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February 11, 2022

Robert Porter, O.T.A.
[redacted]

Nicholas Lienesch
Assistant Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
nicholas.lienesch@ag.state.mn.us

The Honorable Barbara Case
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: In the Matter of Robert Porter, O.T.A.
License No. 201995
OAH Docket No. 82-0917-37673

Dear Mr. Porter, Judge Case, and Mr. Lienesch:

On behalf of the Minnesota Board of Occupational Therapy Practice, enclosed and served upon you is the fully executed Findings of Fact, Conclusions, and Final Order (with Exhibit A attached) in the above matter.

Sincerely,

/s/ **Hans A. Anderson**

HANS A. ANDERSON
Assistant Attorney General

(651) 757-1278 (Voice)
(651) 297-2576 (Fax)
hans.anderson@ag.state.mn.us

Advising Attorney for the Minnesota Board of Occupational Therapy Practice

Enclosure
cc: Molly Cox, Board Neutral, Minnesota Board of Occupational Therapy Practice

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BEFORE THE MINNESOTA

BOARD OF OCCUPATIONAL THERAPY PRACTICE

In the Matter of
Robert Porter, O.T.A.
License No. 201995

FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The above-entitled matter came before Administrative Law Judge ("ALJ") Barbara J. Case at the request of the Minnesota Board of Occupational Therapy Practice ("Board") Complaint Resolution Committee ("Committee"). The matter was initiated pursuant to a Notice and Order for Prehearing Conference and Hearing ("Notice of Hearing") which was served upon Licensee on July 15, 2021. The Committee filed a Notice of Motion and Motion for Summary Disposition on October 12, 2021, and on December 6, 2021, the ALJ issued a Recommendation on Committee's Motion for Summary Disposition ("ALJ's Report"), recommending the Board take disciplinary action against Licensee's license to practice as an Occupational Therapy Assistant in the State of Minnesota. Incorporated herein and attached hereto as Exhibit A is a copy of the ALJ's Report.

The Board convened to consider this matter on February 9, 2022, via WebEx videoconference. Nicholas Lienesch, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Licensee did not appear. Board members Lynette Buckley, OTA/L; Stephen Jobe, Public Member; and Samantha Jo Olsen, OTD, OTR/L, did not participate in deliberations and did not vote in the matter. Board staff that assisted the Committee did not participate in the deliberations. Hans Anderson, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the Findings of Fact set forth in the ALJ's Report, as restated below. Accordingly, based upon its review of the evidence in the hearing record and after careful and thorough deliberation, the Board makes the following Findings of Fact:

1. On August 21, 2014, in Butte County, California, Licensee was charged with six criminal offenses, including two drug-related felonies and several charges related to illegal hunting practices. Subsequently, on approximately October 13, 2014, Licensee applied to practice as an Occupational Therapy Assistant (O.T.A.) in Minnesota. Licensee's application did not include information regarding his pending criminal charges. The Minnesota Department of Health[1] licensed Licensee as an OTA on November 10, 2014.

2. On November 20, 2014, Licensee pleaded no contest to four of the six crimes with which he was charged. Licensee's convictions included illegally cultivating marijuana, and three misdemeanor counts related to illegal hunting. On September 16, 2015, the California Board of Occupational Therapy (California Board) commenced disciplinary proceedings against Licensee, alleging that his criminal conduct also violated California law regulating the practice of occupational therapy (OT). On December 4, 2015, the California Board revoked Licensee's license to practice as an OTA in California.

3. On November 29, 2016, Licensee submitted a renewal application to the Board and responded in the negative to a question about whether, since his last Minnesota application, he had been disciplined by another state licensing authority. On Licensee's February 19, 2019, application for renewal of his Minnesota license, he stated that he did not hold and had never held a credential to practice OT in any other state or jurisdiction. On March 30, 2021, the Board requested an explanation from Licensee regarding information he had failed to report to the Board such as his having been licensed in California, his California license revocation, and his felony and misdemeanor convictions. Licensee, claiming identity theft, denied having a felony conviction and refused to provide further information to the Board.

