

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
David Resnick, D.D.S.
License No. D10681

**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) regarding David Resnick, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint(s) and referred the matter to the Attorney General for investigation. Following the investigation, the Committee held a conference with Licensee on April 22, 2004. 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 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 stipulation is based upon the following facts:

Improper, Unauthorized Personal Use of Controlled Substances

1. Licensee has personally used controlled substances in an improper, unauthorized manner.

a. In 2001 and 2003, Licensee was seriously injured in plane accidents.¹ In 2003, while in the hospital, he was given many medications for pain, including morphine. When he was released from the hospital he was prescribed medication for pain management, including OxyContin and Tylenol with Codeine.

b. Approximately four to six weeks following the plane crash, he went to the hospital because he mistakenly believed he was having a heart attack. Hospital personnel told him to start taking his pain medication again.

c. During the spring of 2003, Licensee began self-medicating with Demerol while he convalesced at home. He uses Demerol in his practice; he provides IV sedation for bone grafting, skin grafting, implant surgery and a large variety of surgical and nonsurgical procedures. He self-medicated with Demerol he obtained through his dental practice.

d. Initially, he used 50 milligrams once or twice a day in the evening only. In approximately late 2003 or January 2004, he started using Demerol less frequently,

¹ Licensee stated his injuries in the 2003 accident included many broken bones, a severe avulsion of his right humeral head with a crushing to the bone of the humeral head, total dislocation and rupture of a socket, complete fracture of the right eye socket with eyeball displaced into his sinus and other facial fractures, leg injuries and soft issue damage.

abstaining for two to four days before using again. However, when he went back to using Demerol, he took higher doses. Ultimately he used up to 1300 to 1500 milligrams per day.²

e. During some days he abstained from Demerol, Licensee took pain medication which had been prescribed for him following the 2001 and 2003 plane accidents. These included: Tramadol, OxyContin, Vicodin, and Tylenol with Codeine.

f. He used Demerol during working hours and had been under the influence of the drug while he was at work.

g. On March 9, 2004, Licensee voluntarily had an assessment with Drake Counseling in Fargo, North Dakota, and began outpatient treatment there. He also saw an internist in Fargo who prescribed three withdrawal doses of Demerol.

h. On March 15, 2004, Licensee contacted the Health Professionals Services Program ("HPSP") and signed an initial Participation Agreement on March 17, 2004. Among other things, HPSP recommended that Licensee:

- 1) Refrain from practice until authorized to return to practice by HPSP;
- 2) Abstain from the use of alcohol and any other mood-altering chemicals unless prescribed or managed by a treating physician or dentist who has been informed of Licensee's diagnosis and history;
- 3) Obtain a chemical dependency assessment and comply with all treatment recommendations;
- 4) Provide HPSP with copies of all prescriptions for controlled substances within seven days of receiving the prescription; and

² A chemical dependency assessment from Drake Counseling services dated March 8, 2004 states that Licensee's highest use of Demerol was 1000 milligrams per day.

5) Respond to unscheduled bodily fluid screens at the request of HPSP.

i. Licensee had complied with his initial and modified HPSP Participation Agreements and Monitoring Plans. HPSP authorized him to return to practice on May 1, 2004 with, among other things, restrictions on his having access to, administering, wasting, handling, ordering or inventorying scheduled drugs.

j. On September 30, 2004, Licensee was discharged from HPSP for the following reasons:

1) Licensee and his individual therapist/chemical dependency counselor agreed to discontinue their professional relationship;

2) Licensee rescinded the release of records from Drake Counseling, two weeks after his last visit, which resulted in preventing HPSP from obtaining a final treatment summary about him;

3) Licensee's Monitoring Plan was changed and it included a request for him to enter a treatment/assessment program specifically designed to work with professionals who have substance disorders and conduct issues through psychiatric, substance and psychological testing. The Licensee disagreed with the recommendation.

k. Since September 30, 2004 Licensee has been seen by David Hjermstad, a Minnesota licensed CD counselor one time per month.

III.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. §150A.08, subd. 1(5) (improper unauthorized use of a legend drug,

chemical or controlled substance) and are sufficient grounds for the disciplinary action specified below.

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

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

1. Licensee shall totally abstain from ingesting, injecting, or otherwise taking or using any mood-altering chemical or drug, including alcohol. This prohibition does not apply to legend drugs, including controlled substances which are prescribed for Licensee by a licensed physician or dentist who has first been informed of Licensee's drug-use history.

