

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

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

**STIPULATION AND ORDER
FOR STAYED SUSPENSION
AND CONDITIONAL LICENSE**

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.

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 January 16, 2014, Licensee appeared before 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., for a disciplinary conference to discuss allegations made in a Notice of

Conference dated December 17, 2013. 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 knowingly and voluntarily waived that opportunity.

III.

FACTS

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

a. Licensee engaged in personal conduct which brings discredit to the profession of dentistry and may be unable to practice dentistry with reasonable skill and safety due to a physical, mental, emotional, or other disability, as follows:

1) On May 10, 2013, Licensee informed the Health Professionals Services Program ("HPSP") that he was arrested and charged with a fifth DWI the evening of May 6, 2013, due to driving under the influence of alcohol after drinking at a bar. As a result, the HPSP revised Licensee's monitoring plan to refrain from practice until further notice and get a chemical dependency assessment. The HPSP also informed the Board about Licensee's relapse and will continue to monitor Licensee.

2) On May 29, 2013, Licensee completed a chemical dependency assessment at Fairview Behavioral Health Services. Licensee informed the assessor that he had relapsed with alcohol for one-day binges on four occasions since January 2013. The assessor diagnosed Licensee with alcohol dependence. Additionally, the assessor recommended for Licensee the following: abstain from all mood-altering chemicals, including alcohol; complete a mental health evaluation; follow all of the HPSP conditions; and enter the Lodging Plus program at Fairview.

3) On June 13, 2013, Licensee was admitted to the Lodging Plus program at Fairview with a proposed completion date of July 1, 2013. Thereafter, Licensee moved into Serenity Manor, a sober house, in Mora, Minnesota.

4) On July 8, 2013, the HPSP notified Licensee that he may return to practicing dentistry.

5) On September 5, 2013, Licensee informed the HPSP that he can no longer afford to stay at Serenity Manor due the high cost for rent. Instead, Licensee will be residing with a cousin in Mora near to his new job.

6) On October 22, 2013, Licensee had a positive toxicology screen. When contacted by the HPSP, Licensee denied consuming any alcohol. Licensee stated that he has been eating foods prepared by his neighbor who is unaware of his recovery and he has been exposed to paint fumes. The HPSP also informed the Board about Licensee's positive screen and will continue to monitor Licensee.

IV.

LAWS

6. Licensee acknowledges that the conduct described in section III. above constitutes a violation of Minnesota Statutes section 150A.08, subdivision 1(4), (6), and (8), Minnesota Rules 3100.6200 A, and justifies 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:

STAYED SUSPENSION

7. The Board hereby **SUSPENDS** Licensee's license to practice dentistry. The suspension is **STAYED** so long as Licensee complies with the following conditions:

CONDITIONS OF STAYED SUSPENSION

8. The Board places the following **CONDITIONS** on Licensee's license:

a. Participation in the HPSP.

1) Licensee must continue with his participation in the HPSP for monitoring of his chemical dependency recovery. Licensee shall provide the HPSP with a copy of this Stipulation and Order after being adopted by the Board.

2) Licensee shall be monitored by the HPSP until the HPSP determines Licensee is qualified to practice without conditions.

3) Licensee shall comply with all provisions of his HPSP Participation Agreement, including revisions subsequent to this order. Licensee's failure to comply with his HPSP Participation Agreement shall be considered a violation of this Stipulation and Order.

4) Licensee shall totally abstain from ingesting, injecting, or otherwise taking or using any mood-altering chemical or drug, including, but not limited to alcohol. This prohibition does not apply to legend drugs, including controlled substances, which are prescribed for Licensee by a licensed physician or another dentist as part of a course of treatment.

Removal of Stayed Suspension

9. The stayed suspension of Licensee's license shall be administratively removed upon Licensee's satisfactory completion of the disciplinary action contained within this

Stipulation and Order. The Board's Executive Director will send written notification to the Licensee regarding the removal of the stayed suspension from Licensee's license to practice dentistry.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

10. 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.

11. 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, or appearances at conferences. Minnesota Rules part 3100.6350 shall be applicable to such requests.

12. It is Licensee's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board pursuant to this Stipulation and Order are timely filed by those preparing the payment, report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Stipulation and Order.

Imposition of Fine

13. 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 Minnesota Statutes section 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.

Order of Removal of Stayed Suspension

14. If the Committee has probable cause to believe Licensee has failed to comply with or has violated any of the requirements for staying the suspension as outlined in paragraphs 7 and 8 above, the Committee may remove the stay pursuant to the procedures outlined in paragraph 15 below, with the following additions and exceptions:

a. The removal of the stayed suspension shall take effect upon service of an Order of Removal of Stayed Suspension (“Order of Removal”). Licensee agrees that the Committee is authorized to issue an Order of Removal, which shall remain in effect and shall have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph 15 below or until the complaint is dismissed and the order is rescinded by the Committee. The Order of Removal shall confirm the Committee has probable cause to believe Licensee has failed to comply with or has violated one or more of the requirements for staying the suspension of Licensee’s license. Licensee further agrees an Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act. Licensee waives any right to a conference or hearing before removal of the stayed suspension.

b. The Committee shall schedule the hearing pursuant to paragraph 15 below to be held within 60 days of service of the Order of Removal.

Noncompliance or Violation With Stipulation and Order

15. 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

16. Within ten days of execution of this Stipulation and Order, Licensee shall provide the Board with the names of all states in which Licensee is licensed to practice as a dental professional or holds any other professional or occupational license or registration.

17. If while residing or practicing in Minnesota, Licensee should become employed at any other dental clinic or facility or move, Licensee shall notify the Board in writing of the new address and telephone number within ten days.

18. In the event Licensee should leave Minnesota to reside or to practice outside of the state, Licensee shall notify the Board in writing of the new address and telephone number within ten 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. If Licensee leaves the state, the terms of this order continue to apply unless waived in writing.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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

26. 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.

27. 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.

By:

COMPLAINT COMMITTEE


MARSHALL SHRAGG, MPH
Executive Director

Dated: Feb 11, 2014

Dated: FEBRUARY 13TH, 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 2nd day of May, 2014.

MINNESOTA BOARD
OF DENTISTRY

By:


TERI YOUNGDAHL, L.D.A.

President