CONCLUSIONS

The Board accepts the December 6, 2021 ALJ's report, and makes the following conclusions of law:

[1] Before 2018, the Minnesota Department of Health licensed occupational therapists and occupational therapy assistants. On January 1, 2018, the Board took over such duties and assumed jurisdiction over OTA licensees in Minnesota. The provisions of Minnesota Statues section 148.6448 that are relevant to this case did not change between 2014 and today.

1. The Board and the Administrative Law Judge have jurisdiction to consider this matter under Minn. Stat. §§ 14.50, .52, .57, 214.103 (2020).

2. The Committee has complied with all relevant procedural requirements of law or rule.

3. Minn. Stat. § 148.6448 (2020) vests the Board with authority to impose discipline, including revocation, suspension, and civil penalties, when it finds that an individual subject to its jurisdiction has violated the Occupational Therapy Practice Act (Minn. Stat. §§ 148.6401 to 148.6450).

4. The Committee bears the burden of proving violations of the Act and related rules by a preponderance of the evidence. A "preponderance of the evidence" means that the ultimate facts must be established by a greater weight of the evidence. "It must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true."

5. The Committee proved by a preponderance of the evidence, based upon the undisputed materials facts of the case, that Licensee violated the following provisions of the Occupational Therapy Act:

a. Intentionally submitted false or misleading information to the board, in violation of Minnesota Statutes section 148.6448, subdivision 1(1).

b. Disciplined by another jurisdiction for conduct in the practice of an occupation, in violation of Minnesota Statutes section 148.6448, subdivision 1(9).

c. Failed to cooperate with a board investigation, in violation of Minnesota Statutes section 148.6448, subdivision 1(10).

d. Engaged in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public, in violation of Minnesota Statutes section 148.6448, subdivision 1(12).

ORDER

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the Committee's motion for summary disposition is **GRANTED**.

2. NOW, THEREFORE, IT IS HEREBY ORDERED that Licensee's license to practice as an occupational therapy assistant in the State of Minnesota is **REVOKED**. Licensee

shall not engage in the practice of occupational therapy in Minnesota. Licensee shall immediately cease to advertise or otherwise represent himself in any manner to be a licensee in this State.

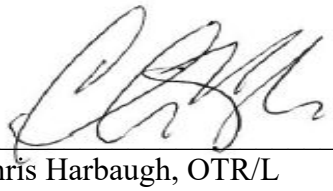
3. Licensee shall not practice, attempt to practice, offer to practice, or advertise or hold himself out as authorized to practice occupational therapy in Minnesota and shall not use the title "occupational therapy assistant" or any other designation which indicates licensure in or authorization to practice occupational therapy.

4. Licensee shall not reapply for licensure as an occupational therapy assistant in Minnesota for a period of ten (10) years following the date of this order. Should licensee reapply for licensure, Licensee may be required to appear before a Board Complaint Resolution Committee to discuss the issues raised by the complaint giving rise to this Order, as well as any information received subsequent to this Order. Licensee must also meet the requirements for licensure in effect at the time of that application.

5. At the time of any such reapplication, Licensee must demonstrate that he is capable of practicing as an occupational therapy assistant in a fit, competent, and ethical manner and with reasonable skill and safety to patients. Licensee shall not be relicensed in Minnesota until further order of the Board, which may include conditions and/or restrictions on Licensee's license.

Dated: 2/10/2022

STATE OF MINNESOTA BOARD OF OCCUPATIONAL THERAPY PRACTICE



Chris Harbaugh, OTR/L
Presiding Board Member

OAH 82-0917-37673

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF OCCUPATIONAL THERAPY PRACTICE

In the Matter of Robert Porter, O.T.A. License No. 201995

RECOMMENDATION ON COMMITTEE'S MOTION FOR SUMMARY DISPOSITION

This matter is currently pending before Administrative Law Judge Barbara J. Case.

Nicholas Lienesch, Assistant Attorney General, appeared on behalf of the Minnesota Board of Occupational Therapy Practice (Board) Complaint Resolution Committee. Robert Porter (Licensee) appears on his own behalf without legal counsel.

On October 12, 2021, the Committee filed a Motion for Partial Summary Disposition (Motion) in this matter. The record closed on October 26, 2021, the deadline for Licensee's response to the Committee's Motion. Licensee failed to file a response by that date or subsequently.

