

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
James I. Midtling, D.D.S.
License No. D10555

**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 James I. Midtling, 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, Richard A. Lind, on January 24, 2007. 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. Although Licensee does not make any specific admissions, he concedes that the Committee's findings below, if proven, would provide a factual basis to support a violation of the applicable statutes and rules, as follows:

Substandard Oral Surgery / Recordkeeping

1. Licensee failed to document pertinent information and/or provide appropriate oral surgery care when providing treatment to patient 1. Examples include:

a. In December 2003, Licensee failed to document or acknowledge in patient 1's record the following: an accurate blood pressure reading; the procedure length beyond the start and end times noted on the CritiCare printout; vital signs during recovery; and condition at discharge relative to this surgical procedure. Despite this, Licensee stated he did perform a preoperative assessment of patient 1. Regarding the blood pressure reading for patient 1, Licensee believes that the reading was appropriate for this patient. However, Licensee admitted that the blood pressure cuff used on patient 1 may have been too small for her.

b. On February 2, 2006, Licensee failed to perform and/or document an adequate preoperative assessment on patient 1 when evaluating the patient's health history status, as follows:

1) Licensee admitted that he failed to document in patient 1's record the patient's current health status, including weight, asthma severity and management, and current use of tobacco. Despite this, Licensee stated that he did consider, through his training and experience, patient 1's obesity and other health-related issues communicated when administering general anesthesia to this patient.

2) Patient 1 indicated on her medical history that she was having difficulty breathing through her nose. Licensee informed the AGO investigator that he

did not question the patient about having difficulty breathing through her nose. Licensee's staff made a note in the progress notes that she had asked the patient if she was breathing okay and the patient replied, "Yes, no problems." Licensee stated he read and considered the staff note regarding the patient's breathing.

3) Licensee additionally stated that, although he did not question the patient about her breathing as indicated on her medical history, he did ask about her asthma and blood pressure medication (Lisinopril). However, Licensee failed to indicate in the record that he asked the patient about these medical issues.

c. On February 2, 2006, Licensee failed to perform and/or document adequate oral surgery procedures on patient 1, including but not limited to, administering and monitoring the general anesthesia for this patient, as follows:

1) Licensee failed to obtain patient 1's informed consent as to whether she wanted to have local or general anesthesia. Instead, Licensee decided to administer general anesthesia to patient 1 based upon a previous sedation appointment, the staff having prepared the patient for general anesthesia, and the difficulty of the extraction procedure.

2) Licensee failed to document a basic physical examination of patient 1 before administering the IV anesthetic, including height, weight, auscultation of the heart and lungs, and evaluation of the airway.

3) Licensee failed to have a time-oriented anesthesia sheet in the record to indicate "real time" of surgical and postsurgical events.

4) Licensee stated that patient 1 was not on oxygen during the surgical procedure, but oxygen was administered after the procedure when the patient was unresponsive. Licensee stated that supplemental oxygen is not routinely used during sedation

except in special circumstances or when oxygen saturations clinically drop. Furthermore, no EKG strip printout was found in patient 1's record. Licensee states that the EKG recorded the data, but the strip was not printed. Finally, blood pressure readings on the CritiCare printout indicated high levels for this obese patient.

5) Licensee failed to maintain patient 1's IV until after the patient was alert and verbally responsive. In this instance, and as instructed by Licensee, Licensee's staff member immediately removed the patient's IV after completing the surgical procedure. When Licensee's staff noticed patient 1 was unresponsive, Licensee administered supplemental oxygen, but there is no indication that Licensee attempted to regain IV access.

6) On the date of this anesthesia incident with patient 1, Licensee failed to be currently certified in advanced cardiac life support ("ACLS") and/or basic life support ("BLS").

Improper Use of Auxiliary Personnel

2. Licensee employed registered dental assistants in his practice who were not certified in BLS, especially on the date of the anesthesia incident with patient 1.

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 (incompetence in the practice of dentistry which falls below accepted standards); Minn. Stat. §§ 150A.08, subd. 1(11), and 150A.11, subd. 1, and Minn. R. 3100.8100 and 3100.8500 (employed, assisted, or enabled an unlicensed person to practice dentistry); Minn. R. 3100.9600 (failure to make or maintain adequate dental records on each patient) for purposes of this Stipulation and Order and are sufficient grounds for the disciplinary action specified below. Licensee agrees to enter into this Stipulation and Order for purposes of settlement.

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. Use of Supplemental Oxygen. Immediately following the January 24, 2007, conference with the Committee, Licensee shall follow the therapeutic standard for conscious sedation and general anesthesia of using supplemental oxygen throughout the anesthetic period when treating a patient under conscious sedation or general anesthesia.

