

Effective February 25, 2014

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

**In the Matter of Andrea Cardenas Harrison
Occupational Therapist**

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Andrea Cardenas Harrison, (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 (hereinafter "Stipulation"), investigative reports, and related documents shall constitute the entire record herein upon which this Stipulation is based and shall be filed with the Department. This Stipulation 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 shall maintain the data classifications to which they are entitled under the MGDPA.

LEGAL AUTHORITY

1. The Department has statutory authority to discipline occupational therapists and occupational therapy assistants for violations of law under Minnesota Statutes, section 214.131, subdivision 2, and Minnesota Statutes, section 148.6448, subdivision 3. The types of disciplinary action the Department may impose include refusal to grant or renew licensure; imposition of conditions; revocation or suspension of license; or any reasonable lesser action including, but not limited to, reprimand or restriction on

licensure; or any action authorized by statute. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.

2. Pursuant to Minnesota Statutes, section 148.6403, subdivision 1, no person may engage in the practice of occupational therapy unless that person is licensed. Pursuant to subdivision 2 of this section, use of the phrase "occupational therapy" or "occupational therapist," or the initials "OT" to form an occupational title or to indicate or imply that the person is licensed by the state as an occupational therapist (OT) is prohibited. Pursuant to subdivision 6 of this section, a person who practices occupational therapy or holds himself or herself out as an occupational therapist is subject to sanctions according to section 148.6448, chapter 214 or other statutory authority.
3. Pursuant to Minnesota Statutes, section 148.6443, subdivision 1, licensed occupational therapists must obtain 24 contact hours of continuing education within each two-year licensing period. Subdivision 8 of this section authorizes the commissioner to refuse to renew or grant, or suspend, condition, limit or qualify the license of an individual who fails to comply with this section.
4. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1 the commissioner may deny an application, impose conditions on a licensee, or discipline a licensee under subdivision 3 of the same section, for intentionally submitting false information (clause (1)); failing to respond to a written request within 30 days (clause (2)); aiding another person in violating the provisions of sections 148.6401 to 148.6450 (clause (8)); engaging in dishonest conduct likely to deceive the public (clause (12)); engaging in fraudulent billing practices (clause (17)); or any other just cause related to the practice of occupational therapy (clause (23)).

5. Pursuant to Minnesota Statutes, section 148.6445, subdivision 11, clause (b), the penalty fee for applicants who engage in the unauthorized practice of occupational therapy or use protected titles before being issued a license is the amount of the license application fee for any part of the first month, plus the license application fee for any part of any subsequent month up to 36 months. This paragraph does not apply to applicants not qualifying for a license who engage in the unauthorized practice of occupational therapy.
6. Pursuant to Minnesota Statutes, section 148.6445, subdivision 11, clause (d), for conduct described in paragraph (b) occurring after August 1, 2005, and exceeding six months, payment of a penalty fee does not preclude any disciplinary action reasonably justified by the individual case.
7. Pursuant to Minnesota Statutes, section 148.6448, subdivision 1, clause (5), the Department may take enforcement action against a practitioner for violating sections 148.6401 to 148.6450.

LICENSURE

1. The purpose of a professional license is to protect the public from harm by setting minimal qualifications and competencies for entry-level practitioners. While the general public may not have sufficient information, experience, or resources to determine whether a health care provider is qualified, a license issued by a governmental entity provides assurance that the licensee has met at least the predetermined minimal standards. The practice of a health occupation, in particular, by someone who is unprepared and/or incompetent poses a risk of harm to the public, both because of the

nature of the services offered and because individuals in need of health services may be particularly vulnerable.

2. In Minnesota Statutes, section 214.001, subdivision 1, the Minnesota Legislature states that the interests of the people of the state are served by the regulation of certain occupations. Subdivision 2 of section 214.001 prohibits regulation of any occupation unless required for the safety and well-being of the citizens of the state and lists factors to be considered in evaluating whether an occupation shall be regulated. These factors include whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state; whether the potential for harm is recognizable and not remote; whether the practice of an occupation requires specialized skill or training; whether the public needs and will benefit by assurances of initial and continuing occupational ability; whether there is another effective means of protection of citizens; and whether the overall cost effectiveness and economic impact would be positive.
3. In 2000, the Minnesota Legislature enacted Chapter 361, encoded as Minnesota Statutes sections 148.6401 through 148.6450, establishing licensing requirements for occupational therapists and occupational therapy assistants.
4. Annually since 2000, over one thousand individuals have been licensed as occupational therapists in the State of Minnesota. As of January 1, 2014, 3373 individuals were licensed as occupational therapists in the state of Minnesota. Each licensee has submitted an initial application for licensure; has submitted biennial renewal applications, as necessary; has paid a fee of \$145 for each license issued, plus, beginning in July of 2009, a \$15 surcharge per license; and for each biennial renewal cycle, has complied with

requirements of Minnesota Statutes, section 148.6643 required continuing education activities.

