

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Clinton L. Roberts, D.D.S.
License No. D10518

**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 Clinton L. Roberts, 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, John M. Degnan, on December 7, 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, besides Wisconsin, and does not hold any other professional or occupational licenses.

B. The parties agree that this stipulation is based upon the following findings:

Unprofessional Conduct / Unnecessary Services / Improper Billing

1. Licensee engaged in unprofessional conduct, provided unnecessary services, and improperly billed the Department of Human Services, third-party payors, and/or others relating to the practice of dentistry, as follows:

a. In 1995, Licensee established a partnership forming Main Street Dental (“MSD”). In 1996, MSD divided into two clinics: the Managed Care Clinic (“MC Clinic”) and the Fee-For-Service Clinic. Licensee provided dental services to patients at the MC Clinic, which is enrolled with the Department of Human Services (“DHS”) in the State of Minnesota to provide dental services to Minnesota Health Care Programs (“MHCP”) recipients.

b. In January 2004, Doral Dental Services (“Doral”), a third-party administrator of DHS, notified MSD about conducting a quality improvement and utilization review of MSD’s billing records. Doral reviewed 16 records, most of the patients whose records were reviewed received dental services provided by Licensee and other MSD dentists. In March 2004, Doral concluded its billing audit and recovered an overpayment for services rendered in the amount of \$17,298.08 from MSD.

c. On April 16, 2004, Licensee’s partnership was terminated from MSD. Shortly thereafter, the MC Clinic conducted its own patient records review identifying additional overpayments received for certain services provided by Licensee to MHCP patients, although this was disputed by Licensee.

d. On May 27, 2004, DHS conducted an on-site review of a sample of records maintained by MC Clinic for services rendered to MHCP recipients and billed to DHS.

e. On September 4, 2004, the MC Clinic and DHS agreed to enter into a Stipulation of Settlement (“Settlement”) which indicated that the overpayments occurred for services rendered by Licensee and by other dentists who were instructed by Licensee and were billed at the direction of Licensee. In addition, the Settlement stated that Licensee’s conduct and instruction caused the MC Clinic to incorrectly bill DHS, resulting in overpayments for several services, but Licensee was not a party to this Settlement agreement. It was later determined by the arbitrators that this statement was not accurate in that Licensee did not instruct the other dentists on billing.

f. The Settlement also indicated that the overpayment to MC Clinic for the period January 1, 1999 to April 30, 2004, was due to incorrect billing for services totaling \$317,719.00, which reflects \$283,492.61 received for services rendered by Licensee and \$34,226.39 received for services rendered by other dentists. The MC Clinic paid the total reimbursement or overpayment amount to DHS in a timely manner.

g. Following the Settlement, Licensee sued MSD for unfairly expelling him from the partnership. In turn, MSD countersued Licensee to recover the reimbursement or overpayment funds paid to DHS. To resolve this matter, Licensee and MSD later entered into binding arbitration.

h. During the course of the lawsuit between MSD and Licensee, MSD hired two experts to review Licensee’s billing and clinical procedures. Licensee also hired one expert. Following their review, each of MSD’s experts submitted a report of their findings including the following:

1) One of MSD’s experts reviewed the billing in 59 MC Clinic records and 11 actual “replacement dentures” of patients concluding that Licensee’s billing was

“substantially inappropriate and inflated . . . based upon the diagnosis of the patient as documented in the record.” The expert added that Licensee’s inappropriate billing was “broad, systematic, and escalating.” Furthermore, MSD’s expert made the following conclusions regarding Licensee’s billing and clinical procedures:

a) From 2001 to 2003, Licensee billed for fabrication of “replacement dentures” using the 5520 CDT code¹ to replace all of the teeth in the patient’s old denture when most of the teeth were not broken or missing.

b) From 2001 to 2003, Licensee billed 70% of his extractions as surgical using the 7210 CDT code² compared to other MSD dentists who billed 28% as surgical extractions. After reviewing the progress notes and radiographs for the aforementioned patients, all of the extraction treatment actually rendered appears to be a simple or less complicated extraction treatment than CDT code 7210 surgical extractions. Furthermore, Licensee failed to properly and consistently document his diagnostic rationale and procedural technique in the aforementioned patients’ records to support the extraction treatment rendered as being surgical for billing purposes.