2. Maintain Intravenous Access. Immediately following the January 24, 2007, conference with the Committee, Licensee shall follow the therapeutic standard for conscious sedation and general anesthesia using intravenous access for patients receiving intravenous medications for conscious sedation or general anesthesia and maintenance of vascular access throughout the procedure and until the patient is no longer at risk for cardiorespiratory depression prior to discharging the patient.

3. Office Inspection / Evaluation. Within three months of the effective date of this Order, Licensee shall make arrangements for the scheduling and completion of an on-site inspection and evaluation of his office facility with the Minnesota Society of Oral and Maxillofacial Surgeon's Anesthesia Review Committee, or another oral and maxillofacial surgeon organization preapproved by the Committee. Licensee is responsible for all costs associated with this on-site inspection and evaluation. Within 14 days of the completion of the inspection and evaluation, Licensee shall provide to the Committee an extensive written report of the evaluation, including any documented deficiencies found with his office facility along with information as to how and when these documented deficiencies have been corrected by Licensee.

4. Advanced Cardiac Life Support Course. Within three months of the effective date of this Order, Licensee shall successfully complete an ACLS course and receive an ACLS certificate. The ACLS certificate must be obtained through the American Heart Association, the American Red Cross, or an equivalent course. Within 30 days after completing the ACLS course, Licensee must submit a copy of his ACLS certificate or the front and back of the card received as proof of completion to the Committee.

5. Jurisprudence Examination. Within six months of the effective date of this Order, Licensee shall take and pass the Minnesota jurisprudence examination with a score of at least 90 percent. Licensee may take the jurisprudence examination within the 90-day period as many times as necessary to attain a score of 90 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.

6. 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, subp. 2. The coursework is as follows:

a. Anesthesia. Within nine months of the effective date of this order, Licensee shall personally attend and successfully complete a full one-day course on the latest information on the safe delivery and usage of anesthesia focusing on conscious sedation and general anesthesia.

b. Recordkeeping. Within 12 months of the effective date of this order, Licensee shall either personally attend or through home-study complete a course of instruction in accurate and complete recordkeeping.

7. Written Coursework and Informational Reports. Licensee shall submit or cause to be submitted to the Committee the reports described below. All reports are subject to review and approval by the Committee:

a. Reports on All Coursework. Within 30 days of completing any coursework, Licensee shall submit to the Board (1) proof of Licensee's attendance at the course; (2) a copy of all materials used and/or distributed in the course; and (3) a written report on specific information addressing how Licensee will incorporate his recently gained 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. Parameters of Care Report. Within six months of the effective date of this order, Licensee shall review the parameters of care for patient assessment and anesthesia in outpatient facilities found in the most current publication of the *American Association of Oral and Maxillofacial Surgeon's Clinical Practice Guidelines for Oral and Maxillofacial Surgery*. Thereafter, Licensee shall submit a written report to the Committee regarding these parameters of care when providing oral and maxillofacial surgery to patients. Licensee's report shall be typewritten in his own words, double-spaced, and at least two pages in length.

c. Auxiliary Duties/Supervision Report. Within nine months of the effective date of this order, Licensee shall review and submit to the Committee a written report regarding the levels of supervision and delegation of duties which registered dental assistants are

authorized to perform in his dental practice in accordance with Minn. R. 3100.8500. Licensee's report shall be typewritten in his own words, double-spaced, and at least two pages and no more than three pages in length.

8. Reimbursement of Costs. Licensee shall pay the Board the sum of \$15,000 as partial reimbursement for the Board's costs in this matter. Payments shall be made by certified check, cashier's check, or money order made payable to the Minnesota Board of Dentistry in two installments as follows: \$7,500 within six months of the effective date of this order and the balance of \$7,500 within one year, or by the time Licensee petitions to have the conditions removed from Licensee's license, whichever occurs first.

9. 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 the 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's license 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 24, 2007. 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 Tamar N. Gronvall represented the Committee at the conference. Assistant Attorney General Daphne A. Lundstrom now represents the Committee. Licensee was represented by Richard A. Lind 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 § 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.

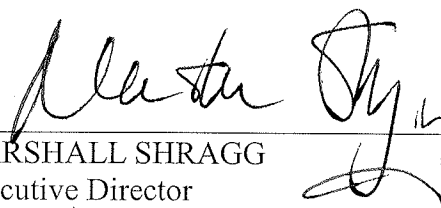
LICENSEE

COMPLAINT COMMITTEE



JAMES I. MIDTLING, D.D.S.
Licensee
Dated: 12/29, 2007

By:



MARSHALL SHRAGG
Executive Director
Dated: NOVEMBER 30th, 2007

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 30th day of November, 2007.

MINNESOTA BOARD
OF DENTISTRY

By:

Nadene Bunge

NADENE BUNGE, D.H.

Vice-President

AG: #1831090-v1