BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Jane E. Odgers, D.D.S.
License No. D9999

SECOND AMENDED STIPULATION AND ORDER FOR LIMITED AND CONDITIONAL LICENSE

STIPULATION

Jane E. Odgers, 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.

BACKGROUND

3. The Complaint Committee determined this matter could be settled with a Stipulation and Order. Sara Boeshans, Assistant Attorney General, represents the Committee.

4. Licensee retained Gregory W. Deckert, Deckert & Van Loh, P.A., Maple Grove Business Lofts, 12912 – 63rd Avenue North, Maple Grove, Minnesota 55369-6001.

III.

FACTS

Licensee agrees that the Board may consider the following facts to be true, but only for the purposes of this stipulation and any further proceedings before the Board, and not for any other purposes, including but without limitation any civil litigation:

5. The Committee finds Licensee engaged in an intentional and persistent pattern of falsifying records, with the goal of defrauding third-party payers for her own financial gain, as follows:

a. Licensee or her staff routinely recorded a date of service in billing records that was later than the actual date the service was performed. These inaccurate billing records were then submitted to third party payers for reimbursement.

b. This "post dating" of services was done with the intention of maximizing insurance reimbursement, or obtaining insurance reimbursement for services that were not yet due under insurance schedules, in order to keep Licensee's clinic's schedule full.

c. Licensee directed her staff to misrepresent dates of service in records submitted to insurance companies for the purposes set forth above.

d. Licensee indicated to staff and patients that the purpose of her misrepresentation of service dates was to maximize reimbursement from third party payers, to make the best use of clinic time.

6. The Committee finds Licensee engaged in the performance of dental treatment that fell below acceptable standards and failed to maintain adequate dental records, as follows:

a. <u>Patient PC</u>

1) Licensee failed to obtain the name and telephone number of the emergency contact for PC.

2) Licensee failed to consistently document a complete record of PC's existing oral health status, diagnoses for dental treatment, and treatment plan.

3) Licensee failed to consistently document PC's informed consent prior to providing dental treatment.

4) During hygiene appointments, Licensee failed to thoroughly assess and document the status of PC's periodontal conditions, failed to perform root planing or scaling when indicated, and failed to provide a periodontal diagnosis or treatment plan. Radiographs

taken during the course of Licensee's treatment of PC reveal concerning periodontal conditions, which Licensee failed to treat and failed to note in the treatment records. These conditions were noted by PC's subsequent dental providers.

5) Licensee recommended replacing PC's teeth #13 and #14 with implants, without thoroughly assessing and diagnosing the periodontal conditions noted above.

b. Patient RG2

1) Licensee failed to consistently document a complete record of RG2's existing oral health status, diagnoses for dental treatment, and treatment plan.

2) Licensee failed to consistently document RG2's informed consent prior to providing dental treatment.

3) Licensee treated RG2 from 1999 to 2008. Licensee failed to obtain a series of full mouth radiographs for RG2 until 2007.

4) Licensee failed to thoroughly assess and document the status of RG2's periodontal conditions, failed to perform root planing or scaling when indicated, and failed to provide a periodontal diagnosis or treatment plan. Radiographs taken during the course of Licensee's treatment of RG2 reveal concerning periodontal conditions, which Licensee failed to properly treat and failed to note in the treatment records.

5) In April and May 2008, Licensee prepared and placed a crown on tooth #19, notwithstanding the fact that tooth #19 suffered from extensive pulp exposure requiring endodontic treatment. A subsequent provider examined the crown Licensee placed on #19 and found a short margin on the crown, exposed build-up material, decay under the crown, and an abscessed tooth. Tooth #19 was ultimately extracted.

c. Patient BO

1) Licensee failed to obtain the name and telephone number of the emergency contact for BO.

2) Licensee failed to consistently document appropriate treatment plans for BO.

3) Licensee failed to identify herself as BO's dental provider in the treatment record by noting her name or initials.

d. Patient JT

1) Licensee failed to consistently document a complete record of JT's existing oral health status, diagnoses for dental treatment, and treatment plan.

2) Licensee failed to properly document JT's informed consent prior to providing dental treatment.

3) Licensee saw JT for a comprehensive evaluation on January 23, 2006, but failed to thoroughly assess and document the status of JT's periodontal conditions. Going forward from that visit, Licensee failed to perform root planing or scaling when indicated, and failed to provide a periodontal diagnosis or treatment plan. Radiographs taken during the course of Licensee's treatment of JT reveal concerning periodontal conditions, which Licensee failed to treat and failed to note in the treatment records.

4) Licensee seated crowns on teeth #14 and #15 on August 28, 2006. The crown placed on #14 had either an open or an overhang margin, and was therefore in need of replacement. This was not noted by Licensee. Licensee failed to assess or note the periodontal conditions affecting #15 before placing the crown on that tooth.

5) Licensee seated a crown on tooth #13 on August 7, 2007, that had an open margin, and was therefore in need of replacement. This was not noted by Licensee.

e. Patient LB

1) Licensee failed to consistently document a complete record of LB's existing oral health status, diagnoses for dental treatment, and treatment plan.

2) Licensee failed to consistently document LB's informed consent prior to providing dental treatment.

3) From 2001 to 2009, Licensee saw LB on a regular basis for hygiene appointments. During these appointments, Licensee failed to thoroughly assess and document the status of LB's periodontal conditions, failed to perform root planing or scaling when indicated, and failed to provide a periodontal diagnosis or treatment plan. Radiographs taken during the course of Licensee's treatment of LB reveal concerning periodontal conditions, which Licensee failed to treat and failed to note in the treatment records.

4) Without addressing the periodontal concerns noted above, Licensee seated an onlay crown on tooth #2 on September 27, 2004, that either had a void or an open margin, and was therefore in need of replacement. This was not noted by Licensee.

f. Patient CA

1) Licensee failed to consistently document appropriate treatment plans for CA.

2) Licensee failed to consistently document CA's informed consent prior to providing dental treatment.

3) Licensee saw CA for a hygiene appointment on April 20, 2009, but failed to thoroughly assess and document the status of CA's periodontal conditions, and failed to provide a periodontal diagnosis or treatment plan.

g. Patient CE

1) Licensee failed to consistently document a complete record of CE's existing oral health status, diagnoses for dental treatment, and treatment plan.

2) Licensee failed to consistently document CE's informed consent prior to providing dental treatment.

3) From 2001 to 2009, Licensee saw LB on a regular basis for hygiene appointments. During these appointments, Licensee failed to thoroughly assess and document the status of LB's periodontal conditions, failed to perform root planing or scaling when indicated, and failed to provide a periodontal diagnosis or treatment plan. Radiographs taken during the course of Licensee's treatment of LB reveal concerning periodontal conditions, which Licensee failed to treat and failed to note in the treatment records.

4) On November 13, 2007, Licensee documented in LB's treatment records that LB's gingival tissue was spongy, blunted, rolled, and red and purple in color. On November 6, 2008, Licensee documented similar findings regarding LB's gingival tissue. These findings are indicative of advanced periodontal disease. Despite these findings, Licensee failed to properly treat LB's periodontal disease.

5) Licensee seated a crown on tooth #29 on January 4, 2005, that had an open margin, and was therefore in need of replacement. This was not noted by Licensee until June 2009.

h. Patient JK2

1) Licensee failed to consistently document a complete record of JK2's existing oral health status, diagnoses for dental treatment, and treatment plan.

2) Licensee failed to consistently document JK2's informed consent prior to providing dental treatment.

7. The Committee finds Licensee failed to maintain safe and sanitary conditions at her clinic, and failed to comply with the most current infection control recommendations from the Centers for Disease Control.

a. A Board representative conducted an inspection of Licensee's clinic on May 12, 2009. The inspector discovered the following:

1) Licensee failed to follow the specified contact time for Birex disinfectant.

2) Licensee failed to properly bag and sterilize all dental instruments.

3) Licensee failed to properly use an internal chemical indicator to ensure proper sterilization of the contents of the sterilization bag.

4) Licensee failed to properly perform and keep record of weekly biological (spore) testing of the autoclave in her clinic.

5) Licensee improperly used cloth towels instead of paper towels to dry her hands.

6) Licensee failed to properly secure the nitrous oxide and oxygen tanks to the wall in her clinic.

b. Licensee touches her face and head while wearing contaminated gloves, then uses the same gloves to provide dental treatment.

c. If called out of the operatory, Licensee removes her gloves. Upon re-entry, Licensee improperly re-uses the gloves she removed upon exiting the operatory.

IV.

LAWS

8. The Committee concludes that the conduct described in section III. above constitutes a violation of Minn. Stat. §150A.08, subd. 1(1), (6), (8), and (13), and Minn. R. 3100.6200A, 3100.6200B, 3100.6200H, 3100.6200I, 3100.6300 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:

LIMITATIONS

9. The Board places the following **LIMITATIONS** on Licensee's license:

a. Licensee must sell her dental practice no later than 12 months from the date of this Order. After the sale of her practice, she may not own, manage or operate any dental practice without advance approval by the Committee. The Committee shall not unreasonably withhold advance approval or fail to promptly consider a request for approval from Licensee. "Prompt" consideration shall mean within 14 days after a written request from Licensee is received by the Committee.

b. After the sale of her practice, Licensee must not practice in an independent or private dental practice, a group practice, or dental clinic, unless the practice or clinic has been approved in advance by the Committee. The Committee shall not unreasonably withhold its approval or fail to promptly consider any request made by Licensee.

c. After the sale of her practice, Licensee may only provide dental care while under the indirect supervision of another dentist licensed in the State of Minnesota or pursuant to a contract for monitoring through Affiliated Monitors, Inc, as specified below.

