

Effective April 2, 2002

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

**In the matter of Deborah Rae McTighe,
Occupational Therapist License Applicant
01000271**

Stipulation and Consent Order

IT IS HEREBY STIPULATED AND AGREED by Deborah Rae McTighe, (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, §214.131, Subd. 2 and Minnesota Statutes, §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 statute, including the assessment of civil penalties.

2. Effective June 17, 1996, persons not registered by the Department have been prohibited from using the protected titles, "occupational therapy", "occupational therapist" or "OT", alone or in combination with other words or initials to form an occupational title or to indicate or imply that they are credentialed by the Department as an OT or OTA. Effective May 12, 2000, it also became illegal to practice as an OT or OTA in Minnesota without first being licensed.

3. Minnesota Statutes, §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.

4. Minnesota Statutes, §148.6448, Subd.1(9), includes as a ground for discipline, discipline for conduct in the practice of an occupation by the State of Minnesota, another

jurisdiction, or a national professional association, if any of the grounds for discipline are the same or substantially equivalent to those in §§148.6401 to 148.6450.

5. Minnesota Statutes, §148.6448, Subd.1(13), includes as a ground for discipline, a demonstration of willful or careless disregard for the health, welfare, or safety of a client.

6. Minnesota Statutes, §148.6448, Subd.1(22), includes as a ground for discipline, a violation of a federal or state court order, including a conciliation court judgment, or a disciplinary order issued by the Department, related to the person's occupational therapy practice.

FACTS

The Department alleges and the Practitioner unconditionally admits for purposes of these and any future disciplinary proceedings the following allegations:

a. Practitioner knowingly and with consent waives her right to be represented by legal counsel during these proceedings;

b. On December 14, 2000, Department staff received Practitioner's application for licensure as an OT, dated December 7, 2000.

c. On December 15, 2000, Department staff received from the Montana Board of Occupational Therapy Practice (hereinafter "Montana Board"), copies of a Stipulation and Final Order dated August 2, 1999, and a Notice of Proposed Board Action and Opportunity For Hearing dated June 15, 1999.

d. In the Montana Board's 1999 orders, the Practitioner admitted that she made contact with patients and began initial evaluations and did not complete paperwork, and she failed to make essential entries by not completing written evaluations for the medical record of patients prior to initiating treatment. The Practitioner further agreed to be subject to peer review for twelve months from the date on which Practitioner returns to practice of occupational therapy in Montana with the Montana Board periodically communicating directly with the peer reviewer about the Practitioner's progress, to inform Practitioner's employer about the records that would be submitted to peer review and to be responsible for all associated costs. Practitioner did not complete any part of the Montana Board's peer review order.

e. On January 9, 2001, a conference call was held between members and staff of the Montana Board, Practitioner, and representatives of a potential Minnesota employer of Practitioner (hereinafter "Employer.") The call was held in response to a request from Practitioner that the restrictions be lifted from her Montana license. Practitioner had advised the Montana Board that the States of Minnesota and South Dakota would not issue her a license as long as there were restrictions on her Montana license. During the conference call it was noted that Practitioner had worked briefly in the State of Montana without following the restrictions of

the Montana stipulation. The Montana Board corrected a misunderstanding on the part of Practitioner as to the agreement. It was noted that the purpose of the Montana Board was to protect the public health, safety, and welfare, and the restrictions outlined in the Stipulation were retained.

f. On January 11, 2001, Department staff received a telephone call from Employer who stated that he was calling on her behalf to try and expedite the matter. Employer stated that they were aware of the order issued by the State of Montana, but did not believe it "was very bad."

g. By letter dated January 12, 2001, and received on January 22, 2001, Practitioner explained that she fell behind in her paperwork during a period when, as an Occupational Therapy Supervisor, she had been asked to fill in for an unfilled Rehabilitation Coordinator position. The paperwork was not completed because on January, 1998, when Practitioner took emergency leave due to a family medical situation. Practitioner expected "...the OTR and the Reg. Rehab. Coord. to step in and make up the paperwork." Practitioner stated that the incomplete paperwork involved Weekly Notes, doctors' orders, and "probably an evaluation or two" and affected "three or four clients...out of an average caseload of eight to ten." Practitioner noted that she was laid off in January 1999, and had not worked on a full-time basis since that time.

h. By letter dated January 16, 2001, and received on January 22, 2001, Employer advised that he had been asked to write a letter on behalf of Practitioner. Employer advised that during the interview process, Practitioner had acknowledged "a period of time where she had been behind in her dictation at her previous occupational therapy position" for a period of two weeks, and that the Montana Board had issued a Stipulation which ordered that "all work performed by licensee should be subject to peer review for a period of 12 months of time from date on which licensee returns to practice of OT."

i. On February 5, 2001, Department staff received copies of documentation from Practitioner's former employer related to the actions leading to the Stipulation. Related to compliance with policy and procedures of documentation, the former employer noted that "written documentation on four residents was out of compliance..." On a Reduction in Workforce Rating System Worksheet dated January 25, 1999, Practitioner received a score of "-2" for disciplinary action, in which one point was to be scored for each disciplinary action in the file. Practitioner received "marginal" rating for "attends scheduled appointment and meets obligations," "organizes time effectively and performs tasks efficiently," "consistently meets productivity standards," and "adjusts to changes and modifies own behavior according to the demands of the situation."

