

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Paul C. Tompach, D.D.S.
License No. D11128

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

STIPULATION

Paul C. Tompach, 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.

BACKGROUND

3. On February 18, 2016, Licensee and the Committee, composed of Board members David Gesko, D.D.S., Teri Youngdahl, L.D.A., John Manahan, J.D., and Douglas Wolff, D.D.S., participated in mediation. Brian L. Williams and Caitlin M. Grom, Assistants Attorney General, represented the Committee at the mediation.

4. Licensee was advised by Committee representatives that he may choose to be represented by legal counsel in this matter. Licensee retained Richard A. Lind, Esq., of Lind, Jensen, Sullivan & Peterson, P.A., 1300 AT&T Tower, 901 Marquette Avenue South, Minneapolis, Minnesota 55402.

III.

FACTS

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

a. Licensee was licensed to practice dentistry on or about June 6, 1997. Licensee holds a specialty certification in Oral and Maxillofacial Surgery. Licensee is certified in general anesthesia and conscious sedation.

b. Licensee has American Heart Association Health Care Level CPR (cardio pulmonary resuscitation) certification and ACLS (Advanced Cardiac Life Support) certification.

c. Licensee is the sole practitioner of an oral and maxillofacial surgery practice in Edina, Minnesota.

d. Licensee employs allied dental personnel in his oral and maxillofacial surgery practice. His full-time staff includes a licensed dental assistant, an unlicensed dental assistant, and a receptionist. Licensee also utilizes dental assisting student interns in his practice.

e. On June 9, 2015, a 17-year-old female patient ("Patient"), accompanied by her mother, came to Licensee for extraction of her four wisdom teeth under general anesthesia. For unknown reasons, during the procedure, Patient's heart rate dropped, her vital signs became undetectable, and she became unresponsive. 911 was called and CPR was performed on Patient. Ultimately, an emergency medical services ("EMS") team arrived at Licensee's office and transferred Patient to the hospital.

f. Patient was hospitalized for six days. Ultimately, on June 15, 2015, Patient was unable to take breaths on her own, was declared brain dead, and died.

g. On June 18, 2015, Licensee filed an adverse reaction report with the Board pursuant to Minn. R. 3100.3600. The adverse reaction report informed the Board that the Patient died as a result of the incident. Subsequently, the Committee initiated an investigation into the incident.

h. The Committee's investigation revealed the following information concerning the sedation monitoring equipment Licensee utilized at the time of Patient's surgery, as well as Licensee's documentation and medication preparation practices:

i. Licensee failed to utilize required monitoring equipment during Patient's surgery. Specifically, Licensee failed to use an end-tidal carbon dioxide ("ETCO2") monitor or precordial stethoscope, as required, in order to provide continuous ETCO2 monitoring. Instead, Licensee used his stethoscope to determine vital signs.

ii. Throughout Patient's surgery, Licensee did not print and maintain vital sign monitor printout recordings, despite having the ability to do so. Moreover, it was Licensee's general practice not to print out and maintain vital sign monitor printout recordings when performing surgeries.

iii. Throughout Patient's surgery, Licensee did not complete and maintain a time-oriented anesthesia sheet for Patient's vital signs to indicate "real time" of surgical and post-surgical events. Moreover, it was Licensee's general practice to not complete and maintain time-oriented anesthesia sheets for patients' vital signs to indicate "real time" of surgical and post-surgical events when performing surgeries.

iv. An August 5, 2015, inspection of Licensee's crash cart revealed the presence of the following expired materials: (1) multiple-dose vial of Flumazenil

(Romazicon), expiration date: 10/2014; (2) multiple-dose vial of Naloxone HCL 0.4 mg/ML, expiration date: 11/1/2014; and (3) endotracheal tube, expiration date: 11/2013.

i. The Committee's investigation also revealed the following information concerning Licensee and Licensee's staffs' inadequate training and preparation for monitoring sedated patients, as well as competently navigating medical emergencies:

i. Licensee employed, assisted, and/or enabled allied dental personnel to practice dentistry, in that Licensee inappropriately allowed licensed and unlicensed dental assistants to perform tasks, which exceeded their legal scope of practice, including by allowing such assistants to monitor patients during preoperative, intraoperative, and/or postoperative phases of general anesthesia prior to the assistants successfully completing Board-approved allied dental personnel courses in monitoring sedated patients comprised of intravenous access and general anesthesia and moderate sedation training.

ii. Throughout Patient's surgery, Licensee allowed his licensed and unlicensed dental assistants to monitor Patient during preoperative, intraoperative, and/or postoperative phases of general anesthesia, despite the fact that his assistants had not successfully completed Board-approved allied dental personnel courses in monitoring sedated patients comprised of intravenous access and general anesthesia and moderate sedation training.

j. The Committee believes that on June 9, 2015, Licensee failed to adequately manage and respond to the medical emergency.

IV.

LAWS

6. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 150A.08, subdivision 1(6), (11), and (13), section 150A.11, subdivision 1, Minnesota Rules 3100.6200(B), 3100.8100, 3100.8300, and 3100.9600, 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:

The Board hereby **RESCINDS** the January 29, 2016 Order which shall have no future force or effect except as incorporated and restated herein.

