

Effective March 23,
2005

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

In the Matter of Tonya Rae Biggs,
Unlicensed Complementary and Alternative
Health Care Practitioner

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Tonya Rae Biggs [hereinafter "Practitioner"] and the Health Occupations Programs [hereinafter "HOP"] within the Minnesota Department of Health [hereinafter "Department"], that, without trial or adjudication of any issue of fact or law herein, and without any evidence or admission by any party with respect to any issue or fact herein:

1. Except as otherwise specified herein, this Stipulation and Consent Order [hereinafter, "Stipulation"], investigative reports, and related documents shall constitute the entire record upon which this Order is based and shall be filed with the Department. The Stipulation document is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA") and Minnesota Statutes, section 146A.06, subd. 2. 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 and Minnesota Statutes, section 146A.06, subd. 2.
2. Practitioner has been and is subject to the jurisdiction of the Department because Practitioner engaged in unlicensed complementary and alternative health care practice as defined in Minnesota Statutes, section 146A.01 after July 1, 2001 when the Department's jurisdiction and legal authority became effective.

3. Practitioner is not now, nor has she ever been licensed or registered by the Minnesota health-related licensing boards or the commissioner of health in Minnesota.
4. Pursuant to Minnesota Statutes, section 146A.01, subd. 4, complementary and alternative health care practices include the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (17) body work, massage and massage therapy.
5. Minnesota Statutes, Section 146A.08, subd. 1 (c) prohibits failure to comply with the self-reporting requirements of Minnesota Statutes, Section 146A.03, subd. 7.
6. Minnesota Statutes, Section 146A.08 subd. 1 (d) prohibits engaging in sexual contact with a complementary and alternative health care client or former client, and engaging in contact that may be reasonably interpreted by a client as sexual. A "former client" means a person who has obtained services from the practitioner within two years of the misconduct.
7. Minnesota Statutes, Section 146A.08 subd. 1 (q) prohibits undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.
8. When violations of law are found, the Department has authority to revoke or suspend a practitioner's right to practice (Minnesota Statutes, sections 146A.09, subd. 1(1) and (2)), to impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed as to deprive the practitioner of any economic advantage gained by reason of the violation or to reimburse the office for all costs of the investigation and proceeding (Minnesota Statutes, section 146A.09, subd.1(4)), or to

impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the Department. (Minnesota Statutes, section 146A.09, subd. 1(7)).

9. The Department alleges, and the Practitioner unconditionally admits, for purposes of these and any future disciplinary proceedings before the Department, the following facts:
 - A. Practitioner was employed as a Massage Therapist at the business of "Keep In Touch", [REDACTED] from January of 2002 to June of 2003. Practitioner provided massage therapy to family and friends from 1999 to 2002 prior to starting at "Keep In Touch".
 - B. Practitioner attended classes at both Sister Roslyn School of Massage, and St. John's Neuromuscular Therapy in 1999. Practitioner received a certificate from St. John's Neuromuscular Therapy.
 - C. Practitioner received education related to boundaries and sexual boundaries while attending massage school in 1999. Practitioner stated she received training from "Keep In Touch" at the start of her employment, which included boundaries training.
 - D. Practitioner stated she kept records on the massages she provided to friends.
 - E. Practitioner met Client A on Father's Day, 2002 at "Keep In Touch." Client A became a client of practitioner's on the same day. Practitioner recalled that Client A had a gift certificate for a massage that Client A had received as a gift from his

family.

