

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of  
William P. Rolfe, Jr., D.D.S.  
License No. D8343

**STIPULATION AND ORDER  
FOR SUSPENSION OF LICENSE**

**STIPULATION**

William P. Rolfe, Jr., 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 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 and Order.

**II.**

**CONFERENCE**

3. On September 14, 2012, Licensee 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 Hearing for Alleged Noncompliance with Stipulation and Order, dated August 30, 2012. Geoffrey S. Karls, Assistant Attorney General, represented

the Committee at the conference. Konstandinos Nicklow, Esq., represented Licensee at the conference.

### **III.**

#### **FACTS**

4. Licensee does not admit the facts as set forth herein. However, pursuant to Minnesota law and to avoid the necessity for further proceedings, the Board may consider the following facts as true for the purpose of this stipulation. It is the intent of the parties that this Stipulation and Order is a settlement of a disputed claim, and the facts set forth herein shall have no collateral estoppel effect, *res judicata* effect, or other preclusive effect, and no evidentiary value in any action or proceeding in any form or process other than proceedings before the Minnesota Board of Dentistry. Nothing in this paragraph shall limit or affect the Board's obligation to fulfill any reporting requirements.

5. The parties agree that this Stipulation and Order is based upon the following:

a. Licensee has held a license to practice dentistry in the State of Minnesota since August 18, 1976, and is subject to the jurisdiction of the Board with respect to the matters described herein.

b. The Board adopted a Stipulation and Order for Limited and Conditional License ("2001 Order," attached as Exhibit A) that placed limitations and conditions on Licensee's dental license on September 21, 2001. The 2001 Order was based on Licensee's unprofessional conduct, improper administration of nitrous oxide, improper prescribing, and substandard recordkeeping. Pursuant to paragraphs F, G, and H of Licensee's 2001 Order, Licensee is subject to fines, additional discipline, and other procedures for resolution of any noncompliance with the 2001 Order.

c. On November 18, 2005, the Board adopted an Amended Stipulation and Order for Limited and Conditional License (“2005 Order,” attached as Exhibit B) placing limitations and conditions on Licensee’s dental license, and allowing the 2001 Order to remain in full force and effect. Licensee’s 2005 Order was based upon Licensee’s substandard recordkeeping. According to paragraph G of the 2005 Order, Licensee is subject to additional discipline if he fails to comply with or violates the 2005 Order. Licensee is currently subject to the 2005 Order, which he agreed to and signed.

d. In April 2011, the Committee received a subsequent complaint against Licensee alleging improper prescribing and fraudulent/improper billing practices. The Committee determined that Licensee has been non-compliant with his 2005 Order, as follows:

1) Licensee violated paragraph D.2.a. of the 2005 Order, which prohibits him from prescribing controlled substances to patients. Licensee’s patients were prescribed controlled substances through Licensee’s associate dentist, Walter Grabner, D.D.S. Dr. Grabner signed multiple prescriptions for controlled substances, leaving the patient name and date of the prescription blank. These prescriptions would then be completed by staff members at Dr. Grabner’s direction, and given to patients. The associate dentist moved to Baltimore, Maryland, and ceased practicing dentistry with Licensee after April 15, 2011. Licensee continued to use Dr. Grabner’s pre-signed prescriptions and Drug Enforcement Administration registration number (“DEA number”), without authorization, to prescribe controlled substances in violation of his 2005 Order.

2) Licensee violated Paragraph D.3.g.(1) of the 2005 Order, which specifies that non-compliance with the laws or rules of the Board of Dentistry constitute

violation of the 2005 Order. Licensee has utilized fraudulent/improper billing practices, as follows:

a) Licensee has been listed as a “non-par” dental provider with Delta Dental since 2003, whereas Dr. Grabner is listed as a “par” dental provider. This means that a service rendered by Licensee where the dental claim indicated that he was the provider would be reimbursed at a lower amount than a claim identifying Dr. Grabner as the provider. Under Delta’s policies, only the name of the dental provider who actually provided the service may be indicated on a dental claim for reimbursement.

b) As a standard practice, Licensee indicated that Dr. Grabner was the provider in claims for services that Licensee actually performed. Accordingly, Licensee was reimbursed at a higher rate than he would have been had he correctly listed himself as the provider.

