

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Kimberlee M. Murphy, D.D.S.
License No. D10230

**STIPULATION AND ORDER FOR
CONDITIONAL LICENSE**

STIPULATION

Kimberlee M. Murphy, D.D.S. ("Licensee"), and the Minnesota Board of Dentistry's Complaint Committee ("Committee") 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 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 and Order.

II.

CONFERENCE

3. On December 7, 2012, Licensee and her attorney, John M. Degnan, appeared before the Committee, composed of Board members Candace Mensing, D.D.S., Nancy Kearn, D.H., and Neal Benjamin, D.D.S., to discuss allegations made in a Notice of Conference dated November 7, 2012. Greg Schaefer, Assistant Attorney General, represented the Committee at the conference.

4. Licensee was advised by Committee representatives that she may choose to be represented by legal counsel in this matter. Licensee retained John M. Degnan, Esq., of Briggs and Morgan, PA, 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402-2157.

III.

FACTS

5. The Committee bases this Stipulation on the following, to be used solely for the purpose of this Stipulation:

Improper Prescribing

a. Licensee improperly prescribed a legend drug or controlled substance, as follows:

1) Patient 1

a) Based upon pharmacy and patient records, Licensee overprescribed to patient 1 several narcotics totaling 535 tablets (or 32 prescriptions) over a ten-month period in 2011 to manage the patient's severe dental pain when providing treatment for extractions, dry sockets, root canals, and/or TMD.

b) On more than one occasion, Licensee failed to accurately document in patient 1's record the following: the prescription, including the dosage amounts when compared to pharmacy records; and her diagnosis for prescribing the pain medication or the source of the patient's pain.

c) Licensee was aware that patient 1 had an ongoing Percocet prescription for 60 tablets monthly from her primary physician. However, Licensee said that patient 1 has not been taking the Percocet; instead, the medication is just for her gall bladder

attacks. Since her gall bladder has been removed, the prescriptions have ceased since the patient no longer experiences this pain.

2) Patient 2

a) Based upon pharmacy and patient records, Licensee prescribed to patient 2 certain narcotics totaling 100 tablets over an eight-month period in 2010 and 2011 to manage the patient's severe dental pain when providing treatment for toothaches and a series of extractions.

b) On more than one occasion, Licensee failed to accurately document in patient 2's record the prescription dosage amounts when compared to pharmacy records.

3) Patient 3

a) Based upon pharmacy and patient records, Licensee prescribed to patient 3 certain narcotics totaling 80 tablets over a one-month period in 2011 to manage the patient's severe dental pain when providing treatment for scaling/root planing and a series of extractions with dry sockets.

b) On one occasion, Licensee failed to document in patient 3's record her diagnosis for prescribing the pain medication or the source of the patient's pain.

4) Patient 4

a) Based upon pharmacy and patient records, Licensee prescribed to patient 4 certain narcotics totaling 60 tablets over a five-day period in 2011 to manage the patient's severe dental pain when providing treatment for two separate extractions and a dry socket.

b) On one occasion, Licensee failed to document in patient 4's record the prescription and her diagnosis for prescribing the pain medication or the source of the patient's pain. Patient 4 was going out of town and needed a prescription to take with him.

5) Patient 5

a) Based upon pharmacy and patient records, Licensee prescribed to patient 5 certain narcotics totaling 100 tablets over a 24-day period to manage the patient's severe dental pain when providing treatment for two abscessed teeth, a root canal treatment, and an extraction by a specialist.

b) On more than one occasion, Licensee failed to document in patient 5's record the prescription and her diagnosis for prescribing the pain medication or the source of the patient's pain.

6) Patient 6

a) Based upon pharmacy and patient records, Licensee prescribed to patient 6 certain narcotics totaling 50 tablets over a six-day period in 2009 and totaling 120 tablets over a one-month period in 2011 to manage the patient's severe dental pain when providing treatment for a root canal treatment that would not settle down. Patient 6 also lives in Florida and needed a prescription when out of town.

b) On more than one occasion, Licensee failed to accurately document in patient 6's record the following: the prescription, including the dosage amounts when compared to pharmacy records; and her diagnosis for prescribing the pain medication or the source of the patient's pain.

