

N.H. Occupational Therapy Governing Board
Office of Allied Health Professionals
Concord, New Hampshire 03301

In the Matter of:
Jean M. Smith, OT
License No. 0713

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of occupational therapy, the New Hampshire Occupational Therapy Governing Board (“the Board”) and Jean M. Smith, OT (“the Respondent”) agree to resolve certain allegations of professional misconduct now pending before the Board in accordance with the following terms and conditions:

1. The Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by occupational therapists who are its licensees pursuant to RSA 328-F: 23, I, 328-F: 24 and 328-F: 25, I. The Board may dispose of any such allegations by settlement and without commencing or completing a disciplinary hearing pursuant to RSA 328-F: 25, III and Ahp 205.02 (i).
2. The Board first granted Respondent a license to practice occupational therapy in the State of New Hampshire on October 2, 1991. Respondent holds license number 0713. Respondent practices occupational therapy at Dartmouth-Hitchcock Medical Center (“DHMC”), One Medical Driver Center, Lebanon, New Hampshire.
3. On or about January 4, 2010 the Board received information that Respondent had presented a falsified license to her employer DHMC.
4. The Board's investigation revealed and Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in unprofessional misconduct in violation of RSA 326-C:3, I; Occ 502.01(a); and

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The American Occupational Therapy Association Code of Ethics Principle (“Code of Ethics”) 6 A and C by the following facts:

- A. Respondent’s occupational therapy license was scheduled to expire on December 31, 2009. Respondent reported that she believed she had sent in her renewal application. In dealing with personal stressors at this time, Respondent neglected to submit her renewal, prior to December 30, 2009.
- B. On or about December 30, 2009, Respondent submitted a copy of her occupational therapist license to DHMC, as she was required to have a valid license as a condition of her employment. During DHMC’s license verification process, it became apparent that Respondent had submitted an altered license to practice as an occupational therapist.
- C. Later in the day on December 30, 2009, Respondent submitted her renewal application to the Board.
- D. When asked by DHMC to explain the situation, Respondent ultimately acknowledged that she had turned in an altered copy of her license. The altered copy showed an expiration date of December 31, 2011.
- E. Respondent’s license had actually expired on December 31, 2009. Respondent refrained from practicing occupational therapy at DHMC after her license expired on December 31, 2009 until she received her new license from the Board on January 25, 2010. Respondent had completed all required continuing education credits by the Board deadline of December 31, 2009.

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5. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct Respondent violated of RSA 326-C:3, I; Occ 502.01(a); and *The American Occupational Therapy Association Code of Ethics Principle* ("Code of Ethics") 6 A and C.
6. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as an occupational therapist in the State of New Hampshire.
7. Respondent consents to the following disciplinary action by the Board pursuant to RSA 328-F: 23, V:
 - A. Respondent is hereby REPRIMANDED;
 - B. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$500. Respondent shall pay this fine in five (5) monthly installments of \$100. The first \$100 payment shall be paid within thirty (30) days of the effective date of this agreement, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 2 Industrial Park Drive, Concord, New Hampshire. The four (4) remaining payments shall be made on every 30 days until the fine is paid in full.
 - C. Respondent's employer shall submit quarterly reports to the Board regarding Respondent's job performance for one year following the effective date of this agreement. Specifically, the reports will comment on Respondent's compliance with all policies regulating the conduct, standards

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of care, and departmental policies related to documentation and billing.

These reports shall be submitted under seal. These reports shall be submitted every ninety (90) days, beginning from the effective date of this Settlement Agreement.

- D. Respondent shall contact the Employee's Assistance Program (EAP) and develop an appropriate plan for dealing with the life and workplace stressors that led to this incident. Respondent shall submit documentation to the Board on a quarterly basis to show that she is in compliance with an EAP approved plan for dealing with the above-mentioned issues. If Respondent prefers to address these issues with a different mental health professional, this information shall be communicated to the Board within fifteen (15) days of the change. Supporting documentation of Respondent's work on addressing these stressors will be submitted under seal, beginning ninety (90) days from the effective date of this Settlement Agreement. Respondent shall present her employer with a valid license to practice as an occupational therapist.
- E. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of this Settlement Agreement to the National Board for Certification in Occupational Therapy.
- F. Within ten (10) days of the effective date of this agreement Respondent shall furnish a copy of this Settlement Agreement to any current employer for whom Respondent performs services as an occupational therapist or

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work which requires specialized training in occupational therapy or an occupational therapy license, or which directly or indirectly involves patient care and to any agency or authority which licenses, certifies or credentials occupational therapists with which Respondent is presently affiliated.

- G. For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this Settlement Agreement to any employer to which Respondent may apply for work as an occupational therapist or for work in any capacity which requires occupational therapy training, or license or directly or indirectly involves patient care and to any agency or authority that licenses, certifies or credentials occupational therapists to which Respondent may apply for any such professional privileges or recognition.
8. Respondent's breach of any terms or conditions of this Settlement Agreement shall constitute unprofessional conduct pursuant to RSA 328-F: 23, IV (d) and a separate and sufficient basis for further disciplinary action.
9. Except as provided herein, this Settlement Agreement shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further

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misconduct be proven against Respondent in the future. Any future discipline by the Board could include license suspension or revocation.

10. This Settlement Agreement shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
11. Respondent voluntarily enters into and signs this Settlement Agreement and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
12. The Board agrees that in return for Respondent executing this agreement, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
13. Respondent understands that her action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
14. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with her decision to enter into this agreement.
15. Respondent understands that the Board must review and accept the terms of this agreement. If the Board rejects any portion, the entire agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this agreement have prejudiced her right to a fair and impartial hearing in the future if the Board does not accept this agreement.
16. Respondent is not under the influence of any drugs or alcohol at the time she signs this agreement.

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17. Respondent certifies that she has read this document entitled Settlement Agreement. Respondent understands that she has the right to a formal adjudicatory hearing concerning the matters stated herein and that at said hearing she would possess the rights to confront and cross examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations to present oral argument and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this agreement she waives these rights as they pertain to the misconduct described herein.
18. This Settlement Agreement shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR THE RESPONDENT

Date: 6/24/10

Jean M. Smith, OT
Jean M. Smith, OT
Respondent

Date: _____

Andrea Daly, Esq.
Attorney for Ms. Smith

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This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

FOR THE BOARD/*

Date: July 16, 2010

Tina M Kelley
(Signature)

TINA M Kelley
(Print or Type Name)
Authorized Representative of the
New Hampshire Occupational
Therapy Governing Board

/* Board Member, recused:

