

Effective: July 6, 2015

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

**In the Matter of Lysa Naydyn Johnson
Speech Language Pathologist
MDH License Number 9040**

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Lysa Naydyn Johnson, (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 speech language pathologists under Minnesota Statutes, Section 148.5195, subdivision 4. The types of disciplinary action the Department may impose include: a civil penalty not exceeding \$10,000 for each violation and that deprives the licensee of any economic advantage gained by the violation and that reimburses the Department for the costs of the investigation and proceedings and any reasonable lesser action against an individual upon proof that the individual has violated

sections 148.511 to 148.5198. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.

2. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(3), the Department may take disciplinary action against a speech language pathologist for providing services in an incompetent or negligent manner.
3. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(4), the Department may take disciplinary action against a speech language pathologist for violating sections 148.511 to 148.5198.
4. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(11), in part, the Department may take disciplinary action against a speech language pathologist for engaging in conducting likely deceive, defraud, or harm the public.

5. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(13), in part, the

Department may take disciplinary action against a speech language pathologist for engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, or state medical assistance laws.

6. Pursuant to Minnesota Statutes, section 148.5196, subdivision 3(6), the Speech Language Pathologist and Audiologist Advisory Council shall review reports of investigations relating to individuals and make recommendations to the commissioner as to whether licensure should be denied or disciplinary action taken against an individual.

FACTS

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

1. On December 13, 2012, Practitioner was licensed as a speech language pathologist in the State of Minnesota by the Minnesota Department of Health, under license number 9040.
2. Beginning in July 2013 and through September 11, 2014, Practitioner was employed in a skilled nursing facility as a speech language therapist and program director in the State of Minnesota.
3. On September 12, 2014, Practitioner was terminated from her employment following an internal compliance audit that revealed Practitioner impersonated a physical therapist, documented and billed 41 minutes of gait training to Client #1, a Medicare Part A patient. The physical therapist did not authorize the documentation and was not able to provide therapy because at the time of the billing, Client #1 was not in the facility.
4. On December 3, 2015, Practitioner responded to the Department's request for information and provided the following reason for the impersonation and false billing to Medicare Part A:
 - A. Practitioner admitted documenting 41 minutes of gait training under a physical therapist's name and admitted Client #1 was not in the facility at the time of the documented therapy.
 - B. Practitioner admitted there are no circumstances in which a speech language pathologist provides gait training for a nursing facility resident.
 - C. Practitioner stated at the time of the billing, she was the program director and responsible for managing employees that provided therapy to clients. Practitioner supervised two clinical fellows, and was responsible for data management, patient billing, scheduling team meetings, and caregiver training. While in this position, Practitioner

stated she provided optional patient care, maintained high staff morale, and maximized employer profits.

D. Practitioner stated she felt pressure from her supervisors to meet the required number of patient therapy minutes. Practitioner explained that if patients do not achieve the required number of therapy minutes, the patient receives a level decrease and subsequently, the employer receives less revenue. Practitioner explained she was required to assure patients received a specific number of therapy hours within a specific period of time. If a patient failed to achieve the hours, the patient's rehab level was adjusted. Practitioner further explained a reduction in a patient's therapy hours may be the result of the patient's ability or inability to complete the therapy, or a scheduling error outside of the patient's control. Further, a decrease in therapy affects the reimbursement the facility receives from Medicare for the specific patient.

E. Regarding the impersonation and false billing, Practitioner billed 41 minutes of gait training, under an occupational therapist's name, to avoid a decrease in Client #1's level of therapy. Practitioner explained she was in the process of training another individual to take over her position as program director and she missed scheduling Client #1 with physical therapy. Practitioner explained that given the rigid time constraints for patients to achieve their rehab goals, combined with Practitioner's determination that Client #1 needed to remain at the current rehab level, she billed for services not provided to prevent Client #1, a Medicare Part A patient.

F. Practitioner asserts she has had no prior disciplinary issues. In a summary of why she billed for occupational therapy services not provided to Client #1, Practitioner stated she felt pressured to avoid a reduced rehab level for Client #1. Practitioner stated she

values her career and was committed to patient care and feared losing her job. She further stated the reduced rehab level would have negatively affected Client #1 as well as her employer's interests. Practitioner takes full responsibility for her actions and states she has learned from the experience.

5. On April 28, 2015, the Competency Review Committee (CRC) of the Speech Language Pathologist and Audiologist Advisory Council reviewed the Department's investigative summary in this matter. CRC members made the following comments and recommendations:

- A. There are no circumstances under law or the community standard of care in speech language pathology for falsifying hours, falsifying the name of the therapist that provided the services or billing for services that were not provided to a client.
- B. There are situations in which a therapist may need to document or bill for services after the fact. In these situations, the community standard of care is to document the hours, the therapist that provided the hours, the billing codes, along with a notation providing a reason for the late documentation and the name of the therapist making the report. In this case, Practitioner admitted to falsely documenting and billing for physical therapy services not provided to the patient and without the knowledge of the physical therapist she impersonated.
- C. The community standard of care is to provide services to a client based on the client's need for services and not the monetary value of the reimbursement a facility receives from the patient's insurance provider. Practitioner may have scheduled Client 1 for the rehab level she determined to be necessary for Client 1, even if Medicare did not reimburse for all hours billed or provided.