Based on the submissions of the parties, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

1. The Committee's Motion for Summary Disposition should be **GRANTED**.

2. The Board should take appropriate disciplinary action against Licensee's license.

3. The hearing scheduled for March 24, 2022, is **CANCELED.**

Dated: December 6, 2021

BARBARA CASE
Administrative Law Judge

Exhibit A-1

NOTICE

This Report is a recommendation, not a final decision. The Board of Occupational Therapy Practice (Board) will make the final decision after a review of the record. The Board may adopt, reject or modify these Findings of Fact, Conclusions of Law, and Recommendations. Under Minn. Stat. § 14.61 (2020), the Board shall not make a final decision until this Report has been made available to the parties to the proceeding for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact the Executive Director of the Minnesota Board of Occupational Therapy Practice, Suite 240, 335 Randolph Avenue, St. Paul, MN 55102, telephone (612) 548-2179, to ascertain the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2020). In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2020), the Board is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

MEMORANDUM

I. Procedural and Factual Background

This case arises out of a Notice and Order for Prehearing Conference and Hearing (Order for Hearing or NOH) filed on July 16, 2021. The NOH specifically alleges that Licensee:

1. Intentionally submitted false or misleading information to the Board, in violation of Minn. Stat. § 148.6448, subd. 1(1) (2020).

2. Disciplined by another jurisdiction for conduct in the practice of an occupation, in violation of Minn. Stat. § 148.6448, subd. 1(9).

3. Failed to cooperate with a Board investigation, in violation of Minn. Stat. § 148.6448, subd. 1(10).

4. Engaged in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to

deceive, defraud, or harm the public, in violation of Minn. Stat. § 148.6448, subd. 1(12).

The Committee argues that there are no genuine issues of material fact regarding Licensee's criminal history, license discipline, false statements to the Board, and failure to cooperate with the Board.[1] The Committee therefore requests that the Administrative Law Judge grant its motion for summary disposition and recommend that disciplinary action be taken against Licensee's license.[2]

The Committee bases its argument on undisputed facts. On August 21, 2014, in Butte County, California, Licensee was charged with six criminal offenses, including two drug-related felonies and several charges related to illegal hunting practices.[3] Subsequently, on approximately October 13, 2014, Licensee applied to practice as an Occupational Therapy Assistant (O.T.A.) in Minnesota. Licensee's application did not include information regarding his pending criminal charges.[4] The Board licensed Licensee as an OTA on November 10, 2014.[5]

On November 20, 2014, Licensee pleaded no contest to four of the six crimes with which he was charged. Licensee's convictions included illegally cultivating marijuana, and three misdemeanor counts related to illegal hunting.[6] On September 16, 2015, the California Board of Occupational Therapy (California Board) commenced disciplinary proceedings against Licensee, alleging that his criminal conduct also violated California law regulating the practice of occupational therapy (OT).[7] On December 4, 2015, the California Board revoked Licensee's license to practice as an OTA in California.[8]

On November 29, 2016, Licensee submitted a renewal application to the Board and responded in the negative to a question about whether, since his last Minnesota application, he had been disciplined by another state licensing authority.[9] On Licensee's February 19, 2019, application for renewal of his Minnesota license, he stated that he did not hold and had never held a credential to practice OT in any other state or jurisdiction.[10] On March 30, 2021, the Board requested an explanation from Licensee regarding information he had failed to report to the Board such as his having been licensed in California, his California license revocation, and his felony and misdemeanor

[1] Mem. of Law in Support of Complaint Resolution Committee's Motion for Summary Disposition (Mem. in Support) at 6 (Oct. 12, 2021).
[2] *Id*. at 2.
[3] Declaration of Christian Bourland (Bourland Decl.) at Ex. B (Criminal Complaint).
[4] *Id.* at Ex. C (Application).
[5] *See id.* at Ex. A (Board License verification).
[6] *Id.* at Ex. D. (Plea of No Contest form), Ex. E. (Probation form).
[7] *Id.* at Ex. F (Accusation).
[8] *Id.* at Ex. G (Default Decision and Order).
[9] *Id.* at Ex. H. (Licensee's Renewal Application).
[10] *Id.* at Ex. I. (Licensee's Renewal Application).

convictions.[11] Licensee, claiming identity theft, denied having a felony conviction and refused to provide further information to the Board.[12]