VI.

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 limitation and conditions:

VII.

CONDITIONS OF STAYED SUSPENSION

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

a. Refrain from Practice until Successful Completion of Psychological Fitness for Duty Evaluation. Licensee shall refrain from the practice of dentistry until Licensee submits proof of successful completion of psychological fitness for duty evaluation pursuant to paragraph 8.b. below.

b. Psychological Fitness for Duty Evaluation. Within three months of the effective date of this Order, Licensee shall arrange to participate in an individualized professional evaluation performed by J.H., Ph.D., L.P. in Edina, Minnesota, or another equivalent evaluation approved in advance by the Committee. Licensee shall provide Dr. H. with a copy of this Order. The evaluation shall assess Licensee's judgment and critical thinking abilities in day-to-day work situations as well as medical emergencies. Licensee's signature on this Order is authorization for the Committee to communicate with the instructor/practitioner before, during, and after Licensee's evaluation about Licensee's comprehension of the presented material, performance, and progress. Licensee's signature also constitutes authorization for the instructor/practitioner to provide the Committee with copies of all written evaluation reports. Successful completion of the evaluation shall be determined by the Committee on an expedited basis based on input from Dr. H or the instructor/practitioner of an equivalent evaluation.

c. One-on-One Consultation with Oral Surgeon. Licensee must complete a one-on-one consultation with R.T., D.M.D., or an oral surgeon consultant ("consultant") approved in advance by the Committee. The consultation must last six hours or until such time as the evaluator determines is sufficient to achieve the learning objectives, whichever is greater.

Licensee must provide the consultant with a copy of this Order. Licensee's signature on this Order constitutes authorization for the consultant to provide the Committee with copies of all written evaluation reports. Licensee's signature also authorizes the Committee to communicate with the consultant, before, during, and after the consultation about Licensee's needs, performance, and progress. Licensee is responsible for arranging and paying for the consultation.

The consultation must address and conduct: 1) a review of best practices and standard of care for sedation protocols; 2) a review of the standard for emergency response to a

medical emergency in the clinical setting; 3) a review of the Licensee's emergency management protocol; 4) a review of staff roles, work flow, physical safeguards and work-practice controls including management of medications; 5) a review of recordkeeping requirements related to sedation practice; and 6) the facilitation of an emergency response drill. The consultant must submit a report directly to the Board, and address the following:

- 1) Verification the consultant has reviewed a copy of this Order;
- 2) An evaluation of Licensee's understanding of the subjects of the instruction prior to beginning the consultation;
- 3) A description of the content and method of instruction provided during the consultation;
- 4) A statement indicating what Licensee learned and achieved through the instruction and how the learning was evaluated;
- 5) An evaluation of Licensee's capacity to respond to a medical emergency;
- 6) Any recommendations for additional education or other action directed at improving Licensee's dentistry practice; and
- 7) Any other information the consultant believes would assist the Board in its ultimate review of the matter.

d. One-on-One Consultation with Emergency Medical Professional.

Licensee must complete a one-on-one consultation with an emergency medical professional, or a consultant approved in advance by the Committee. The consultation must last six hours or until such time as the evaluator determines is sufficient to achieve the learning objectives, whichever is greater. Licensee is responsible for arranging and paying for the consultation. The consultation must address and conduct: 1) current standards for emergency management; and 2)

facilitate medical emergency scenarios. The consultant must submit a report directly to the Board, and address the following:

- 1) Verification the consultant has reviewed a copy of this Order;
- 2) An evaluation of Licensee's understanding of the subjects of the instruction prior to beginning the consultation;
- 3) A description of the content and method of instruction provided during the consultation;
- 4) A statement indicating what Licensee learned and achieved through the instruction and how the learning was evaluated;
- 5) An evaluation of Licensee's capacity to respond to a medical emergency;
- 6) Any recommendations for additional education or other action directed at improving Licensee's dentistry practice; and
- 7) Any other information the consultant believes would assist the Board in its ultimate review of the matter.

e. Compliance with Consultants' Recommendations. Licensee must promptly comply with any recommendations for additional education or action made by the consultants described in paragraph 8.c and 8.d.

f. Monitoring / Consultative Services. When the limitation referred to in paragraph 9.a. is lifted pursuant to paragraph 10, Licensee agrees to contract with Affiliated Monitors, Inc. or a comparable monitoring company (hereafter the "evaluator") for one-on-one monitoring and consultative services regarding oral surgery care and sedation. **The evaluator must be approved in advance by the Committee.** To obtain pre-approval from the Committee,

Licensee must submit in writing the name(s) of one or more evaluators for consideration to the Committee for review and approval.