D. The CRC understood the pressure a therapist may be under when a patient is not able or willing to receive the recommended level of services, or the facility is faced with scheduling issues. However, Practitioners are required to adhere to the legal requirements under the law and the ethical community standards of care in the profession.

E. The CRC recommended the Department discipline practitioner for violating the prohibited acts, including Minnesota Statutes, section 148.5195, subdivision 3(3); 3(11); and 3(13).

ORDER

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

1. Upon the effective date of this Stipulation, Practitioner's license to provide speech language pathology is conditioned as follows:

A. Within three months of the effective date of this Order, Practitioner shall submit evidence of successful completion of the following two Web-Based Training (WBT) courses, offered by the Medicare Learning Network, Center for Medicare & Medicaid Services: Medicare Billing: 8371 and Form CMS-1450 (March 2014) and Medicare Fraud and Abuse: Prevention, Detection, and Reporting (Revised November 2014).

B. Within twelve months of the effective date of this Order, Practitioner shall submit evidence of successful completion of six continuing education (CE) course hours, preapproved by the Department on the following topics: Two CE course hours on practice management, two CE course hours on ethics in speech language pathology, and two CE course hours on reimbursement and Medicare. The CE shall be in addition to the CE requirements of Minnesota Statutes, section 148.5193 and as required for her

February 1, 2016 renewal, and must meet the requirements for continuing education as stipulated by the American Speech-Language-Hearing Association.

C. Within 30 days of the effective date of this Stipulation, Practitioner shall pay a civil penalty in the amount of \$772.00 to reimburse MDH for the cost of the investigation and proceedings to date. Practitioner must make the payment by check or money order made payable to "State of Minnesota Treasurer" and mail the check to the attention of: Investigation and Enforcement Unit, Health Occupations Program, MDH, PO Box 64882, Saint Paul, MN 55164-0882.

D. Practitioner may pay the \$772.00 civil penalty in monthly installments of up to four months after the effective date of this action. If Practitioner chooses to make installments, she must notify the Department in writing about her intentions, including how many installments she intends to make and in what amount. Within 30 days of the effective date of this Stipulation, Practitioner must send this information to: Investigation and Enforcement Unit, Health Occupations Program, MDH, PO Box 64882, Saint Paul, MN 55164-0882. Each payment is due by the last day of each month; however, Practitioner may prepay at any time.

E. Regarding the civil penalty described in paragraph 1.C above, the penalty may be referred to the Minnesota Collection Enterprise (MCE) in the Minnesota Department of Revenue, or 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 MCE, MCE is authorized by Minnesota Statutes, section 6D.17, to obtain a judgment against Practitioner without further notice or additional proceedings.

2. Upon successful completion of the conditions herein, but not less than twelve months from the effective date of this Stipulation, Practitioner may petition the Department for reinstatement of an unconditional license. The Department may continue, modify or remove the conditions set forth in this Stipulation.
3. In the event the Division Director in her discretion does not approve this settlement or a lesser remedy than specified herein, 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 148.5195, 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.
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 on the basis of any act, conduct, or omission of Practitioner, justifying action which occurred after or before the date of this Stipulation and which is not directly related to the specific facts and circumstances as set forth herein.
5. 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

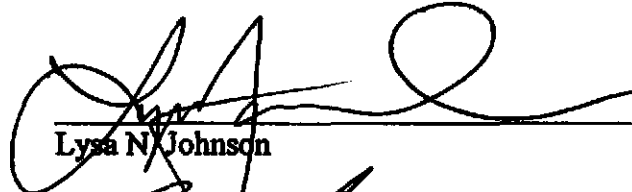
Director, once the Division Director has approved it, the Division Director may issue the Stipulation to Practitioner at any time without further notice.

6. A copy of this Stipulation, when issued by the Division Director, shall be served by first class mail on Practitioner, at The Hoffner Firm, Ltd., The Flour Exchange Building, 310 4th Avenue South, Suite 5010, Minneapolis, MN 55415. Service via first class mail shall be considered as personal service upon Practitioner, at which time this Stipulation shall become effective. 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.

CONSENT

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

Dated: June 23rd, 2015

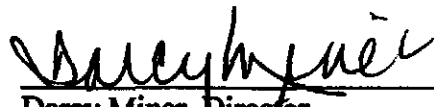

Lysa N. Johnson

Dated: 6/29, 2015


Gilbert Acevedo, 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 29th day of June, 2015.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH


Darcy Miner, Director
Health Regulation Division