

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Erik M. Unger, D.D.S.
License No. D13961

**STIPULATION AND ORDER FOR
LIMITED AND CONDITIONAL LICENSE**

STIPULATION

Erik M. Unger, D.D.S. (“Licensee”) and the Minnesota Board of Dentistry’s Practitioner Review 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 12, 2023, Licensee and his attorney, David M. Aafedt, appeared before the Committee, composed of Board members Angela Rake, D.D.S., Hassan Ismail, D.D.S., Heidi Donnelly, L.D.A., and Ruth Dahl, to discuss allegations made in a Notice of Conference dated December 7, 2022. Nicholas B. Lienesch, Assistant Attorney General, represented the Committee at the conference.

4. Licensee was advised by Committee representatives that he may choose to be represented by legal counsel in this matter. Licensee retained David M. Aafedt, Esq., of Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402.

III.

FACTS

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

a. Licensee is a dentist licensed in the State of Minnesota. Licensee holds a specialty certification in Periodontology. Licensee is certified in moderate conscious sedation, but agreed to a Stipulation to Cease Practicing Moderate Conscious Sedation Services (“2022 Stipulation to Cease”), temporarily while this matter was being resolved, which was executed on October 4, 2022.

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

c. Licensee provided dental care which fell below the accepted standards in the practice of dentistry when he failed to properly administer moderate sedation to patient 1, as follows:

1) On August 18, 2022, patient 1 had an appointment with Licensee to extract numerous teeth while the patient was under moderate sedation. Prior to this, Licensee reviewed patient 1’s medical history, which included atrial fibrillation; abnormal cardiac stress test; anemia; aortic stenosis; atherosclerotic heart disease; Barrett’s esophagus; hypertension; mitral regurgitation; secondary hyperparathyroidism due to end stage renal disease; and uremia.

2) Prior to the sedation appointment, Licensee prescribed 800 mg of ibuprofen for patient 1. During the sedation procedure, Licensee administered 5 mg of Versed and 50 mcg of fentanyl to patient 1.

3) During the procedure, patient 1 became unresponsive, his heart rate slowed, and he went into cardiac arrest. Licensee administered 0.2mg of flumazenil and 0.4mg of Narcan to patient 1. When no response occurred, Licensee also administered 0.5mg of atropine to patient 1. 911 was called and CPR was performed on patient 1. The emergency medical services (“EMS”) arrived at Licensee’s office and transferred patient 1 to the hospital. Patient 1 was reported as deceased on arrival to the hospital. Later, Licensee timely filed an adverse reaction report regarding patient 1 with the Board.

4) Regarding the aforementioned incident with patient 1 on August 18, 2022:

a) Licensee failed to personally discuss and document patient 1’s medical history with his primary physician, cardiologist, and nephrologist, regarding his dialysis and assessing comorbidities. Licensee also failed to review patient 1’s cardiology record that indicates the patient has moderate aortic stenosis with severe regurgitation, severe mitral insufficiency, and a history of non-sustained ventricular tachycardia. This can be shown on patient 1’s EKG tracing obtained by Licensee.

b) Licensee failed to assess patient 1’s complete medical history and utilize the information to treatment plan the patient’s anesthesia plan, use of local anesthetic, and medications prescribed, prior to the administration of sedation medication to the patient. Licensee did not obtain a medical clearance for surgery from patient 1’s cardiologist or primary care physician.

c) Licensee failed to properly assess patient 1’s ASA classification (ASA=American Society of Anesthesiologists physical status) by not indicating an ASA-IV status for the patient, based upon the patient’s current medical status and medications.

d) Licensee failed to document the reason for prescribing ibuprofen when it was contraindicated for patient 1 because he was receiving peritoneal dialysis and presenting with pre-existing end stage renal disease.

e) Licensee failed to appropriately interpret and document the arrhythmia present in patient 1's electrocardiogram (EKG).

f) Licensee's response to patient 1 exhibiting signs of cardiac arrest failed to adhere to Advanced Cardiac Life Support ("ACLS") guidelines, including Licensee's use of atropine and failure to follow ACLS protocols.

g) Patient 1's pulse oximeter did not obtain a reading of the patient's oxygen saturation level twice in a row, immediately prior to marked desaturation. Licensee did not document in the patient record the reason for the two instances of "no reading" in a row.

h) Licensee failed to interpret probable arrhythmias for patient 1 including ventricular tachycardia and ST depression.

i) Licensee prescribed an antibiotic to patient 1 without regard to renal implications.

IV.