Substandard Periodontal Care

b. Licensee failed to provide appropriate periodontal treatment when providing care to patient 7. Based upon patient 7's record, Licensee failed to perform a

comprehensive periodontal assessment of the patient's periodontal conditions prior to proceeding with any dental treatment.

Substandard Radiographic Diagnosis

c. Licensee failed to appropriately take diagnostic radiographs for patient 7. Based upon patient 7's record, Licensee failed to take a sufficient number of radiographs on patient 7 to properly diagnose the patient's existing oral health status.

Substandard Recordkeeping

d. Licensee failed to make or maintain an adequate patient record for patient 7. Licensee failed to properly and consistently document within patient 7's record the following: an updated medical history regarding existing medical conditions, including osteoporosis, and current medications, including antibiotics; appropriate treatment plans; and the patient's informed consent prior to performing treatment.

Failure to Cooperate

e. Licensee failed to cooperate with the Board, its agents, or those working on behalf of the Board. On November 7, 2012, the Complaint Committee served upon Licensee a Notice of Conference requesting that she submit to the Committee a typewritten response to the Notice at least 14 days prior to the conference date of December 7, 2012. On December 5, 2012 (12 days late), Licensee responded to the Board's request.

IV.

LAWS

6. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minn. Stat. § 150A.08, subd. 1(5), (6), and (13), Minn. R. 3100.6200 B, 3100.6200 J, 3100.6350, and 3100.9600 and justifies the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

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

Conditions

7. The Board places the following **CONDITIONS** on Licensee's license:

a. Written Reports on Specified Topics. Within six months of the effective date of this Order, Licensee shall submit to the Committee the three reports described below regarding prophylactic antibiotics, osteoporosis, and prescriptions. Licensee's reports shall be typewritten in her own words, double-spaced, at least two pages but no more than three pages in length, and shall list references used to prepare the report. All reports are subject to review and approval by the Committee.

1) Prophylactic Antibiotics. Licensee shall submit a written report regarding the latest guidelines by the American Heart Association on pre-medications using prophylactic antibiotics relative to patients and their medical history, including surgical medical implants.

2) Medical History — Osteoporosis. Licensee shall submit a written report regarding the importance of a medical consultation with the physician of a patient who has osteoporosis and is receiving treatment; the effects of drug treatments for osteoporosis, including intravenous drugs; and dental concerns with the osteoporosis patient and performing multiple tooth extractions.

3) Prescriptions. Licensee shall submit a written report regarding: (a) her responsibilities to prescribe controlled substances; (b) recognizing the drug abuser; (c) the required documentation in the patient's record for prescriptions for recordkeeping purposes;

(d) how to protect or secure your Federal Drug Enforcement Administration (“DEA”) registration number; and (e) how to implement and use the Prescription Monitoring Program.

b. 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:

1) Professional Boundaries. Within six months of the effective date of this Order, Licensee shall arrange to enroll in an individualized professional boundaries training course taught by John Hung, Ph.D., L.P., in Edina, Minnesota, or another equivalent course approved in advance by the Committee. The course shall address professional boundaries, including properly managing a patient complaining of chronic pain who may be exhibiting drug-seeking behavior. Licensee’s signature on this stipulation is authorization for the Committee to communicate with the instructor/practitioner before, during, and after Licensee takes the course about her needs, performance, and progress. Licensee’s signature also constitutes authorization for the instructor/practitioner to provide the Committee with copies of all written evaluation reports. Successful completion of the boundaries course shall be determined by the Committee based on input from Dr. Hung or the instructor/practitioner of an equivalent course.

2) Periodontics. Within nine months of the effective date of this Order, Licensee shall personally attend and successfully complete one full-day course in periodontics through the University of Minnesota School of Dentistry or another accredited

dental institution that focuses on periodontal diagnosis, treatment planning, proper recordkeeping, and referring to a specialist.