After an evaluator has been approved by the Committee, Licensee must present at least ten (10) different active patient records that involve sedation practice, including radiographs, to the evaluator once every 30 days for an accumulated period of one year. For each patient record, the evaluator will review and evaluate the entire record and the treatment rendered by Licensee focusing on proper oral surgery care, including using appropriate monitoring equipment, maintaining monitor print-out recordings, completed anesthesia sheet, current inventory of medications, and staff training on medical emergencies to determine if Licensee is providing appropriate care to his patients. Each month for this one-year period, the evaluator shall complete their review and prepare a detailed written report on the evaluation of the patient record and treatment rendered and any recommendations made by the evaluator.

In addition, Licensee must provide the evaluator with a copy of this Order. Licensee's signature on this Order constitutes authorization for the evaluator to provide the Committee with copies of all written evaluation reports. Licensee's signature also authorizes the Committee to communicate with the evaluator, before, during, and after the review of Licensee's records about Licensee's needs, performance, and progress. Licensee shall bear all costs associated with and pursuant to the contract agreement with the evaluator, including monitoring/consultative evaluations, preparation of reports, and complying with the evaluator's recommendations.

g. Office Inspection. Licensee shall cooperate with an office visit at his dental office during normal office hours by a representative of the Board. The Board's representative shall provide Licensee with 12 hours notice in advance of the inspection. The Board's representative shall inspect Licensee's office for the purpose of reviewing Licensee's

compliance with all applicable anesthesia and sedation requirements. The office visit shall occur within one year of the date of this Order.

h. Civil Penalty. Licensee shall pay to the Board a civil penalty totaling \$12,500 with \$6,250 due within 12 months of the effective date of this Order and the remaining \$6,250 due within 24 months of the effective date of this Order. Licensee shall also complete 100 hours of community service within 24 months of the effective date of this Order. Payments 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 Bridgett Anderson, L.D.A., M.B.A., Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414.

VIII.

LIMITATION OF STAYED SUSPENSION

9. The Board places the following **LIMITATION** on Licensee's license:

a. General Anesthesia/Sedation. Pursuant to paragraph 8.a. and upon successful completion of 8.b. (fitness for duty examination), Licensee may return to the practice of dentistry but will be prohibited from administering general anesthesia, deep sedation, moderate sedation, minimal sedation, and nitrous oxide, to patients.

While this limitation is in effect, Licensee may employ or contract another licensed health care professional with the qualified training and legal authority to administer general anesthesia, deep sedation, moderate sedation, minimal sedation, or nitrous oxide. **The licensed health care professional must be approved in advance by the Committee.** To obtain pre-approval from the Committee, Licensee must submit in writing the name(s) of one or more licensed health care professionals for consideration to the Committee for review and approval. Licensee must have all necessary permits and licenses required to contract with another licensed

health care professional in place before beginning contract services. A copy of this Order must be provided to the licensed health care professional. **Licensee's scope of practice will not otherwise be limited according to Minnesota statute and rules.**

On a bi-weekly basis during this period, the licensed health care professional shall provide: 1) verification the licensed health care professional and Licensee collaborated and agreed upon an emergency management plan; and 2) a copy of the sedation records generated by the licensed health care professional. The sedation provider shall submit the bi-weekly reports directly to the Committee.

Removal of Limitation

10. Licensee may petition the Committee to remove the limitation described in paragraph 9.a. upon successful completion of the conditions described above in paragraph 8.b. (psychological fitness for duty evaluation); 8.c. and d. (one-on-one consultations); and 8.e. (compliance with consultant's recommendations). Licensee shall have the burden of proving that Licensee has complied with the conditions and that Licensee is qualified to practice sedation without the limitation. Licensee's compliance with the foregoing requirements shall not create a presumption that the limitations should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the limitation imposed by this Stipulation and Order.

Removal of Stayed Suspension

11. Licensee may petition to have the stayed suspension removed from Licensee's license at any regularly scheduled Board meeting provided that Licensee has complied with the limitation and conditions of his stayed suspension. Moreover, Licensee's petition must be received by the Board at least 30 days prior to the Board meeting. Licensee has the burden of proving that Licensee has complied with the limitation and conditions of this Stipulation and

Order and that Licensee is qualified to practice without a stayed suspension. Licensee's compliance with the foregoing requirements does not create a presumption that the stayed suspension should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the stayed suspension imposed by this Stipulation and Order.

IX.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

12. 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.

13. 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.

14. 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

15. 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, upon notice of violation, 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.

Noncompliance or Violation With Stipulation and Order

16. 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.

X.

ADDITIONAL INFORMATION

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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.

26. 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.

XI.

DATA PRACTICES NOTICES

27. 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.

28. 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

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PAUL C. TOMPACH, D.D.S.

COMPLAINT COMMITTEE

By: [Signature]
BRIDGETT ANDERSON, L.D.A., M.B.A.
Executive Director

Dated: March 10, 2016

Dated: March 10th, 2016

ORDER

The Board hereby **RESCINDS** the January 29, 2016 Order, and adopts terms of the **STAY OF SUSPENSION WITH CONDITIONS AND LIMITATIONS** set forth in the Stipulation which is hereby issued as an Order of this Board effective this 11 day of March, 2016.

MINNESOTA BOARD OF DENTISTRY

By: [Signature]
STEVEN SPERLING, D.D.S.
President