#### **IV.**

#### **LAWS**

6. Licensee acknowledges the conduct described in section III. above, if proven, would constitute a violation of the 2005 Order and Minnesota Statutes section 150A.08, subd. 1(13), and would justify 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:

### **Suspension**

7. Licensee's license to practice dentistry in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time. During the period of suspension License shall not engage in any conduct that constitutes the practice of dentistry, and shall not imply to any person by words or conduct that Licensee is authorized to practice dentistry in the State of Minnesota.

### **Stay of Suspension**

8. Licensee may petition the Committee to have the suspended status of his license **STAYED** following 6 months from the date of this Order. Licensee will be required to meet with the Committee. The burden of proof shall be upon Licensee to demonstrate by a preponderance of the evidence that he is capable of conducting himself in a fit and competent manner in the practice of dentistry. In petitioning for a stay of the suspension, Licensee shall comply with or provide the Committee with, at a minimum, the following:

a. Licensee shall pay a civil penalty in the amount of \$20,000. 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. Licensee must attain a passing score on the Minnesota jurisprudence examination. At the end of the examination session, Licensee will receive a printed score report from Prometric. Licensee must submit to the Committee either an original printed score report or a notarized copy of the score report as proof of having passed the jurisprudence examination. Licensee is responsible for locating a testing center, registering for the jurisprudence examination, and paying for the examination fee through the Board's contracted testing agency,

Prometric Incorporated. [A link for Prometric can be found on the Board's website under Licensing.]

c. Licensee shall complete an individually designed one-on-one course in ethics taught by Dr. Muriel Bebeau, or another Committee-approved instructor in the event that Dr. Bebeau is unavailable. Licensee's signature on this Order is authorization for the Committee to communicate with Dr. Bebeau before, during, and after Licensee takes the course about his needs, performance, and progress. Licensee's signature also constitutes authorization for Dr. Bebeau to provide the Committee with copies of all written evaluation reports. Successful completion of this course shall be determined by the Committee based on input from Dr. Bebeau about Licensee and the course.

d. Within 30 days after completing the ethics course above, Licensee shall submit to the Board the following information: (1) a transcript or other documentation verifying that Licensee has successfully completed the course; (2) a copy of all materials used and distributed in the course; and (3) a written report summarizing how Licensee will implement this knowledge into Licensee's practice. Licensee's report shall be typewritten in Licensee's 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. This report is subject to approval by the Committee.

e. Licensee shall provide any additional information relevant to Licensee's petition reasonably requested by the Committee.

### **Conditions**

9. While the stay of suspension described in paragraph 8 is in effect, Licensee shall comply with the following:

a. Licensee agrees to contract with Affiliated Monitors, Inc. (hereafter the "evaluator") for one-on-one monitoring and consultative services. 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.

b. The Board's representative shall conduct a canvas of pharmacies in the area of Licensee's dental office to obtain a profile of Licensee's prescribing practices. Based upon this patient and prescribing information, Licensee shall cooperate with at least one unannounced office visit at his dental office during normal office hours by a representative of the Board. The representative shall select, remove, and make copies of original patient records,

including radiographs, to provide to the Committee for its review of Licensee's prescribing practices. Additional office visits shall be at the discretion of the Committee.

10. While the stay of suspension described in paragraph 8 is in effect, the limitations and conditions of Licensee's 2001 Order and 2005 Order shall remain in full force and effect.