Indirect supervision shall mean that Licensee may only provide dental care while the supervising dentist is in the office, has authorized the procedure, and the supervising dentist remains in the office while the procedures are being performed by Licensee.

If Licensee chooses to provide dental care without indirect supervision after the sale of her clinic, within 30 days of the sale of her clinic, Licensee agrees to contract with Affiliated Monitors, Inc., Licensee must present at least ten (10) different active patient records including radiographs to the evaluator once every month. For each patient record, the evaluator will review and evaluate the entire record, focusing on proper billing and recordkeeping. Once each

month, the evaluator shall complete their review and prepare a detailed written report on the evaluation of the patient record and any recommendations made by the evaluator. Licensee shall cause the evaluator to submit the written report for each monthly period to the Committee for its review. Licensee shall implement any changes requested by the Committee.

In addition, Licensee must provide the evaluator with a copy of this Order. Licensee's signature on this Order constitutes authorization for the evaluator to provide the Committee with copies of all written evaluation reports. Licensee's signature also authorizes the Committee to communicate with the evaluator, before, during, and after the review of Licensee's patient records about Licensee's needs, performance, and progress. Licensee shall bear all costs associated with and pursuant to the contract agreement with the evaluator including, but not limited to, monitoring/consultative evaluations, preparation of reports, and complying with the evaluator's recommendations.

d. Licensee must not provide endodontic treatment to any patient, except in emergency situations as described within this paragraph. In emergencies, Licensee must provide the patient requiring endodontic treatment with a referral to either another dental provider or an endodontist before Licensee provides the patient with any emergency endodontic treatment limited to: (a) opening the patient's tooth to gain access to the pulp; (b) removing inflamed or necrotic pulp tissue; and (c) closing the access opening to the tooth for the sole purpose of relieving the patient's pain at a single visit. Licensee is specifically prohibited from obturating the canals of the tooth and from repeating any emergency endodontic treatment on a patient's tooth at a subsequent visit.

CONDITIONS

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

a. Licensee shall pay a civil penalty in the amount of $30,000. Payment shall be made within 60 days from the sale of Licensee's practice. Payment from Licensee 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.

b. Within 90 days of the effective date of this Order, Licensee agrees to contract with Affiliated Monitors, Inc. Licensee must present at least ten (10) different active patient records including radiographs to the evaluator once every six months. For each patient record, the evaluator will review and evaluate the entire record, focusing on proper billing and recordkeeping. Once every six months, the evaluator shall complete their review and prepare a detailed written report on the evaluation of the patient record and any recommendations made by the evaluator. Licensee shall cause the evaluator to submit the written report for each six month period to the Committee for its review. Licensee shall implement any changes requested by the Committee.

In addition, Licensee must provide the evaluator with a copy of this Order. Licensee's signature on this Order constitutes authorization for the evaluator to provide the Committee with copies of all written evaluation reports. Licensee's signature also authorizes the Committee to communicate with the evaluator, before, during, and after the review of Licensee's patient records about Licensee's needs, performance, and progress. Licensee shall bear all costs associated with and pursuant to the contract agreement with the evaluator including, but not

limited to, monitoring/consultative evaluations, preparation of reports, and complying with the evaluator's recommendations.

Licensee must continue the above-described monitoring with Affiliated Monitors, Inc. until the sale of her practice or until Licensee is providing dental care under the indirect supervision of another dentist licensed in the State of Minnesota.

c. Within 24 months after the effective date of this Order, Licensee must take and successfully attain a passing score on the regional clinical examination specified in Minnesota Rules part 3100.1100, subp. 2.

Removal of Limitations and Conditions

11. Licensee may petition to have the limitations and conditions removed from her license at any regularly scheduled Board meeting no sooner than three years after the effective date of this Order, provided that Licensee has complied with the conditions and limitations. Moreover, Licensee's petition must be received by the Board at least 30 days prior to the Board meeting. Licensee has the burden of proving that Licensee has complied with the conditions and limitations of this stipulation and order and that Licensee is qualified to practice. Licensee shall provide any additional information relevant to Licensee's petition reasonably requested by the Committee.

12. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the limitations and conditions imposed by this order.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

13. 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.

14. 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.

15. 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.

16. 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

17. 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 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

18. 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

19. 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.

20. 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.

21. In the event Licensee should leave Minnesota 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 in Minnesota unless waived in writing.

22. 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.

23. 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.

24. 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.

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

26. 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.

27. 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.

28. 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

29. 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.

30. 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

JANE E. ODGERS, D.D.S.

Dated: July 16, 2014

COMPLAINT COMMITTEE

By: _____
MARSHALL SHRAGG, MPH
Executive Director

Dated: July 10th, 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 25th day of July, 2014.

MINNESOTA BOARD
OF DENTISTRY

By: _____
TERESE M. YOUNGDAHL, L.D.A.
President