II. Legal Standard

Summary disposition is the administrative equivalent of summary judgment and the same legal standards apply.[13] Summary disposition is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.[14] A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.[15] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition in contested case matters.[16]

The moving party must demonstrate that no genuine issues of material fact exist and that it is entitled to summary disposition as a matter of law.[17] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.[18] It is not sufficient for the nonmoving party to rest on mere averments or denials; presentation of specific facts demonstrating a genuine issue for hearing is required.[19] When considering a motion for summary disposition, the Administrative Law Judge must view the facts in the light most favorable to the nonmoving party.[20] All doubts and factual inferences must be resolved against the moving party.[21] If reasonable minds could differ as to the import of the evidence, disposition as a matter of law should not be granted.[22]

III. Analysis

The Board has the responsibility to oversee the licensing of occupational therapists and OTAs. OTAs are required to comply with the licensing requirements set forth in statute and overseen by the Board, including providing information as requested by the Board.[23] The Board has the authority to take disciplinary action against OTAs when they fail to meet the statutory standards.[24] Prohibited conduct under the statute includes intentionally submitting false or misleading information to the Board, not cooperating with a Board investigation, and engaging in dishonest, unethical, or

[11] *Id.* at Ex. J-2 (Letter).
[12] *Id.* at Ex. K-1 (E-mail to Board).
[13] Minn. R. 1400.5500 K (2021).
[14] Minn. R. Civ. P. 56.03; Minn. R. 1400.5500 K.
[15] *Highland Chateau v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *review denied* (Minn. Feb. 6, 1985).
[16] Minn. R. 1400.6600 (2021).
[17] *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).
[18] *Highland Chateau*, 356 N.W.2d at 808.
[19] Minn. R. Civ. P. 56.05.
[20] *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[21] *Thiele*, 425 N.W.2d at 583.
[22] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).
[23] Minn. Stat. § 148.6420 (2020).
[24] Minn. Stat. § 148.6448 (2020).

unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public.[25] The statute also grants the Board authority to discipline a licensee who has been disciplined for conduct in the practice of an occupation in another jurisdiction if any of the grounds are the same or substantially equivalent to those in the Minnesota Statutes pertaining to OTs and OTAs.[26]

There is no dispute that the state of California revoked Licensee's license to practice in California. Licensee's claim of identity theft is unsupported and therefore is a bare allegation that fails to give rise to a question of a material fact in this matter. In contrast to Licensee's unsupported claim, the Committee has demonstrated that Licensee violated Minn. Stat. § 148.6448, subds. 1(1), (9) and (10), because his license was revoked in California, he did not disclose his California criminal convictions and license revocation, and he did not cooperate with the Board's investigation. In addition, Licensee's deceitful and uncooperative behavior supports a finding of a violation Minn. Stat. § 148.6448, subd. 1(12).

Conclusion

Licensee failed to raise a disputed material fact that would require an evidentiary hearing. The Committee is entitled to judgment as a matter of law on all four of the statutory violations alleged in the Order for Hearing. The Board has grounds for, and should take, disciplinary action against Licensee's license based on his violations of Minn. Stat. § 148.6448.

B. J. C.

[25] *Id.*, subd. 1(1), (10), (12).
[26] *Id.*, subd. 1(9).

CERTIFICATE OF SERVICE

Re: In the Matter of Robert Porter, O.T.A.
License No. 201995
OAH Docket No. 82-0917-37673

SANDRA D. HOWARD verifies by oath or affirmation that on February 11, 2022, at the City of St. Paul, County of Ramsey, and State of Minnesota, (s)he served the attached fully executed FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER (WITH EXHIBIT A ATTACHED) by transmitting via electronic mail, and/or depositing a true and correct copy thereof in the United States mail at said city and state, properly enveloped, with first-class postage prepaid, and addressed to the following named individual(s) or entities at the addresses indicated below:

(VIA U.S. MAIL)
Robert Porter, O.T.A.
[redacted]

(VIA U.S. MAIL)
The Honorable Barbara Case
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

(*VIA EMAIL*)
Nicholas Lienesch
Assistant Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
nicholas.lienesch@ag.state.mn.us

/s/ Sandra D. Howard
SANDRA D. HOWARD