

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Joseph A. Fiedler, D.D.S.
License No. D7540

**STIPULATION AND ORDER
FOR 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 against Joseph A. Fiedler, D.D.S. (“Licensee”). The Board’s Complaint Committee (“Committee”) reviewed the complaint and requested additional patient records from Licensee, which were all reviewed by an orthodontic expert. Following the review, the Committee held a conference with Licensee and his attorney, T. Michael Speidel, on November 18, 2011. 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 Licensee 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 on the following Committee findings:

Substandard Orthodontic Treatment

1. Licensee failed to provide appropriate orthodontic treatment to one or more of his patients, as follows:

a. Licensee failed to obtain patient 1's chief complaint as part of his comprehensive orthodontic assessment.

b. Licensee failed to perform comprehensive clinical examinations such as an extraoral facial assessment and an intraoral examination for patients 1 to 7. For an intraoral examination, the following conditions are assessed: the hard/soft tissues including the periodontium; tooth irregularities; an evaluation of centric relation to centric occlusion describing the amount and direction; and the temporomandibular joint and associated musculature for function and disease.

c. Licensee failed to obtain adequate pre-treatment orthodontic records to form a proper diagnosis and treatment plan on one or more of his patients, as follows:

1) Licensee failed to adequately take and evaluate pre-treatment study models for patients 1 to 7. Specifically, Licensee failed to take wax bite registrations with the models, evaluate models for tooth size/irregularities or arch length, and trim the models to standards. Additionally, Licensee failed to take any progress study models for patients 1 to 7.

2) Licensee failed to adequately evaluate pre-treatment radiographs for patients 1 to 7. Specifically, Licensee failed to take panorex and cephalometric radiographs of diagnostic quality, and evaluate the panorex and trace the cephalometric radiographs for skeletal and tooth positions.

3) Licensee failed to take sufficient pre-treatment extraoral and intraoral photographs for patients 1 to 7. Specifically, Licensee failed to obtain the following photographic views for each patient: (extraoral) facial frontal, facial frontal smile, and facial profile; and (intraoral) buccal right, buccal left, frontal in occlusion, maxillary occlusal, and mandibular occlusal.

d. For patients 1 to 7, Licensee failed to develop a comprehensive orthodontic treatment plan for each patient that detailed his diagnosis and treatment objectives. Licensee also failed to adequately inform patients 1 to 7 of treatment options on an individual basis.

e. For patients 1 to 7, Licensee failed to adequately document clinical orthodontic treatment and progress in the patient's record regarding the type of appliances used, band sizes, bracket placement, tooth movement, oral hygiene, details of adjustments made, archwire types and sizes, elastic sizes and instructions, the name or initials of dental providers, and other significant care information.

f. For patients 2 to 7, Licensee failed to obtain all post-treatment orthodontic records, including final study models and sufficient extraoral and intraoral photographs, after removing the patient's orthodontic appliances to verify the results of the orthodontic treatment.

C. Violations. The Committee concludes that the practices described above constitute violations of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 B (repeated performance of dental treatment which falls below accepted standards); Minn. Stat. § 150A.08, subd. 1(13) and Minn. R. 3100.9600 (failure to make or maintain adequate dental records on each patient); and are sufficient grounds for the disciplinary action specified below.

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

CONDITIONS

Licensee's license shall be subject to the following conditions:

1. Monitoring / Consultative Services for Orthodontic Care. Within 90 days of the effective date of this Order, 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 orthodontic care. **The evaluator 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 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 30 days for an accumulated period of two years. For each patient record, the evaluator will review and evaluate the entire record and the treatment rendered by Licensee focusing on proper orthodontic care, including diagnoses, treatment planning, radiographs, study models, photographs, treatment progress, completion results, retention, and recordkeeping to determine if Licensee is providing appropriate orthodontic care to his patients. On a quarterly basis or once every three months for this two-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. Within 30 days after each quarterly period,

Licensee shall cause the evaluator to submit the written report for each quarterly 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 monitoring/consultative evaluations, preparation of reports, and complying with the evaluator's recommendations.

2. 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 stipulation and order. If Licensee takes the coursework indicated below through the University of Minnesota School of Dentistry, Licensee must first contact the University's Director of Quality Assurance, Craig Selden, D.D.S., regarding enrollment, see contact information within the cover letter attached to this stipulation and order. None of the coursework taken pursuant to this stipulation and order may be used by Licensee to satisfy any of the continuing dental education/professional development requirements of Minn. R. 3100.5100, subpart 2. The coursework is as follows:

a. Orthodontics. Within one year after the effective date of this Order, Licensee shall successfully complete at least twelve (12) hours of one-on-one instruction in orthodontics through the University of Minnesota School of Dentistry – Division of

Orthodontics or another accredited orthodontic institution. The orthodontic course shall focus on diagnosis, treatment planning, orthodontic treatment standards, and proper recordkeeping. If Licensee decides to complete this orthodontic instruction through the University of Minnesota School of Dentistry, Licensee must first contact the University's director, Craig Selden, D.D.S., regarding enrollment as indicated within the attached cover letter to this Order.

3. Written Coursework Report. Within 30 days after completing the coursework above, Licensee shall submit to the Board the following information:

- a. a transcript or other documentation verifying that Licensee has successfully completed the course;
- b. a copy of all materials used and distributed in the course; and
- c. a written report summarizing how Licensee has implemented this knowledge into his practice. Licensee's report shall be typewritten in Licensee's own words, double-spaced, at least two pages but no more than three pages in length, and shall list references used to prepare the report. The report is subject to approval by the Committee.

4. Other 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. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minn. R. 3100.6300 and 6950.1000 through 6950.1080, and with Centers for Disease Control and Prevention, Public Health Service, and United States Department of Health and Human Service.

d. In the event Licensee should move, Licensee shall notify the Board in writing of any new residence or practice 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 Conditions. 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 order.

F. Fine for Violation of Order. 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 Minn. Stat. § 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.

G. 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.

H. 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.

I. Attendance at Conference. Licensee and his attorney attended a conference with the Committee on November 18, 2011. The following Committee members attended the conference: Candace Mensing, D.D.S. and Nancy Kearn, D.H. Assistant Attorney General Daphne A. Lundstrom represented the Committee at the conference. Licensee was represented by T. Michael Speidel in this matter, who has advised Licensee regarding this stipulation and order.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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

COMPLAINT COMMITTEE

Joseph A. Fiedler D.D.S. By:
JOSEPH/A. FIEDLER, D.D.S.

Marshall Shragg
MARSHALL SHRAGG, MPH
Executive Director

Dated: 2-1, 2012

Dated: February 6TH, 2012

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 23rd day of March, 2012.

MINNESOTA BOARD
OF DENTISTRY

By:


NEAL BENJAMIN, D.D.S.
President