j. On March 30, 2001, Department staff presented Practitioner's case to the Competency Review Committee (CRC) of the Occupational Therapy Practitioner Advisory Council. CRC members noted that Practitioner's action demonstrated a lack of responsibility which could have resulted in significant harm to a client, given the right circumstances. CRC members further

noted that there is a risk of liability for both Medicare fraud and for patient harm if documentation is not done, and it is standard practice to complete paperwork within 24 hours. CRC members advised that a family emergency may be a valid excuse, but that the practitioner can always do some follow-up by telephone.

k. On March 4, 2002, the Department received a Preliminary Determination made by the Disciplinary Action Committee of the National Board for Certification in Occupational Therapy, (NBCOT), a private organization. Practitioner signed and agreed to NBCOT's determination on January 20, 2002. NBCOT determined that Practitioner violated its ethical standards and decided Practitioner should be put on probation and can choose between the following options to satisfy probation:

1) To fulfill Montana's requirements of being subject to peer review for a period of twelve months in any state where Practitioner obtains licensure; OR

2) To undertake course work on proper documentation either through a continuing education program or some form of mentor ship.

3. Practitioner admits and acknowledges that, for purposes of this Stipulation and Consent Order and any future disciplinary proceedings, proof at hearing that paperwork and documentation was not completed in a timely manner, and that Practitioner was subject to a disciplinary action in another state as described above, would constitute violations of Minn. Stat. §§148.6448, subd. 1(3)(9)(13) and (22) and justifies action by the Department to deny or take other action under Minn. Stat. §148.6448, subd. 3 against Practitioner's license application;

4. Practitioner expressly waives the formal hearing and all other procedures before the Department of Health to which Practitioner may be entitled under the Minnesota or United States constitutions, statutes, or rules;

ORDER

5. Upon this Stipulation record, as set forth in paragraph 2 above, and without any further notice of proceedings, the Division Director hereby ORDERS:

a. The Department will issue an OT license conditional to the terms of this Stipulation and after this Stipulation becomes final and effective.

b. Before the Department can issue an OT license to Practitioner, she must re-submit an OT license application, complete with new fees and which complies with all the procedures necessary for license applications as administered by credentialing staff in Department. Practitioner can contact the credentialing staff to obtain a new license application and instructions. Practitioner's disclosure of the Montana and Minnesota disciplinary actions on Practitioner's new license application will not be a reason to deny Practitioner's license

application.

c. Practitioner will pay a civil penalty in the amount of \$570, reflecting the costs of investigating the licensure application information and determining whether to issue, deny, or condition licensure. Practitioner can pay the civil penalty in five installments over five months after the effective date of the Stipulation. Each check must be received by the last day of the month. The personal check must be made payable to the "Treasurer, State of Minnesota" and mailed to Susan Winkelmann, Investigations and Enforcement Manager, Minnesota Department of Health, Health Occupations Program, P.O. Box 64975, St. Paul, MN, 55164-0975.

d. At least one week before starting OT employment in Minnesota, Practitioner must notify the Department about her future employment and disclose the organization name, employer's (and supervisor's) name, address and telephone numbers.

e. Practitioner must provide any employer who hires her as an OT with a copy of this Stipulation and Consent Order.

f. All charting, documentation and paperwork done by Practitioner as an OT must be subject to supervision by Practitioner's OT employer for twelve months after obtaining employment as an OT. If Practitioner's employment ceases at any time during the twelve month period, the time is tolled until Practitioner begins employment again as an OT with another employer. Practitioner must complete twelve months of supervision and it is not necessary that the time be consecutive if there is more than one employer or employment has ceased at any time.

g. Practitioner's supervisor must submit monthly reports directly to the Department for the first three months of the twelve months to report about Practitioner's record keeping and charting. Thereafter, Practitioner's supervisor can submit one report every three months for the final three quarters of the twelve month period. If Practitioner obtains a new supervisor, then each new supervisor must supply monthly reports for three months directly to the Department.

h. Practitioner shall sign whatever releases are necessary for the supervisor to report Practitioner's work directly to the Department. Practitioner shall cooperate fully during the process of Department's enforcing and monitoring compliance with this Stipulation.

i. Practitioner must comply with Minnesota Statutes, §§148.6401 to 148.6450.

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. If the Department receives evidence that Practitioner has made a misrepresentation to the Department, a client or employer, or has engaged in acts or omissions that would constitute a violation of Minnesota Statutes, §§148.6401 to 148.6450, the Department shall notify Practitioner in writing at her last known address filed with the Department. Practitioner shall have the opportunity to explain the alleged violation or misrepresentation. If Practitioner fails to submit an explanation within 30 days of the Department's notice or if the explanation is unsatisfactory, the Division Director may suspend Practitioner's license;

8. 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;

9. 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;

10. 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. 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: 3-26, 2002



Deborah Rae McTighe, Practitioner

Dated: 3/29, 2002



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 29th day of March, 2002.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

David J. Giese

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