation, or documentation. Failure to make payments or file reports on or before their due date is a violation of this Stipulation and Consent Order. The information contained in the reports, evaluations, and documentation shall be submitted to the Board by United States Mail, courier, or personal delivery only.

11. If Licensee fails to comply with or violates this Stipulation and Consent 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 shall schedule a hearing before the Board. At least 20 days before the hearing, the Committee shall mail Licensee 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, Licensee shall 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 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 Consent Order. The Committee shall have 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 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 shall 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 this Stipulation and Consent Order is in effect.

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

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Licensee's license pursuant to Minnesota Statutes section 214.077, based on a violation of this Stipulation and Consent Order or based on conduct of Licensee not specifically referred to herein. Similarly, nothing herein shall limit the Committee's or the Board's right to automatically suspend Licensee's license pursuant to Minnesota Statutes section 148.262, subdivision 2.

VI.

ADDITIONAL INFORMATION

12. In the event the Board at 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 by either party to this stipulation, except that Licensee agrees that should the Board reject this stipulation and this case proceeds to hearing, Licensee will assert no claim that the

Board was prejudiced by its review and discussion of this stipulation or of any records relating to this matter.

13. In the event Licensee resides or practices outside the State of Minnesota, Licensee must 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 Licensee's suspended, limited, or conditioned license in Minnesota unless Licensee demonstrates that practice in another state conforms completely with Licensee's Minnesota license to practice as a licensed nursing home administrator.

14. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board.

15. Licensee has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Licensee is represented by Susan M. Voigt, Esq., Voigt Rode, and Boxeth, LLC. The Standards of Practice Committee is represented by Nicholas Lienesch, Assistant Attorney General.

16. Licensee waives all formal hearings on this matter and all other procedures before the Board to which Licensee may be entitled under the 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.

17. Licensee hereby knowingly and voluntarily waives any and all claims against the Board, the Office of the Minnesota Attorney General, the State of Minnesota and their agents, employees, and representatives which may otherwise be available to Licensee under the Americans With Disabilities Act or the Minnesota Human Rights Act relative to the action taken

or authorized against Licensee's license to practice as a licensed nursing home administrator under this stipulation.

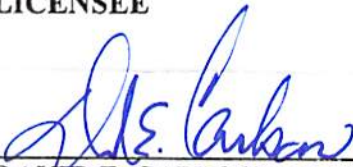
18. Licensee hereby acknowledges that he has read, understands, and agrees to this stipulation and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Licensee acknowledges he is fully aware the stipulation is not binding unless and until it is approved by the Board.

19. This Stipulation and Consent Order constitutes a disciplinary action against Licensee.

20. This Stipulation and Consent Order is a public document and will be sent to all appropriate data banks and entities consistent with Board policy.

21. This Stipulation and Consent Order contains the entire agreement between the parties there being no other agreement of any kind, verbal or otherwise, which varies this stipulation.

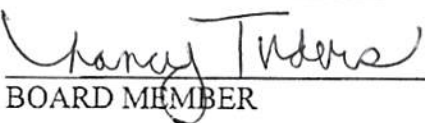
LICENSEE



DAVID E. CARLSON, LNHA

Dated: 6-10-15

**FOR THE STANDARDS OF
PRACTICE COMMITTEE**



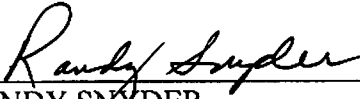
BOARD MEMBER

Dated: 7/22/15

ORDER

Upon consideration of the Stipulation and all the files, records and proceedings herein, the terms of the Stipulation are approved and adopted, and the recommended remedy set forth in the Stipulation is hereby issued as an Order of this Board effective this 22 day of July, 2015.

MINNESOTA BOARD
OF EXAMINERS FOR
NURSING HOME ADMINISTRATORS



RANDY SNYDER
Executive Director