

**State of New Hampshire
Speech-Language Pathology Governing Board
Concord, New Hampshire 03301**

In the Matter of
Justine E. Lariviere, SLP
Provisional License No. P-0498
(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 speech-language pathology, the New Hampshire Office of Allied Health Professionals, Speech-Language Pathology Governing Board (“Board”) and Justine E. Lariviere, SLP (“Ms. Lariviere” or “Respondent”), a speech-language pathologist who previously was provisionally 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-F:5, II, RSA 328-F:23, I, and 328-F:24, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by provisionally licensed speech-language pathologists. Pursuant to RSA 328-F:24, VI, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted the Respondent a provisional license to practice as a speech-language pathologist in the State of New Hampshire in September of 2011. The Respondent held provisional license number P-0498. The Respondent last practiced as a speech-language pathologist in August of 2012.

3. In September of 2012, the Board received information that the Respondent was terminated from her employment for allegedly improperly billing speech-language pathology services for patients. In response to receiving that information, the Board conducted an investigation and obtained evidence from numerous sources.
4. The Respondent stipulates that if a disciplinary hearing was held in this matter, the following information and evidence would be presented in support of proving professional misconduct under RSA 328-F:23, II:
 - A. In September of 2011, the Board issued the Respondent a provisional license to practice speech-language pathology. Later that month, the Respondent began full-time employment with Genesis Rehab Services (“Genesis”) and was assigned to provide services at the Mountain View Nursing Home in Ossipee, New Hampshire. As a provisional licensee, the Respondent was required to complete a Clinical Fellowship Year (“CFY”) under the supervision of a Board licensee. The Respondent’s CFY ended in June of 2012.
 - B. In early August of 2012, two co-workers of the Respondent separately reported to Genesis management their suspicion that the Respondent might not be treating all of her assigned patients, because there appeared to be substantial portions of the day when she was not seeing patients. Based on that information, Genesis management arranged for the Respondent to be secretly observed while working on August 16, 2012.

- C. The designated observer witnessed on August 16 that the Respondent worked at the facility for a total of 6.25 hours. During that time, she performed billable patient care totaling 2.25 hours and non-patient care tasks totaling 4.0 hours. For that same day, the Respondent claimed billable care totaling 5.75 hours that she attributed to ten different patients. The Respondent was observed providing billable care to only three of those ten patients.
- D. On August 17, 2012, Genesis management met with the Respondent to discuss the observation findings from August 16. During that meeting, the Respondent admitted that she did not see four of the seven patients in question, despite billing 2.0 hours for those four patients. The Respondent claimed that she had been distracted on August 16 due to a personal problem and billed from her patient schedule instead of her treatment records.
- E. As part of the investigation, the Respondent's treatment productivity (Patient Care/On-Site Time) was examined from wage and billing records covering the period that coincided with her co-workers' reported suspicions. During the three-week period that preceded August 16, 2012, the Respondent's submitted claims for billable care equaled more than 80 percent of her on-site time. On the day that she was observed, the Respondent's submitted claims for billable care equaled 92 percent of her on-site time even though she was witnessed spending only 36 percent of her time on billable care.

- F. Because the Respondent is a member of the American Speech-Language-Hearing Association (“ASHA”), Genesis also reported her alleged improper billing conduct to that organization. Based on its review of the evidence, the ASHA Board of Ethics issued a Final Decision on April 12, 2013, ruling that the Respondent had violated ASHA’s Code of Ethics (2010). Its Final Decision imposed a 12-month revocation of the Respondent’s ASHA membership and certification, effective April 12, 2013.
- G. In December of 2011, the Respondent moved from her address in Dover, New Hampshire to a new address in Dover, but failed to report that change to the Board. In February of 2013, the Respondent moved to a third address in Dover, but failed to report that change to the Board. That same month, the Respondent obtained new employment that did not require a Board license, but failed to report that change to the Board.
5. The Board finds from the evidence described above that the Respondent has engaged in certain professional misconduct that provides sufficient grounds for imposing disciplinary sanctions under RSA 328-F:23, II as follows:
- A. The Respondent violated certain ethical standards adopted by the Board and, as a result, engaged in professional misconduct in violation of RSA 328-F:23, II(c). Specifically, the Respondent’s improper billing of services violated Principle of Ethics I (Rule O); Principle of Ethics III (Rule E); and Principle of Ethics IV (Rule C) of the ASHA Code of Ethics. Pursuant to Speech-Language Pathology Administrative Rule

(“Spe”) Part 503, the Respondent was required to comply with those provisions contained in the ASHA Code of Ethics.

- B. The Respondent engaged in professional misconduct in violation of RSA 328-F:23, II(j) by failing to comply with the Board’s rules under Spe 406.01(a)(1) and Spe 406.01(a)(2), which required that she maintain her current business and home addresses with the Board and notify the Board of any address changes.
6. The Respondent acknowledges that the conduct summarized above provides sufficient grounds for the Board to impose disciplinary sanctions against her previously held provisional license to practice as a speech-language pathologist in the State of New Hampshire.
7. The Respondent consents to the Board imposing the following discipline under RSA 328-F:23, IV:
- A. The Respondent is Reprimanded;
 - B. The Respondent shall complete a new Clinical Fellowship Year (“CFY”) in accordance with the requirements of Part Spe 308. The Respondent’s CFY Supervisor shall be pre-approved by the Board. Before seeking the Board’s approval of her CFY Supervisor, the Respondent shall provide the proposed CFY Supervisor with a copy of this *Settlement Agreement*;
 - C. In addition to the requirements imposed on CFY Supervisors pursuant to Part Spe 309, the Respondent shall ensure that her Board-approved CFY Supervisor submits the following periodic reports to the Board during the CFY:

- (i) For the first three months of the CFY, the Supervisor, within ten (10) days after completing each month of supervision, shall submit to the Board a written summary that details the direct and indirect supervision (as defined under Spe 301.04 and Spe 301.05) provided to the Respondent during that month, to include the dates, times, and locations by which the supervision was provided.
- (ii) Within fifteen (15) days after completing the fifth month of supervision, the Supervisor shall submit to the Board a written summary that details the direct and indirect supervision provided to the Respondent during the preceding two months, to include the dates, times and locations by which the supervision was provided.
- (iii) Within thirty (30) days after completing the CFY, the Supervisor shall submit to the Board a written summary that details the direct and indirect supervision provided to the Respondent since completing the fifth month, to include the dates, times and locations by which the supervision was provided.

D. The Respondent shall furnish a copy of this *Settlement Agreement* to any employer for whom the Respondent may apply for work as a speech-language pathologist while completing her new CFY. The Respondent shall also provide a copy of this *Settlement Agreement* to any individual

that supervises her work wherever she is employed while completing her new CFY.

- E. The 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 provide a separate and sufficient basis for further disciplinary action by the Board.
8. 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 the fact that discipline was imposed by this *Settlement Agreement* as a factor in determining appropriate discipline in the event further misconduct is proven against the Respondent in the future.
9. This *Settlement Agreement* shall become a permanent part of the Respondent's file and maintained by the Board as a public document.
10. The 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.
11. The Board agrees that in return for the Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
12. The 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.

13. The 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 *Settlement Agreement*.
14. The 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. The Respondent specifically waives any claim 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, in the event this *Settlement Agreement* is not accepted by the Board.
15. The Respondent certifies that she is not under the influence of any drugs or alcohol at the time she signs this *Settlement Agreement*.
16. The Respondent certifies that she has read this document titled *Settlement Agreement*. The 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 seek judicial review of a final Board decision. Further, the Respondent fully understands the nature, qualities and dimensions of these rights. The Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.

17. This 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: 4/23/14

Justine Lariviere
Justine E. Lariviere, SLP
Respondent

FOR THE BOARD/*

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

Date: May 20, 2014

Tina M Kelley
(Signature)

TINA M Kelley
(Print or Type Name)
Authorized Representative of the
Speech-Language Pathology
Governing Board

/*Board Members not participating:
