BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

In the Matter of
Mark Ziebarth, M.S., L.P.
License No. LP2295

STIPULATION AND CONSENT ORDER

Mark Ziebarth, M.S., L.P. ("Licensee") and the Minnesota Board of Psychology ("Board") 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 Board is authorized pursuant to Minnesota Statutes sections 148.88 to 148.98 to license and regulate the practice of psychology and to take disciplinary action when appropriate.

2. During all times herein, Licensee has been and now is subject to the jurisdiction of the Board from which he holds a license to practice psychology.

II.

FACTS

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

a. On February 2, 2017, the Minnesota Board of Nursing issued a stipulation and consent order related to Licensee's practice of nursing. (See Exhibit A attached). The stipulation and consent order was based on Licensee's conduct while Licensee worked at a clinic in Maple Grove, Minnesota ("Clinic"). Such conduct included the following:

1) Prescribing controlled substances to patients who had been weaned off controlled substances;

2) Prescribing controlled substances to patients with a history of chemical dependency;

3) Failing to properly document in patient records, including regarding patient assessments and diagnoses;

4) Failing to check the Minnesota Prescription Monitoring Program records for patients before prescribing controlled substances;

5) Failing to monitor patients' use of controlled substances;

6) Other issues with prescribing narcotics, including prescribing medications outside scope of practice, prescribing too high of dosages, prescribing improper combinations of medications, making clerical mistakes resulting in improper dosages, discontinuing mediation without tapering, and prescribing refills and additional dosages with unsafe frequency; and

7) Violating accepted practice standards regarding patient privacy and boundaries.

b. Licensee denied any physical, cognitive, or mental health issues that could have been impacting his nursing practice or judgment. Licensee disclosed mental health diagnoses that are stable and managed.

c. Licensee's employment at the Clinic was terminated for conduct that included his prescribing practices, documentation, and patient boundary issues, disregard of clinic policies, and misrepresentation on Licensee's credentialing paperwork presented upon Licensee's hire.

d. Following Licensee's termination, the Clinic conducted a chart audit of Licensee's charts. The Clinic found 262 patients with prescription dosages and combinations inconsistent with community standards and clinic policy and procedure. In addition, 96 patients were at the maximum dosage guidelines.

III.

LAWS

4. The Board views Licensee's practices as described in paragraph 3 to be in violation of statutes and rules enforced by the Board. Licensee agrees that the conduct cited above constitutes a violation of Minn. Stat. § 148.941, subd. 2(a)(6) (has had a license disciplined in any jurisdiction) and Minn. Stat. § 148.941, subd. 2(a)(3) and Minn. R. 7200.5700 (engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice, without actual injury having to be established).

V.

DISCIPLINARY ACTION

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

1. The Board places the following **CONDITIONS** on Licensee's license to practice psychology:

a. Participation in HPSP. Licensee must contact the Health Professionals Services Program ("HPSP") at (651) 642-0487 to initiate enrollment in the HPSP within 14 days of the date of this Order. Licensee is then required to sign a minimum 24-month Participation

Agreement with the HPSP no later than 60 days following the date of this Order. Licensee must comply with and successfully complete all terms of his HPSP Participation Agreement.

b. Mental Health Evaluation. Within 60 days of the date of this Order, Licensee must undergo a mental health evaluation performed by a mental health professional as defined in Minnesota Statutes sections 245.462, subdivision 18. Licensee must submit, or cause to be submitted, the credentials of the evaluator for review and pre-approval by Board staff for purposes of this evaluation. Licensee is responsible for the cost of the evaluation. If Licensee has previously submitted to such an evaluation pursuant to the attached disciplinary action by the Minnesota Board of Nursing, Licensee may submit such evaluation for consideration by the Committee. The Committee has discretion to evaluate and accept, deny or request more information regarding that evaluation. Evaluation results must be sent directly to the Board and must provide and address:

1) Verification the evaluator has reviewed a copy of this Order, and any evaluation or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation;

2) Diagnosis and any recommended treatment plan;

3) Licensee's ability to handle stress;

4) Recommendations for additional evaluation or treatment;

5) Whether the evaluator believes Licensee requires a neuropsychological evaluation to more fully assess his ability to practice psychology with reasonable skill and safety; and

6) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

c. Neuropsychological Evaluation. If the mental health evaluator determines Licensee requires a neuropsychological evaluation to more fully assess his ability to practice psychology with reasonable skill and safety, Licensee must undergo a neuropsychological evaluation performed by a psychiatrist or a licensed psychologist specializing in administration and interpretation of neuropsychological testing and evaluation, within 60 days of the mental health evaluator's determination. Licensee must submit, or cause to be submitted, the credentials of the evaluator for review and preapproval by Board staff for purposes of this evaluation. Licensee is responsible for the cost of the evaluation. The results must be sent directly to the Board and HPSP and must provide and address:

1) Verification the evaluator has reviewed a copy of this Order and any evaluation or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation;

2) Verification the evaluator has reviewed the results of Licensee's previous neuropsychological testing and psychiatric records;

3) The testing results including test scores for each psychometric test employed during the evaluation;

4) The evaluator's findings regarding, at a minimum, Licensee's level of cognitive and memory functioning and his ability to learn new information and a comparison of current and previous testing results;

5) Diagnosis, prognosis and any recommended treatment plan;

6) Licensee's ability to manage his mental illness symptoms and handle stress;

7) Recommendations for additional evaluation or treatment;

8) Recommendations for limitations or conditions regarding Licensee's nursing practice; and

9) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

c. Compliance With Evaluator's Recommendations. Licensee must comply promptly with recommendations for additional evaluation and treatment made by the evaluator.

d. Waivers. If requested by the Board at any time while this Order is in effect, Licensee must complete and sign health records waivers supplied by the Board to allow representatives of the Board to discuss Licensee's case with and to obtain written evaluations and reports and copies of all of Licensee's health, mental health, or chemical use records from his physician, mental health professional, or others from whom Licensee has sought or obtained treatment, support, or assistance.

5. While this Order is in effect, Licensee must notify each present and future psychology supervisor of this Order within ten days of the date of the order or commencing employment. Licensee must provide the supervisor with a copy of the entire signed Order.

6. The conditions upon Licensee's license will be administratively removed after at least 24 months from the date of this Order, upon the HPSP's written notification to the Board of Licensee's successful completion of the terms of the Participation Agreement, and upon satisfactory completion of the requirements imposed by the conditions. The removal is effective upon written notification to Licensee by the Board of the removal of the conditions.

7. 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 suspended 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, an additional period of suspension, additional conditions of reinstatement, or revocation of Licensee's license.

8. This Stipulation shall not in any way limit or affect the authority of the Board to temporarily suspend Licensee's license under Minn. Stat. §§ 148.941, subd. 3 or 214.077, or to initiate contested case proceedings against Licensee on the basis of any act, conduct, or omission of Licensee justifying disciplinary action occurring before or after the date of this Stipulation and Consent Order which is not related to the facts, circumstances or requirements referenced herein.

9. In the event the Board at its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, then, and in that event, 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.

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

11. Licensee has been advised by Board representatives that he may choose to be represented by legal counsel in this matter. Licensee is has knowingly waived legal representation. The Committee is represented by Nicholas Lienesch, Assistant Attorney General.

12. 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.

13. Licensee hereby knowingly and voluntarily waives any and all claims against the Board, the Minnesota Attorney General's Office, 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 psychology under this Stipulation.

14. 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. The Board may either approve the Stipulation and Consent Order as proposed, approve the Stipulation and Consent Order subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation will then take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the Stipulation, it will be of no effect except as specified herein.

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

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

17. 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

Mark Ziebarth, M.S., L.P. 2295 MN
Licensee

Dated: 7/15/2017

MINNESOTA BOARD OF PSYCHOLOGY
COMPLAINT RESOLUTION COMMITTEE

Scott A. Fischer, Ph.D., L.P.
Committee Chair

Dated: 8/11/17

ORDER

Upon consideration of this Stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the license of Licensee is placed in a **CONDITIONAL** status, and that all other terms of this Stipulation are adopted and implemented by the Board this _____ day of _____, 2017.

MINNESOTA BOARD OF PSYCHOLOGY

~~Presiding Board Member~~
EXECUTIVE DIRECTOR

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of
Mark J. Zieharth, APRN-CNS, RN
APRN-CNS License No. 0144
RN License No. 82065-9

STIPULATION AND CONSENT ORDER

STIPULATION

Mark J. Zieharth, APRN-CNS, RN ("Licensee"), and the Minnesota Board of Nursing Review Panel ("Review Panel") agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

1. The Minnesota Board of Nursing ("Board") is authorized pursuant to Minnesota Statutes sections 148.171 to 148.285 to license and regulate advanced practice registered nurses, registered nurses, and licensed practical nurses and to take disciplinary action as appropriate.

2. Licensee holds licenses from the Board to practice advanced practice registered and professional nursing 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. On October 25, 2016, Licensee and his attorney, Sarah MacGillis of MacGillis Law, Minneapolis, Minnesota, appeared before the Review Panel, composed of Christine Norton, Board member, and Mariclaire Bugland, Nursing Practice Specialist, for the Board, to discuss allegations made in a Notice of Conference dated August 31, 2016. Cody Zastiak, Assistant Attorney General, represented the Review Panel at the conference. Hans Anderson, Assistant Attorney General, represents the Review Panel in this matter.

EXHIBIT
A

III.

FACTS

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

a. On August 15, 2012, Licensee met with a Board Review Panel to discuss allegations related to his advanced practice registered nurse ("APRN") practice as a clinical nurse specialist ("CNS") in psychiatric and mental health, including that Licensee prescribed inappropriate combinations of medication; prescribed medications outside his scope of practice; failed to complete patient documentation; resumed prescriptions for patients who had medications discontinued during inpatient hospitalizations; and prescribed medication to a family friend who was not his patient and lied about prescribing for this individual.

b. By letter dated November 27, 2012, the Board informed Licensee it had decided disciplinary action was not warranted at the time, but the Board would reevaluate should it receive a similar report in the future.

c. In July 2016, the Board received a report regarding Licensee's APRN-CNS practice while working at a clinic in Maple Grove, Minnesota. The Board's investigation revealed the following:

1) On August 4, 2014, Licensee was presented with a summary of issues which arose during a visit from the clinic's medical quality assurance supervisor. Licensee committed multiple violations of the Health Insurance Portability and Accountability Act ("HIPAA") by giving prescriptions to the wrong patients. Licensee failed to keep education and active medication lists up to date. Licensee's documentation was incomplete and included sections copied from previous notes without making changes.

2) On March 19, 2015, Licensee was placed on a performance improvement plan ("PIP") for numerous issues with his prescribing and documentation. Licensee prescribed controlled substances to a patient who had been weaned off controlled substances. Licensee prescribed Valium, Xanax, and Adderall to a patient with a history of chemical

dependency, despite knowing the prescribing of benzodiazepines and stimulants concurrently was in violation of clinic policy. Licensee prescribed Xanax and phenobarbital to a patient with an extensive and clearly documented chemical dependency history with benzodiazepines. Licensee also had several issues with documentation, including documenting before sessions were completed, using previous notes without updating them, and failing to document changes to patients' stats, prescriptions and treatment plans.

3) On May 11, 2015, Licensee's PIP was amended after the clinic discovered additional concerns of potential privacy breaches.

4) In October 2015, the clinic received a report relating to one of Licensee's patients. The patient had two recent hospitalizations for overdosing related to Licensee's prescribing of benzodiazepines to the patient. Licensee had previously indicated he would taper the patient off benzodiazepines, but prescribed Klonopin despite the patient recently filling prescriptions for Xanax and Klonopin. Licensee failed to check the patient's Minnesota Prescription Monitoring Plan ("PMP") records. Licensee also sent text messages to the patient regarding private health information.

5) On November 12, 2015, Licensee's PIP was amended to address additional concerns, including failing to check the PMP records for seven patients before prescribing controlled substances; failing to monitor patients' use of controlled substances; and issues with prescribing narcotics, including prescribing medications outside his scope of practice, prescribing too high of dosages, prescribing improper combinations of medications, and prescribing to patients with a history of chemical dependency. Licensee also continued to have problems with documentation of his patient assessments and rationale for medication changes and patient privacy, including exchanging text messages with patients.

6) On December 18, 2015, Licensee met with clinic management to discuss additional issues, including Licensee's patient selling her prescribed medications and Licensee's poor documentation resulting in a patient receiving more lorazepam than prescribed. Licensee also increased the dose of a medication he was instructed to decrease.

7) On January 12, 2016, Licensee prescribed controlled substances to a patient with a chemical dependency history who was followed by an addictionologist.

8) On February 2, 2016, Licensee met with clinic management to discuss Licensee's continued difficulties with prescribing. Licensee prescribed narcotic pain medication to a patient against facility policy, outside his scope of practice and over and above the clinic's policies and procedures. Licensee also prescribed stimulants and benzodiazepines concurrently to a patient with chemical dependency issues. Licensee continued to have issues with documentation of his patient examinations.

9) On February 16 and 23, 2016, Licensee met with clinic management to discuss ongoing concerns with his prescribing practices. Licensee was advised not to prescribe narcotics to patients, change his documentation practices, and stop giving out his personal cell phone number to patients.

10) In March 2016, Licensee failed to include a patient's diagnoses in his documentation, resulting in the patient being unable to refill medications.

11) In April 2016, an audit of Licensee's billing practices found his appointment start and stop times were inaccurate.

12) On May 6, 2016, Licensee met with clinic management regarding his deficient documentation practices including patient assessments and diagnoses.

13) In June 2016, a psychiatric professional contacted the clinic with concerns about Licensee's practice. Two of Licensee's patients recently seen in a hospital had prescriptions from Licensee for stimulants and benzodiazepines in high doses. Licensee prescribed one of the patients 12 psychoactive medications. Licensee's practices appeared to contribute to the need for the patients' hospitalizations. Licensee's clinic notes and medication list did not match for one patient and also lacked a plan for the patient.

14) On June 30, 2016, concerns were reported regarding Licensee's prescribing practices, including that Licensee discontinued a patient's Xanax without tapering and prescribed numerous medications, including Ambien, to a patient with documented ongoing

concerns of medication seeking behavior. Licensee also prescribed a high dose of Xanax to a patient who had been weaned off the medication earlier in 2016 when entering chemical dependency treatment.

15) On July 12, 2016, a review of Licensee's documentation showed that 90 percent of his appointments' start and stop times were incorrect.

16) On October 6, 2016, Licensee's employment was terminated.

d. At the October 25, 2016 conference, Licensee stated the following:

1) Licensee denied any physical, cognitive, or mental health issues that could have been impacting his nursing practice or judgment. Licensee disclosed mental health diagnoses that are stable and managed.

2) Licensee admitted he did not always check the PMP for each patient. Licensee stated the prescriptions he wrote were appropriate and he did not always consider other prescriptions not written by him. Licensee displayed little understanding and concern for overprescribing and potential drug interactions.

3) Licensee stated he prescribed narcotics outside his scope of practice because the patients were in need of "bridge dosing" until the patient could see a primary care provider or pain specialist.

4) Licensee did not consider that prescribing medications would be outside his legal scope of practice as a CNS despite his employer finding no psychiatric indication for his prescribing on numerous occasions.

5) Licensee stated a strong philosophy of assisting his patients despite the limitations of his employment policies, legal scope of practice, and role as a CNS.

e. The conference was continued to obtain additional information regarding the circumstances surrounding Licensee's termination of employment.

f. In October and November 2016, the Board received additional records from Licensee's former employer. The records indicated the following:

1) Licensee was terminated for failure to show improvement in his prescribing practices, documentation, and patient boundary issues; disregard of clinic policies; and misrepresentation on Licensee's credentialing paperwork presented upon Licensee's hire. Licensee failed to disclose the previous Board investigation to the clinic at the time of hire.

2) On July 12, 2016, Licensee was overheard telling a patient, "I love you." The patient responded, "I love you too." Licensee admitted making the statement.

3) In September 2016, a patient contacted the clinic to self-report his inability to control his use of Xanax and wanted to be taken off the medication. Subsequent to this call, Licensee prescribed the patient Librium and Ambien at an appointment. On September 20, 2016, the patient requested an early refill of Librium after running out of the medication after seven days. Licensee refilled and doubled the dose of Librium for the patient.

4) On September 21, 2016, Licensee prescribed Xanax, clonazepam, and Adderall to a patient in chemical dependency treatment and in a methadone program. Licensee's prescriptions were contraindicated.

5) In September 2016, numerous concerns about Licensee's practices were reported. Licensee did not document or provide clinical rationale for a patient's prescription for a high dose of Xanax. Licensee also failed to update a patient's PHQ-9 scores since January 2016.

6) Following Licensee's termination, the clinic conducted a chart audit of Licensee's charts. The clinic found 262 patients with prescription dosages and combinations inconsistent with community standards and clinic policy and procedure. 96 patients were at the maximum dosage guidelines.

g. The Review Panel remained concerned about Licensee's repeated failure to remain within his scope of practice, ability to adhere to established policies, procedures, and self-correct his practice, and troubling prescribing practices despite repeated counseling, supervision, and performance improvement plans over the course of two years. The Review

Panel determined a surrender of Licensee's APRN license, and conditions on his registered nurse license, are necessary to protect the public.

