

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Jerry K. Brunsoman, D.D.S.
License No. D6950

**STIPULATION AND ORDER
ACCEPTING VOLUNTARY
SURRENDER OF LICENSE**

STIPULATION

Jerry K. Brunsoman, 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 when appropriate, including accepting a voluntary surrender of license.

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 October 6, 2017, Licensee and his attorney, Dennis B. Johnson, appeared before the Committee, composed of Board members Douglas Wolff, D.D.S., Steven Sperling, D.D.S., Teri Youngdahl, L.D.A., and John Manahan, J.D., to discuss allegations made in a Notice of Conference dated September 15, 2017. Nicholas B. Lienesch, Assistant Attorney General, represented the Committee at the conference.

3. Licensee is represented by Dennis B. Johnson, Esq., of Chestnut Cambronne, P.A., 17 Washington Avenue North, Suite 300, Minneapolis, Minnesota 55401-2048.

III.

FACTS

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

Improper Prescribing

a. Licensee improperly or in an unauthorized manner prescribed, dispensed, administered, or personally used or made improper or unauthorized use of a legend drug, other chemical, or controlled substance, as follows:

1) From February 2016 to January 2017 from several medical supply companies, Licensee authorized ordering eleven bottles of Vicodin products totaling 1,100 tablets.

2) During the investigation, Licensee told the investigator that Vicodin is no longer kept at his dental office, since someone has been stealing the drugs from the locked storage area without authorization. Licensee stated that six bottles (or 600 tablets) of Vicodin are missing. However, Licensee failed to notify the Drug Enforcement Administration, in writing, of the theft or significant loss of any controlled substance within one business day of discovery of such loss or theft, as required by 21 C.F.R. § 1301.76(b).

3) Licensee failed to limit access to the locked storage area containing his drug supply to only employees having legal authority to dispense while under direct supervision, as required by Minnesota Rules 6800.9951. Licensee admitted to the investigator that he did not know how many sets of keys were available to his employees.

4) Licensee failed to produce an inventory record for the aforementioned Vicodin and other drugs that he is required to keep on file at each office location

from which dispensing is taking place a record of drugs received, administered, dispensed, sold, or distributed, as required by Minnesota Rules 6800.9954. Licensee stated that he only documents the dispensing of drugs to a patient in the patient's chart.

Patient 1:

5) According to pharmacy records, Licensee prescribed to patient 1 the following controlled substances: 30 tablets of Lortab (Vicodin) on November 7, 2016; and 30 tablets of Percocet on December 19, 2016.

6) Prior to February 21, 2017, Licensee failed to document the November 2016 prescription for Lortab (Vicodin) in patient 1's record. On February 21, 2017, Licensee documented the prescription for Lortab for masseter muscle myalgia in patient 1's record. However, Licensee incorrectly documented the prescription strength amount and a prior entry indicated that patient 1 was allergic to Lortab.

7) Prior to February 22, 2017, Licensee failed to document the December 2016 prescription for Percocet in patient 1's record. On February 22, 2017, Licensee incorrectly documented the date of the December prescription as December 9, 2017. Licensee also documented that patient 1 had an allergic reaction to Lortab; therefore, he prescribed Percocet.

Patient 2:

8) According to pharmacy records, Licensee prescribed to patient 2 the following controlled substances: 12 tablets of Percocet on May 5, 2016; 24 tablets of Percocet on May 3, 2016; 24 tablets of Lortab (Vicodin) on July 13, 2016; 30 tablets of Percocet on December 23, 2016, and February 17, 2017; and 30 tablets of Lortab (Vicodin) on January 12, February 1 and 13, 2017.

9) In patient 2's record, Licensee failed to document in her progress notes the three prescriptions dated May 3, 5, and July 13, 2016. Prior to February 22, 2017, Licensee failed to document his diagnoses for the eight aforementioned prescriptions in patient 2's record. On February 22, 2017, Licensee indicated in patient 2's record that he examined the patient, diagnosed herpes zoster, and prescribed Percocet.

