

BEFORE THE MINNESOTA  
BOARD OF EXECUTIVES FOR LONG-TERM SERVICES AND SUPPORTS

In the Matter of  
James B. Birchem, LNHA, LALD  
NHA License No. 2000  
ALD License No. 1352

**STIPULATION AND  
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by James B. Birchem, LNHA, LALD (“Licensee”), and the Minnesota Board of Executives for Long-Term Services and Supports Standards of Practice Committee (“Committee”) as follows:

**I.**

**JURISDICTION**

1. The Minnesota Board of Executives for Long-Term Services and Supports (“Board”) is authorized pursuant to Minnesota Statutes chapter 144A to license and regulate nursing home administrators and assisted living directors and to take disciplinary action as appropriate.

2. Licensee holds a license from the Board to practice as a licensed nursing home administrator and licensed assisted living director 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. Licensee is unrepresented in this matter. The Committee is represented by Alex Mountain, Assistant Attorney General.

### **III.**

#### **FACTS**

For the purpose of this Stipulation and Consent Order only, the Board finds the following:

1. On September 15, 1983, the Board granted Licensee a Nursing Home Administrator (“NHA”) license.
2. On June 2, 2021, the Board granted Licensee an Assisted Living Director (“ALD”) license.
3. On January 30, 2019, the Board issued a Stipulation and Consent Order (“2019 Order”) reprimanding and conditioning Licensee’s Nursing Home Administrator license. The 2019 Order was based on a history of repeated violations at an assisted living facility owned by Licensee from 2015 until its closure in 2017.
4. From April 29, 2023 until March 31, 2024, Licensee was listed as the Administrator of Record for Havenwood Care Center (HFID #: 00017) (“facility”), located in Bemidji.
5. On September 23, 2023, the facility failed to provide adequate supervision when staff did not appropriately respond to a sounding exit door alarm for a resident (“Resident 1”) identified at risk for elopement. Resident 1 exited the building and was outside the facility without staff knowledge. This resulted in an immediate jeopardy (“IJ”) for Resident #1. The IJ was removed on September 28, 2023, and the deficient practice was corrected prior to the start of the survey and was therefore issued as past-noncompliance.
6. On November 16, 2023, the facility failed to administer three consecutive doses of a high-risk medication to prevent or reduce the risk of seizures resulting in repetitive seizures and hospitalization for a resident (“Resident 2”). The facility failed to implement a plan to secure the medication at the facility or develop alternative interventions via provider notification. On

December 1, 2023, the administrator in training, licensed social worker, and corporate nurse were notified of the IJ. On December 4, 2023, the IJ was removed, but noncompliance remained at the lower scope and severity level D, with no actual harm with potential for more than minimal harm that was not immediate jeopardy.

#### IV.

#### REGULATIONS

4. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minnesota Rules 6400.6900, subpart 1.E. (statute or rule enforced by the Board), subpart 1.I. (unprofessional conduct) and Minnesota Rules 6400.7095, subpart 1.E. (statute or rule enforced by the Board), subpart 1.I. (unprofessional conduct), and justifies the disciplinary action described in section V. below.

#### V.

#### DISCIPLINARY ACTION

5. Upon this Stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Licensee consents that until further order of the Board, the Board may make and enter an order as follows:

##### A. Conditions

6. The Board **CONDITIONS** Licensee's licenses to practice as a nursing home administrator and assisted living director in the State of Minnesota as follows:

a. ***Independent Consultant.*** Within 15 days of assuming a position as Administrator of Record or Director of Record, Licensee must propose to the Committee the name of an Independent Consultant to provide reports to the Committee as described below. The Committee reserves the right to reject the consultant proposed by Licensee. If the Committee

rejects the consultant proposed by Licensee, the Committee may require that Licensee submit additional names, or the Committee may provide Licensee with the name of a consultant.

b. ***Independent Consultant Sessions.*** Licensee shall meet with the Independent Consultant for no less than two hours per month for four months after assuming a position as Administrator of Record or Director of Record. Consulting sessions must include discussion of the following issues regarding Licensee's practice:

- Professionalism;
- Quality Assurance Process Improvement ("QAPI") processes for auditing and monitoring of all departments;
- Leadership;
- Administrator of Record or Director of Record roles and responsibilities;
- Compliance with all applicable regulations; and
- Any other topic deemed relevant by the Independent Consultant.

c. ***Independent Consultant Reports.*** Licensee must ensure that the Committee receives at least two reports from the Independent Consultant regarding the following areas: professionalism, leadership, role and responsibilities of the Administrator of Record or Director of Record, and compliance with all applicable regulations. The first report must be provided within 30 days of the Committee's approval of the Independent Consultant, as described in paragraph 6.a. above. A subsequent report shall be submitted no later than 30 days after the final consultation session. Each report shall provide and/or address:

- 1) In the first report, evidence Licensee's Independent Consultant has received and reviewed a copy of this Stipulation and Consent Order;
- 2) Dates on which consulting sessions took place with Licensee;
- 3) A statement of issues discussed in consulting sessions; and
- 4) The Independent Consultant's opinion regarding any deficiencies with Licensee's practice concerning the areas identified for discussion in consulting sessions.

## B. Limitations

7. ***No Mentorship.*** While this Order is in effect, Licensee may not serve in any mentorship role.

## C. Removal of Conditions and Limitations

8. Following twenty-four (24) months from the date that this Stipulation and Consent Order is adopted and upon completing the requirements set forth in paragraphs 6-7, the conditions and limitations upon Licensee's licenses will be administratively removed. The removal is effective upon written notification to Licensee by the Board of the removal of the conditions and limitations.

## VI.

### CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

9. 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 preparing the report, evaluation, or documentation. Failure to 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, electronic mail addressed to the Executive Director, or personal delivery only. The Board's mailing address is 335 Randolph Avenue, Suite 210-B, St. Paul, Minnesota 55102.

10. 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 licenses.

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Licensee's licenses pursuant to Minnesota Statutes section 214.077 or 214.104, based on a violation of this Stipulation and Consent Order or based on conduct of Licensee not specifically referred to herein.

## **VII.**

### **ADDITIONAL INFORMATION**

11. Licensee is responsible for all costs incurred as a result of compliance with this Stipulation and Consent Order.

12. 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 an assisted living director and nursing home administrator.

13. 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 Licensee agrees that should

the Board reject this Stipulation, and if 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 hereto.

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

15. 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.

16. 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 relative to the action taken or authorized against Licensee's licenses under this stipulation.

17. 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.

18. 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.



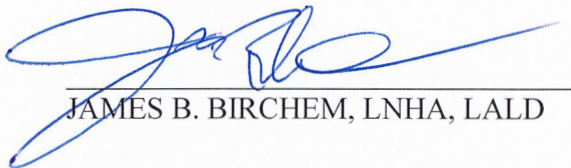
**VIII.**

**DATA PRACTICES NOTICES**

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

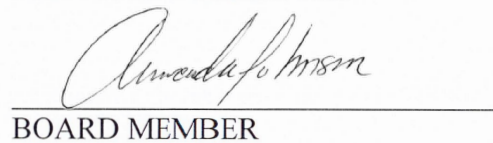
**CONSENT:**

LICENSEE

  
JAMES B. BIRCHEM, LNHA, LALD

Dated: 23 Sep 24

FOR THE STANDARDS OF  
PRACTICE COMMITTEE

  
BOARD MEMBER

Dated: 9/25/2024

**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 23 day of October, 2024.

MINNESOTA BOARD  
OF EXECUTIVES FOR LONG-TERM  
SERVICES AND SUPPORTS

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STEPHEN JOBE  
Executive Director