

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Robert H. Cheney, D.D.S.
License No. D11152

**STIPULATION AND ORDER
FOR INDEFINITE SUSPENSION**

STIPULATION

Robert H. Cheney, D.D.S. (“Licensee”) and the Minnesota Board of Dentistry’s Complaint Committee (“Committee”) agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

1. The Minnesota Board of Dentistry (“Board”) is authorized pursuant to Minnesota Statutes chapter 150A, section 214.10, and section 214.103 to license and regulate dentists and to take disciplinary action when appropriate.

2. Licensee holds a license from the Board to practice dentistry in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Order.

II.

CONFERENCE

3. On September 18, 2014, the Committee, composed of Board members, Joan Sheppard, D.D.S., Teri Youngdahl, L.D.A., John Manahan, J.D., and David Gesko, D.D.S., discussed the allegations made in the Notice of Removal of Stay of Suspension, Imposition of Suspension, and Hearing, dated August 29, 2014, and determined this matter could be resolved

through a Stipulation and Order for an Indefinite Suspension. Licensee was given the opportunity to participate in a disciplinary conference, but declined. Sara P. Boeshans, Assistant Attorney General, represented the Committee at the conference.

4. Although Licensee was informed that he could be represented by legal counsel, Licensee has knowingly and voluntarily waived that opportunity.

III.

FACTS

5. The parties agree that this Stipulation and Order is based upon the following:

a. Licensee has held from the Board a license to practice dentistry in the State of Minnesota since July 10, 1997, and is subject to the jurisdiction of the Board with respect to the matters described therein.

b. On January 16, 2014, Licensee met with the Committee for a disciplinary conference to discuss his alcohol dependency issues.

c. On May 2, 2014, the Board adopted a Stipulation and Order for Stayed Suspension and Conditional License (“2014 Order”) that placed conditions on Licensee’s license to practice dentistry in the State of Minnesota. The 2014 Order provides that any violation of the terms in the order would violate the conditions of the stay, constitute violation of a Board order for purposes of Minnesota Statutes section 150A.08, subdivision 1(13), and provide grounds for further disciplinary action. Among other things, the 2014 Order required Licensee to participate in the HPSP and abstain from the use of mood-altering drugs. Licensee is currently subject to the 2014 Order.

d. On February 28, 2011, Licensee signed a Participation Agreement and Monitoring Plan with the HPSP.

1) Paragraph I.F. and I.G., respectively, of Licensee's monitoring plan require Licensee to abstain from the use of alcohol, controlled substances, and any other mood altering substances and to provide toxicology screens at the request of the HPSP and comply with the HPSP Toxicology Screening Protocols.

e. On August 28, 2014, the Licensee's HPSP Case Manager received a call from a staff member at the Minnesota Department of Corrections. The staff member stated that Licensee relapsed with alcohol in June 2014 and on August 27, 2014, that Licensee admitted to consuming ten whiskey beverages on August 27, 2014, and that Licensee was administered a breathalyzer which registered an alcohol concentration of 0.146.

f. On August 28, 2014, Licensee's HPSP Case Manager spoke with Licensee on the phone. Licensee stated he had an increase in depression and anxiety and relapsed with alcohol on August 27, 2014.

g. On August 28, 2014, Licensee's HPSP Case Manager received a phone call from Licensee's office manager. The office manager stated that Licensee reported to work late on August 28, 2014, and went straight to his office and then to work on a patient. The office manager stated that Licensee exited the exam room after he finished with the patient, and staff noticed that Licensee was stumbling. Staff confronted Licensee regarding his behavior, and Licensee stated he had been drinking alcohol.

h. On August 28, 2014, the HPSP notified the Board that it had unsatisfactorily discharged Licensee on that same day for not reporting a relapse in June 2014, for a relapse on August 27, 2014, and for providing patient care while under the influence of alcohol on August 28, 2014.

IV.

