



Tel. (603)-271-8389
Fax (603) 271-6702

State of New Hampshire

Office of Licensed Allied Health Professionals

2 INDUSTRIAL PARK DRIVE, SUITE 8
CONCORD, NEW HAMPSHIRE 03301-8520

TDD Access: Relay NH 1-800-735-2964
www.nh.gov/alliedhealth

March 27, 2012

Kathleen M. Valpey, PT
47 Gantry Street
Manchester, New Hampshire 03103

Certified & Regular Mail

Dear Ms. Valpey:

The Physical Therapy Governing Board reviewed the "Settlement Agreement" signed by you on February 9, 2012 at their meeting held March 21, 2012. The Board has made the following editorial changes:

Page 1, under #1 the Board changed the date the Respondent was first issued a license to practice from "1989" to "1980".

Pages 2 through 8 the header was changed from "N.H. Board of Medicine and Kathleen M. Valpey, PT" to "N.H. Physical Therapy Governing Board and Kathleen M. Valpey, PT".

Page 6 under letter F. the Board changed the word "physicians" to "physical therapists".

Page 8 under authorized representative "Speech-Language Pathology" was changed to "Physical Therapy".

The Board made one substantive change to the document. Page 6 under section B. 4. the Board modified the practice location that you must refrain from practicing in to include "Hospice Care Facilities".

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**State of New Hampshire
Physical Therapy Governing Board
Concord, New Hampshire 03301**

In the Matter of:

Kathleen M. Valpey, PT

No.: 0526

(Misconduct Allegations)

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 Physical Therapy, the New Hampshire Office of Allied Health Professionals, Physical Therapy Governing Board (“Board”) and Kathleen M. Valpey, PT (“Respondent”), a physical therapist licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 328-A; RSA 328-F:5, II; RSA 328-F:23, I; RSA 541-A; and New Hampshire Office of Licensed Allied Health Professionals Administrative Rule (“Ahp”) 203 and 209, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physical therapists. Pursuant to RSA 328-F:24, VI; RSA 541-A; and Ahp 214, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice Physical Therapy in the State of New Hampshire on November 6, ~~1989~~¹⁹⁸⁰. Respondent holds license number 0526.
3. On or about February 10, 2012 the Board received information that Respondent’s employment had been terminated due to suspected diversion of prescription drugs from physical therapy clients.
4. In response to this, the Board conducted an investigation and obtained information regarding Respondent’s suspected diversion of drugs.

5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would offer evidence to prove that Respondent engaged in professional misconduct, in violation of RSA 328-F:23, II (a) and(c), Phy 501.02, and American Physical Therapy Association Code of Ethics (“APTA Code”) Principles 2.A., 4.A., 4.B., and 7.C. by the following facts:
 - A. Respondent had been working as a physical therapist for a home health care provider. On or around October 7, 2011, Respondent stole percocet pills from Patient 1. When Respondent’s employer questioned her about the alleged diversion, she denied taking any medication from this patient.
 - B. During the fall of 2011, Respondent asked for and received an Ativan pill from the wife of a current patient.
 - C. In December of 2011, Respondent was working with Patient 2. On several occasions, Patient 2 gave Respondent Oxycodone pills. Respondent accepted these pills from Patient 2. When Respondent’s employer questioned her about these allegations, she denied receiving or stealing any medication from Patient 2.
 - D. During the fall and winter of 2011-2012, Respondent purchased percocets from an acquaintance.
 - E. In a February 10, 2012 letter to the Board, Respondent provided notification of her change in employment. Respondent also denied receiving or stealing medication from Patient 2. Respondent later disclosed that she did accept medication from Patient 2 and that the information she had previously provided to the Board was false.
 - F. Respondent has been licensed for over 30 years and this conduct represents her first disciplinary matter before the Board. The investigation did not reveal any evidence that Respondent’s conduct harmed patients.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 328-F:23, II (a) and(c), Phy 501.02 and APTA Code Principles .A., 4.A., 4.B., and 7.C.

7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose reciprocal disciplinary sanctions against Respondent's license to practice as a physical therapist in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 328-F:23, III.
 - A. Respondent's license to practice as a physical therapist is SUSPENDED. This suspension shall remain in effect for a minimum of ninety (90) days. Prior to asking the Board to lift the suspension, Respondent must comply with the following requirements:
 1. Respondent shall undergo an addiction evaluation by an addiction psychologist or psychiatrist within sixty (60) days of the issuance of this Settlement Agreement. This addiction psychologist or psychiatrist must be pre-approved by the Board.
 - a. Respondent shall provide the Board with the names of three (3) potential evaluators within 30 days of the effective date of this *Settlement Agreement*.
 - b. The psychologist or psychiatrist will review the following documents before completing the evaluations:
 - Respondent's treatment record from her primary care physician.
 - Respondent's prescription profile from the Wal-Mart pharmacy located at 300 Keller Street in Manchester, New Hampshire.
 - Respondent's prescription profile from the Rite-Aid pharmacy located at 1 South Willow Street in Manchester, New Hampshire.
 - This Settlement Agreement as issued by the Board.
 - c. Respondent shall sign any and all releases necessary for provision of the above-listed records.