IV.

LAWS

5. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 148.261, subdivision 1(6), (7), (9), (11), (15), (16), (18), and (21), 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:

A. Voluntary Surrender of APRN License

6. The Board accepts Licensee's VOLUNTARY SURRENDER of his license to practice advanced practice registered nursing. Licensee must not engage in any act which constitutes the practice of advanced practice registered nursing as defined in Minnesota Statutes section 148.171, subdivision 13, and must not imply by words or conduct that Licensee is authorized to practice advanced practice registered nursing.

B. Application for APRN Relicensure

7. Licensee may not apply for relicensure as an advanced practice registered nurse for a minimum of 24 months from the date of this Order and when Licensee is able to demonstrate by a preponderance of the evidence that Licensee is capable of practicing advanced practice nursing in a safe, competent, and ethical manner. At the time of Licensee's application, Licensee must meet with a Board Review Panel.

a. Additional Information. Licensee must provide any additional information relevant to his application reasonably requested by the Review Panel. The Board will consider all competent evidence of rehabilitation presented to the Board upon Licensee's application for relicensure.

b. APRN Licensure Requirements. Licensee must meet all APRN Licensure requirements in effect at the time of his reapplication, including but not limited to completing the appropriate application, paying the requisite fees, completing any necessary continuing education requirements and meet all other licensure requirements in effect at the time of APRN application.

8. The Board may, at any regularly scheduled meeting following Licensee's reapplication for reinstatement pursuant to paragraph 7 above, take any of the following actions:

a. Grant APRN nursing licensure and registration to Licensee;

b. Grant APRN nursing licensure and registration to Licensee with limitations upon Licensee's scope of practice, conditions for Licensee's practice, or both; or

c. Deny Licensee's request for issuance of APRN nursing licensure and registration based upon his failure to meet the burden of proof.

C. Conditions on Registered Nurse License

9. The Board places the following CONDITIONS on Licensee's license to practice registered nursing:

a. Participation in HPSP. Licensee must contact the Health Professionals Services Program ("HPSP") at (651) 642-0487 to initiate enrollment in the HPSP within 14 days of the date of this Order. Licensee is then required to sign a minimum 24-month Participation Agreement with the HPSP no later than 60 days following the date of this Order. Licensee must comply with and successfully complete all terms of his HPSP Participation Agreement.

b. Mental Health Evaluation. Within 60 days of the date of this Order, Licensee must undergo a mental health evaluation performed by a mental health professional as defined in Minnesota Statutes sections 245.462, subdivision 18. Licensee must submit, or cause to be submitted, the credentials of the evaluator for review and pre-approval by Board staff for purposes of this evaluation. Licensee is responsible for the cost of the evaluation. The results must be sent directly to the Board and must provide and address:

1) Verification the evaluator has reviewed a copy of this Order, and any evaluation or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation;

2) Diagnosis and any recommended treatment plan;

3) Licensee's ability to handle stress;

4) Recommendations for additional evaluation or treatment;

5) Whether the evaluator believes Licensee requires a neuropsychological evaluation to more fully assess his ability to practice professional nursing with reasonable skill and safety; and

6) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

c. Compliance With Evaluator's Recommendations. Licensee must comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

d. Neuropsychological Evaluation. If the mental health evaluator determines Licensee requires a neuropsychological evaluation to more fully assess his ability to practice professional nursing with reasonable skill and safety, or upon the Board's request, Licensee must undergo a neuropsychological evaluation performed by a psychiatrist or a licensed psychologist specializing in administration and interpretation of neuropsychological testing and evaluation, within 60 days of the mental health evaluator's determination or the Board's request. Licensee must submit, or cause to be submitted, the credentials of the evaluator for review and preapproval by Board staff for purposes of this evaluation. Licensee is responsible for the cost of the evaluation. The results must be sent directly to the Board and HPSP and must provide and address:

1) Verification the evaluator has reviewed a copy of this Order and any evaluation or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation;

2) Verification the evaluator has reviewed the results of Licensee's previous neuropsychological testing and psychiatric records;

3) The testing results including test scores for each psychometric test employed during the evaluation;

4) The evaluator's findings regarding, at a minimum, Licensee's level of cognitive and memory functioning and his ability to learn new information and a comparison of current and previous testing results;

5) Diagnosis, prognosis and any recommended treatment plan;

6) Licensee's ability to manage his mental illness symptoms and handle stress;

7) Recommendations for additional evaluation or treatment;

8) Recommendations for limitations or conditions regarding Licensee's nursing practice; and

9) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

c. Compliance With Evaluator's Recommendations. Licensee must comply promptly with recommendations for additional evaluation and treatment made by the evaluator.

d. Waivers. If requested by the Board at any time while this Order is in effect, Licensee must complete and sign health records waivers supplied by the Board to allow representatives of the Board to discuss Licensee's case with and to obtain written evaluations and reports and copies of all of Licensee's health, mental health, or chemical use records from his physician, mental health professional, or others from whom Licensee has sought or obtained treatment, support, or assistance.

10. While this Order is in effect, Licensee must notify each present and future nursing supervisor of this Order within ten days of the date of the order or commencing employment. Licensee must provide the supervisor with a copy of the entire signed Order.

D. Removal of Conditions on Registered Nurse License

11. The conditions upon Licensee's license will be administratively removed after at least 24 ~~36~~ months from the date of this Order, upon the HPSP's written notification to the Board of Licensee's successful completion of the terms of the Participation Agreement, and upon satisfactory completion of the requirements imposed by the conditions. The removal is effective upon written notification to Licensee by the Board of the removal of the conditions.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

12. It is Licensee's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board and HPSP 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 the Stipulation and Consent Order. The information contained in the reports, evaluations, and documentation is confidential and will be submitted to the Board by United States Mail, courier, or personal delivery only.

13. If Licensee fails to comply with or violates this Stipulation and Consent Order the Review Panel 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 Review Panel will schedule a hearing before the Board. At least 20 days prior to the hearing, the Review Panel will mail Licensee a notice of the violation(s) alleged by the Review Panel. In addition, the notice will designate the time and place of the hearing. Within ten days after the notice is mailed, Licensee must 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 Review Panel, in its discretion, may schedule a conference with the 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 Review Panel and Licensee may submit affidavits and written argument in support of their positions. At the hearing, the Review Panel and Licensee may present oral argument. Argument will not refer to matters outside the record. The evidentiary record will be limited to the affidavits submitted prior to the hearing and this Stipulation and Consent Order. Unless stated otherwise in this Stipulation and Consent Order, the Review Panel will 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 prior to the conference, hearing, or meeting of the Board may be taken into account by the Board but will not limit the Board's authority to impose discipline for the violation. A decision by the Review Panel not to seek discipline when it first learns of a violation will not waive the Review Panel's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while this order is in effect.

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

f. Nothing herein will limit the Review Panel'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 will limit the Review Panel's or the

Board's right to automatically suspend Licensee's license pursuant to Minnesota Statutes section 148.262, subdivision 2.

VII.

ADDITIONAL INFORMATION

14. In the event Licensee should leave Minnesota to reside or to practice outside of the state, Licensee will 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 registered nurse 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.

15. 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.

16. Licensee waives any claims against the Board, the Minnesota Attorney General, 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.

17. This Stipulation and Consent Order, the files, records, and proceedings associated with this matter will constitute the entire record and may be reviewed by the Board in its consideration of this matter.

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

19. 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.

20. 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.

21. This Stipulation and Consent Order does not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate means 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 herein.

VIII.

DATA PRACTICES NOTICES

22. 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. Data regarding this action will be provided to data banks as required by Federal law or consistent with Board policy. While this Stipulation and Consent Order is in effect, information obtained by the Board pursuant to this 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.

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

CONSENT:

BOARD OF NURSING
REVIEW PANEL

MARK J. ZIBARTH, APRN-CNS, RN
Licensee

Dated: 2/2/, 2017

CHRISTINE NORTON
Board Member

Dated: Feb 2, 2017

ORDER

Upon consideration of the Stipulation, the Board accepts the **VOLUNTARY SURRENDER** of Licensee's advanced practice registered nurse license, places Licensee's professional nursing license in a **CONDITIONAL** status, and adopts all of the terms described above on this 2nd day of February, 2017.

MINNESOTA BOARD
OF NURSING

SHIRLEY A. BREKKEN
Executive Director