LAWS

6. Licensee acknowledges the conduct described in section III. above would constitute a violation of the 2014 Order and Minnesota Statutes section 150A.08, subdivision 1(4), (6), (8), and (13), and Minnesota Rules 3100.6200A and would justify the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

7. The Board hereby **RESCINDS** the 2014 Order, which shall have no future force or effect, and places an **INDEFINITE SUSPENSION** upon Licensee's license to practice dentistry in the State of Minnesota in accordance with the following terms:

a. Surrender. Effective the date this Order is adopted by the Board, Licensee's license to practice dentistry in the State of Minnesota is suspended for an indefinite period of time. Within ten days of the effective date of this Order, Licensee shall surrender to the Board Licensee's original license and current renewal certificate by delivering them personally or by first-class mail to Marshall Shragg, Executive Director, Minnesota Board of Dentistry, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414.

b. Prohibitions. Effective the date this Order is adopted by the Board, Licensee shall not engage in any act which constitutes the practice of dentistry as defined in Minnesota Statutes section 150A.05 and shall not imply to former patients or other persons by words or conduct that Licensee is licensed to practice dentistry.

c. Transfer of Patient Records. Within 30 days after the effective date of this Order, Licensee shall notify his patients that he is no longer practicing and his patients may request that their patient records be provided to them or their new treating dentists. Licensee shall comply with record requests within 15 days of receipt. Within 30 days after the effective date of this Order, Licensee shall provide the Board with written verification he has complied with this paragraph.

Requirements for License Reinstatement

8. The requirements for reinstatement of Licensee's license are as follows:

a. Reinstatement Application. Licensee may apply to the Board for reinstatement at any regularly scheduled Board meeting no earlier than one year after the effective date of the Board's Order. Licensee must comply fully with the applicable statutes and rules in effect at the time of Licensee's application, including the payment of all fees relating to reinstatement and completing the Professional Development requirements.

b. Documented Sobriety and Chemical Dependency Evaluation. In addition to the reinstatement requirements contained in the applicable statutes and rules in effect at the time of Licensee's application, Licensee shall have the burden of proving that he has successfully addressed the causes of the conduct described in this Stipulation and Order, and that he is fit to practice dentistry in compliance with accepted standards. Licensee shall comply with the following requirements including, but not limited to:

1) Licensee must submit proof that, after the effective date of this Order, he has maintained documented, uninterrupted sobriety for a period of at least one year prior to submitting his application for reinstatement.

2) Within 60 days prior to submission of a reinstatement application to the Board, Licensee shall undergo a chemical dependency evaluation performed by an addictionologist or chemical dependency assessor. Licensee shall submit, or cause to be submitted, the credentials of the evaluator for review and pre-approval by Board staff for purposes of this evaluation. Licensee is responsible for all costs associated with this evaluation. The results of the evaluation shall be sent directly to the Board and must include a statement verifying the evaluator has reviewed this Stipulation and Order and any medical, mental health, and chemical dependency treatment records deemed pertinent by the evaluator or the Board prior to the evaluation. Licensee shall comply with any recommendations for additional evaluation and treatment made by the evaluator.

3) Licensee must provide any additional documented proof that he has completely abstained from ingesting, injecting, or otherwise taking any mood-altering chemicals or drugs, including alcohol, unless prescribed by a physician or dentist who has been previously informed of Licensee's drug abuse history and with whom Licensee has a formal healthcare provider/patient relationship.

c. Mental Health Evaluation. Within 60 days prior to submission of a reinstatement application to the Board, Licensee shall undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Licensee shall submit, or cause to be submitted, the credentials of the evaluator for review and preapproval by Board staff for purposes of this evaluation. Licensee is responsible for the cost of the evaluation. The results shall be sent directly to the Board and shall provide and address:

1) Verification the evaluator has reviewed a copy of this Stipulation and Order;

- 2) Diagnosis and any recommended treatment plan;
- 3) Licensee's ability to handle stress;
- 4) Recommendations for additional evaluation or treatment; and
- 5) Any other information the evaluator believes would assist the

Board in its ultimate review of this matter.

Licensee shall comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

d. Physical Evaluation. Within 60 days prior to submission of a reinstatement application to the Board, Licensee shall undergo a physical examination with a physician. Licensee is responsible for the cost of the examination. The results of the examination, including a history and physical from Licensee's physician, shall be sent directly to the Board and must include a statement verifying the physician has reviewed this Stipulation and Order and any evaluation or investigative records deemed pertinent by the Board or the evaluator prior to the examination. The report shall provide and address:

- 1) Identification of diagnoses and any plans of treatment, including any medications, devised for Licensee; and

- 2) Any other information the physician believes would assist the Board in its ultimate review of this matter.

e. License Examination. Moreover, if Licensee is out of practice for more than two (2) years after the effective date of this Stipulation and Order, Licensee shall take and successfully attain a passing score on the regional clinical examination specified in Minnesota Rules 3100.1100, subpart 2.

