

**BEFORE THE MINNESOTA**

**BOARD OF DENTISTRY**

In the Matter of  
David R. Dunphy, D.D.S.  
MN License No. D9166

**STIPULATION AND ORDER  
FOR CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

The Board received a complaint against David R. Dunphy, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint and referred the matter to the Minnesota Attorney General's Office for investigation. Following the investigation, the Committee held a conference with Licensee and his attorney, David A. Orenstein, on November 10, 2011. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Besides holding a dental license from the State of California, Licensee states that he does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This Stipulation is based on the following Committee findings:

**Unprofessional Conduct / Improper Billing**

1. Licensee engaged in unprofessional conduct and improper billing of patients, third-party payers, and others relating to the practice of dentistry when he incorrectly billed more than one of his dental patients for certain dental services rendered in the State of Minnesota. Examples include the following:

a. In March 2008, Licensee signed a Participation Agreement with Delta Dental of Minnesota agreeing to certain terms such as accepting the reimbursement allowance as payment in full for dental claims and not balance bill the patient. However, Licensee engaged in balance billing when he charged his dental patients a dental service fee that was more than the contractual amount allowed by their dental insurance company, Delta Dental. Additionally, Licensee failed to write-off the difference between his dental service fees compared to the amount that he agreed to under his contract with Delta Dental. Based upon all investigative material and relevant records, Licensee received an overpayment totaling \$34,731.17 for dental services due to his improper billing practices with the following 14 patients in 2008 and 2009, as follows:

<b>PATIENT(S) #</b>	<b>AMOUNT BALANCE BILLED TO PATIENT</b>
1	\$ 811.05
2	454.00
3	1,323.47
4	1,278.02
5	2,144.77
6	2,736.93
7	1,515.92

8	1,337.16
9	2,660.00
10	3,522.48
11	1,904.77
12	3,443.00
13	7,814.00
14	3,785.60
TOTAL -----	\$34,731.17

b. From April to August 2009, a representative of Delta Dental of Minnesota sent letters to Licensee regarding his improper practice of balance billing and the overpayment amounts relative to patients 2, 3, 4 and 5. Additionally, Delta Dental's letters requested Licensee to contact and provide a refund of the overpayment amount to each patient. As of yet, Licensee has only provided a refund to patient 2. C. Violations. The Committee concludes that the practices described above constitute violations of Minn. Stat. §150A.08, subd. 1(6), Minn. R. 3100.6200 A (unprofessional conduct), and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order placing **CONDITIONS** on Licensee's license to practice dentistry in the State of Minnesota as follows:

**CONDITIONS**

Licensee's license shall be subject to the following conditions:

1. Written Report – Overpayment Amounts. Within one year of the effective date of this Order, Licensee shall submit a written report to the Committee addressing the list of

14 patients and overpayment amounts outlined in paragraph B.1.a. above. Licensee's report shall provide a detailed summary of the action taken to resolve this matter with each patient including copies of correspondence sent to or received from the patient. If Licensee determines that the figures in the table above are incorrect, Licensee shall include the basis for his recalculations of overpayment amounts, if any. Licensee shall submit proof that either (a) Licensee has refunded the overpayment amount in full; (b) the patient has agreed to accept the overpayment amount in installments over a period of time not to exceed three years from the effective date of this Order, and Licensee has paid all of the installment to date; or (c) the patient has waived the right to a refund, in whole or in part. If the patient has waived the right to a refund in part, then, as to the balance, Licensee shall submit proof that Licensee has met the requirements of (a) or (b) in the preceding sentence. Proof of waiver on the part of patients must be in the form of sworn affidavit. Said affidavits must include an acknowledgment that the patient has reviewed this Order. Three years from the effective date of this Order, Licensee shall submit proof to the Board that he has refunded all of the overpayment amounts in full, except amounts that the patients have waived or that Licensee has recalculated, as provided in this paragraph. Licensee's report, and any subsequent written submissions made under this paragraph, must be reviewed and accepted by the Committee.

2. Civil Penalty. The Board imposes a civil penalty in the amount of \$7,500.00 for the conduct described above. The civil penalty shall be paid by Licensee by the time Licensee petitions to have the conditions removed from Licensee's license. The payment from Licensee shall be made by cashier's check or money order made payable to the Minnesota Board of Dentistry and shall be delivered personally or by mail to the Minnesota Board of

Dentistry, c/o Marshall Shragg, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414.

3. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minn. R. 3100.6300 and 6950.1000 through 6950.1080, and with Centers for Disease Control and Prevention, Public Health Service, and United States Department of Health and Human Service.

d. In the event Licensee should move, Licensee shall notify the Board in writing of any new residence or practice location within five days. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order.

E. Removal of Conditions. Licensee may petition to have the conditions removed from Licensee's license at any regularly scheduled Board meeting provided that Licensee's petition is received by the Board at least 30 days prior to the Board meeting. Licensee shall have the burden of proving that Licensee has complied with the conditions and that Licensee is

qualified to practice dentistry without conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the conditions should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the conditions imposed by this order.

F. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

G. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

1. 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 alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

2. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

3. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or a limitation on Licensee's practice, or suspension or revocation of Licensee's license.

H. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee shall have the right to attempt to resolve an alleged violation of the stipulation and order through the procedures of Minn. Stat. § 214.103, subd. 6. Nothing herein shall limit (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

I. Attendance at Conference. Licensee and his attorney attended a conference with the Committee on November 10, 2011. The following Committee members attended the conference: Joan Sheppard, D.D.S.; David Linde, D.D.S.; and Teri Youngdahl, L.D.A. Assistant Attorney General Geoffrey S. Karls represented the Committee at the conference.

Licensee was represented by David A. Orenstein in this matter, who has advised Licensee regarding this stipulation and order.

J. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

K. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order shall be null and void and shall not be used for any purpose by either party hereto. If this stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

L. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the

date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

M. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. parts 60 and 61), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

N. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

O. Service and Effective Date. If approved by the Board, a copy of this stipulation and order shall be served personally or by first class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE

COMPLAINT COMMITTEE

  
\_\_\_\_\_  
DAVID R. DUNPHY, D.D.S.

By:   
\_\_\_\_\_  
MARSHALL SHRAGG, MPH  
Executive Director

Dated: 4/24/, 2012

Dated: MAY 9<sup>TH</sup>, 2012

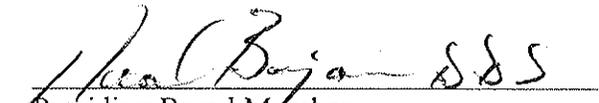
**ORDER**

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 22 day of June, 2012.

MINNESOTA BOARD  
OF DENTISTRY

By:

  
Presiding Board Member

AG: #2926667-v1