SETTLEMENT AGREEMENT BETWEEN THE MISSOURI COMMITTEE FOR PROFESSIONAL COUNSELORS AND BETTY BERTHELOT

Betty Berthelot ("Berthelot") and the Committee for Professional Counselors ("the Committee") enter into this Settlement Agreement for the purpose of resolving the question of whether Berthelot's license as a Missouri licensed professional counselor will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri, and additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo (Cum. Supp. 2011), and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Berthelot acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a disciplinary hearing before the

[1] Statutory citations herein are to the Revised Statutes of Missouri 2000 unless otherwise noted.

Committee at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending an action against her license. Being aware of these rights provided her by operation of law, Berthelot knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement. Berthelot further agrees to abide by the terms of this Agreement, as they pertain to her.

Berthelot acknowledges that she has received a copy of the investigative report, and other documents relied upon by the Committee in determining there was cause for discipline, along with citations to law and/or regulations the Committee believes were violated. For the purpose of settling their dispute, Berthelot stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Committee that her Missouri license as a licensed professional counselor, license number 001694, is subject to disciplinary action by the Committee in accordance with provisions of Chapter 621, RSMo (Cum. Supp. 2011) and Chapter 337, RSMo.

The parties stipulate and agree that the disciplinary order agreed to by the Committee and Berthelot in the Joint Agreed Disciplinary Order herein is based only on the agreement set out in the Joint Stipulation of Facts and Joint Conclusions of Law herein. Berthelot understands that the Committee may take further disciplinary action against her based on facts or conduct not specifically

mentioned in this document that are either now known to the Committee or may be discovered.

I.

Joint Stipulations of Fact and Conclusions of Law

1. The Committee for Professional Counselors ("the Committee") is an agency of the state of Missouri created and established pursuant to § 337.535, RSMo, for the purpose of executing and enforcing the provisions of Chapter 337, RSMo pertaining to the practice of social work.

2. Respondent Betty Berthelot ("Berthelot") is licensed by the Committee as a Missouri licensed professional counselor, license number 001694 ("License").

3. Berthelot's License was issued on or about October 2, 2008.

4. Berthelot's License was current and active at all relevant times herein.

5. Berthelot is the owner and operator of Berthelot Counseling Company.

6. Berthelot's residential address is 212 South Walnut Street, Dexter, Missouri, 63841.

7. On or about December 28, 2011, Berthelot signed a Deferred Prosecution Agreement with the Office of the Attorney General, Medicaid Fraud

Control Unit (MFCU). MFCU signed the Deferred Prosecution Agreement on January 13, 2012. The Deferred Prosecution Agreement refers to Berthelot and her company, Berthelot Counseling Company, as "D[efendant]." The Deferred Prosecution Agreement states, in relevant part:

a. "D[efendant understands that D[efendant] is subject to being charged with violating Section 191.905.1(3) RSMo, in that D[efendant], a health care provider, knowingly concealed or failed to disclose information with the intent to obtain health care payments from MO Healthnet, to which D[efendant] was not entitled from July 2008 to July 2011. D[efendant] violated Section 191.905(3) RSMo[,] by filing 242 false Medicaid claims during this period..."

b. "D[efendant] further understands that the Attorney General of Missouri is willing to defer prosecution for a period of thirty-six (36) months, providing that D[efendant] complies with and satisfies the terms of the agreement."

c. "D[efendant] acknowledges that D[efendant] has been advised by the Office of the Missouri Attorney General of D[efendant]'s right to consult with an attorney prior to

entering into this agreement and D[efendant] has consulted with and is represented by an attorney."

d. "D[efendant] hereby admits that D[efendant] knowingly concealed or failed to disclose information with the intent to obtain health care payments to which D[efendant] was not entitled during the period of time alleged in paragraph [a] above. By this admission, D[efendant] freely and voluntarily waives D[efendant]'s right to remain silent guaranteed under both the Fifth Amendment to the United States Constitution and Article I, Section 19 of the Missouri State Constitution."

e. "D[efendant] agrees to forfeit Betty J. Berthelot, LPC and Berthelot Counseling Co's Medicaid provider numbers [] to the Missouri Department of Social Services, MO Healthnet Division (formerly Division of Medical Services) and agrees to not bill Medicaid from and after this date."

f. "D[efendant] agrees to promptly reimburse to the MO HealthNet Fraud Reimbursement Fund the amount of Twenty-Seven Thousand One Hundred Ninety Dollars ($27,190.00) as restitution upon the signing of this agreement. D[efendant] understands that failing to reimburse the MO

HealthNet Fraud Reimbursement Fund or attempting to discharge the MO HealthNet Fraud Reimbursement debt in bankruptcy will be considered a violation of this agreement."

g. "D[efendant] acknowledges that she has read this agreement and is fully advised as to its contents and freely and voluntarily enters into this agreement this 29th day of December, 2011."