¹ Prosthodontics (Removable) Procedure Codes from the American Dental Association’s *Current Dental Terminology, Second Edition (CDT-2 /1995-2000), Third Edition (CDT-3 /2000-2002), and Fourth Edition (CDT-4 /2003-2004)*.

D5520: Replace missing or broken teeth – complete denture (each tooth).

² Oral Surgery Procedure Codes from the American Dental Association’s *Current Dental Terminology, Second Edition (CDT-2 /1995-2000), Third Edition (CDT-3 /2000-2002), and Fourth Edition (CDT-4 /2003-2004)*.

D7210: Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth. Includes cutting of gingiva and bone, removal of tooth structure, and closure.

c) From 1998 to 2003, Licensee billed for a limited oral evaluation using the 0140 CDT code³ in addition to billing for other already-covered dental procedures on at least 750 occasions.

d) From 2001 to 2003, Licensee billed for denture adjustments on the delivery date and within the first six months of the delivery of a new or replacement denture.

2) Another MSD expert reviewed Licensee's procedure of fabricating a new set of dentures while concurrently constructing a spare set of dentures, as well as examining the 11 replacement or spare dentures that Licensee sent to the dental laboratory. The expert made the following conclusions:

a) After examining the 11 dentures, the expert concluded that "most if not all could have been used successfully as a spare or "second" set of dentures with minimal or no modification for the patients . . . Most of the dentures . . . did not have missing, very few had broken teeth and the observed degree of wear would not have precluded the patient from using the dentures. A re-fabricated set of spare or second dentures was simply not necessary."

b) Moreover, the expert stated that Licensee's technique to fabricate the second set of dentures was "substandard and most likely would have produced an

³ Diagnostic Procedure Codes from the American Dental Association's *Current Dental Terminology, Second Edition (CDT-2 /1995-2000), Third Edition (CDT-3 /2000-2002), and Fourth Edition (CDT-4 /2003-2004)*.

D0140: Limited oral evaluation – problem focused. An evaluation limited to a specific oral health problem. This may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedures separately. Definitive procedures may be required on the same date as the evaluation. Typically, patients receiving this type of evaluation present with a specific problem and/or dental emergencies, trauma, acute infections, etc.

unwearable set of dentures” and he knew of “no one who has ever used such a technique to routinely fabricate a set of dentures for a patient.”

c) Furthermore, the expert concluded regarding the second set of dentures and the cost of replacing each individual tooth plus the cost of the rebasing procedure that “the total fee for each individual denture was equivalent to or more than that which would have been billed for a new single denture.”

i. Licensee’s expert found that Licensee did not engage in grossly negligent or reckless conduct with regard to billing, contrary to the findings of MSD’s experts. Licensee also challenged the reliability of the evidence regarding whether dentures provided by him were medically necessary, citing a lack of verifiable chain of custody for all of the dentures examined by MSD’s experts. The arbitrators did not consider these dentures in the arbitration.

j. Based on the investigative record in this case, the Board makes the following additional findings:

1) There is nothing in CDT-2, -3, or -4⁴ for the code 5520 that allows for the replacement of worn denture teeth.

2) Licensee charged for a limited examination at each of the four steps when a patient was having a new denture made.

3) Pursuant to MSD clinic policy, Licensee charged for a limited examination and a denture adjustment beginning three months after the denture was inserted.

⁴ Procedure Codes from the American Dental Association’s *Current Dental Terminology, Second Edition (CDT-2 /1995-2000), Third Edition (CDT-3 /2000-2002), and Fourth Edition (CDT-4 /2003-2004)*.