3) Treatment Planning / Recordkeeping. Within one year of the effective date of this Order, Licensee shall personally attend and successfully complete the treatment planning / recordkeeping course entitled “Dental Patient Management: Dental Records and Treatment Planning Fundamentals” offered at the University of Minnesota School of Dentistry, or a course deemed equivalent by the Committee.

c. Coursework Reports. Within 30 days after completing each of the courses listed above, Licensee shall submit to the Committee:

1) Proof of Licensee’s attendance and completion of the course;

2) Copies of all materials used and/or distributed in the courses; and

3) A summary report of what Licensee learned in the course and specific information addressing how Licensee will incorporate this recently gained knowledge into Licensee’s practice.

4) Licensee’s reports shall be typewritten in Licensee’s own words, double-spaced, at least two pages in length but no more than three pages, and shall list references used to prepare the report.

5) All coursework reports submitted by Licensee are subject to review and approval by the Committee.

d. Recordkeeping Inspection. Licensee shall cooperate with all unannounced office visits during normal business hours by a representative of the Board; **OR** the Board’s representative may instruct Licensee to submit to the Committee the original records of five randomly selected patients, including radiographs, which utilize what Licensee has learned in the recordkeeping course. During an office visit, the representative shall randomly select, remove,

and make copies of original patient records, including radiographs, to provide to the Committee for its review of Licensee's recordkeeping practices. Additional office visits or requests for patient records shall be at the discretion of the Committee.

e. Civil Penalty. Licensee shall pay to the Board a civil penalty totaling \$3,000 in two installments as follows: \$1,500 within three months from the effective date of this Order and the balance of \$1,500 within six months from the effective date of this Order. Payments shall be made 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.

Removal of Conditions

8. Licensee may petition to have the conditions removed from Licensee's license at any regularly scheduled Board meeting no sooner than one year after the effective date of this Stipulation and Order 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 Stipulation and Order.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

9. 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.

10. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minnesota Rules parts 3100.6300 and 6950.1000 to 6950.1080 and with the Centers for Disease Control and Prevention, Public Health Service, and the United States Department of Health and Human Services.

11. 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, or appearances at conferences. Minnesota Rules part 3100.6350 shall be applicable to such requests.

12. It is Licensee's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board pursuant to this Stipulation and Order are timely filed by those preparing the payment, report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Stipulation and Order.

Imposition of Fine

13. 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 with 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 Minnesota Statutes section 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.

Noncompliance or Violation With Stipulation and Order

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

VII.

ADDITIONAL INFORMATION

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

16. If while residing or practicing in Minnesota, Licensee should become employed at any other dental clinic or facility or move, Licensee shall notify the Board in writing of the new address and telephone number within ten days.

17. In the event Licensee should leave Minnesota to reside or to practice outside of the state, Licensee shall notify the Board in writing of the new address and telephone number within ten 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. If Licensee leaves the state, the terms of this order continue to apply unless waived in writing.

18. 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.

19. 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 Order, which may otherwise be available to Licensee.

20. This Stipulation and 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.

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

22. Licensee has read, understands, and agrees to this Stipulation and Order and has voluntarily signed this Stipulation and Order. Licensee is aware this Stipulation and Order must be approved by the Board before it goes into effect. The Board may approve the Stipulation and Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation and 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 Order, it will be of no effect except as specified in the following paragraph.

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

24. This Stipulation and 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

25. This Stipulation and 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 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.

26. 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

COMPLAINT COMMITTEE

Kimberlee M. Murphy, DDS
KIMBERLEE M. MURPHY, D.D.S.

By: Marshall Shragg
MARSHALL SHRAGG, MPH
Executive Director

Dated: 3-4-14

Dated: MARCH 25TH, 2014

* * *

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 2nd day of May, 2014.

MINNESOTA BOARD OF DENTISTRY

By: Teri Youngdahl
TERI YOUNGDAHL, L.D.A.
Board President