

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
James O. Harvey, D.D.S.
License No. D6511

**STIPULATION AND ORDER
ACCEPTING VOLUNTARY
SURRENDER OF 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 James O. Harvey, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint and referred it to the Attorney General for investigation. Following the investigation, the Committee and Licensee agreed that the matter may 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 he 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:

Background

1. In September 1990 and June 1998, the Board issued orders that placed conditions on Licensee's license to practice dentistry. The orders were based on inadequate infection control and recordkeeping practices. Licensee successfully completed the requirements of each order and was granted unconditional licenses in February 1991 and January 2000.

Current Issues

2. On June 17, 2005, the Board adopted a Stipulation and Order for Stayed Suspension ("2005 Stipulation and Order") that placed conditions of the stayed suspension on Licensee's license to practice dentistry. The 2005 Stipulation and Order is based upon evidence of inadequate infection control procedures. Licensee is currently subject to the 2005 Stipulation and Order.

3. In March 2006, the Board received a written complaint(s) alleging that Licensee suffers from a physical, mental, emotional, or other disability which adversely affects his ability to perform the practice of dentistry and forwarded it to the Committee. The Committee reviewed the complaint and referred it to the Attorney General for investigation.

4. On or about May 5, 2006, Licensee contacted the Board to request a voluntary surrender of his license to practice dentistry in the State of Minnesota which was accepted by the Committee.

C. Violations. Licensee admits that pursuant to Minnesota Statutes, section 150A.08, subd. 1(8), that the facts and conduct specified above are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order **RESCINDING** the 2005 Stipulation and Order for Stayed Suspension and

accepting the **VOLUNTARY SURRENDER** of Licensee's license to practice dentistry in the State of Minnesota in accordance with the following terms:

1. Surrender. Effective the date of the order, Licensee's license to practice dentistry in the State of Minnesota is terminated. Within ten days of the date the order is adopted by the Board, Licensee shall surrender to the Board Licensee's original license and current renewal certificate by delivering them personally or by first-class mail to Marshall Shragg, Executive Director, Minnesota Board of Dentistry, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414.

2. Prohibitions. Licensee shall not engage in any act which constitutes the practice of dentistry as defined in Minn. Stat. § 150A.05 and shall not imply to former patients or other persons by words or conduct that Licensee is licensed to practice dentistry.

3. Transfer of Patient Records. No later than 30 days after the effective date of this order, 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. Within 30 days after the date of this order, Licensee shall provide the Board with written verification he has complied with this paragraph.

E. Application for Relicensure. Licensee may apply to the Board for relicensure 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 relicensure. Minnesota Rule 3100.1850 does not apply to an application for relicensure following the issuance of a stipulation and order for voluntary surrender of license.

In addition, if Licensee is out of practice for more than two (2) years after the effective date of this stipulation and order, he shall attain a passing score on the regional clinical examination. 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.

Upon Licensee's application for relicensure, the burden of proof shall be upon him 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 Complaint Committee. Licensee shall meet with a complaint committee of the Board at least 30 days prior to the Board meeting to consider Licensee's application for relicensure. The complaint committee shall review and discuss Licensee's application and fitness to resume the practice of dentistry. After meeting with Licensee, the complaint 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 relicensure and meeting with a complaint 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; or
3. Deny the application for relicensure upon Licensee's failure to meet the burden of proof.

H. Judicial Relief. If Licensee violates paragraph D above, a district court of this state may, upon application of the Committee, enter an order enjoining Licensee from such practice and grant the Board costs, reasonable attorney fees, and other appropriate relief.

I. Right to an Attorney. Licensee has been informed that he could be represented by legal counsel, but has elected not to be represented by counsel.

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 appropriateness 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 § 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. 5. 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

James O. Harvey
JAMES O. HARVEY, D.D.S.

Dated: May 10, 2006

COMPLAINT COMMITTEE

By: Marshall Shragg
MARSHALL SHRAGG
Executive Director

Dated: May 16th, 2006

ORDER

Upon consideration of the foregoing stipulation and based upon all the files, records and proceedings herein, the Board **RESCINDS** the June 17, 2005, Stipulation and Order for Stayed Suspension, 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 23rd day of May, 2006.

MINNESOTA BOARD
OF DENTISTRY

By: 

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