

**BEFORE THE MINNESOTA**

**BOARD OF DENTISTRY**

In the Matter of  
Robert J.M. Gibson, D.D.S.  
License No. D7420

**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(s) against Robert J.M. Gibson, 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 ("AGO") for investigation. Following the investigation, the Committee held a conference with Licensee and his attorney, T. Michael Speidel, on January 19, 2006. 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 upon the following facts:

**Substandard Infection Control**

1. Licensee failed to maintain adequate safety and sanitary conditions for a dental office. Licensee also failed to comply with the most current infection control recommendations and guidelines of the Centers for Disease Control (CDC), as described below:
  - a. Licensee failed to create or locate an infection control manual for his office that complies with the current CDC Guidelines for Infection Control.
  - b. Licensee had outdated vials of Xylocaine in the operatory of his office.
  - c. Licensee failed to properly bag and sterilize contaminated dental items, including but not limited to, unbagged pliers in racks on the countertops, unbagged instruments, hemostats, wire ties, and straight handpiece attachments in the operatory drawers, and the air/water syringe tips.
  - d. Licensee failed to perform biological monitoring (spore testing) of his autoclave on a weekly basis.
  - e. Licensee told the investigator that his staff puts the contents of the sharps container into a larger sharps container, but failed to recall how the larger sharps container is disposed of when it is full.
  - f. Licensee failed to wear a new pair of latex gloves when he has returned to the operatory during treatment of a patient, instead Licensee reused the gloves he left behind when leaving the operatory.
  - g. Licensee failed to wear appropriate personal protection equipment such as a laboratory coat or gown that covers personal clothing and skin (e.g., forearms) likely to

be soiled with blood, saliva, or other potentially infectious materials when providing treatment to patients. Instead, Licensee wears short-sleeved, V-necked scrubs when treating patients.

h. Licensee failed to place protective barriers on the handpiece, air/water syringe, and high volume suction hose in his office.

### **Unprofessional Conduct**

2. Licensee has engaged in personal conduct which brings discredit to the profession of dentistry. Examples include the following:

a. On one or more occasions, Licensee lost his temper with patients while providing dental treatment, loudly complained about the patient's behavior, shouted stern commands to manage certain conflict situations with patients, and abruptly left the operatory.

b. When arriving for appointments at Licensee's office, Licensee's staff routinely informed patients that Licensee was in a very bad mood.

c. During the AG investigation, several individuals were interviewed by the investigator who stated that Licensee yelled at employees on a daily basis and is a loud, rude, overbearing man who talks to patients in a stern manner. During his interview, Licensee denied having a problem with anger. He explained that complaints about his yelling at patients and staff are based on a misperception, his voice is loud as a result of a hearing problem.

### **Improper Use of Auxiliary Personnel**

3. On one or more occasions, Licensee has inappropriately authorized and permitted unregistered dental assistants to perform tasks which exceeded their legal scope of practice. For example, Licensee has authorized and permitted an unregistered dental assistant employed in his office to remove arch wires from orthodontic appliances attached to the patient's teeth and clip the ends of orthodontic wires in the patient's mouth.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(10) and Minn. R. 3100.6200 K and 3100.6300 (failure to maintain adequate safety and sanitary conditions for a dental office); Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 A (personal conduct which brings discredit to the profession of dentistry); Minn. Stat. §§ 150A.08, subd. 1(11) and 150A.11, subd. 1 and Minn. R. 3100.8100 and 3100.8400 (employed, assisted, or enabled an unlicensed person to practice dentistry) and are sufficient grounds for the disciplinary action specified below.

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

#### CONDITIONS

1. Coursework and evaluations. Licensee shall successfully complete the coursework and evaluations described below. All coursework and evaluations must be approved in advance by the Committee. Licensee is responsible for locating, registering for, and paying for all coursework and evaluations taken pursuant to this Stipulation and Order. When Licensee has an evaluation, Licensee must provide each evaluator with a copy of this Stipulation and Order prior to beginning an evaluation. Licensee's signature on this Stipulation and Order constitutes authorization for the evaluators to provide the Committee with a copy of the final report of the evaluation and subsequent recommendations. Licensee's signature also authorizes the Committee to communicate with evaluators before, during, and after Licensee takes an evaluation about Licensee's needs, performance, and progress. 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 and evaluations are as follows:

a. Comprehensive Mental Health Evaluation. Within 90 days of the effective date of this order, Licensee shall make an appointment with an evaluating psychiatrist (“evaluator”) pre-approved by the Committee and shall inform the Committee of the appointment date. Licensee shall meet with the evaluator for the purpose of undergoing a comprehensive mental health evaluation relating to his anger management issues and any other associated behavior. Before meeting with the evaluator, Licensee shall provide to the evaluator medical releases and medical records for any prior medical treatment for consideration in the complete evaluation. Within 14 days of the completion of the evaluation, Licensee shall cause the evaluator to provide to the Committee a report of the evaluation and subsequent treatment recommendations. Licensee shall comply with all treatment recommendations the evaluator may make. Failure to follow all treatment recommendations shall constitute violation of this Order. Licensee shall bear the costs of the evaluation, the preparation of the report, and compliance with any treatment recommendations.

