

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Gerald J. Gray, D.D.S.
License No. D 11595

**STIPULATION AND
CONSENT ORDER**

STIPULATION

Gerald J. Gray, D.D.S. (“Licensee”) and the Minnesota Board of Dentistry’s Complaint Committee (“Committee”) composed of Board members Linda Boyum, R.D.A., Joan Sheppard, D.D.S., David Linde, D.D.S., and Kristin Heebner, J.D., 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 Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists and to take disciplinary action when appropriate.

2. 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 and Consent Order.

II.

CONFERENCE

3. On April 30, 2009, Licensee and his attorney, John E. Diehl, of Larkin Hoffman Daly & Lindgren, Ltd., Minneapolis, Minnesota, appeared before the Committee composed of Board members Linda Boyum, R.D.A., Joan Sheppard, D.D.S., David Linde, D.D.S., and Kristin Heebner, J.D., to discuss allegations made in a Notice of Conference dated March 30,

2009. Angelina M. Barnes, Assistant Attorney General, represented the Committee at the conference.

III.

FACTS

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

Licensee employed, assisted, or enabled auxiliary staff to practice dentistry in that Licensee inappropriately allowed an unlicensed dental hygienist to perform tasks which exceeded her legal scope of practice. From October 2, 2007, to January 9, 2008, Licensee allowed an unlicensed dental hygienist employed in his office to administer local anesthesia and take radiographs on patients.

IV.

LAWS

5. Licensee acknowledges the conduct described in section III. above constitutes a violation of 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 3100.8300 (employed, assisted, or enabled an unlicensed person to practice dentistry), and justifies the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

6. The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

a. Licensee is hereby **REPRIMANDED** for the conduct referenced in section III. above.

b. Licensee shall pay to the Board a **CIVIL PENALTY** in the amount of \$5,000. 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, within 90 days of the date of this order.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

7. It is Licensee's responsibility to ensure that payment of the civil penalty is submitted to the Board on or before the due date. Failure to submit payment of the civil penalty on or before the due date is a violation of this Stipulation and Consent Order.

8. If Licensee fails to comply with or violates this Stipulation and Consent 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 Consent 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 Consent Order or based on conduct of Licensee not specifically referred to herein.

VII.

ADDITIONAL INFORMATION

9. Within ten days of execution of this Stipulation and Consent Order, Licensee shall provide the Board with the names of all states in which Licensee is licensed to practice dentistry or holds any other professional or occupational license or registration.

10. 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.

11. 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 Consent Order, which may otherwise be available to Licensee.

12. This Stipulation and Consent 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.

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

14. Licensee has read, understands, and agrees to this Stipulation and Consent Order and has voluntarily signed the Stipulation and Consent Order. Licensee is aware this Stipulation

and Consent Order must be approved by the Board before it goes into effect. The Board may approve the Stipulation and Consent Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation and Consent 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 Consent Order, it will be of no effect except as specified in the following paragraph.

15. Licensee agrees that if the Board rejects this Stipulation and Consent 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 Consent Order or of any records relating to it.

16. This Stipulation and Consent 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

17. This Stipulation and Consent 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 Consent 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.

18. 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


GERALD J. GRAY, D.D.S.

By:

COMPLAINT COMMITTEE


MARSHALL SHRAGG, MPH
Executive Director

Dated: May 28, 2009

Dated: JUNE 9th, 2009

ORDER

Upon consideration of this Stipulation, the Board issues Licensee a **REPRIMAND** and **CIVIL PENALTY** and adopts all of the terms described above on this 26th day of June, 2009.

MINNESOTA BOARD
OF DENTISTRY

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