- d. The psychologist or psychiatrist shall provide a copy of the evaluation, under seal, to the Board, within eighty (80) days of the issuance of this Settlement Agreement.
2. Respondent shall submit a written treatment plan for the Board's approval. The treatment plan shall include compliance with all recommendations made in the addiction evaluation, including mental health counseling. It shall also include substance abuse counseling and monitoring.
 - Respondent shall submit supporting documentation to confirm compliance with the pre-approved written treatment plan to the Board on a monthly basis. This documentation will be submitted under seal.
 - While engaging in mental health counseling, Respondent shall address the stressors that led to her narcotics abuse, as outlined in this Settlement Agreement. Respondent shall discuss her insight into the causes and consequences of her behavior as well as techniques for managing these stressors in the future.
 - Monitoring shall consist of random alcohol and drug testing at least twice a month. All screens required pursuant to this agreement must include extensive panel drug testing for drugs of abuse, prescription medications and alcohol. The results of the alcohol and drug screens shall be forwarded to the Board on a monthly basis.
 - In the event of a positive screen, Respondent shall notify the Board within 48 hours. Respondent shall also sign any and all necessary releases allowing the testing facility to notify the Board of positive screens within 48 hours. Both Respondent and the facility shall notify the Board of any missed tests.

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3. Respondent shall demonstrate a minimum of sixty (60) days compliance with the pre-approved treatment plan prior to requesting that the Board lift the suspension of her license.
- B. Upon Respondent's return to practice, the following conditions shall be met:
1. Respondent will continue her treatment plan for a period of three (3) years or until further order of the Board. Respondent shall continue to address what stressors led to Respondent's narcotics abuse, as outlined in this Settlement Agreement, and Respondent's insight into the causes and consequences of this behavior and how to manage these stressors in the future.
 2. Respondent shall file quarterly reports from the mental health provider, under seal, with the Board, at The New Hampshire Physical Therapy Governing Board, Office of Licensed Allied Health Professionals, 2 Industrial Park Drive, Concord NH 03301. The quarterly reports shall outline Respondent's attendance and compliance with any treatment as well as a general statement of Respondent's progress and compliance with all recommendations.
 3. Respondent shall submit to random alcohol and drug testing for a period of three years. Random testing shall occur on a monthly basis for four (4) months. Provided that all screens up to this point have been negative, testing will then occur on a bi-monthly basis for the next eight (8) months. The testing shall continue to occur on a bi-monthly basis for the next three (3) years, absent further order from the Board. If Respondent has had twelve (12) consecutive months of negative screens, she may petition the Board for permission to reduce the frequency of testing. Respondent shall be responsible for submitting the results to the Board on a monthly basis.

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4. Respondent shall refrain from practicing in the home setting for a minimum of two years. Respondent's license will remain under this restriction until further order of the Board.
- C. Respondent shall bear all costs of complying with the terms of this *Settlement Agreement*, but she shall be permitted to share such costs with third parties.
- D. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
- E. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a physical therapist and to any agency or authority which licenses, certifies or credentials physical therapists, with which Respondent is presently affiliated.
- F. 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 a physical therapist and to any agency or authority that licenses, certifies or credentials ~~physicians~~ ^{physical therapists}, to which Respondent may apply for any such professional privileges or recognition.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 328-F:23, II (j) and a separate and sufficient basis for further disciplinary action by the Board.
10. 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 misconduct be proven against Respondent in the future.

or Hospice
Care
Facility

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11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. 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.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with his decision to enter into this agreement.
16. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
17. Respondent is not under the influence of any illicit drugs or alcohol at the time she signs this *Settlement Agreement*.
18. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter 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 *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.

19. 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 RESPONDENT

Date: 2/29/12

Kathleen Valpey
Kathleen M. Valpey, PT
Respondent

FOR THE BOARD/*

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

Date: 3/27/12

Tina M Kelley
(Signature)

TINA M Kelley
(Print or Type Name)
Authorized Representative of the
Board of Allied Health Professionals,
Speech-Language Pathology Governing Board
Physical Therapy

/* Board members, recused:

