BEFORE THE MINNESOTA
BOARD OF OCCUPATIONAL THERAPY PRACTICE

In the Matter of
Lucinda Mitchell, OT
License No. 103520

STIPULATION AND CONSENT ORDER

STIPULATION

Lucinda Mitchell, OT ("Licensee"), and the Minnesota Board of Occupational Therapy Practice Complaint Resolution Committee ("Committee") agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

1. The Minnesota Board of Occupational Therapy Practice ("Board") is authorized pursuant to Minnesota Statutes sections 148.6401 to 148.6449 to license and regulate the practice of occupational therapy, and to take disciplinary action as appropriate.

2. Licensee holds a license to practice occupational therapy 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.

BACKGROUND

3. Following a thorough review of all available information, the Committee determined the matter could be resolved with a Stipulation and Consent Order.

4. Licensee was advised by the Board's representatives that she may choose to be represented by legal counsel in this matter. Licensee chose to appear *pro se* in this matter. Nicholas Lienesch, Assistant Attorney General, represents the Committee in this matter.

III.

FACTS

5. The parties agree this Stipulation and Consent Order is based upon the following facts:

a. On September 25, 2007, Licensee was licensed as an occupational therapist ("OT") in Minnesota.

Noncompliance with Continuing Education Requirements

b. On or about December 18, 2018, Licensee renewed her OT license by mailing the Board a license renewal application, and emailing the Board documentation of continuing education hours ("CE"). The CE documentation that Licensee submitted did not indicate that she completed any CE credits in the 2016 to 2018 reporting period. The Board sent Licensee a letter advising Licensee that she owed a penalty fee for uncompleted CEs and Licensee did not respond.

Billing Fraud

c. In December 2018, Licensee was working as an OT at a rehabilitation center in Mankato ("Facility") through a placement by a staffing agency. Facility staff learned that Licensee billed for occupational therapy services with patients who she did not in fact see that day. Facility staff reviewed Facility surveillance video, and then questioned Licensee regarding the report. Licensee admitted to billing for occupational therapy services for three patients on December 28, 2018 whom she did not in fact see on that day. Licensee's employment was terminated. Licensee has informed the Committee that her mental health and physical health struggles may have contributed to the above-referenced conduct at the Facility.

IV.

LAWS

6. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 148.6448, subdivision 1(3) (performed services in a manner below the standard of care), 1(12) (unprofessional conduct), and 1(17) (engaged in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws or state medical assistance laws), and Minnesota Statutes section 148.6443 (failed to obtain 24 contact hours of continuing education in a two-year licensing period); and justifies the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

6. Licensee is **REPRIMANDED** for engaging in the conduct and violations described above.

7. Licensee shall pay a **CIVIL PENALTY** of $1,000 for the violations enumerated above. Licensee may pay the $1,000 civil penalty in monthly installments of no less than $100 per month.

8. Licensee's practice as an OT shall be subject to the following **CONDITIONS**:

a. Continuing Education. Within twelve months of the effective date of this Stipulation and Consent Order, Licensee shall successfully complete 24 contact hours of continuing education (CE). Licensee must provide the Board with a copy of the certificates demonstrating successful completion. Such credits shall be in addition to the continuing education requirements of Minnesota Statutes, section 148.6443. The 24 required hours shall include the following, in addition to courses of Licensee's choosing:

i. American Occupational Therapy Association Continuing Education Course. Every Day Ethics: Core Knowledge of OT Practitioners and Educators, 3rd ed. SKU: OL4953 (0.3 AOTA CEU—3 contact hours).

ii. American Occupational Therapy Association Continuing Education Course. Skilled Nursing Facilities 101: Documentation, Reimbursement, and Ethics in Practice, 2nd Edition SKU: OL5143 (0.3 AOTA CEU—3 contact hours).

iii. Summit Professional Education Course. Current Ethical Trends in Occupational Therapy (2 contact hours) (summit-education.com).