FACTS

For the purpose of this Stipulation, the Department considers the following facts as true:

1. On June 28, 2011, Practitioner hand-delivered an application for licensure as an OT. On her application, Practitioner stated that she had been awarded a master's in OT from the University of Minnesota in May 2003 and had been employed by Hospital 1 as an OT. In the space for dates of employment, Practitioner wrote "July 5, 2011". In response to Question 11, which asks if the applicant has ever been issued a credential as an OT, Practitioner checked "no."
2. The State of Minnesota governmental offices were shutdown from July 1, 2011 through July 20, 2011, during which time no Department staff was available to process OT licensure applications.
3. On July 11, 2011, Department staff received a Verification of Credential from the National Board for Certification in Occupational Therapy, Inc. (NBCOT), which indicated Practitioner had been certified by that organization since December 4, 2003, and her certification was due to expire on March 31, 2014.
 - a. On July 25, 2011, Department staff received notification from Hospital 1 that Practitioner had been employed as an OT from 2002 through 2011. Hospital 1 staff advised that Practitioner applied for licensure through the Department "... but failed to follow through on ensuring that her application was processed and a license was

awarded.” Hospital 1 staff further stated that Practitioner applied for licensure “... just prior to the state shutdown.”

4. By letter dated October 4, 2011, Investigations and Enforcement (I & E) staff requested that Practitioner provide information concerning her Hospital 1 employment. Her response was due November 3, 2011. When no response was received, a second request was sent on November 16, 2011. In a response received December 19, 2011, Practitioner:

- a. Stated she started to work at Hospital 1 on February 4, 2002 as a “part-time/on-call student occupational therapist” and applied to the Department for an OT license in 2004 after she passed the NBCOT examination and was hired by Hospital 1 as a “full-time occupational therapist”;
- b. Stated that she had received a letter from the Department requesting further verification of her qualifications;
- c. Claimed that she submitted the information and continued to work as an OT;
- d. Claimed that in 2004, Department staff informed her by telephone that all application questions had been answered.
- e. Claimed that she left a voice mail message for Department staff in 2004, requesting that her license be sent to Hospital 1.
- f. Claimed that in late June 2011 while Hospital 1 was preparing for the impending state government shutdown, Hospital 1 notified her there was no record of either an application from her or licensure and that she would need to submit a new application;

- g. Stated that she entered the date "July 5, 2011" on her 2011 application as her start date as an OT at the instruction of Hospital 1 Human Resources because her position had been changed to "program therapist" and it was her manager's and the hospital's belief "...this would protect the hospital from negative reviews and expedite my application;"
- h. Stated that her employer initially told her that her demotion to the position of "program therapist" was temporary and that she would be reinstated as an OT when her license was issued; however, due to the state government shutdown and the resulting cessation of licensing work, she was terminated on July 9, 2011;
- i. Stated that she applied for an OT license with the State of California in July of 2011, but had not been granted a license because she did not have proof of a Minnesota license and also needed proof of continuing education credits. (A check of the California Board of Occupational Therapy, conducted on November 30, 2012, failed to reveal any information concerning Practitioner.)
- j. Enclosed with her response was a copy of a letter dated June 10, 2004, on Department letterhead requesting additional information; and two cover sheets dated May 1, 2004, sent from a Hospital 1 facsimile machine. One was sent to a facsimile machine at NBCOT in the State of Maryland and the second to the University of Minnesota. Both facsimile forms requested that application-related information be sent to the Health Occupations Program of the Department. An extensive search of Department files failed to locate any indication that the requested information was received by Department staff.