Patient 3:

10) In patient 3's record, Licensee failed to document his diagnoses for prescribing the following pain medications: 30 tablets of Lortab (Vicodin) on February 3, 2017; and 16 tablets of Percocet on February 9, 2017.

Patient 4:

11) For patient 4, Licensee improperly prescribed 30 tablets of Lortab (Vicodin) without creating a patient record to document the prescriptions, his diagnoses for prescribing the pain medications, or the source of the patient's pain, on the following dates: December 2015; July 2016; and December 2016.

Conduct Contrary to the Best Interests of the Public

b. Licensee has engaged in personal conduct that brings discredit to the profession of dentistry and is contrary to the best interests of the public. Examples include the following:

1) Licensee may be unable to practice dentistry with reasonable skill and safety due to taking pain medication and abusing alcohol, as follows:

a) Licensee told the investigator that he previously took Vicodin as prescribed by his physician to treat his chronic back pain. Since early 2017, Licensee has not taken Vicodin after obtaining relief from a recent amniotic fluid injection. Licensee also

denied that his prior use of Vicodin at work made him feel spacey or foggy or forgetful about which room to go to during the day.

b) On June 19, 2017, after reviewing the investigative report, the Committee sent a confidential referral letter to Licensee instructing him to contact the Health Professionals Services Program (“HPSP”) within ten days. On June 28, 2017, Licensee contacted the HPSP. On September 14, 2017, the HPSP discharged Licensee from the program.

2) Licensee engaged in practice beyond the scope of his dental license as follows:

a) On January 18, February 1 and 9, 2017, Licensee inappropriately provided a microlaser peel to patient 3’s upper back, which does not fall within the standard of care for a dental practitioner to perform.

b) Licensee admitted during the investigation to having a sexual relationship with patient 5 from 2013 to 2014. Licensee further admitted to providing dental treatment to patient 5 during the same time period.

3) Licensee intentionally supplemented documentation within two patient records after being notified of an upcoming investigation of his dental records.

5. Licensee entered into a Stipulation and Consent Order on June 22, 2018, which was adopted by the Board on July 13, 2018 (“July 2018 Order”). In the July 2018 Order, Licensee agreed to surrender his license with the drug enforcement administration (“DEA”) effective July 31, 2018, and to perform other requirements, as specified in the July 2018 Order, including submitting to a fitness for duty evaluation within three months of the date of the order. The July 2018 Order specified that the Board may fine Licensee \$100 for any late report or other violation of the July 2018 Order, and may fine Licensee \$500 for failure to correct such violation with five days after service of a demand for payment and correction. Licensee failed to submit to

the fitness for duty evaluation, and failed to respond to the Board's demand for payment and correction within five days of service.

IV.

6. Licensee acknowledges the conduct described in section III. above constitutes a violation of the July 2018 Order and Minnesota Statutes section 150A.08, subdivision 1(6) and (13) and Minnesota Rule 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:

7. The July 2018 Order shall have no future force or effect.

8. Civil Penalty. Licensee must pay to the Board a civil penalty totaling \$600. Immediately after the effective date of this Stipulation and Order, Licensee must make monthly payments to the Board on the first of each month in the amount of at least \$100 for six consecutive months. Larger monthly payments made by Licensee will be accepted by the Board and will fulfill this requirement more expeditiously. Payments must 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, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414.

9. The Board accepts the **VOLUNTARY SURRENDER** of Licensee's license to practice dentistry in the State of Minnesota in accordance with the following terms:

a. Surrender. Effective December 31, 2018, Licensee's license to practice dentistry in the State of Minnesota is terminated. Within ten days of December 31, 2018,

Licensee shall surrender to the Board his original license and current renewal certificate by first class mail to Bridgett Anderson, Executive Director, Minnesota Board of Dentistry, 2829 University Avenue Southeast, Suite 450, Minneapolis, Minnesota 55414.

b. Prohibitions. Effective December 31, 2018, Licensee shall not engage in any act that constitutes the practice of dentistry as defined in Minnesota Statutes section 150A.05 and shall not imply to former patients or other persons by words or conduct that Licensee is licensed to practice dentistry.

c. Transfer of Patient Records. No later than January 31, 2019, Licensee shall notify his patients that he is no longer practicing and they may request that their patient records be provided to them or their new treating dentists. Licensee shall comply with record requests within 15 days of receipt. No later than January 31, 2019, Licensee shall provide the Board with written verification that he has complied with this paragraph.