However, DHS does not allow for denture adjustments within the first six months following insertion.

k. At the conference, Licensee acknowledged that he improperly used CDT billing codes during his practice at MSD.

Substandard Recordkeeping

2. Licensee failed to make or maintain adequate patient records for his patients. At the conference and upon review, Licensee failed to properly and consistently document within the records for patients 1 through 15 one or more of the following: the patient's date of birth; the name and phone of the patient's emergency contact person; update and follow-up with medical histories; existing oral health status including a temporomandibular joint analysis, occlusal assessment, and periodontal conditions; the patient's informed consent prior to performing treatment; all medications used and materials placed during treatment procedures including the type of local anesthetic administered and all dental materials used in endodontic and operative procedures. During the conference, Licensee acknowledged that he had failed to adequately document in his patient records according to the required recordkeeping practices during the time period in question.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 B (gross ignorance in the practice of dentistry which falls below accepted standards); Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 E (performing unnecessary services); Minn. R. 3100.9600 (failure to make or maintain adequate dental records on each patient) and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. In consideration of the foregoing facts, the recovery already gained by the Minnesota Department of Human Services, and anticipated remedies that will be imposed through settlement with the Attorney General's Office, 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. Jurisprudence Examination. Within 90 days of the effective date of this Order, Licensee shall take and pass the Minnesota jurisprudence examination with a score of at least 75 percent. Licensee may take the jurisprudence examination within the 90-day period as many times as necessary to attain a score of 75 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.

2. 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. Licensee must provide each instructor with a copy of this stipulation and order prior to commencing a course. Licensee shall pass all courses with a grade of 70 percent or a letter grade "C" or better. Licensee's signature on this stipulation and order constitutes authorization for the course instructor(s) to provide the Committee with a copy of the final examination and answers for any course Licensee takes. Licensee's signature also authorizes the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course about Licensee's needs, performance and progress. 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:

a. Ethics. Within nine months of the effective date of this Order, Licensee shall complete an individually designed one-on-one course in ethics offered by Dr. Muriel Bebeau at the University of Minnesota School of Dentistry, or an equivalent course approved by the Committee offered by another practitioner, no fewer than two contact days. Licensee's signature on this Order is authorization for the Committee to communicate with the practitioner before, during, and after Licensee takes the course about his needs, performance, and progress.

b. Removable Prosthodontics. Within nine months of the effective date of this Order, Licensee shall successfully complete at least a one full-day course on prosthodontics which includes a hands-on component, at the University Of Minnesota School Of Dentistry or an equivalent course. This prosthodontic course shall focus on the fabrication of immediate and replacement complete dentures including assessing the occlusion, vertical dimension, temporomandibular joints, and periodontal health.

3. Written Report on Coursework. Within 30 days of completing the coursework, Licensee shall submit to the Board (a) a transcript or other documentation verifying that Licensee has successfully completed the course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing how Licensee has implemented this 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. All reports are subject to approval by the Committee.

4. Reimbursement of Costs. Licensee shall pay the Board the sum of \$5,000 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: \$2,500 within one year of the effective date of this Order, and the balance of \$2,500 at the time Licensee petitions to have the conditions removed from Licensee's license.

5. 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 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 will have the right to inspect Licensee's dental office(s) during normal office hours within 24-hours of 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 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 December 7, 2007. The following Committee members attended the conference: Nadene Bunge, D.H.; Candace Mensing, D.D.S.; and Freeman Rosenblum, D.D.S. Assistant Attorney General Daphne A. Lundstrom represented the Committee at the conference. Licensee was represented by John M. Degnan 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 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. 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


CLINTON L. ROBERTS, D.D.S.

Dated: 5/23/, 2008

COMPLAINT COMMITTEE

By: 
MARSHALL SHRAGER
Executive Director

Dated: MAY 30TH, 2008


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 27th day of June, 2008.

MINNESOTA BOARD
OF DENTISTRY

By:



NADENE BUNGE, D.H.
President