5. By letter dated December 20, 2011, I & E staff acknowledged receipt of Practitioner's response and requested that Practitioner provide a copy of her 2004 OT credentialing application. By letter dated January 11, 2012, Practitioner advised she no longer had a copy of her 2004 OT application because she "...submitted the completed application to the Minnesota Department of Health."
6. On December 28, 2011, I&E staff received Hospital 1's personnel file. That file revealed Practitioner was hired on February 4, 2002, as an OT "not yet licensed" and was terminated July 9, 2011, for "failure to obtain and maintain a MN Occupational Therapy license as required for her job and as required in the Minnesota statutes. Hospital 1 staff noted Practitioner "...had been asked on several occasions to produce her license but failed to do so"; "...thought the state sent it directly to human resources"; and when "...asked if she ever wondered why she did not receive renewal notices since it had been seven years since she applied, she said she did sometimes wonder about it." Included in Practitioner's personnel file was a copy of a letter dated June 10, 2004, on Department letterhead acknowledging receipt of Practitioner's application and requesting additional information needed for processing of the application. Also included in Practitioner's personnel file was a resume and performance reviews. In her resume, Practitioner stated that she had worked at Hospital 1 as an "occupational therapist" since February of 2002. In a Performance Review for the period February 2008 through February 2009, Practitioner documented her work with students, creating and setting up curriculum and providing opportunities for them to practice. Practitioner noted no activity in the area related to continuing education. Work with students was also documented in a performance review for the period February 2010 through February 2011.

7. By letter dated February 24, 2012, I&E staff requested that Practitioner provide additional information concerning surnames she has used, her knowledge of another individual with a similar name who had surfaced in Department records, and her method of payment for the 2004 application fee. In a response received on April 6, 2012, Practitioner stated she has only used the surnames "Cardenas" and "Harrison" and applied for licensure under the name "Andrea Cardenas".
8. During the course of this investigation, extensive effort was made to locate Practitioner's claimed 2004 application. No information concerning either Practitioner or the application was located. Included in the search were the following:
 - a. Archived files in the state storage facilities;
 - b. Deposit records from 2004, which records are created on the same day that payment is received through a different process and by a different staff person than the staff person who reviews applications and issues licenses;
 - c. Facsimile and mailings received and held by all HOP-related credentialing programs pending receipt of application materials. Many of these documents being held by staff pre-date 2004;
 - d. Files held in the office of the assistant director of the Health Occupations Program;
 - e. Data in the Health Occupations Program's licensing database, dating back to 1996; and
 - f. Data in the Health Occupations Program's electronic files, going back to 1995.

VIOLATION OF STATUTES

1. Practitioner violated Minnesota Statutes, sections 148.6403, subdivision 1 and 148.6448, subdivision 1(5) by representing in her resume that she began working as an occupational

therapist at Hospital 1 in February of 2001, and for working as an occupational therapist prior to applying for or being granted a license in occupational therapy.

2. Practitioner violated Minnesota Statutes, sections 148.6403, subdivision 1; 148.6448, subdivision 1(5); and 148.6448, subdivision 1(12) by working as an occupational therapist without a license between the time of her 2004 application and termination of her employment in July of 2011.
3. Practitioner violated Minnesota Statutes, section 148.6448, subdivision 1(8), by allowing occupational therapy services she provided to Medicare and state medical assistance patients to be billed to those entities even though she was unlicensed, in violation of subdivision 1(17) of that same section.
4. Practitioner violated Minnesota Statutes, section 148.6448, subdivision 1(1) by stating, in her 2011 application, that she had begun work at Hospital 1 on July 5, 2011.
5. Practitioner violated Minnesota Statutes, section 148.6448, subdivision 1(23) when, as an unlicensed individual, she planned and oversaw the work of students, as documented on her Performance Review for the period February 2008 through February 2009.
6. Practitioner violated Minnesota Statutes, sections 148.6443 and 148.6448, subdivision 1(5) by failing to obtain and document continuing education.
7. Practitioner violated Minnesota Statutes, section 148.6448, subdivision 1(2) by failing to respond, within 30 days, to letters sent by Department on October 4.

ORDER

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

1. Practitioner is assessed a civil penalty of \$1,500.00, as authorized by Minnesota Statutes, section 148.6445, subdivision 11, clause (b).
2. Due to extreme personal and financial hardship Practitioner is experiencing as a result of serious illness; because the record contains no allegations or any other information indicating that a client may have been harmed as a result of the facts that are the subject of this Stipulation; and because Department is unable to find Practitioner's original but incomplete application, the Department shall waive the remainder of the civil penalty originally calculated as \$19,227, including \$18,240 for 114 months of unlicensed practice at \$160 per month and \$987 (at that time) in investigative costs.
 - A. Practitioner may pay the \$1,500.00 representing costs of the investigation in monthly installments. If Practitioner chooses to make installments, she must notify the Department in writing about her intentions, including how many installments she intends to make, in what amount, and over which time period. Practitioner must send this information to: Investigations and Enforcement Unit, Health Occupations Program, Minnesota Department of Health, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of the effective date of this document.
 - B. Each payment will be made by check payable to "State of Minnesota, Treasurer", and mailed to Investigations and Enforcement Unit, Health Occupations Program, Minnesota Department of Health, PO Box 64882, Saint Paul, MN 55164-0882, or any other addressed specified by the Department. Each payment is due the last day of each month; however, Practitioner may prepay at any time.