LAWS

6. Licensee acknowledges that the conduct described in section III. above constitutes a violation of Minnesota Statutes section 150A.08, subdivisions 1(6) and (13), and Minnesota Rules 3100.3600 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:

7. Licensee is hereby **REPRIMANDED** for the conduct referenced in section III. above.

LIMITATION

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

a. Moderate Sedation. Effective immediately, Licensee is prohibited from administering moderate sedation 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 moderate sedation. **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 names 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 is prohibited from providing moderate sedation until he successfully completes the moderate sedation course described below and submits the required written report to the Committee for review and acceptance. At that time, Licensee may petition the Committee for removal of the limitation.

Removal of Limitation

9. Licensee may petition the Committee at eight months, due to Licensee already being subject to the 2022 Stipulation to Cease Practicing Moderate Sedation, after the effective date of this Stipulation and Order to remove the limitation described in paragraph 8.a. upon successful completion of the moderate sedation course described below in paragraph 10.b.(1) and submits the required written report to the Committee for review and acceptance described below

in paragraph 10.d. Licensee shall have the burden of proving that he has complied with the condition and that Licensee is qualified to provide moderate sedation without limitation. Licensee's compliance with the foregoing requirements shall not create a presumption that the limitation 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.

CONDITIONS

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

a. Psychological Fitness for Duty Evaluation. Within six 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 Minnetonka, Minnesota, or another equivalent evaluation approved in advance by the Committee. Licensee shall provide the instructor/practitioner 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 takes the 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 based on input from the instructor/practitioner of an equivalent evaluation. Licensee shall bear all costs associated with and pursuant to the contract agreement with the evaluator including, but not limited to, evaluations, preparation of reports, and complying with the evaluator's recommendations.

b. Coursework. Licensee shall successfully complete the coursework described below. **All coursework must be approved in advance by the Committee.** Licensee is responsible for locating, registering for, and paying for all coursework taken pursuant to this Order. None of the coursework taken pursuant to this Order may be used by Licensee to satisfy any of the continuing dental education/professional development requirements of Minnesota Rules 3100.5100, subpart 2. The coursework is as follows:

1) Moderate Sedation. Within nine months of the effective date of this Order, Licensee shall complete an educational course in the administration of moderate sedation, with a minimum of 60 hours of didactic education in both enteral and parenteral administration, and personally administering and managing at least ten individual supervised cases of parenteral moderate sedation of which a maximum of five cases may be performed on a patient-simulated manikin, as required under Minnesota Rules 3100.3600, subpart 17(A)(3).

2) Medically Compromised Patients. Within nine months of the effective date of this Order, Licensee shall successfully complete a minimum of six hours of instruction in the dental management of medically compromised patients to include medical and dental histories and risk factors.

c. Monitoring and Consultative Services. After removing the limitation in this Order, Licensee agrees to contract with Affiliated Monitors, Inc. or a comparable monitoring company for one-on-one monitoring and consultative services. **Both the monitoring company and the assigned individual evaluator (hereafter the “evaluator”) must be approved in advance by the Committee.** To obtain pre-approval from the Committee, Licensee must submit in writing both the name of the monitoring company and the names 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 including radiographs to the evaluator once every three months for an accumulated period of one year. For each patient record, the evaluator will review and evaluate the entire record focusing on proper moderate sedation services and sedation recordkeeping. Once every three months 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 any recommendations made by the evaluator. Licensee shall cause the evaluator to submit the written report for each three-month period to the Committee for its review.

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 patient 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, but not limited to, monitoring/consultative evaluations, preparation of reports, and complying with the evaluator's recommendations.

d. Coursework Reports. Within 30 days after completing each of the courses listed above, Licensee shall submit to the Committee:

- 1) Proof of Licensee's attendance and completion of the courses;
- 2) Copies of all materials used or distributed in the courses; and
- 3) A summary report of what Licensee learned in the course and specific information addressing how Licensee will incorporate this recently gained knowledge into Licensee's practice.

4) Licensee's reports shall be typewritten in Licensee's own words, double-spaced, at least two pages in length but no more than three pages, and shall list references used to prepare the report.

5) All coursework reports submitted by Licensee are subject to review and approval by the Committee.

Removal of Conditions

11. 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 Stipulation and Order.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

12. 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 3100.6350 shall be applicable to such requests.

13. 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.

14. Licensee must make full payment to the person or agency that provides services for all evaluations, inspections, courses, monitoring services, or other conditions required pursuant to this Stipulation and Order. Licensee's failure to make full payment is a violation of this Stipulation and Order and will render the requirement unsatisfied.

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 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, 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

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.

VIII.

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

DocuSigned by:

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ERIK M. UNGER, D.D.S.

PRACTITIONER REVIEW COMMITTEE


BRIDGETT ANDERSON, L.D.A., M.B.A.
Executive Director

Dated: April 3, 2023, 2023

Dated: April 3rd, 2023

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 14th day of April, 2023.