- F. Practitioner stated she provided "basic massage" to Client A, mainly focusing on the back. Practitioner recalls that Client A was stressed about his job and marriage on the day of the first massage.
- G. Practitioner stated that Client A came to Keep in Touch for a massage on an average of two to three times a month.
- H. Practitioner stated that during the time frame Client A was an active client of hers she ran into Client A a few times at a coffee shop near the massage center and they talked. Practitioner stated, "after so many months and so long of knowing each other" Client A approached her about meeting outside of work. Practitioner stated she met with Client A sometime in the winter of 2002 in the parking lot of Burnsville mall and they talked.
- I. Practitioner stated that within a few weeks after the first planned meeting, Practitioner met Client A for dinner.
- J. Practitioner began seeing Client A on a weekly basis outside of massage sessions. Practitioner received gifts from Client A. The gifts included charms and a necklace. Practitioner gave cards to Client A.
- K. Practitioner stated as time progressed she and Client A continued to meet in parking lots and on a "few occasions" they went to a hotel together. The hotels were located in Burnsville, Apple Valley, and near Stillwater.
- L. Practitioner stated that when meeting Client A in parking lots there would be a lot of hugging and kissing between them.

- M. Practitioner and Client A engaged in sexual intercourse at the hotels they went to. Practitioner denied that sexual contact ever happened in the massage room.
- N. Practitioner disclosed to the owner of Keep In Touch sometime in late March or early April of 2003 that she had developed feelings for Client A. The owner requested practitioner to discontinue providing massage therapy to Client A.
- O. Client A's spouse stopped by Keep In Touch to speak with practitioner about practitioner's involvement with Client A on or about April 28, 2003. Practitioner informed Client A's spouse that she was sorry for the affair with her husband.
- P. Practitioner was suspended from employment with Keep In Touch on or about April 28, 2003 due to her relationship with Client A. A few days later the owner of Keep In Touch called practitioner and informed her she was fired. Practitioner did not report this matter to the Minnesota Department of Health.
- Q. Practitioner stated the final massage session she provided to Client A was two weeks to a month prior to her being fired.
- R. Practitioner acknowledged that Client B was a client of hers at Keep In Touch. Practitioner went to Client B's home on one occasion to give him a massage. Client B was recovering from surgery. The owner of Keep In Touch gave practitioner a warning because it was against their policy to provide home massages. Practitioner realized she had made a mistake.
- S. Practitioner is currently working out of her home at a printing business.
10. Practitioner waives any claim that she may have against the Department, the State of Minnesota, or any employee thereof, under the Equal Access to Justice Law, Minnesota

Statutes, sections 15.471-15.475.

11. For purposes of this Stipulation, Practitioner expressly waives all procedures and proceedings before the Department to which Practitioner may be entitled under the Minnesota and/or United States Constitution, statutes, rules, and also waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minnesota Statutes, section 480A.06, or otherwise from the Order issued by the Division Director pursuant to this Stipulation.
12. Except as otherwise specified herein, this Stipulation, investigative reports, and related documents shall constitute the entire record of the proceedings herein upon which this Stipulation is based and shall be filed with the Department. Any report or other material related to this action and received after the date this Stipulation is executed shall become part of the record and may be considered by the Department in future aspects of this proceeding. These items shall maintain data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and Minnesota Statutes, section 146A.06, subd. 2. They shall not be considered a part of this Stipulation and shall not, to the extent they are not already public documents, become public merely because they are referenced herein.
13. In the event the Division Director, in his discretion, does not approve this settlement, or a lesser remedy than specified herein, this Stipulation shall be null and void and shall not be used for any purpose by either party hereto; provided, however, that should this occur and thereafter an administrative contested case is initiated pursuant to Minnesota Statutes, Chapter 14, Practitioner agrees she will not raise any objections on any administrative

level or in any court action to the Department's proceeding and hearing the case on the basis that the Division Director has become disqualified due to the Division Director's review and consideration of this Stipulation and record.

