

## **SETTLEMENT AGREEMENT**

Joan Hapka-Tracy (“Licensee”), and the Missouri State Committee for Social Workers (“Committee”), and enter into this settlement agreement for the purpose of resolving the question of whether Licensee’s clinical social worker license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri (“AHC”) regarding cause to discipline the Licensee’s licenses, and, additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo 2000.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee’s own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Committee at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney’s fees incurred in defending this action against Licensee’s license. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the investigative report and other documents relied upon by the Committee in determining there was cause to discipline

Licensee's license, along with citations to law and/or regulations the Committee believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Committee that Licensee's clinical social worker license, numbered 003211, is subject to disciplinary action by the Committee in accordance with the provisions of Chapter 621, RSMo, and Chapter 337, RSMo.

**Joint Stipulation of Facts and Conclusions of Law**

1. The Committee is an agency of the state of Missouri, created and existing pursuant to § 337.622, RSMo, for the purpose of carrying out the provisions of §§ 337.600 through 337.689, RSMo.<sup>1</sup>
2. Licensee, Joan Hapka-Tracy, is a natural person residing at 3748 Neosho Street, St. Louis, Missouri 63116.
3. Licensee's social security number is xxx-xx-4294.
4. On or about March 10, 2009, the Committee received a written complaint regarding Licensee. The complaint alleged that Licensee was assigned to provide case management for a consumer, M.K., of the Department of Mental Health (DMH). Licensee was an employee of Barnes Jewish-Christian Behavioral Health (BJC) at the

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

time. In February 2008, the City of St. Louis condemned M.K.'s apartment due to being infested with cockroaches, having no heating source, having no hot water and having no properly functioning toilet. DMH conducted an investigation of M.K.'s case following the condemnation. Based on the investigative report, the complaint stated that DMH made a finding of class I neglect against Licensee for her management of M.K.'s case, failing to adequately serve M.K., leaving M.K. in an apartment which was condemned by the City of St. Louis. The complaint stated that the finding of Class I neglect was upheld in an administrative hearing before DMH and Licensee's name was placed on the Employee Disqualification Registry maintained by DMH.

5. On or about April 28, 2009, the Committee received a letter from Licensee's attorney. The letter stated that Licensee denied and contested the finding of class I neglect and was seeking judicial review of that decision and placement on the Employee Disqualification Registry in the Circuit Court for the City of St. Louis.
6. Licensee filed her Petition for Review in the Circuit Court of the City of St. Louis (Circuit Court) on March 23, 2009.
7. Licensee also filed a Brief in support of her Petition for Review. In her brief, Licensee argued that there was not competent and substantial evidence upon the record to substantiate that M.K. was in imminent danger to her health, safety or welfare or that a substantial probability that death or physical injury would result.
8. DMH filed a Brief in support of the finding of Class I neglect asserting that there was competent and substantial evidence supporting the finding that Licensee neglected M.K.

by not responding adequately to M.K.'s complaints about her apartment, leaving M.K. in an unacceptable apartment, which was condemned at the end of eight months and which was paid for with DMH funds.

9. On April 5, 2010, the Circuit Court issued its Memorandum, Order and Judgment in the case. The Circuit Court affirmed the decision of DMH, determining that there was competent and substantial evidence to support DMH's determination. Licensee appealed the decision in the Missouri Court of Appeals, Eastern District.
10. On or about March 29, 2011, the Missouri Court of Appeals, Eastern District (Court of Appeals), affirmed the Circuit Court's decision pursuant to Rule 84.16(b) of the Missouri Court Rules. The Court of Appeals issued a memorandum with its Order affirming the decision setting forth the reasons for its affirmance. The Court of Appeal's memorandum stated:
  - a. Licensee was a clinical case manager at BJC, an outpatient mental health center that contracts with DMH to provide adult community psychiatric rehabilitation and case management to DMH consumers (as defined in 9 CSR 10-5.200(1)(B) living in the community.
  - b. Licensee was the case manager for consumer M.K. from July 2007 through February 12, 2008 when the City of St. Louis informed M.K. and Licensee that it had condemned M.K.'s apartment building.

- c. Based on M.K.'s assessment, she required LOCUS<sup>2</sup> Level 3 services which are defined as "provided to consumers who need intensive support in the community. Level 3 services require a case manager to establish face-to-face contact with a consumer every two weeks. Level 3 also prescribe "moderate assistance with providing or arranging: daily living skills (personal hygiene, food prep, housekeeping, shopping, use of public transportation, money management and community safety skills ... supportive house ... coordination of care, and general health care."
- d. M.K. lived in an apartment and received rental assistance through DMH's Supported Community Living Program (SCLP). On July 3, 2007, Licensee visited M.K. at her apartment and discovered that the air conditioning was not working, the water heater was not working, the toilet seat was broken and the toilet did not flush properly and there were cockroaches in the bathroom. M.K. told Licensee that she reported the issues to the landlord and paid him money for the repairs but they had not been made. M.K. also told Licensee that she wanted to move to a different apartment building and specifically mentioned two in which she was interested.
- e. On July 5, 2007, Licensee contacted SCLP to discuss M.K.'s apartment and was told to contact M.K.'s landlord. Licensee left a voicemail with an SCLP employee asking

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2 LOCUS is the Level of Care Utilization Services. LOCUS is a level of care instrument developed by the American Association of Community Psychiatrists.

for the landlord's phone number, called the two other apartment buildings in which M.K. was interested and searched online for other options. Licensee called M.K. and told her about her efforts. M.K. again stated she wanted out of the apartment as soon as possible.

- f. On August 14, 2007, M.K. called Licensee and complained that she still did not have air conditioning or hot water and that her landlord stated she would have to pay him \$600 for a new hot water heater. Licensee asked for the landlord's contact information but M.K. stated she did not have it handy at that time.
- g. On November 29, 2007, M.K. called Licensee to complain that she had neither hot water nor a working furnace and asked Licensee to call her landlord. Licensee told M.K. that she could not talk to the landlord until M.K. signed a release. Licensee composed and mailed a release to M.K. and scheduled an appointment for M.K. to come to Licensee's office on December 10, 2007. M.K. did not return the release and did not come to the appointment.
- h. Between November 29, 2007 and January 7, 2008, M.K. contacted Licensee's supervisor and requested a new case manager.
- i. On January 7, 2008, Licensee contacted M.K. and informed her that her request for a different case manager had been denied and asked M.K. to come to Licensee's office on January 17, 2008 for her annual assessment. After M.K. missed the appointment, Licensee sent M.K. a letter asking her to reschedule.

- j. On February 12, 2008, a St. Louis Metropolitan Police Department detective contacted Licensee and told her that the City had condemned M.K.'s apartment building.
- k. DMH conducted an investigation into possible concerns of abuse and neglect of M.K. On May 13, 2008, DMH Chief of Community Operations Scott Giovanetti made a preliminary determination that Licensee committed one count of class I neglect pursuant to DMH regulation 9 CSR 15-5.200(1)(A)<sup>3</sup>. Licensee requested a meeting with Giovanetti regarding his preliminary finding. Following the meeting on July 8, 2008, on July 21, 2008, Giovanetti made a final determination substantiating the finding of Class I neglect and notifying Licensee that her name would be placed on DMH's Employee Disqualification Registry.
- l. Licensee appealed Giovanetti's determination to the DMH Hearings' Administrator who held a hearing on January 29, 2009. On February 20, 2009, the hearings administrator issued a decision substantiating one count of Class I neglect, defined by 9 CSR 10-5.200 (2006), against Licensee. Licensee filed her petition for judicial review in the Circuit Court of the City of St. Louis. On April 5, 2010, the Circuit Court affirmed the decision of the DMH hearings administrator. Licensee then

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<sup>3</sup> The relevant regulation is now found at 9 CSR 15-5.200(1)(F), effective May 30, 2009.

appealed the decision to the Court of Appeals. Pursuant to § 536.140.2, RSMo, the Court of Appeals review on appeal was of the agency's decision.

- m. The Court of Appeals determined that there was competent and substantial evidence establishing that Licensee committed class I neglect in failing to secure for M.K. an acceptable and inhabitable apartment.
- n. The Court of Appeals determined that as M.K.'s case manager, Licensee was responsible for providing M.K. supportive services including assistance with living arrangements. The Court of Appeals held that, outside a handful of phone calls and some internet research, as described in subparagraphs d through g above, Licensee made little effort to rectify M.K.'s living situation especially in light of the fact that M.K. was still living there on February 12, 2008 when the City of St. Louis condemned it and deemed it uninhabitable. Thus, the Court of Appeals held that Licensee failed to provide reasonable or necessary services to maintain M.K.'s physical and mental health which presented danger to M.K.'s "health, safety and welfare" or a "substantial probability that death or serious injury would result." 9 CSR 10-5.200(1)(A).
- o. The Court of Appeals also held that merely because M.K. did not suffer documented physical injury or illness as a result of Licensee's negligence, did not excuse Licensee's neglect of M.K.
- p. Finally, the Court of Appeals held that Licensee "has been found guilty of inaction and negligence because she knowingly allowed M.K. to remain in a substandard

apartment for almost seven months and failed to help M.K. find acceptable housing.”

The Court of Appeals found that DMH’s decision was based on the standard of care in the LOCUS guidelines and there was substantial and competent evidence to support DMH’s decision.

11. DMH regulation 9 CSR 10-5.200(1)(A) (2006) defines Class I neglect as:

[The] failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer or a substantial probability that death or serious physical injury would result.

12. Licensee’s actions and the resulting finding of Class I neglect, as described in paragraphs

4 through 10 above, constitute incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a social worker licensed pursuant to this chapter, for which the Committee has cause to take disciplinary action against Licensee’s clinical social worker license.

13. Licensee’s actions and the resulting finding of Class I neglect, as described in paragraphs

4 through 10 above, constitute violation of any professional trust or confidence for which the Committee has cause to take disciplinary action against Licensee’s clinical social worker license.

14. Accordingly, cause exists for the Committee to take disciplinary action against Licensee’s

clinical social worker license under § 337.630.2(5) and (13) RSMo, which states in pertinent part:

The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license required by sections 337.600 to 337.689 or any person who has failed to renew or has surrendered the person's license for any one or any combination of the following causes:

- ...  
(5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a social worker licensed pursuant to this chapter;
- ...  
(13) Violation of any professional trust or confidence[.]

**Joint Agreed Disciplinary Order**

15. The terms of discipline shall include that the Licensee's clinical social worker license, license number 003211 be placed on **PROBATION** for a period of five (5) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to retain Licensee's clinical social worker license and offer and engage in the practice of clinical social work as provided in Chapter 337, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

16. SPECIFIC REQUIREMENTS

- a. Licensee may offer and provide services only under supervision by a supervisor pre-approved by the Committee.
- b. For all quarters during which Licensee offers or provides any clinical social worker services, Licensee shall facilitate the submission of quarterly reports from her supervisor directly to the Committee. Such reports shall be submitted by the supervisor to the State Committee of Social Workers, P.O. Box 1335, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1, April 1, July 1 and October 1 during each year of the disciplinary period. The first report shall be due on October 1, 2012.

17. GENERAL REQUIREMENTS

- a. Licensee shall meet with the Committee or its representatives at such times and places as required by the Committee after notification of a required meeting.
- b. Licensee shall submit reports to the Missouri State Committee for Social Workers, Post Office Box 1335, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period. The first report shall be due January 1, 2013. Such reports shall be submitted regardless of whether Licensee is offering or providing clinical social work services.
- c. Licensee shall keep the Committee apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Committee within ten days of any change of home or work address and home or work telephone number.
- d. Licensee shall comply with all provisions of the Chapter 337, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- e. During the disciplinary period, Licensee shall timely renew Licensee's licenses and timely pay all fees required for licensing and comply with all other Committee requirements necessary to maintain Licensee's licenses in a current and active state.
- f. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapter 337, or fails to advise the Committee of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with  
§ 337.630.4, RSMo.
- g. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Committee's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.
- h. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Committee may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

- i. This Settlement Agreement does not bind the Committee or restrict the remedies available to it concerning any other violation of Chapter 337, RSMo, by Licensee not specifically mentioned in this document.
18. The parties to this settlement agreement understand that the Missouri State Committee for Social Workers will maintain this Agreement as an open record of the Committee as provided in Chapters 337, 610 and 324, RSMo.
19. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.
20. Licensee, together with Licensee's heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Committee, its respective members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in

perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

21. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

22. If Licensee has requested review, Licensee and Committee jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the settlement agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

**LICENSEE**

**COMMITTEE**

Joan Hapka-Tracy \_\_\_\_\_ Tom Reichard \_\_\_\_\_

Joan Hapka-Tracy

Tom Reichard  
Executive Director  
State Committee for Social Workers

Date 8-3-12 \_\_\_\_\_

Date 8-13-12 \_\_\_\_\_