

**BEFORE THE MINNESOTA
DEPARTMENT OF HEALTH
HEALTH OCCUPATIONS PROGRAM**

**In the matter of Kelly Ersland-Anderson
Occupational Therapist - 02.00017**

Stipulation and Consent Order

IT IS HEREBY STIPULATED AND AGREED by Kelly Ersland-Anderson, (hereinafter "Practitioner"), and the Minnesota Department of Health, (hereinafter "Department"), and that without trial or adjudication of any issue of fact or law herein:

Except as otherwise specified herein; this Stipulation and Consent Order, investigative reports, and related documents shall constitute the entire record herein upon which this Order is based and shall be filed with the Department. The Stipulation and Consent Order document is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA"). All other data comprising the record shall not be considered a part of this Stipulation and Consent Order and shall maintain the data classifications to which they are entitled under the MGDPA.

LEGAL AUTHORITY

1. The Minnesota Department of Health has authority to discipline occupational therapists (hereinafter "OT") and occupational therapy assistants for violations of law under Minnesota Statutes, Section 148.6448, Subd. 3. The type of discipline the Department may impose includes denying applications for licensure, revocation, suspension, conditional licensure, reprimands or restrictions and any other action authorized by statutes, including the assessment of civil penalties.
2. Minnesota Statutes, Section 148.6448, Subd. 1(3), includes as a ground for discipline, a determination that an applicant has performed services of an OT or OTA in a manner that falls below the community standard of care.

FACTS

3. Practitioner has been a registered and licensed OT since October 19, 1996.
4. On November 16, 2001, the Department received information from Facility One stating that:

a. During a routine audit of medical records of patients treated by Practitioner, it was discovered that there were documentation errors, including treatment plans with physician signatures that were signed by Practitioner instead of the physicians;

b. Upon this discovery Facility One suspended Practitioner with pay pending a meeting to discuss the matter. In the course of the meeting Practitioner did not dispute that she, rather than the physicians, signed certain treatment plans;

c. After the meeting Practitioner resigned from her position at Facility One.

5. In April 2002, the Department obtained information from the Minnesota Department of Human Services (DHS), Surveillance and Integrity Review (SIRS) Unit regarding Practitioner. There had been an investigation for maltreatment alleging "forging doctors signatures on plan of service at Facility One". According to this investigation, Practitioner admitted to forging doctor's signatures on plan of treatment for Medicare patients.

6. An audit of patient charts at Facility One was conducted by the law firm for Facility One. Facility One concluded that there had been ninety patient charts were possibly forged and the record types are listed below:

1. Treatment plans;
2. Treatment plans signed beyond 30 days;
3. Treatment plans signed beyond 60 days;
4. 4th RX;
5. Physician signed treatment plans.

7. As a result of the audit, Facility One calculated that the total amount paid to Medicare for claims that lacked a required physician signature was \$46,796.92 and Facility One reimbursed Medicare that amount on May 3, 2002. Facility One stated that their audit revealed that the erroneous Medicare billing involved claims for which the documentation was inadequate and the claim lacked a required signature or was supported by a signature that Facility One believed to be false. However, in all cases, the services were performed as described.

8. On June 20, 2002, the Department notified Practitioner that a complaint had been received concerning her OT therapy services alleging that during a routine audit of medical records of patients treated by her at Facility One, documentation errors were discovered, including treatment plans with physician signatures that appeared to be signed by her; and further, the complaint also alleged that she did not dispute that it was she, rather than the physicians, that signed certain treatment plans. Practitioner was informed that a second audit was conducted and revealed that ninety patient charts had been identified as having possible forgeries from 1995 through 1999. Practitioner was provided the names of the patients as well as named referring physician on the title of the documents.

9. In her response to the Department's inquiry of whether or not she signed treatment orders for these ninety charts, Practitioner offered to review the ninety charts in question for the purpose of identifying the charts which she may have signed. Practitioner expressed an interest in cooperating in the identification of specific charts but was unable to comment on specific charts without reviewing the signatures.

10. On August 21, 2002, the Department requested that Practitioner sign a Records Release and Authorization for her personnel file at Facility One.

11. On November 6, 2002, the Department provided Facility One with Practitioner's release and requested a copy of Practitioner's personnel file on November 18, 2002. Practitioner's personnel file contains the following documents:

- a. Letter of resignation signed by Practitioner on 10/18/02;
- b. Exit Evaluation: Reason for resignation/termination: "Voluntary resignation";
- c. A copy of a letter to the Department from Practitioner's supervisor dated November 14, 2001, in which Practitioner did not dispute that she, rather than the physicians, signed certain treatment plans;
- d. Memo dated 10/15/01 to Facility One from Practitioner in which she stated she was "sorry for what happened.... It was not planned out for doing such a terrible action as this. I have been trying to keep my own mental health issues under control by myself..... I want you to know I am very shameful, and remorseful of what I have done.....".

