

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Nancie J. Johnson, D.D.S.
License No. D9836

**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 Nancie J. Johnson, 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 for investigation. Thereafter, the Committee held a conference with Licensee on January 15, 2010. 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:

Improper Prescribing

1. Licensee improperly or in an unauthorized manner prescribed, dispensed, administered, or personally used or made improper or unauthorized use of a legend drug, other chemical, or controlled substance. From February 5, 2006, to March 7, 2008, Licensee improperly prescribed Vicodin beyond the scope of practicing dentistry using various patient names or her own name according to pharmacy records for a total of 2,796 tablets. During the investigation, Licensee told the investigator that she prescribed Vicodin using another person's name or her name when the prescription drugs were actually for her own personal use.

Unprofessional Conduct and/or Inability to Practice with Reasonable Skill and Safety

2. On March 10, 2008, Licensee self-reported to Health Professionals Services Program ("HPSP") after responding to complaints received by the Board regarding improper prescription writing. During her intake interview, Licensee admitted that she is addicted to Vicodin and improperly wrote and filled prescriptions for her personal use. In addition, Licensee indicated that she has panic attacks and depression for which she takes Xanax and Wellbutrin as prescribed by her psychiatrist. HPSP recommended that Licensee complete both a mental illness chemical dependency ("MICD") evaluation and a chemical dependency ("CD") assessment.

3. On March 13, 2008, Licensee had a MICD outpatient evaluation completed by an addiction medicine psychiatrist at the University of Minnesota. The assessor diagnosed opiate dependency and recommended Licensee enter chemical dependency treatment, attend support group meetings, meet with a psychiatrist regularly, and participate in the HPSP.

4. On March 17, 2008, Licensee had a CD assessment completed by an evaluator at Fairview Riverside Recovery Services (“Fairview”). The evaluator’s impression of Licensee included opiate dependency. The evaluator recommended that Licensee abstain from alcohol and all illegal substances, stop self-prescribing drugs, enter an outpatient treatment program, and participate in the HPSP monitoring program.

5. On March 20, 2008, HPSP received Licensee’s signed Participation Agreement to monitor her substance and psychiatric disorders. Among other things, the terms of Licensee’s monitoring plan prohibited her from prescribing or dispensing medications to herself or family members.

6. On March 27, 2008, Licensee was admitted into the Women’s Recovery Outpatient Chemical Dependency Program at Fairview’s River Ridge Treatment Center (“River Ridge”) in Minnetonka, Minnesota. Licensee successfully completed the program on June 26, 2008. Among the aftercare recommendations, Licensee was to remain abstinent from all mood-altering chemicals and follow all recommendations of the HPSP.

7. To date, Licensee is compliant with the requirements of the HPSP monitoring program.

▪ C. Violations. The Committee concludes that the practices described above constitute violations of Minn. Stat. §150A.08, subd. 1(5), (6) and (8), Minn. R. 3100.6200 A, and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. The Board **REPRIMANDS** Licensee for the foregoing conduct. 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

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

1. Participation in HPSP.

a. Licensee must continue with her participation in the HPSP for monitoring of her chemical dependency recovery. Licensee shall provide HPSP with a copy of this stipulation and order after being adopted by the Board.

b. Licensee shall be monitored by HPSP until HPSP determines Licensee is qualified to practice without conditions.

c. Licensee shall comply with all provisions of her HPSP Participation Agreement, including revisions subsequent to this order. Licensee's failure to comply with her HPSP Participation Agreement shall be considered a violation of this stipulation and order.

d. Licensee shall totally abstain from ingesting, injecting, or otherwise taking or using any mood-altering chemical or drug, including, but not limited to alcohol. This prohibition does not apply to legend drugs, including controlled substances, which are prescribed for Licensee by a licensed physician or dentist as part of a course of treatment.

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. 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. Ethics. Within one year of the effective date of this Order, Licensee shall complete an individually designed course in ethics offered by Dr. Karin Quick at the University of Minnesota School of Dentistry, or an equivalent course offered by another practitioner. Licensee's signature on this stipulation and order is authorization for the Committee to communicate with the practitioner before, during, and after Licensee takes the course about her needs, performance and progress. Licensee's signature also constitutes authorization for the practitioner to provide the Committee with copies of all written evaluation reports. Successful completion of this course shall be determined by the Committee based on input from the practitioner of the course.

3. Coursework Report. Within 30 days after completing the coursework listed above, Licensee shall submit to the Committee (a) proof of Licensee's attendance and completion of the course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing how Licensee will incorporate 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.

4. Civil Penalty. The Board imposes a civil penalty in the amount of \$1,000 for Licensee's conduct described above. Licensee must pay the civil penalty by certified check, cashier's check, or money order made payable and delivered to the Minnesota Board of Dentistry by the time Licensee petitions to have the conditions removed from Licensee's license.

5. 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 Service.

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 and her attorney attended a conference with the Committee on January 15, 2010. The following Committee members attended the

conference: Candace Mensing, D.D.S.; Freeman Rosenblum, 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



NANCIE J. JOHNSON, D.D.S.

By:

COMPLAINT COMMITTEE



MARSHALL SHRAGG, MPH,
Executive Director

Dated: 2/8/10, 2010

Dated: FEBRUARY 12TH, 2010

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 19th day of February, 2010.

MINNESOTA BOARD
OF DENTISTRY

By:



JOAN SHEPPARD, D.D.S.
President