8. The Missouri Department of Social Services, Missouri Medicaid Audit and Compliance Unit implemented a total suspension of Medicaid payments for Berthelot's license number as a result of the fraudulent billing.

9. The Committee recognizes that Berthelot cooperated fully with the MFCU investigation.

10. Pursuant to the Deferred Prosecution Agreement, Berthelot promptly reimbursed the MO Healthnet Fraud Reimbursement Fund the amount of $27,190.00, completing restitution.

11. Berthelot's actions as described in paragraphs 7 and 8 constitute:

a. misconduct, misrepresentation or dishonesty in the performance of the functions of a professional,

b. a violation of regulations adopted by the Committee pursuant to §§ 337.500 to 337.540,

c. a violation of any professional trust or confidence, and

d. unethical conduct as defined in the ethical standards set by rule by the Committee.

12. Cause exists for the Committee to take disciplinary action against Berthelot's license under §337.525.2(4), (5), (13), and (15), 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 337.500 to 337.540 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:
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> (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;
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> (5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions and duties of a professional counselor;
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> (6) Violation of, or assisting or enabling any person to violate, any provision of sections 337.500 to 337.540 or of any lawful rule or regulation adopted pursuant to sections 337.500 to 337.540;
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> . . .
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> (13) Violation of any professional trust or confidence;
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> . . .
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> (15) Being guilty of unethical conduct as defined in the ethical standards for counselors adopted by the division and filed with the secretary of state.

13. State regulation 20 CSR 2095-3.010, regarding professional responsibility of professional counselors, provides in pertinent part:

> (1) The ethical standards for counselors (hereinafter standards) shall apply to a licensed professional counselor, registered supervisor that is a licensed professional counselor, provisional licensed professional counselor, counselor-in-training, and an applicant for licensure and/or supervision (hereinafter referred to as counselor or counselors). A violation of these standards constitutes unprofessional conduct and is sufficient reason for disciplinary action pursuant to section 337.525, RSMo,
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> . . .
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> (3) A counselor shall not accept any form of remuneration that exploits the therapeutic relationship and a counselor shall not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound, professional judgment and skills[.]

14. State regulation 20 CSR 2095-3.015, regarding professional responsibility of professional counselors, provides in pertinent part:

> (4) A counselor shall not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skills.

II.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the Disciplinary Order entered by the Committee

in this matter under the authority of § 337.525.2, RSMo, and § 621.045.4, RSMo (Cum. Supp. 2011):

1. **Berthelot's License is on probation.** Berthelot's License as a professional counselor, License Number 001694, is hereby placed on **PROBATION for TWO (2) YEARS**. The period of probation shall constitute the "Disciplinary Period." During the period of probation, Berthelot shall be allowed to practice professional counseling under Chapter 337, RSMo, provided she adheres to all the terms of this Agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the Disciplinary Period are as follows:

A. During the period of probation, Berthelot's practice as a professional counselor shall be supervised by a licensed professional counselor, licensed psychiatrist, or a licensed psychologist approved by the Committee. Berthelot shall submit a panel of at least one (1) potential supervisor[s] to the Committee, who shall have the option to select or reject any of the potential supervisor[s]. If Berthelot fails to secure a supervisor within twenty (20) business days from the start of probation, Berthelot shall cease practicing professional counseling until a supervisor is secured.

1) In the event the approved supervisor becomes unable or decides not to continue serving in their capacity as a supervisor or otherwise ceases to serve as a supervisor during the period of probation, then Berthelot shall:

(a) within three (3) business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, or otherwise learning of the need to secure a supervisor, advise the Committee in writing that she needs to secure a supervisor and the reasons for such change; and

(b) within twenty (20) business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, or otherwise learning of the need to secure a supervisor, Berthelot shall secure a new supervisor pursuant to and in accordance with the terms and conditions set forth in this Settlement Agreement. After twenty (20) business days, Berthelot shall not practice if she has not secured a new supervisor.

