

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

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

**AMENDED STIPULATION AND ORDER
FOR STAYED SUSPENSION**

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.

On May 19, 2010, James I. Midtling, D.D.S. ("Licensee"), his attorney, Richard A. Lind, and the Board's Complaint Committee ("Committee") participated in mediation. Assistant Attorney General Daphne A. Lundstrom represents the Committee. As a result, the Committee and Licensee have agreed that the matter may now be resolved by this amended stipulation and order for stayed suspension.

In the interest of settling this matter and avoiding the necessity for further proceedings, the Board may consider the following facts as true for the purpose of this amended stipulation and order. However, it is the intent of the parties that this amended stipulation and the facts set forth herein shall have no collateral estoppel effect, res judicata effect, or other preclusive effect and no evidentiary value in any action or proceeding in any forum or process other than proceedings before the Minnesota Board of Dentistry or another authorized licensing board or licensing agency. Nothing in this paragraph shall limit or affect the Board's obligation to fulfill any reporting requirements.

AMENDED STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license from the Board to practice dentistry in the State of Minnesota 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 amended stipulation is based upon the facts set forth hereinafter. Licensee does not make any specific admissions of these facts but concedes that, if proven, the facts would provide a factual basis to support the claimed violations.

1. Licensee was licensed to practice dentistry in the State of Minnesota on October 4, 1990, and is subject to the jurisdiction of the Board.

2. On November 30, 2007, the Board issued to Licensee a Stipulation and Order for Conditional License ("2007 Order"). Licensee remains subject to the 2007 Order as of the date of this amended stipulation.

3. On January 22, 2009, Licensee treated patient 1, a 63-year-old male, using general anesthesia, in Licensee's dental office.

4. Patient 1 presented with a referral from his general dentist for extraction of teeth #1, 2, 4, 5, 7, 9, 10, 12, 17, and 26. The medical history provided by patient 1 included congestive heart failure with stent in July 2008, heart disease/bypass, high blood pressure, and diabetes. Patient 1's medications included Albuterol inhaler, aspirin, Glipizide, Hydralazine, Metoprolol, Nitroglycerine, Isosorbide, Lisinopril, Spironolactone, Ambien, and Furosemide.

Patient 1 answered “yes” to the question, “Have you had any complications following general surgery with anesthesia?” Patient 1 also indicated an allergy to Fentanyl.

5. Licensee failed to appropriately assess patient 1’s health status and risk for general anesthesia and inaccurately assigned patient 1’s American Society of Anesthesiologists (“ASA”) classification, indicating that the patient was an ASA II/III, when the patient was an ASA IV.

6. Patient 1 was transported from Licensee’s office to a hospital on January 22, 2009, and died on January 24, 2009.

C. Violations. The Committee concludes that the practices described above constitute violations of Minn. Stat. § 150A.08, subd. 1(6) and (13), Minn. R. 3100.6200A; Minn. Stat. § 150A.08, subd. 1(6) and (13), and Minn. R. 3100.6200 B for purposes of this amended stipulation and order and are sufficient grounds for the disciplinary action specified below. Licensee agrees to enter into this amended stipulation and order for purposes of settlement.

D. Stayed Suspension. Licensee’s license to practice dentistry in the State of Minnesota is hereby SUSPENDED. The suspension is STAYED conditioned on Licensee’s compliance with all of the limitations and conditions set forth in paragraph E. below.

E. Conditions. Licensee’s license shall be subject to the following conditions:

1. Performance of Dental Procedures on Patients Under General Anesthesia. Licensee shall not sedate or place ASA IV patients under general anesthesia. All ASA III patients who are transferred from a medical facility shall have approval by a medical doctor for general anesthesia or sedation. The examination shall be performed within 48 hours before the sedation or general anesthesia is administered. Until Licensee completes the continuing education required by the order and is determined through the 1:1 evaluation, conducted through

the Mayo Clinic, to be appropriately skilled in assessment of patients, he must refrain from delivering general anesthesia or sedation to ASA III patients who have not been medically approved for such anesthesia or sedation.

2. Monitoring Program. For a period of 12 months (hereafter the “Effective Period”), Licensee agrees to contract with Affiliated Monitors, Inc., or a comparable monitoring company, or oral surgeon certified by the American Board of Oral and Maxillofacial Surgery (hereafter the “evaluator”), approved by the Committee, for monitoring services. Monitoring of the patient charts will be conducted on a quarterly basis of 25 current patients under Licensee’s care. The monitoring shall be random and shall be subject to the following requirements:

a. Prior to establishing a contract with the evaluator, Licensee must provide the evaluator with a copy of this amended stipulation and order. Licensee’s signature on this amended stipulation and order constitutes authorization for the evaluator to provide the Committee with copies of all written monitoring reports. Licensee’s signature also authorizes the Committee to communicate with the evaluator about Licensee’s needs, performance, and progress.

b. Licensee is responsible for all costs associated with and pursuant to the contract agreement with the evaluator, including but not limited to monitoring evaluations, preparing reports, and complying with the evaluator’s recommendations.

c. During the Effective Period, Licensee shall contract with and engage the services of the evaluator to perform monitoring of his clinical practice and review his recordkeeping, as described below:

1) On-Site Observation. Within 45 days from the selection of the evaluator by the Board and continuing thereafter on a quarterly basis throughout the Effective

Period, the evaluator will conduct on site four hours of observation of Licensee's clinical competence, including patient and time management, when rendering dental services to patients at the office of Licensee chosen by the evaluator.

2) Evaluation of Patient Records. Within 45 days from the selection of the evaluator by the Board and continuing thereafter on a quarterly basis throughout the Effective Period, the evaluator will randomly select twenty-five (25) current patient records and conduct a comprehensive clinical evaluation of these patient records. The comprehensive clinical evaluation shall focus on Licensee's clinical competence when providing dental services to patients and a complete review of his recordkeeping.

3) Written Reports. Within 60 days following the effective date of this order and on a quarterly basis thereafter throughout the Effective Period, Licensee shall arrange for the evaluator to submit to the Committee a written report of the on-site observations, patient record evaluations, and any compliance recommendations made by the evaluator. Within 45 days of each report received by the Committee from the evaluator, Licensee shall comply with the evaluator's recommendations and submit a written report to the Committee explaining the changes Licensee has made in his dental practice. Failure to follow all recommendations made by the evaluator shall constitute violation of this order.

3. Educational Course / 1:1 Evaluation. Licensee shall participate in an educational course to be approved in advance by the Committee. Licensee shall work with Mayo Clinic Oral and Maxillofacial Surgery to develop a 1:1 evaluation of his assessment skills. This course may not be used by Licensee to satisfy any of the continuing dental education/professional development requirements of Minn. R. 3100.5100, subpart 2.

4. Unannounced Visits. A Board representative may make unannounced visits to Licensee's office and review files and equipment. These visits will take place at noon or thereafter.

5. Reimbursement of Costs. Licensee shall pay to the Board the sum of \$3168.00 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 and delivered to the Minnesota Board of Dentistry in two installments as follows: \$1584.00 within six months of the effective date of this order and the balance of \$1584.00 within 12 months of the effective date of this order or by the time Licensee petitions to have the conditions removed from his license, whichever occurs first.

6. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this amended stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this amended 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. If the Board receives a complaint alleging additional misconduct, the Board reserves the right to investigate the allegations in accordance with its own rules.

d. 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 amended stipulation and order.

F. Removal of Stayed Suspension and Conditions. Licensee may petition one year from the date of the order to have the stayed suspension and conditions removed from his 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 he has complied with the conditions and that he 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.

G. Fine for Violation of Order. If Licensee violates this amended stipulation and order, the Committee may fine Licensee \$100 per violation. Licensee shall pay the fine and correct the violation within ten 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.

H. Additional Discipline for Violation of Order. If Licensee violates this amended 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 received by Licensee, 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 amended 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 limitations on Licensee's practice, or suspension or revocation of Licensee's license.

I. Other Procedures for Resolution of Alleged Violations. Violation of this amended 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 amended stipulation and order or based on the conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

J. Collateral Estoppel. This stipulation contains the entire agreement regarding the above-stated facts, issues, violations, and disciplinary action. The stipulation will be presented to and may be approved by the Board without further notice. The Committee may participate in Board deliberations and may vote concerning the stipulation. Upon approval by the Board, the parties are collaterally estopped from litigating the facts and violations stated above and this stipulation settles, bars, and precludes further administrative or judicial proceedings regarding the issues (except and save stipulation violations referred to in paragraph G above) addressed herein.

K. Board Rejection of Amended Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this amended 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 amended 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 amended 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. pts. 60 and 61), the Board must report the disciplinary action contained in this amended 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 amended 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 I. MIDTLING, D.D.S.

Dated: 9/20/2010, 2010

COMPLAINT COMMITTEE

By:


MARSHALL SHRAGG
Executive Director

Dated: 9/20/2010, 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 24th day of September, 2010.

MINNESOTA BOARD
OF DENTISTRY

By:



JOAN SHEPPARD, D.D.S.
President

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