

**BEFORE THE MINNESOTA
BOARD OF PHYSICAL THERAPY**

In the Matter of the
Physical Therapy License
of Kathy E. Smith
Date of Birth: 4/23/1949
License Number: 1131

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Kathy E. Smith ("Respondent") and the Complaint Review Committee ("Committee") of the Minnesota Board of Physical Therapy ("Board") as follows:

1. During all times herein, Respondent 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.
2. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Although aware of her right to representation by counsel, Respondent has knowingly and expressly waived that right. The Committee was represented by Nathan W. Hart, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, telephone (651) 296-7575.

FACTS

3. For the purpose of this stipulation, the Board may consider the following facts as true:
 - a. Respondent was licensed to practice physical therapy in Minnesota on May 12, 1973.

b. In April 2005, the Board received a report that Respondent received several written warnings from her employer about incomplete documentation and missing files. Respondent had removed approximately 300 patient charts from the facility, covering over a five-year period, in an effort to complete her charting.

c. Respondent indicated she was suffering from depression, and that was the cause of her incomplete charting. The Committee referred her to the Health Professionals Services Program ("HPSP"), and on December 27, 2005, Respondent signed a Participation Agreement.

d. On December 27, 2006, Respondent was discharged from HPSP after successful completion of the program.

e. On October 27, 2008, Respondent received a written reprimand from her employer for breaking company policy relating to the expected code of conduct as a physical therapist. Specifically, the reprimand references her failure to comply with Medicare documentation rules relating to plans of care, incomplete documentation, and improper handling of medical records. Respondent was given an additional number of weeks to complete her charting and was transferred to another facility.

f. On August 25, 2009, Respondent was terminated from her position. The cited reason was failure to remain up to date with paperwork, regardless of any efforts to help her complete the needed documentation. She continued to work until October 15, 2009, to complete her paperwork.

STATUTES

4. The Committee views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 148.75(a)(1) (violated a statute or rule that the Board is

authorized to enforce) and (6) (engaged in unprofessional conduct) (2008). Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action under these statutes.

REMEDY

5. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order **CONDITIONING** and **RESTRICTING** Respondent's license to practice physical therapy in the State of Minnesota as follows:

a. Respondent shall only practice in a group setting, approved in advance by the Complaint Review Committee. The group practice setting must employ at least one other physical therapist at the same location.

b. Respondent shall obtain a mentor/work quality assessor, approved in advance by the Complaint Review Committee. The mentor/work quality assessor shall meet weekly with Respondent to review her documentation. The mentor/work quality assessor shall provide written reports to the Board every month for the first six months. Thereafter, the mentor/work quality assessor shall provide written reports to the Board on a quarterly basis.

c. Respondent shall submit to and cooperate with quarterly reviews performed by the Problem Identification/Peer Review Committee of the Minnesota Chapter of the American Physical Therapy Associations ("MNAPTA"). Reviews shall include chart audits. Respondent shall be responsible for ensuring the Board receives quarterly reports from MNAPTA regarding the findings of each review performed.

d. Respondent shall successfully complete an MN APTA documentation course. Successful completion shall be determined by the Committee.

6. Respondent is responsible for all costs incurred as a result of compliance with this Stipulation and Order.

7. This Stipulation and Order shall remain in effect for a minimum of two years. At the end of this period, Respondent may petition for reinstatement of an unconditional license. Upon hearing the petition, the Board may continue, modify, or remove the conditions set out herein.

8. Within ten days of the date of this Order, Respondent shall provide the Board with a list of all hospitals, clinics, and skilled nursing facilities at which Respondent currently has privileges, a list of all states in which Respondent is licensed or has applied for licensure, and the addresses and telephone numbers of Respondent's residences and all work sites. Within seven days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Stephanie Lunning, Minnesota Board of Physical Therapy, University Park Plaza, 2829 University Avenue S.E., Suite 420, Minneapolis, Minnesota 55414-3664.

9. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of her residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice physical therapy.

10. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the Committee shall schedule a hearing before the Board. The Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Respondent shall submit a response to the allegations at least three days prior to the hearing. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice, or suspension or revocation of Respondent's license.

11. 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 Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto.

12. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by 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.

13. Respondent hereby acknowledges that she has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: 15-04-2011

Dated: 5/19/2011

SIGNATURE ON FILE

KATHY E. SMITH
Respondent

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 19th day of May, 2011.

MINNESOTA BOARD OF
PHYSICAL THERAPY

SIGNATURE ON FILE

STEPHANIE LUNNING
Executive Director

AG: #2797482-v1