### **Removal of Suspension**

11. Licensee may petition to have the suspended status removed from his license at any regularly scheduled Board meeting no sooner than two years after the effective date of this Order, provided that Licensee has complied with the conditions of his stayed suspension. 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 of this stipulation and order and that Licensee is qualified to practice without a stayed suspension. In petitioning for removal of the suspension, Licensee shall comply with or provide the Committee with, at a minimum, the following:

a. Licensee shall pay a civil penalty in the amount of \$20,000. 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. Licensee shall complete 150 hours of unpaid community service at a voluntary dental access clinic, e.g. Uptown Dental Clinic, Sharing and Caring Hands Dental Clinic, Union Gospel Dental Clinic, or some other voluntary dental access clinic located in the state of Minnesota. Licensee shall submit to the Committee evidence of successfully completing 150 hours of service.



c. 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 stayed suspension 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, in a manner related to paragraph 5 above, 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 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.

22. With regard to this matter, 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.

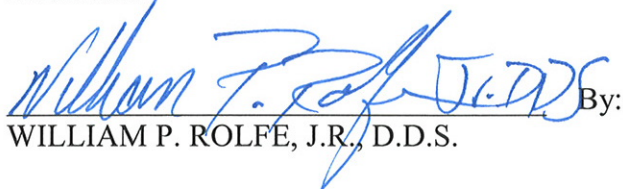
### VIII.

#### 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.

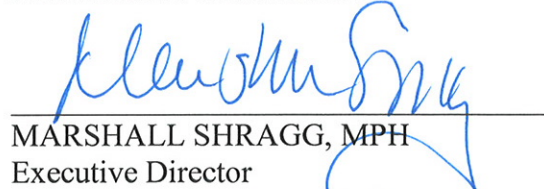
30. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

LICENSEE

 By:  
WILLIAM P. ROLFE, J.R., D.D.S.

Dated: Sep 21, 2012

COMPLAINT COMMITTEE

  
MARSHALL SHRAGG, MPH  
Executive Director

Dated: SEPTEMBER 21<sup>ST</sup>, 2012

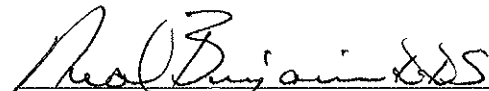
## ORDER

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 October 15, 2012.

MINNESOTA BOARD  
OF DENTISTRY

By:

  
~~BTHERESA YOUNGDAHL~~ NEAL BENJAMIN DDS  
~~Board Secretary~~ PRESIDENT

AG: #3086102-v2

**BEFORE THE MINNESOTA**

**BOARD OF DENTISTRY**

In the Matter of  
William P. Rolfe, Jr., D.D.S.  
License No. D8343

**STIPULATION AND ORDER FOR  
LIMITED AND 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 complaints against William P. Rolfe, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaints and referred them to the Attorney General for investigation. Following the investigation, the Committee took action resulting in the temporary suspension of Licensee's license and a contested case hearing that resulted in Findings of Fact, Conclusions of Law and Recommendation being filed by Administrative Law Judge, George A. Beck, on May 9, 2001. 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

Exhibit A



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:

#### **Background**

1. Licensee received a B.S. degree from the University of Minnesota in 1974 and received his dental degree from the University of Minnesota in June, 1976.

2. Licensee has held a license to practice dentistry in the State of Minnesota since August 18, 1976. On March 31, 1995, the Board adopted a Stipulation and Order (1995 Order), which placed conditions on Licensee's license to practice dentistry in the State of Minnesota on the grounds that Licensee had perpetrated billing fraud; had provided substandard diagnostic, operative, periodontal, and radiographic treatment to one or more of his patients; had failed to make or maintain adequate patient records; had failed to comply with current infection control guidelines; had permitted auxiliary staff to provide services beyond their legal scope; and had engaged in personal conduct, which brought discredit to the dental profession. Following the investigation into these complaints, Licensee attended a disciplinary conference with the Committee on August 12, 1994, and subsequently agreed to enter into the 1995 Order.

3. In 1997 and 1998, Board staff and the Committee reviewed a number of Licensee's patient records pursuant to the 1995 Order and discovered deficiencies described herein below. In addition, the Board received other complaints and allegations concerning Licensee, which the Committee forwarded to the Minnesota Attorney General's Office for investigation.