14. 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 on the basis of any act, conduct, or omission of Practitioner justifying action which occurred after the date of this Stipulation and which is not directly related to specific facts and circumstances set forth herein.
15. Any appropriate federal or state court shall, upon application of the Director, enter an order of enforcement of any or all of the terms of this Stipulation.
16. Practitioner hereby acknowledges that she has read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Practitioner acknowledges that she is fully aware that it must be approved by the Division Director. The Division Director may either approve the Stipulation as proposed, approve it subject to specific changes, or reject it. If the Division Director approves the Stipulation or makes a change acceptable to the Practitioner, the Division Director will issue the Order and it will take effect. If the changes are unacceptable to Practitioner, or the Division Director rejects the Stipulation, it will be of no effect, except as specified in paragraph 13, above.
17. Practitioner's violation of this Stipulation will be considered a violation of Minnesota Statutes, section 148C.09, subdivision 1(2); and will constitute grounds for further disciplinary action;

18. Upon this Stipulation, and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Practitioner does hereby consent that until further order of the Division Director, made after notice and hearing or after agreement between the Department and Practitioner, the Division Director may make and enter an Order for the following:

A. Practitioner's right to engage in unlicensed complementary or alternative health care practices, including massage and bodywork, pursuant to Minnesota Statutes, Chapter 146A is suspended for five years from the effective date of this Stipulation.

B. If the Practitioner wishes to be reinstated to practice unlicensed complementary or alternative health care practices, including massage and bodywork, in Minnesota, she must petition to the Department for reinstatement. As part of the petition for reinstatement, the Practitioner must submit to a mental evaluation by a licensed mental health therapist, pre-approved by the Department, to assess Practitioner's safety to practice unlicensed complementary and alternative health care practice; specifically assessing boundaries and sexual misconduct issues and whether there is a risk that Practitioner will engage in similar misconduct after reinstatement.

C. Practitioner will be responsible for the scheduling and cost of the evaluation; however the results will be sent directly to the Department. Practitioner consents to permit the evaluator to provide any record or information obtained during the evaluation to the Department for purposes of compliance with this Stipulation. Practitioner shall execute and provide any health record or other waivers necessary for submission of reports referenced in Stipulation to enable the Department to obtain the information related to

this matter and authorize the testimony of those contacted by the Department in any proceeding relating to this matter.

D. The evaluator will submit a report directly to the Department, with a copy to the Practitioner. The evaluator's report shall contain the following information and meet the following requirements:

- i) Verification that the evaluator has received a copy of the Stipulation;
- ii) Evaluation date(s);
- iii) Evaluation methods and instruments employed;
- iv) A review and discussion of each boundary violation that occurred;
- v) The evaluator's opinion as to whether Practitioner's capacity to understand and manage her professional role and boundaries of that role and Practitioner's ability to distinguish between her personal and professional needs;
- vi) The evaluator's opinion as to whether Practitioner requires additional training in boundary concepts and/or whether supervision of Practitioner's practice is warranted; and
- vii) any other information the evaluator believes is relevant and important.

E. Practitioner may be evaluated within three months of the end of the five-year suspension. Practitioner must have been evaluated within six months of the date she petitions for reinstatement.


F. Practitioner will pay a civil penalty in the amount of \$925.00 representing the costs of investigations in these proceedings, to date. Practitioner may opt for payment in installments of up to eight months. Each money order or certified check must be made

payable to "State of Minnesota, Treasurer". Practitioner shall mail each payment to Alan Ditsworth, Investigator, Health Occupations Program, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882. Should Practitioner fail to complete the payment schedule, the Department will refer the matter for collection to the Minnesota Collection Enterprise (MCE) in the Minnesota Department of Revenue, or another source for collection. MCE is authorized by Minnesota Statutes, section 16D.17 to obtain a judgement against Practitioner without further notice or proceedings.

G. Practitioner shall cooperate fully during the process of the Department's enforcement and monitoring of compliance with this Stipulation and shall respond to the Department's correspondence within the time provided by law or by the deadline of Department staff.

19. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation; and
20. Practitioner agrees that service of this Stipulation by regular mail at her attorney's office address of, David Larson, Attorney at Law, 444 Cedar Street, Suite 2050, St. Paul, MN 55101, shall be due and sufficient service on Practitioner.

Date: 3/4/2005, 2005

Tonya Rae Biggs
Tonya Rae Biggs
Practitioner


Dated: 3/15/05, 2005

Tom Henneman for
SUSAN WINKELMANN, Manager
Investigations and Enforcement
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