MINNESOTA BOARD OF DENTISTRY

A handwritten signature in black ink that reads "Hassan Ismail DDS". The signature is written in a cursive, flowing style.

HASSAN ISMAIL, D.D.S.
President

SETTLEMENT AGREEMENT

I. PARTIES

This settlement agreement is made and entered into by and between the North Dakota Board of Dental Examiners (“Board”) and Joshua Day, D.D.S. (“Day”).

II. RECITALS

1. The Board is authorized pursuant to North Dakota Century Code (N.D.C.C.) ch. 43-28 to license and regulate the profession of dentistry.
2. Day is licensed to practice in North Dakota by the Board.
3. N.D.C.C. § 43-28-06 authorizes the Board to suspend, revoke, or place conditions on a license issued by the Board on proof at a hearing that the licensee has committed an act set forth in the law.
4. During investigation conducted under N.D.C.C. § 43-28-18.2, the Board obtained records indicating Day’s sedation practices resulted in his dosing of multiple patients at levels that substantially exceed recommended, safe levels, and that his practice did not meet acceptable standards of care.
5. The Board concluded that Day is placing patients at unacceptable levels of risk, which amounts to grounds that support allegations that Day violated North Dakota Century Code (N.D.C.C.) § 43-28-18 (1, 6, 11, 13, 22, 27), and the Principles and Ethics Code—Section 2 Principle: Nonmaleficence, and Paragraphs 2A and 2B
6. The Board decided to initiate a disciplinary action.
7. Day acknowledges he has been informed and understands he has the right to seek the advice of legal counsel in this matter.

8. Day acknowledges he has been informed and understands he has the right to a hearing and appeal pursuant to N.D.C.C. ch. 43-28 and N.D.C.C. ch. 28-32 prior to any adverse action being taken against his license.

III. AGREEMENT

The Board and Day agree to resolve this matter as follows:

1. Day waives his right to an administrative hearing and appeal as are set forth in N.D.C.C. ch. 43-28 and N.D.C.C. ch. 28-32 as to the allegations contained in Recitals 4 and 5.
2. Day's license is placed on probation.
3. During probation, Day:
 - a. Is prohibited from performing implants.
 - b. Is prohibited from performing a full mouth edentalation in one appointment and must be in staged work.
 - c. Must successfully complete an AAID Maxi Course.
 - d. Must pass Part 1 of the AAID Associate Fellowship Examination.
 - e. Must submit the names of three (3) psychiatrists or clinical psychologists who are licensed in at least one state of the United States, who are not current or former friends or family of Day, who have no financial, personal, professional, or material relationships with Day, and who are willing to evaluate Day's mental health, including as assessment of any aspects of Day's mental health that may impact his ability to practice dentistry. The Board will review Day's submissions and anticipates selecting one (1) individual identified by Day to carry out the assessment ("Provider"). If none of Day's

submissions are acceptable to the Board, the Board will identify and select the Provider.

- f. Day will undergo a mental health assessment administered by the Provider to establish whether Day is fit to practice dentistry. Day shall bear all costs associated with the assessment. Day will execute all forms or releases necessary for the Provider to (i) obtain any records the Provider seeks, and (ii) submit the results of the assessment and any other relevant documentation directly to the Board.
4. When the Board receives evidence indicating Day has completed 3(c) and 3(d), and if the evaluation set forth in 3(f) confirms Day is fit to practice without restrictions, the Board will lift the probation and any restrictions on Day's license, and recognize his license as being active and in good standing.
5. Day's application for an anesthesia and sedation permit is denied.
6. During probation Day shall comply with all laws and rules related to the practice of dentistry
7. If the Board concludes that Day failed to fulfill the terms of this Agreement, the Board may take further disciplinary action against his license through an Order, and without a hearing or appeal, on the allegations contained in Recitals 4 and 5.
8. There are no covenants, promises, undertakings, or understandings outside this Agreement other than as herein specifically set forth.
9. This Agreement may be changed or amended at any time upon written agreement of both parties.
10. This Agreement shall be governed by the substantive laws of the State of North Dakota without regards to conflicts of law principles.

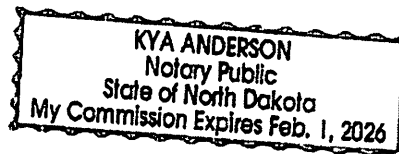
Dated this 8 day of November, 2022

Joshua Day

State of North Dakota
County of Cass

Subscribed and affirmed to before me
this 8 day of November, 2022.

Kyra Anderson
Notary Public



Dated this 8 day of November, 2022.

BOARD OF DENTAL EXAMINERS

By:

Tim Melhoff
Tim Melhoff, President