

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
James H. Wittnebel, D.D.S.
License No. D6916

**STIPULATION AND ORDER FOR
LIMITED AND 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(s) against James H. Wittnebel, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint(s) and referred the matter to the Minnesota Attorney General's Office for investigation. 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. 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 upon the following facts:

1. On January 14, 2009, the Board received a complaint against Licensee alleging that he suffers from a physical, mental, emotional, or other disability which adversely

affects his ability to perform the services for which he is licensed. After reviewing the complaint, the Committee referred it to the Minnesota Attorney General's Office for investigation.

2. On March 18, 2009, an investigative report was submitted to the Committee. The investigative report included the following information:

a) Licensee is being treated by a retina specialist. The retina specialist stated that Licensee has no useful vision in his right eye for a number of years due to glaucoma and macular degeneration. As for his left eye, the retina specialist stated that Licensee has glaucoma and developed "wet" macular degeneration in July 2008. In October 2008, Licensee's wet macular degeneration worsened into a hemorrhage behind Licensee's left retina requiring surgery to remove the blood. After surgery, the retina specialist indicated that Licensee now has only 20/200 vision in his left eye which is inadequate to practice orthodontia with reasonable skill and safety. Conversely, the retina specialist added that Licensee's vision in his left eye has the potential to very slowly improve to 20/50 or 20/60 over time, or Licensee may have no vision improvement.

b) As of March 1, 2009, Licensee has ceased practicing orthodontic dentistry and transferred treatment of current orthodontic patients to a subsequent dental provider.

C. Violations. The Committee concludes that the facts described above constitute a violation of Minn. Stat. § 150A.08, subd. 1(8) (physical, mental, emotional or other disability which adversely affects ability to perform as a licensed dentist) and is sufficient grounds for the disciplinary action specified below.

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

LIMITATIONS

1. Clinical Dentistry Prohibition. Licensee is prohibited from personally practicing clinical dentistry at his dental practice or any other dental facility in the State of Minnesota.

CONDITIONS

2. Licensee's license shall be subject to the following 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. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives shall have the right to inspect Licensee's dental office(s) during normal office hours without prior notification and to select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

d. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new 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 Limitations and Conditions. Licensee may petition to have the limitations and 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 limitations and conditions and that Licensee is qualified to practice dentistry without limitations and conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the limitations and 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 limitations and conditions imposed by this order.

F. 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.

G. 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.

H. Right to an Attorney. Through this stipulation and order, Licensee is further notified that Licensee may choose to be represented by legal counsel in this matter. Licensee has elected not to be represented by counsel. The Committee involved with this matter is comprised of Board members Linda Boyum, R.D.A., Joan Sheppard, D.D.S., and David Linde, D.D.S. Assistant Attorney General Angelina M. Barnes is representing the Committee.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

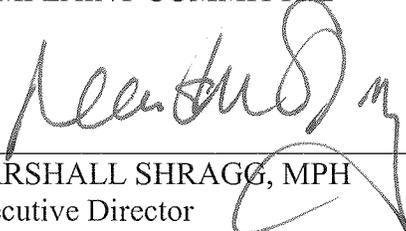
LICENSEE



JAMES H. WITTNEBEL, D.D.S.

Dated: 6-24, 2009

COMPLAINT COMMITTEE

By: 

MARSHALL SHRAGG, MPH
Executive Director

Dated: JUN 29TH, 2009

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, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing LIMITATIONS and CONDITIONS on Licensee's license effective this 26th day of June, 2009.

MINNESOTA BOARD
OF DENTISTRY

By: *Candace Mensing*
CANDACE MENSING, D.D.S.
President