STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH CARE SERVICES
BOARD OF OCCUPATIONAL THERAPY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

[redacted]
License Number: [redacted] **File Number:** [redacted]
_____/

PETITION FOR DISSOLUTION OF SUMMARY SUSPENSION

NOW COMES, [redacted], hereinafter referred to as "Respondent", by and through her counsel, CHAPMAN LAW GROUP, and Ronald W. Chapman II, and for her Petition for Dissolution of Summary Suspension states as follows:

1. Respondent is currently licensed to practice as a registered nurse in the state of Michigan.
2. At some point Respondent was unexpectedly contacted by Health Professional Recovery Program, a program that monitors Health Professionals for substance abuse and mental health issues.
3. Respondent voluntarily agreed to attend an intake interview and substance abuse evaluation.
4. On [redacted] Respondent completed an initial interview conducted by the Health Professional Recovery Program, hereafter HPRP.
5. During that time, Respondent was being treated by her physician for chronic pain as a result of severe arthritis in her knees. This treatment included the prescription of narcotic pain medication.

6. Despite the obvious conflict of interest, during the evaluation the HPRP evaluator began "treating" Respondent and began making changes to Respondent's medication without the approval and consent of Respondent's treating physician.
7. Respondent, understandably, refused to enter into a physician-patient relationship with an HPRP "evaluator".
8. On [redacted], HPRP attempted to contact Respondent, via telephone only, regarding her refusal to be treated by an evaluator who was not her physician.
9. On [redacted] HPRP closed Respondent's case and reported her to the Department of Licensing and Regulatory Affairs; this included forwarding all of her treatment records to the Department of Licensing and Regulatory Affairs.
10. On [redacted], the Department of Licensing and Regulatory Affairs issued an Order of Summary Suspension but failed to articulate on the face of that document the reason for the suspension. (**Exhibit A**; Order of Summary Suspension)
11. On [redacted], a month after Respondent's case was closed, the Department of Licensing and Regulatory Affairs issued an Administrative Complaint alleging that Respondent is impaired, in violation of 16221(a), and that she has a mental or physical inability, reasonably related to, and adversely affecting Respondent's ability to practice in a safe and competent manner, in violation of 16221(b)(iii). (**Exhibit B**; Complaint)
12. MCL 333.16233(5) provides, "After consultation with the chair of the appropriate board or task force, or his or her designee, the department may summarily suspend a license or registration if the public health, safety, or welfare requires emergency action in accordance with section 92 of the Administrative Procedures Act of 1969, MCL 24.292".

13. MCL 24.292 provides, "if the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its Order, summary suspension of a licensee may be ordered effective on the date specified in the Order."
14. The [redacted], Order of Summary Suspension fails to specify why Respondent is a danger to the public health, safety, and welfare and therefore has failed to provide Respondent of sufficient notice. (**Exhibit A**; Order of Summary Suspension)
15. Furthermore, the Complainant failed to identify in its Order, or incorporate into its Order, any allegations that Respondent is an imminent threat to the public health safety, and welfare, and why such emergency action is required despite the Complainant's one month delay in suspending Respondent.
16. Complainant's indiscriminate use of summary suspension proceedings, solely based off of the closure of an HPRP case and absent any additional evidence requiring "emergency action," falls well short of the constitutional requirements of substantive due process required in licensing cases.
17. Because there is a presumption that a licensee is entitled to substantive due process **before** sanctioning a license, and because a suspension of a license is so damaging to the licensee, the Constitution discourages summary suspension. Summary suspension should be narrowly construed and rarely done.
18. MCL 24.323(1) provides:

> "the presiding officer that conducts a contested case shall award to a prevailing party, other than an agency, the costs and fees incurred by the party in connection with that contested case, if the presiding officer finds that the position of the agency to the proceeding was frivolous. To find that an agency's position was frivolous, the presiding officer shall determine that at least 1 of the following conditions has been met:

(a) The agency's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.

(b) The agency had no reasonable basis to believe that the facts underlying its legal position were in fact true.

(c) The agency's legal position was devoid of arguable legal merit.

19. The instant case is an abuse of such summary suspension authority, is devoid of arguable legal merit, is frivolous, and the agency had no reasonable basis to believe that the facts underlying its legal position were in fact true – that Respondent is "an imminent threat to the public health safety and welfare". Thus, costs and fees shall be awarded as allowed by MCL 24.323(1).

WHEREFORE, Respondent, by and through her counsel, Chapman Law Group, and Ronald W. Chapman II, respectfully requests: (1) a hearing be immediately scheduled pursuant to 1996 AACS, R 338.1610; (2) the Order of Summary Suspension is dissolved; and (3) an Order awarding reasonable costs and fees is entered pursuant to MCL 24.323.

Respectfully submitted,
CHAPMAN LAW GROUP

Dated: [redacted]

_____
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PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing Petition for Dissolution of Summary Suspension was served upon [redacted], Analyst through the State of Michigan, Department of Licensing and Regulatory Affairs, Bureau of Health Care Services via facsimile only to [redacted]; and upon [redacted], Director, Bureau of Health Care Services, Department of Licensing & Regulatory Affairs via facsimile only to [redacted] this [redacted] day of [redacted].

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