4. Based on the information obtained in that investigation, and upon a July 27, 2000, report by the Rush Behavioral Health Center concerning its evaluation of Licensee, the

Committee temporarily suspended Licensee's license to practice dentistry on August 4, 2000. On August 16, 2000, the Board ordered that the suspension would continue in effect during the pendency of the disciplinary proceedings.

5. Licensee opened his private practice in Hopkins, Minnesota in 1981, where he has worked continuously for the last 20 years. At the time of his suspension by the Board, he maintained three Twin Cities offices – Hopkins, Eagan and Blaine – the latter two he opened in 1986 and 1991, respectively.

6. Although Licensee is active athletically, he has an arthritic hip condition. According to his regular physician, he has degenerative joint disease of the hips, a debilitating condition that is painful, that can be immobilizing, that continues to advance, and for which there is no cure. The only medications Licensee uses are over-the-counter analgesics and non-steroidal anti-inflammatory drugs. He will probably need hip replacements in the near future.

#### **Physical Contact with Patients**

7. While performing dental procedures, Licensee usually sits at an 8 o'clock position (with 12:00 representing the patient's head and 6:00 the feet). As a result of this position, and the height of his chair, there is occasional contact between Licensee's forearm, between his elbow and wrist, and a patient's upper chest or breastbone area. He does not put his forearm on a patient's chest and leave it there for long periods of time. Licensee has never had a patient complain to him personally about the contact between his forearm and a patient's chest area. He believes this position minimizes his hip pain. Licensee admits that when resting his forearm on a female patient's chest it is possible to come in contact with that female's breasts.

8. Licensee believes that this was a practice he learned in dental school during the mid-1970's. At the hearing, Licensee demonstrated that when his operatory chair was low,

Licensee's forearm would be in the middle of a patient's chest. The higher the dentist's chair, the less likelihood there would be of contact with the patient's chest. If Licensee used the recognized 11 or 12 o'clock positions there would be no need of forearm contact with a patient's chest.

9. A textbook offered into evidence, entitled "Four-handed Dentistry," does not specifically state that it is either proper or improper to rest the forearm on a patient's chest. However, it does not picture a dentist in that position. The textbook does recommend against an 8 o'clock position since it leads to poor posture on the part of the dentist and requires extension of the dentist's arm that is not desirable. The illustrations show the dentist in a seated position at a level higher than the patient.

10. The practice of resting a forearm on a patient's chest caused concern for two of Licensee's employees, dental hygienist M.E.H. and registered dental assistant, P.B. They were especially uncomfortable about his resting his arm on female patients. Patients complained to dental hygienist M.E.H. about this contact occurring. Sometime in 1998, M.E.H. had an after-work-hours meeting with Licensee in the Hopkins office to express her concern about this practice, at which time Licensee's father came in and overheard the conversation. Licensee told her that he learned this position in dental school and would continue with the practice. M.E.H. told him that if he just raised the level of his dentist chair there would be no need to touch a patient's chest.

11. Thomas D. Larson, D.D.S., M.S.D., is Associate Dean of Academic Affairs at the University of Minnesota ("U of M") School of Dentistry. He graduated from the University of Minnesota in 1970 and has taught there continuously since 1973, while at the same time practicing general dentistry part-time. Dr. Larson is of the opinion that resting forearms on

patients' chests was never taught as an accepted position at the U of M Dental School, either in the mid-1970's or any time since. To the contrary, dental students were specifically warned that for female patients in particular, appropriate physical contact would only be from the clavicle up. Dental students were also taught that resting the forearm on a patient's chest would be ergonomically incorrect because of the need to keep the wrist straight and not bent.

12. James Q. Swift, D.D.S., is a full-time professor at the U of M School of Dentistry. Before starting at the U of M in 1989, Dr. Swift served four years as an instructor at the University of Oklahoma Dental School. His specialty is oral and maxillofacial surgery. Dr. Swift also served a one-year residency in general practice dentistry and has, over his career in dental education, engaged in frequent interaction with general dentistry faculty and students. He is not currently in general practice. Among other subjects, Dr. Swift teaches courses related to professional ethics and conduct, as well as the proper use and administration of nitrous oxide.