2. Enrollment in Board Approved Recovery/Monitoring Program. Within fourteen (14) days of the effective date of this stipulation and order, Licensee shall enroll in a recovery/monitoring program, which shall be pre-approved by the Board for monitoring of his sobriety. Licensee shall be responsible for costs associated with the program and monitoring. Licensee shall provide this pre-approved program with a copy of this stipulation and order at the time of enrollment. Licensee must execute and return the recovery/monitoring program's participation agreement to the program within 14 days of receiving it. Failure to meet either of these deadlines will be considered a violation of this stipulation and order. Licensee shall be monitored by this pre-approved recovery/monitoring program until it determines Licensee is qualified to practice without conditions.

3. Licensee shall comply with all provisions of his recovery/monitoring participation agreement, including but not limited to all provisions regarding prohibitions and/or

limitations on Licensee's access to, administration of, etc., controlled substances. Licensee shall comply with all revisions of his participation agreement subsequent to this stipulation and order. The recovery/monitoring program shall communicate all changes and proposed changes to Licensee's counsel and the Board. Licensee's failure to comply with his participation agreement shall be considered a violation of this stipulation and order.

4. Licensee is prohibited from prescribing, administering, or dispensing any legend drugs for Licensee's own use or for his family members' use or prescribing, administering, or dispensing any legend drugs to patients for conditions not related to dentistry.

5. Comprehensive Mental and Physical Health Evaluation. Within fourteen (14) days of the effective date of this stipulation and order Licensee shall submit to Sajid Ravasia, M.D. copies of his records from HPSP and Drake Counseling. Licensee will request that Dr. Ravasia review the records. Licensee will ask Dr. Ravasia to determine whether any additional tests and or treatment are warranted following that review, taking into account any prior examination of Licensee. Licensee shall cause Dr. Ravasia to provide to the Committee a report of the evaluation and subsequent treatment recommendations, if any. Licensee shall bear the costs of the evaluation(s) and the preparation of the report. Licensee shall comply with all testing, and/or treatment recommendations or aftercare plans Dr. Ravasia may make. If Dr. Ravasia recommends treatment by another provider, that provider must be pre-approved by the Committee. Termination of therapy, if any, shall be at the recommendation of the approved treatment provider. Failure to follow treatment recommendations shall constitute violation of this stipulation and order. Licensee shall allow the Board or its designee to communicate with all Licensee's treating professionals.

6. Upon request, Licensee shall sign releases allowing the Board or the Committee to obtain Licensee's medical, mental health or chemical abuse/dependency records from any treating professional, evaluator, or facility.

7. Written Reports. Licensee shall submit the following reports to the Committee for its approval:

a. Within 30 days of the effective date of this stipulation and order Licensee must provide to his business partner, work-site monitors and employees a copy of this stipulation and order and submit a statement to the Committee verifying that he has done so.

b. Within 30 days of the effective date of this stipulation and order, Licensee must submit to the Committee a written protocol for the management of pain for dental patients as agreed to by his partners or associates.

8. 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. 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 those areas of Licensee's dental office(s) which related to the administration and storage of controlled substances, 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.

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 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 after Licensee has complied with all the conditions of his participation agreement with his recovery/monitoring program 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 proof proving that Licensee has complied with his participation agreement with his recovery/monitoring program and the conditions of this stipulation and order and that the Licensee is qualified to practice without conditions. Licensee's compliance with these conditions 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 including documents compiled by HPSP and/or by Licensee's recovery/monitoring program 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 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.

H. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee shall have the right to attempt to resolve an alleged violation of the stipulation and order through the procedures of Minn. Stat. § 214.103, subd.6. Nothing herein shall limit (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

I. Attendance at Conference. Licensee attended a conference with the Committee on April 22, 2004. The following Committee members attended the conference: Linda Boyum, R.D.A., John Bengtson, D.D.S. and Susan Gross, D.D.S. Assistant Attorney General Rosellen Condon represented the Committee at the conference. Although Licensee was informed in the Notice of Conference that he could be represented by legal counsel, Licensee has voluntarily and knowingly waived legal representation.

J. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board

deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

K. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order shall be null and void and shall not be used for any purpose by either party hereto. If this stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

L. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

M. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner 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's legal counsel. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

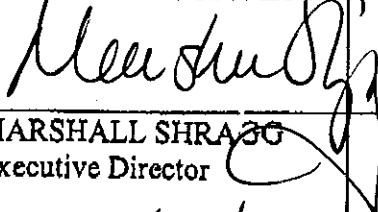
LICENSEE



DAVID RESNICK, D.D.S.

By:

COMPLAINT COMMITTEE



MARSHALL SHRAGO
Executive Director

Dated: 12-28-04, 2004

Dated: 4/28/2005, 2004 *ny*

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 it effective this 28th day of January 2004 ^{5th}

MINNESOTA BOARD
OF DENTISTRY

By:

Linda R. Boyum R.D.A.

PRESIDENT

LINDA BOYUM, R.D.A.

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