b. Health Professionals Services Program. Licensee shall contact the Health Professionals Services Program ("HPSP") at 651-642-0487, within 14 days from the date of this Stipulation and Consent Order. Licensee shall submit to an intake interview and evaluation, to determine if Licensee's mental and physical health conditions constitute an illness warranting monitoring by HPSP. If HPSP determines that Licensee's mental and physical health conditions are suitable for monitoring by HPSP, Licensee shall participate in HPSP monitoring for a term to be determined by HPSP, including signing and returning all documents required for HPSP enrollment, including a Participation Agreement, and shall comply with all terms of her Participation Agreement, until the end of her HPSP agreed-upon monitoring term.

9. The conditions upon Licensee's license will be administratively removed upon Licensee's satisfaction of the requirements of paragraphs 7 and 8, above. The removal is effective upon written notification to Licensee by the Board of reinstatement of unconditional license.

10. While this Stipulation and Consent Order is in effect, Licensee shall notify each present occupational therapy supervisor of this Stipulation and Consent Order within ten days of

the date of the order, and shall also notify each future occupational therapy supervisor of this Stipulation and Consent Order within ten days of commencing employment.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

11. It is Licensee's responsibility to ensure all payments, reports, evaluations, and documentation 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 is confidential and shall be submitted to the Board by United States Mail, courier, or personal delivery only. Licensee is responsible for all costs incurred in compliance with this Stipulation and Consent Order.

12. 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 Licensee's license is in a conditional status.

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.

VII.

ADDITIONAL REQUIREMENTS

13. In the event Licensee should leave Minnesota to reside or to practice outside of the state, Licensee shall give the Board written notification of the new location, as well as dates of departure and return. Periods of residency and practice outside of Minnesota will not apply to the reduction of any period of Licensee's conditional license in Minnesota unless Licensee demonstrates that the practice in another state conforms completely with this Stipulation and Consent Order. If Licensee leaves the state, the terms of this Order continue to apply unless waived in writing.

14. Within ten days of execution of this Stipulation and Consent Order, Licensee shall provide the Board with the addresses and telephone numbers of Licensee's residence and all agencies or facilities and locations at which Licensee has become employed or performs volunteer occupational therapy. Licensee shall inform the Board within ten days if she becomes employed at any additional agencies or facilities or moves and shall provide the new or additional address and telephone number.

15. Within ten days of execution of this Stipulation and Consent Order, Licensee shall provide the Board with the names of all states in which Licensee is licensed to practice occupational therapy or has applied for licensure as an occupational therapist.

OTHER INFORMATION

16. 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.

17. Licensee waives any claims against the Board, the Minnesota Attorney General's Office, 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 Consent Order, which may otherwise be available to Licensee.

18. This Stipulation and Consent 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.

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

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

21. Licensee agrees that if the Board rejects this Stipulation and Consent 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 Consent Order or of any records relating to it.

22. This Stipulation and Consent Order shall not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate action 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.

VIII.

DATA PRACTICES NOTICES

23. This Stipulation and Consent Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Therefore, employers and other individuals will be able to see this entire Stipulation and Consent

Order by searching Licensee's name on the Board's website, or by requesting a copy of this Stipulation and Consent Order from the Board. Data regarding this action will be provided to data banks as required by Federal law and consistent with Board policy. While this Stipulation and Consent Order is in effect, information obtained by the Board pursuant to this Stipulation and Consent 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.

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

LICENSEE:

Lucinda Mitchell

LUCINDA MITCHELL, OT
Licensee

Dated: 6/5, 2019

BOARD OF OCCUPATIONAL THERAPY PRACTICE COMPLAINT RESOLUTION COMMITTEE

Samantha Olsen

Committee Member Signature

Samantha Olsen

Printed Name

Dated: 8/8, 2019

ORDER

Upon consideration of the Stipulation, the Board adopts all of the terms described above on this 8 day of August, 2019.

MINNESOTA BOARD OF
OCCUPATIONAL THERAPY PRACTICE

CHRISTINA BOURLAND, OTR/L
Executive Director