f. Report from Probation Officer. Licensee shall cause to be submitted to the Board reports from his probation or parole officers. The reports shall be submitted at the time Licensee petitions for reinstatement. The reports shall provide information regarding Licensee's compliance with all terms of his probations and any criminal charges brought against him.

g. Burden of Proof. Licensee's compliance with the above-referenced requirements shall not create a presumption that he should be granted a license to practice dentistry in the State of Minnesota. When applying for reinstatement, the burden of proof shall be upon Licensee to demonstrate to the Board by clear and convincing evidence that he is capable of conducting himself in a qualified and competent manner, is able to perform the duties of a dentist with reasonable skill and safety, and has complied fully with the terms of the Board's Order.

h. Meeting with a Complaint Committee. Licensee shall meet with a Complaint Committee of the Board at least 60 days prior to the Board meeting to consider Licensee's application for reinstatement. The Complaint Committee shall review and discuss with Licensee his application and supporting evidence. After meeting with Licensee, the Complaint Committee shall forward a report containing its recommendations to the Board.

i. Board Action. At any regularly scheduled Board meeting following Licensee's application for reinstatement and meeting with a Complaint Committee, the Board may take any of the following actions:

- 1) Reissue a license to Licensee;
- 2) Reissue a license to Licensee with limitations and/or conditions placed upon the scope of Licensee's practice of dentistry; or

3) Deny the application for reinstatement upon Licensee's failure to meet the burden of proof.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

9. If Licensee fails to comply with or violates this Stipulation and Order or it is determined Licensee has further violated Minnesota Statutes chapter 150A or Minnesota Rules chapter 3100, the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a written response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

b. The Committee, in its discretion, may schedule a conference with the Licensee prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through the procedures of Minnesota Statutes section 214.103, subdivision 6.

c. Prior to the hearing before the Board, the Committee and Licensee may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Licensee may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. The Committee shall have the burden of proving by a

preponderance of the evidence that a violation has occurred. If Licensee has failed to submit a timely response to the allegations, Licensee may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Licensee waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Licensee's correction of a violation prior to the conference, hearing or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek discipline when it first learns of a violation will not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while this order is in effect.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional conditions or limitations on Licensee's practice, suspension, or revocation of Licensee's license.

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Licensee's license pursuant to Minnesota Statutes section 150A.08, subdivision 8, based on a violation of this Stipulation and Order or based on conduct of Licensee not specifically referred to herein.

VII.

ADDITIONAL INFORMATION

10. Licensee waives the contested case hearing and all other procedures before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or rules.

11. Licensee waives any claims against the Board, the Minnesota Attorney General, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Order, which may otherwise be available to Licensee.

12. This Stipulation and Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

13. Either party may seek enforcement of this Stipulation and Order in any appropriate civil court.

14. Licensee has read, understands, and agrees to this Stipulation and Order and has voluntarily signed this Stipulation and Order. Licensee is aware this Stipulation and Order must be approved by the Board before it goes into effect. The Board may approve the Stipulation and Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation and Order will take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the Stipulation and Order, it will be of no effect except as specified in the following paragraph.

15. Licensee agrees that if the Board rejects this Stipulation and Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board, Licensee

will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Order or of any records relating to it.

16. This Stipulation and Order shall not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Licensee which constitutes grounds for disciplinary action and which is not directly related to the specific facts and circumstances set forth in this document.

VIII.

DATA PRACTICES NOTICES

17. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Data regarding this action will be provided to data banks as required by Federal law or consistent with Board policy. While this Stipulation and Order is in effect, information obtained by the Board pursuant to this Order is considered active investigative data on a licensed health professional, and as such, is classified as confidential data pursuant to Minnesota Statutes section 13.41, subdivision 4.

18. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

LICENSEE



ROBERT H. CHENEY, D.D.S.

COMPLAINT COMMITTEE

By: 

MARSHALL SHRAGG, MPH
Executive Director

Dated: oct 6, 2014

Dated: OCTOBER 14th, 2014

ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records, and proceedings herein,

The terms of the Stipulation are approved and adopted, and the recommended disciplinary action set forth in the Stipulation is hereby issued as an Order of this Board effective this 24th day of October, 2014.

MINNESOTA BOARD
OF DENTISTRY

By:



TERI YOUNGDAHL, L.D.A.
Board President