C. The penalty may be referred to the Minnesota Department of Revenue (MDR), or any other source for collection, if Practitioner misses a monthly payment by 14 calendar days after the deadline. When this Stipulation for a penalty becomes public and the Department refers the matter to MDR, MDR is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or additional proceedings.

3. Practitioner shall be issued a conditional license for occupational therapy provided Practitioner has met the following conditions:

- A. Practitioner must resubmit a completed application for occupational therapy and comply with all licensing procedures as requested by credentialing staff. Practitioner's fee of \$160.00, submitted on July 29, 2011, will be applied towards Practitioner's application fee.
- B. Practitioner must notify the Department within 30 days of a change in her name, address or employment as required by Minnesota Statutes, section 148.6428.
- C. With her application, Practitioner must submit acceptable evidence of completion of 24 contact hours of continuing education (CE). In addition, within twelve months of the issuance of the conditional license, Practitioner must submit evidence of successful completion of an additional 12 contact hours of CE. CE contact hours must be conducted by a sponsor approved by the American Occupational Therapy Association. Practitioner shall submit course titles to the Department prior to taking the course by emailing health.ot@state.mn.us, or mailing to Health Occupations Program, Occupational Therapy Program, P.O. Box 64882, St. Paul, MN 55164-0882. Information submitted must include the

number of contact hours, the topics covered, a certificate of attendance and a description of the course. Practitioner is responsible for paying fees associated with the CE contact hours.

- D. Within fourteen days of the effective date of this Stipulation or effective date of Practitioner's employment as an occupational therapist, Practitioner must provide the Department with the name, address and telephone number of her supervisor and the name, address and telephone number of her current employer.
- E. During the period of conditional licensure, Practitioner is not authorized to provide supervision, in a clinical setting, to occupational therapists, occupational therapy assistants, occupational therapy students, or occupational therapy assistant students.
- F. Practitioner must at all times comply with Minnesota Statutes, section 148.6401 to 148.6450.
- G. After completion of the twelve month period of conditional licensure, Practitioner may submit a written request to the Department to remove the conditions on her license.

- 4. This Stipulation shall not in any way or manner limit or affect the authority of the Department to proceed against Practitioner by initiating a contested-case hearing or by other appropriate means, based on any act, conduct, or admission of the Practitioner which justifies disciplinary action and occurred either before or after the date of this Stipulation and which is not directly related to specific acts and circumstances set forth herein.

5. In the event the Division Director in her discretion does not approve this settlement, this Stipulation 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 Minnesota Statutes Chapter 14 and Minnesota Statutes, Section 214.10 and Minnesota Statutes, section 148.6448, subdivision 2, Practitioner agrees to assert no claim that the Division Director was disqualified due to the review and consideration of this Stipulation or any records relating hereto.
6. This Stipulation contains the entire agreement between the Department and the Practitioner, 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, the Division Director will issue the Stipulation. Upon this Stipulation and all other evidence made available to the Division Director, once the Division Director has approved it, the Division Director may issue the Stipulation to Practitioner at any time without further notice.
7. The Facts and Violations of Statute set forth in this Stipulation and Consent Order do not constitute admissions by Practitioner and may not be used as such in any other legal proceeding against Practitioner by any other authority.
8. Attorney David G. Waytz of Fredrikson & Byron, P.A. represented Practitioner in this matter. A copy of this Stipulation, when issued by the Division Director, shall be served by first class mail on Practitioner by mailing it to David G. Waytz at Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425. Service via first class mail shall be considered as personal service upon Practitioner, at which

time this Stipulation shall become effective. Any appropriate state court shall, upon application of the Director, enter an order of enforcement of any or all of the terms of this Stipulation.

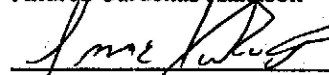
CONSENT

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

Dated: 2/13/, 2014


Andrea Cardenas Harrison

Dated: 2/14/, 2014


Anne Kukowski
Assistant Director
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 19th day of February, 2014

STATE OF MINNESOTA
DEPARTMENT OF HEALTH


Darcy Miner, Director
Division of Compliance Monitoring