

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Ned Windmiller, D.D.S.
License No. D8249

**STIPULATION AND ORDER
FOR CONDITIONAL LICENSE**

STIPULATION

Ned Windmiller, D.D.S. ("Licensee") and the Minnesota Board of Dentistry 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. Licensee was advised that he may choose to be represented by legal counsel in this matter. Licensee was represented by David M. Aafedt and Cody M. Zustiak, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402. Tiffany Sedillos and David Cullen, Assistant Attorneys General, represented the Board in this matter.

4. Board members John Manahan, J.D., Steven Sperling, D.D.S., Teri Youngdahl, L.D.A., and Douglas Wolff, D.D.S., did not participate in deliberations on this Stipulation and Consent Order.

III.

FACTS

5. This Stipulation and Order is based upon the following facts:

A. On April 12, 1976, Licensee was licensed to practice dentistry in the State of Minnesota.

B. On May 8, 2017, Board staff sent a letter of inquiry to Licensee in regards to a complaint received by the Board on April 12, 2017. The letter included a subpoena requesting that licensee provide the Board complete records for patient W.D. no later than twenty-one days from May 8, 2017.

C. Licensee failed to timely respond to the Board's May 8, 2017 letter and subpoena.

D. On August 21, 2017, Board staff sent Licensee a letter informing him that he needed to appear for a conference with a representative of the Committee on September 19, 2017.

E. On September 15, 2017, Licensee contacted Board staff and requested to reschedule the September 19, 2017 conference. The parties agreed that the conference would be moved to October 17, 2017. The parties further agreed that Licensee would submit a letter in response to the complaint at issue and accompanying patient record in the week prior to the conference.

F. Licensee failed to provide a letter of response or the patient record by October 16, 2017, and the conference was subsequently canceled.

G. Board staff contacted Licensee on October 16, 2017, and again requested the letter of response and patient record. Licensee agreed to submit the materials but failed to do so, and a contested case hearing was initiated at the Minnesota Office of Administrative Hearings by the Board's Professional Review Committee ("Committee") regarding Licensee's failure to respond to the Board's letter and subpoena.

H. Licensee did not appear at a pre-hearing conference at the Office of Administrative Hearings, and the Administrative Law Judge ("ALJ") issued Findings of Fact, Conclusions of Law, and Recommendation ("ALJ's Report") on March 21, 2018, recommending the Board take disciplinary action against Licensee's dentistry license. Licensee eventually submitted an untimely response to the Board's letter of inquiry and subpoena on April 6, 2018.

I. The Board held a hearing to consider the matter on April 13, 2018. Licensee attended the hearing, and knowingly waived legal representation. The Board accepted the recommendation for discipline in the ALJ's Report and concluded that Licensee's conduct constitutes a violation of Minnesota Statutes sections 150A.08, subdivision 1(6) and (13), Minnesota Rules 3100.6200(J) and 3100.6350, and justifies disciplinary action. The Board issued Findings of Fact, Conclusions, and Final Order for discipline against Licensee's dentistry license, followed by Amended Findings of Fact, Conclusions, and Final Order for discipline against Licensee's dentistry license dated April 13, 2018 ("Amended Order"), correcting a typographical error in the previous order.

J. Following the Board's issuance of the Amended Order, Licensee obtained legal representation, Winthrop & Weinstine, P.A., and filed a writ of certiorari with the

Minnesota Court of Appeals, appealing the Amended Order. The parties then reached agreement as to the disciplinary action set forth below.

IV.

LAWS

6. The Board considers the conduct described in section III. above to constitute a violation of Minnesota Statutes sections 150A.08, subdivision 1(6) and (13), Minnesota Rules 3100.6200(J) and 3100.6350, 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 Board hereby **RESCINDS** the Amended Order. Licensee is hereby **REPRIMANDED** for the conduct referenced in section III. above.

CONDITIONS

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

a. Civil Penalty. Pursuant to Minnesota Statutes section 150A.08, subdivision 3a(a), Licensee must pay to the Board a civil penalty totaling \$1,000 to reimburse the board for the cost of the investigation and proceeding. Licensee must pay the civil penalty within 30 days after the effective date of this Order. 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.

Removal of Condition

9. The condition upon Licensee's license shall be administratively removed upon Licensee's satisfactory completion of the condition contained within Paragraph 8(a) of this Stipulation and Order. The Board's Executive Director will send written notification to the Licensee regarding the removal of the condition from Licensee's license to practice dentistry.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

10. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this Stipulation and Order. Minnesota Rules 3100.6350 shall be applicable to such requests.

11. Licensee's failure to make full payment is a violation of this Stipulation and Order and will render the requirement unsatisfied.

Imposition of Fine

12. If payment 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 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 Board 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

13. 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

14. 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.

15. 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.

16. 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.

17. 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. Licensee agrees that concurrently with this Stipulation, his counsel shall execute and send to counsel for the Board for filing with the Court of Appeals in case A18-0822, a stipulated request for dismissal pursuant to Minnesota Rules of Appellate Procedure 142.01.

18. 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.

19. 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.

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

21. 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.

22. 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

23. 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.

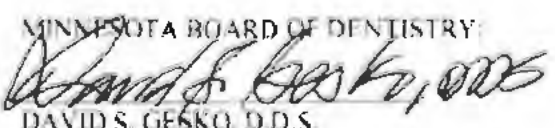
24. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

LICENSEE


NED WINDMILLER, D.D.S.

Dated 7/31/, 2018

MINNESOTA BOARD OF DENTISTRY


DAVID S. GESKO, D.D.S.

Presiding Board Member

Dated: July 31, 2018

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 31st day of July, 2018.

MINNESOTA BOARD OF DENTISTRY

By


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