b. Infection Control Course. Within six months of the effective date of this Order, Licensee shall successfully complete a minimum of eight hours of instruction either through an on-line course or by personally attending a course in infection control based upon the Centers for Disease Control and Prevention (CDC) Guidelines for Infection Control in Dental Health-Care Settings-2003.

c. Evaluation by Infection Control Consultant. Within six months of the effective date of this Order, Licensee shall hire an evaluating infection control consultant (“evaluator”) pre-approved by the Committee for at least one evaluation involving consultative

and inspection services specifically for his dental office. Within 14 days of the completion of the evaluation, Licensee shall cause the evaluator to provide to the Committee an extensive written report of the evaluation and compliance recommendations. Licensee shall bear the costs of this evaluation, the preparation of the report, and compliance with any infection control recommendations. Within 30 days of the evaluator's report, Licensee shall comply with all infection control recommendations and submit a written report to the Committee that indicates the changes relative to infection control that Licensee has made in his dental office.

2. Infection Control Inspection. Following completion of the infection control coursework and evaluation, Licensee shall fully cooperate with an unannounced office visit by a representative of the Board conducted for the purpose of inspecting the safety and sanitary conditions present in Licensee's office. The Board's representative shall conduct the inspection during normal business hours. The Board's representative shall complete at least one unannounced office visit pursuant to this paragraph, additional visits shall be at the discretion of the Committee.

3. Written Reports and Information. Licensee shall submit or cause to be submitted to the Board the reports and/or information described below. All reports and information are subject to approval by the Committee:

a. Reports on All Coursework. Within 30 days of completing any coursework, Licensee shall submit to the Board (a) a transcript or other documentation verifying that Licensee has successfully completed the course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing how Licensee has implemented this knowledge into Licensee's practice. Licensee's reports shall be typewritten in Licensee's

own words, double—spaced, at least two pages and no more than three pages in length, and shall list references used to prepare the report.

b. Auxiliary Duties/Supervision Report. Within 90 days of the effective date of this order, Licensee shall submit to the Committee a written report signed and dated by Licensee and each staff member regarding the levels of supervision and delegation of duties which his auxiliary staff members are authorized to perform in accordance with Minnesota Rules 3100.8400, 3100.8500, and 3100.8700, as applicable. Licensee's report shall be typewritten in his own words, double—spaced, and at least two pages in length.

c. Infection Control Manual. Within nine months of the effective date of this Order, Licensee shall submit to the Committee a copy of his entire infection control manual that includes his written protocol establishing infection control procedures in his dental office. Licensee's manual must be current and in compliance with the Centers for Disease Control and Prevention (CDC) Guidelines for Infection Control in Dental Health-Care Settings-2003. In addition, Licensee and each staff member shall sign the manual to verify that everyone has read it and to confirm that the manual reflects procedures currently in place and adhered to by Licensee and his staff members.

4. Jurisprudence Examination. Within 90 days of the effective date of this Order, Licensee shall take and pass the Minnesota jurisprudence examination with a score of at least 75 percent. Licensee may take the jurisprudence examination within the 90-day period as many times as necessary to attain a score of 75 percent, however, Licensee may take the examination only once each day. Within 10 days of each date Licensee takes the jurisprudence examination, Board staff will notify Licensee in writing of the score attained.

5. Civil Penalty. The Board imposes a civil penalty in the amount of \$7,500 for the conduct described above. The civil penalty shall be paid 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 Marshall Shragg, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414. Payments shall be made in two installments as follows: \$3,500 within six months of the effective date of this order, and the balance of \$4,000 by the time Licensee petitions to have the conditions removed from Licensee's license.

6. 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, United States Department of Health and Human Services, *Guidelines for Infection Control in Dental Health-Care Settings - 2003*, Morbidity and Mortality Weekly Report, December 19, 2003 at 1.

d. 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.

e. 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 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 attended a conference with the Committee on January 19, 2006. The following Committee members attended the conference: Linda Boyum, R.D.A.; John Bengtson, D.D.S.; and Mark Harris, D.D.S. Assistant Attorney General Rosellen Condon 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 adequacy 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. 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.

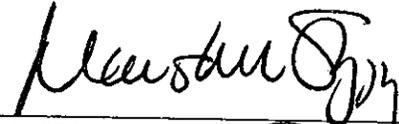
O. Service and Effective Date. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE

  
ROBERT J.M. GIBSON, D.D.S.

Dated: 6-15-06, 2006

COMPLAINT COMMITTEE

  
MARSHALL SHRAGG  
Executive Director

Dated: MARCH 22<sup>ND</sup>, 2006

### 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 CONDITIONS on Licensee's license effective this 31<sup>st</sup> day of March, 2006.

MINNESOTA BOARD  
OF DENTISTRY

By:   
MARK W. HARRIS, D.D.S.  
President