13. In Dr. Swift's opinion it is improper, under the standards in Minnesota, for a dentist to rest or touch a forearm on the chests of either female or male patients. An additional consideration for female patients is that any contact by the dentist in and around the breasts would definitely be inappropriate. Such contact is unnecessary to render dental treatment because the dentist's body can be positioned and access to the oral cavity can be made without touching the patient's chest, particularly if the dentist's chair is elevated above the level of the patient, as it should be. Normally a dentist's chair is above the level of the patient so that the forearm is at a right angle to the upper arm. In Dr. Swift's opinion proper professional boundaries between a dentist and patient requires that care be rendered without inappropriate contact to any part of the patient's body other than in and around the oral cavity.

### **Other Actions With Female Patients**

14. Licensee does not always have an assistant in the operatory when he is working on female patients, even when he has dental assistants available. However, he has a dental assistant present most of the time.

15. In Dr. Swift's opinion the standard of care in Minnesota is that a dentist and a patient of the opposite sex are never left alone by themselves in the operatory. He believes there should always be someone else working with the dentist, particularly if the patient is under nitrous oxide sedation. Dr. Larson believes that a dental assistant should usually be present, but not at all times.

16. Licensee sometimes made comments to young female patients in the dental office about their appearance. He talked about patient M.S.'s clothing and during one of her appointments in 1991, Licensee remarked to her, "I'm surprised you didn't dress up for me," which made her feel uncomfortable. Licensee would sometimes spend extra time with younger female patients. On one occasion Licensee came into Dr. John Dunn's operatory while Dunn was working on a young, attractive female who was a friend of Dr. Dunn's mother. Licensee then said to Dr. Dunn, while looking at the patient: "Are all your patients models?" This embarrassed the young woman, who became flushed. In Dr. Dunn's opinion it was an inappropriate comment by Licensee. Licensee once handed out invitations to young female patients for a singles event he had helped to plan.

### **Recording of Nitrous Oxide Use**

17. Licensee usually, but not always, records his use of nitrous oxide on a patient in that patient's dental chart. For example, he did not record the fact that he gave nitrous oxide to M.S., a 21-year-old woman, during his last appointment with her on January 18, 1992. When he

does record nitrous oxide use, he only notes the concentration level when it is unusual. Not all dentists record the concentration level. Licensee admits that the use of nitrous oxide should be recorded along with any untoward reaction.

18. In Dr. Swift's opinion, failure to record the use of nitrous oxide in a dental chart falls below the standard of care in Minnesota. Dr. Swift also believes that recording must be done in such a way that another dentist can determine the actual concentration of nitrous oxide used in the period of time that the gas was administered.

#### **Patient M.F.**

19. In 1983, Licensee married J.J.H. They have four children together. During this marriage, Licensee and his wife moved from Minneapolis to a house in Eden Prairie. One of the neighbors on their block in Eden Prairie was the family of M.F., a girl who was born on May 17, 1976. During her senior year in high school M.F. began baby-sitting Licensee's children.

20. On or about November 1, 1996, Licensee separated from his wife by moving out of their Eden Prairie house. Their divorce, however, did not become final until about July 1999.

21. M.F. had been hired by Licensee in the summer of 1995, and she worked in both the front office and as a dental assistant. Because Licensee did free dental work for his employees, M.F. also became Licensee's patient on July 1, 1995. Within a few weeks after separating from his wife, Licensee, then age 46, began dating M.F., then age 20.

#### **Recording of Narcotics Prescriptions**

22. During the course of their relationship Licensee wrote prescriptions for controlled substance pain pills for M.F. that were neither recorded in her dental chart nor related to any dental work performed. Licensee wrote a total of about 15-20 prescriptions for M.F. from 1995

to 1999. However, only four of these prescriptions were recorded in her dental chart in connection with any dental treatment.

