

THE SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

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IN THE MATTER OF THE SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS LICENSE #0392 ISSUED TO CHRISTOPHER FOSNESS, RPT AGREEMENT

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This Agreement, made and entered into by the South Dakota Board of Medical and Osteopathic Examiners, hereinafter referred to as Board, by and through its Executive Secretary, L. Paul Jensen, and the licensee Christopher Fosness, RPT, WITNESSETH:

WHEREAS, Christopher Fosness, is the holder of physical therapist's license #0392 of the South Dakota Board of Medical and Osteopathic Examiners and at all times pertinent hereto was engaged in the practice of physical therapy in locations within the State of South Dakota, including St. Michael's Hospital in Tyndall, South Dakota; and

WHEREAS, the Board has asserted that Christopher Fosness was charged under a superseding information with retaining money that had been improperly obtained from the United States. As a result of the charge made in the superseding information, Christopher Fosness pled guilty to violation of 18 U.S.C. § 641. That in the course of the proceeding, Christopher Fosness has stated that he failed to determine and refund money that the United States had overpaid to St. Michael's hospital on account of incorrect physical therapy claims filed between July 1998 and January 2001,

which conduct and action constitutes grounds for the cancellation, revocation, or suspension of his South Dakota license to practice physical therapy in that such conduct by Christopher Fosness constituted unprofessional conduct in violation of SDCL 36-10-40(4); and

WHEREAS, the parties hereto agree to resolve any issues relative to the revocation of Christopher Fosness' license to practice physical therapy without the necessity of the Board filing a formal complaint or notice of hearing pursuant to SDCL 1-26-9 in this matter.

NOW, THEREFORE, based upon the foregoing, the parties agree as follows:

1. The license of Christopher Fosness, RPT to practice physical therapy in the State of South Dakota is revoked effective April 1, 2005.

2. Other than for exceptional circumstances shown by Christopher Fosness, RPT, the South Dakota Board of Medical and Osteopathic Examiners will not consider an application for a license to practice as a physical therapist submitted pursuant to SDCL 36-10-47 in the State of South Dakota for a period of five (5) years from and after the date of revocation.

3. As a condition to the consideration of any license application submitted by Christopher Fosness following the five (5) year period referred to in Paragraph 2. above, Christopher Fosness shall attend and submit evidence to the Board of

Examiners of attendance at a minimum of five (5) education programs relative to reimbursement and/or permissible billing practices for participation in the Medicare and Medicaid programs.

4. Christopher Fosness shall obey all state and federal laws, rules and regulations during the period of revocation.

5. Upon completion and submission of an application for a new license to practice physical therapy in the State of South Dakota, Christopher Fosness shall submit to an interview before a committee designated by the Board of Examiners at which time inquiry shall be made as to his knowledge and understanding of reimbursement criteria for participation in the Medicaid and Medicare programs. This committee may contain one (1) or more physical therapists who may act as consultants to the Board of Examiners.

6. The Board of Examiners is free to accept or reject any recommendation by this Committee. Therefore, Christopher Fosness shall understand and agree the committee referenced in Paragraph 5. above may only make a recommendation and the full Board of Examiners is free to accept or reject the recommendation of the Committee and may impose other sanctions or terms and conditions on his license to practice or any future license to practice physical therapy as it deems appropriate.

7. The Board of Examiners shall report any sanction imposed by it to the United States Department of Health and Human

Services, the Centers for Medicare and Medicaid Services, the State of South Dakota Medicaid Program and any other professional licensing board which now or in the future shall license Christopher Fosness as a physical therapist or other health care professional.

8. That the parties hereto recognize that Board representatives who have engaged in discussions relative to an agreed disposition of this matter may only make recommendations to the South Dakota Board of Medical and Osteopathic Examiners, which recommendation may in no way be considered as binding upon the full membership of the Board who would ultimately decide the pending contested case, and this Stipulation is subject to acceptance by the full membership of the Board.

9. It is further agreed that in the event this Stipulation is not accepted by the membership of the South Dakota Board of Medical and Osteopathic Examiners, such agreed disposition shall not in any manner be considered as binding upon Christopher Fosness and in such case, the above entitled matter would proceed to a contested case hearing with no inferences or presumptions being drawn by reason of this Stipulation entered into and that such Stipulation shall in no way prejudice or be considered by the Board upon a contested case hearing or decision thereon.

10. That Christopher Fosness understands that he has the right and has been afforded the opportunity to have this Stipulation reviewed by his attorneys, and that in the event he

chooses to execute this document without taking the opportunity to avail himself of this right such failure shall be deemed to be a waiver of such right.

11. That Christopher Fosness specifically waives any claim that any disclosures made to the full membership of the Board for the purposes of the consideration of this Stipulation have prejudiced his rights to a fair and impartial hearing in the event this Stipulation is not accepted by the full Board and further proceedings before the Board are initiated. However, if the Stipulation is not accepted by the full Board, and further proceedings before the Board are initiated, then the Board shall inform Christopher Fosness of all disclosures made to the full membership of the Board for the purposes of the consideration of this Stipulation

12. Christopher Fosness understands and agrees that the entry of an Order by this Board shall cause a report to be filed by this Board with the National Practitioner Data Bank as an adverse licensure action.


13. Christopher Fosness further agrees that there have been no inducements, threats or promises made in order to obtain his entry into this Stipulation.

14. That the parties further agree that all statements contained herein are based upon the facts known to the Board on the date of execution of this Stipulation.

15. That Christopher Fosness waives any and all rights, administrative and judicial, that he may enjoy pursuant to SDCL Chapter 1-26 or SDCL Chapter 36-10, including the necessity of the Board filing of a formal complaint to initiate license sanction proceedings in this matter.

16. That this Stipulation shall become a matter of public record and the obligations of the Board with respect thereto shall be governed by the laws of South Dakota and the Board policy then in effect.

Dated this 29 day of June, 2005.



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L. Paul Jensen  
Executive Secretary  
South Dakota Board of  
Medical and Osteopathic Examiners  
1323 S. Minnesota Avenue  
Sioux Falls, South Dakota 57105

Dated this 2nd day of June, 2005.



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Christopher Fosness