(c) Berthelot must complete twenty four (24) months of supervision while working as a licensed professional counselor in Missouri to satisfy the two years of supervised

practice requirement of this agreement. Any time that Berthelot is not licensed, not under supervision, or not employed as a professional counselor shall not count towards completion of the 2 years of supervision.

2) Supervision shall be done on a bi-weekly basis or at least two visits per month, at the discretion of the supervisor.

3) Berthelot's supervisor shall report to the Committee in writing on a quarterly basis with the reports due by December 1, March 1, June 1, and September 1 each year during the period of probation. It is Berthelot's responsibility to ensure that these reports are provided in a timely manner.

4) Berthelot shall be responsible for any payment associated with the supervision of her practice.

5) During the Disciplinary Period, Berthelot shall not serve as a supervisor to other professionals licensed pursuant to Chapter 337, RSMo.

B. Within one (1) year of the effective date of the disciplinary period, Berthelot shall pass the online jurisprudence examination for professional counselors and shall forward a copy of the certificate documenting the passing to the Committee.

1) The certificate documenting the passing of the online jurisprudence exam must be received by the Committee or postmarked within one (1) year of the effective date of this Settlement Agreement.

2) Berthelot shall be responsible for all costs associated with taking the online jurisprudence exam.

C. During the Disciplinary Period, Berthelot shall keep the Committee apprised at all times in writing of her current work and home addresses and telephone numbers at each place of residence and employment. Berthelot shall notify the Committee in writing of any change in address or telephone number within fifteen (15) days of a change in this information

D. During the Disciplinary Period, Berthelot shall timely renew her license and timely pay all fees required for license renewal and comply with all other Committee requirements necessary to maintain her license in a current and active state, including completion of all continuing education requirements.

E. During the Disciplinary Period, Berthelot shall comply with all provisions of §§ 337.500 - .540, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. "State" includes

the state of Missouri and all other states and territories of the United States. Any cause to discipline Berthelot's License as a professional counselor under § 337.525.2, RSMo, that accrues during the Disciplinary Period shall also constitute a violation of this Agreement.

F. During the Disciplinary Period, Berthelot shall accept and comply with reasonable unannounced visits from the Committee's duly authorized agents to monitor her compliance with the terms and conditions stated herein.

G. During the Disciplinary Period, Berthelot shall appear before the Committee or its representative for a personal interview upon the Committee's written request.

H. If, at any time within the Disciplinary Period, Berthelot removes herself from the state of Missouri, ceases to be currently licensed under the provisions of §§ 337.500 - .540, RSMo, or fails to keep the committee advised of all current places of residence and business; the time of absence, uncertified status or unknown whereabouts shall not be deemed or taken as any part of the Disciplinary Period.

3. Upon the expiration of the Disciplinary Period, Berthelot's License shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Committee determines that Berthelot has violated

any term or condition of this Agreement, the Committee may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Berthelot's License.

4. No additional discipline shall be imposed by the Committee pursuant to the preceding Paragraph of this Agreement without notice and an opportunity for hearing before the Committee as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Agreement does not bind the Committee or restrict the remedies available to it concerning any future violations by Berthelot of §§ 337.500 - .540, RSMo, or the regulations promulgated thereunder, or of the terms and conditions of this Agreement.

6. This Agreement does not bind the Committee or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Committee or may be discovered.

7. If any alleged violation of this Agreement occurred during the Disciplinary Period, the parties agree that the Committee may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Berthelot agrees and stipulates that the

Committee has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

8. Each party agrees to pay all of their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this 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.

10. The parties to this Agreement understand that the Committee will maintain this Agreement as an open record of the Committee as required by Chapters 337, 610, and 620, RSMo, as amended.

11. Berthelot, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Committee, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited

to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Agreement. The parties acknowledge that this Paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

12. Berthelot understands that she may, either at the time this Agreement is signed by all parties, or within fifteen (15) days, thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed-to by the parties to this Agreement constitute grounds for discipline of her license.

13. This Agreement will become effective thirty (30) days after it is signed by the Committee's Executive Director.

ONE (1) SIGNATURE PAGE FOLLOWS

LICENSEE

Betty Berthelot, LPC
License Number 001694

Date: 2-19-13

Cullen Cline
Attorney for Betty Berthelot

Date: 25 Feb 2013

COMMITTEE

Loree Kessler
Executive Director
Committee for Professional Counselors

Date: 3/6/13

Stephen Doerhoff
Attorney for the Committee

Date: 3/4/2013