12. Practitioner currently is employed at an assisted living facility in Willmar, Minnesota, and is not working as an OT at the assisted living facility in Willmar and has not worked an OT since she resigned at Facility One.

13. Practitioner's license was renewed on March 1, 2003, and in her issuance letter, she was informed that the issuance of her license would not affect the pending investigation regarding his matter.

ORDER

Upon this Stipulation record, and without any further notice of proceedings, the Division Director hereby ORDERS:

1. Practitioner should pay a civil penalty of \$440.00 for reimbursement to the Department for costs of investigations and proceedings up to this date;
2. Practitioner must submit verification of completion of the following continuing education course offered through the American Occupational Therapy Association in her next continuing education

reporting period ending February 28, 2005: "Documentation is not a Four Letter Word". This course is for eight contact hours. This course is in addition to her OT continuing education for licensure.

3. If Practitioner gains employment as an OT, she must be supervised for one year as follows:

- a. Within fourteen days of hire, provide the Department with the name, address and phone number of her employer, immediate supervisor, and the date of hire;
- b. Sign a release addressed to her employer for four quarterly reports, each of which shall include but not be limited to:
 - (1) a description of Practitioner's practice (type of patients treated and description of treatment environment);
 - (2) statement from Practitioner's supervisor that Practitioner's charts were reviewed for accuracy;
 - (3) a summary of the dates and times of the meetings between supervisor and Practitioner, the number of records reviewed and the overall quality, accuracy and of records charted;
- c. Practitioner is responsible for ensuring that the supervisor submits all required reports;
- d. Practitioner is responsible for submitting any and all copies of performance evaluations related to her OT practice with each quarterly report.
- e. Practitioner's supervisor does not have to be a licensed OT, but can be anyone who is experienced in managing patient charts and records and understands the procedures for documenting the health care provided and the required signatures for that health care;

4. Practitioner accepts this Stipulation as including a Public Reprimand for this conduct;

5. If Practitioner fails to comply with the terms ordered, or if the Commissioner receives future evidence that Practitioner violated any statutes as stated in this action, the Commissioner may revoke Practitioner's license;

6. This Stipulation and Consent Order shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Practitioner by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of the Practitioner, justifying disciplinary action which occurred before or after the date of this stipulation and which is not directly related to specific acts and circumstances set forth herein;

7. In the event the Division Director in his discretion does not approve this settlement or a lesser remedy than specified herein, this Stipulation and Order shall be of no evidentiary value and shall not be relied upon or used for any purpose by either party. If this should occur and thereafter an administrative contested case is initiated pursuant to Minn. Stat. Chapter 14, Practitioner agrees she will assert no claim that the Division Director was precluded by his review and consideration of this Stipulation or any records relating hereto;

8. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. Practitioner understands that this agreement is subject to the Division Director's approval. If the Division Director either approves the Stipulation or makes changes acceptable to the Practitioner, an Order will be issued by the Division Director, upon this Stipulation and Consent Order and all other evidence made available to the Division Director, once the Division Director has approved it, the Division Director may issue the Stipulation and Consent Order to Practitioner at any time without further notice;

9. A copy of the Stipulation and Consent Order when issued and signed by the Division Director, shall be served by first class mail on Practitioner, at Practitioner's last known address or Practitioner's attorney. Service via first class mail shall be considered personal service upon Practitioner, at which time this Stipulation and Consent Order shall become effective. Any appropriate federal or state court shall, upon application of the Department, enter its decree enforcing the Order of the Department.

CONSENT: Practitioner hereby acknowledges that she has read, understood, and agreed to this Stipulation and Consent Order and has freely and voluntarily signed it.

Dated: 09/07, 2003 Kelly Ersland Anderson
Kelly-Ersland Anderson, Practitioner

Dated: Sept. 11, 2003 Janet Waller
Janet Waller, Attorney for Practitioner
Chestnut and Cambronne, P.A.

Dated: Sept 15, 2003 Susan Winkelman
Susan Winkelman, Investigations and Enforcement Manager
Health Occupations Program

Upon consideration of this stipulation and all the files, records and proceedings herein by the Division Director, **IT IS HEREBY ORDERED** that the terms of this stipulation are adopted and implemented by the Division Director on this 18th day of September, 2003.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

David J. Giese
David J. Giese, Director
Health Policy and Systems Compliance Division