VI.

Requirements for License Reinstatement

10. The requirements for reinstatement of Licensee's license are as follows:

a. Reinstatement Application. Licensee may apply to the Board for reinstatement at any regularly scheduled Board meeting no earlier than one year after the effective date of the Board's Order. Licensee must comply fully with the applicable statutes and rules in effect at the time of Licensee's application, including the payment of all fees relating to reinstatement and completing the Professional Development requirements.

b. Mental Health Evaluation. Within 60 days prior to submission of a reinstatement application to the Board, Licensee shall undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Licensee shall submit, or cause to be submitted, the credentials of the evaluator for review and preapproval by Board staff for

purposes of this evaluation. Licensee is responsible for the cost of the evaluation. The results shall be sent directly to the Board and shall provide and address:

- 1) Verification the evaluator has reviewed a copy of this Stipulation and Order;
- 2) Diagnosis and any recommended treatment plan;
- 3) Licensee's ability to handle stress;
- 4) Recommendations for additional evaluation or treatment; and
- 5) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

Licensee shall comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

c. Physical Evaluation. Within 60 days prior to submission of a reinstatement application to the Board, Licensee shall undergo a physical examination with a physician. Licensee is responsible for the cost of the examination. The results of the examination, including a history and physical from Licensee's physician, shall be sent directly to the Board and must include a statement verifying the physician has reviewed this Stipulation and Order and any evaluation or investigative records deemed pertinent by the Board or the evaluator prior to the examination. The report shall provide and address:

- 1) Identification of diagnoses and any plans of treatment, including any medications, devised for Licensee; and
- 2) Any other information the physician believes would assist the Board in its ultimate review of this matter.

d. License Examination(s). If Licensee is out of practice for more than two (2) years after the effective date of this Stipulation and Order, Licensee shall take and

successfully attain a passing score on the regional clinical examination specified in Minnesota Rules 3100.1100, subpart 2.

e. Burden of Proof. Licensee's compliance with the above-referenced requirements shall not create a presumption that he should be granted a license to practice dentistry in the State of Minnesota. When applying for reinstatement, the burden of proof shall be upon Licensee to demonstrate to the Board by clear and convincing evidence that he is capable of conducting himself in a qualified and competent manner, is able to perform the duties of a dentist with reasonable skill and safety, and has complied fully with the terms of the Board's Order.

f. Meeting with a Practitioner Review Committee. Licensee shall meet with a Practitioner Review Committee of the Board at least 60 days prior to the Board meeting to consider Licensee's application for reinstatement. The Committee shall review and discuss with Licensee his application and supporting evidence. After meeting with Licensee, the Committee shall forward a report containing its recommendations to the Board.

g. Board Action. At any regularly scheduled Board meeting following Licensee's application for reinstatement and meeting with a Practitioner Review Committee, the Board may take any of the following actions:

- 1) Reissue a license to Licensee;
- 2) Reissue a license to Licensee with limitations and/or conditions placed upon the scope of Licensee's practice of dentistry; or
- 3) Deny the application for reinstatement upon Licensee's failure to meet the burden of proof.

VII.

ADDITIONAL INFORMATION

11. 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.

12. 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.

13. 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.

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

15. 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.

16. 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.

17. 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


18. 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.

19. 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

JERRY K. BRUNSOMAN, D.D.S.

By:

PRACTITIONER REVIEW COMMITTEE

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

Dated: Nov. 21, 2018

Dated: Dec. 17th, 2018

ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records and proceedings herein,

The Board approves and adopts the terms of the Stipulation, orders the recommended action set forth in the Stipulation, and accepts the **VOLUNTARY SURRENDER** of Licensee's license to practice dentistry in the State of Minnesota effective this 20th day of December, 2018.

MINNESOTA BOARD OF DENTISTRY

By: 
Presiding Board Member