23. Licensee wrote the following unrecorded prescriptions for M.F.:

**Comparison of Pharmacy Records and Dental Records for M.F.**

<u>Date</u>	<u>Drug</u>	<u>Quantity</u>	<u>Pharmacy</u>
7/10/97	Endocet	12	Snyder
2/9/98	Endocet	20	Snyder
4/9/98	Endocet	20	Snyder
4/17/98	Oxycodone/APAP	20	Target
6/10/98	Oxycodone/APAP	20	Target
7/29/98	Roxicet	20	Walgreens
9/2/98	Sulfisoxazol	40	Target
1/6/99	Oxycodone/APAP	24	Target
1/28/99	Roxicet	24	Walgreens
2/12/99	Roxicet	24	Walgreens
3/9/99	Oxycodone/APAP	24	Target

24. Licensee does not always maintain a record of the narcotic prescriptions he writes, or of the receipt and dispensing of free narcotic samples he receives in his practice. He stated that the reason he fails to do so is that it's not a requirement.

25. Another unrecorded prescription unrelated to any documented dental treatment was written for G.C. G.C. is a long-time dedicated employee of Licensee and a close friend who has done numerous personal favors for him. The records indicate:

**Comparison of Pharmacy Records and Dental Records for G.C.**

<u>Date</u>	<u>Drug</u>	<u>Quantity</u>	<u>Pharmacy</u>
2/18/98	Endocet	20	Snyder

26. It is Dr. Swift's opinion that the standard of care for recording prescriptions in dental charts is that they are always noted with the name of the medication, the quantity prescribed, the frequency for the medication to be taken, and the rationale for the prescription. Furthermore, he believes that it is below the standard of care for a dentist to prescribe a controlled substance to anyone (patient or employee) that is not in connection with any sort of dental procedure. Dr. Swift also believes that Licensee's writing the unrecorded prescriptions for his girlfriend M.F. was below the standard of care in Minnesota because, with only one exception, they were all for controlled substance narcotics with high abuse potential.

27. The Committee has not proved by a preponderance of the evidence that Licensee improperly or in an unauthorized manner personally used a legend drug, chemical, or controlled substance in violation of Minn. Stat. § 150A.08, subd. 1(5).

#### **Improper Use of Nitrous Oxide With M.F.**

28. During Licensee's dating relationship with M.F. he would also use nitrous oxide recreationally with her in his office after work hours. These sessions occurred at all three offices, weekly at times, and involved sexual activity. One incident happened on Halloween night, 1997. That evening M.F., Licensee, and a friend of Licensee's named R.H. went out partying in costumes. M.F. was dressed as a witch with a wig of long, black hair. Licensee was driving that night, and on their way home afterward Licensee stopped at his Hopkins dental office. Once there, Licensee started using the nitrous oxide tanks in the operatory while R.H. and M.F. remained in the waiting area. When M.F. went back to the operatory, Licensee had the nitrous mask on himself and then tried to force her into the dental chair and put a nosepiece on her. After a struggle, M.F. got away and walked out, after which they went home. Later, Licensee told M.F. not to say anything about it, and also told her he was going to tell R.H. the same thing.



29. When dental hygienist M.E.H. left the Hopkins office at the end of the day on Halloween (which was on a Friday that year), the office was cleaned, the nosepieces were taken off the nitrous oxide equipment for sterilization, the nitrous oxide tanks were put away, and all dental chairs put in the upright position. The next morning, Saturday, when she came into work, M.E.H. saw one of the operatory chairs reclined, with dark synthetic hair fibers on it and on the floor. She also discovered that the nosepiece was back on the nitrous oxide tanks and that on the tanks was the same kind of black fibers of wig hair she saw on the dental chair. M.E.H. then reported what she had found to Dr. Mark Bradshaw, one of the associate dentists who was working that Saturday in the Hopkins office. Dr. Bradshaw also saw Halloween wig hair around the nitrous oxide machine. Both M.E.H. and Bradshaw also saw small burn holes on the dental chair headrest.

30. Two other employees of Licensee, K.M. and P.B., observed that, at times when they came into Licensee's Eagan office in the morning, they would see evidence that someone had been using the nitrous oxide machine during the night. Their observations included seeing the nitrous machine moved from the location where it had been left the night before, dental chairs being in a reclined position when they had been upright the night before, and the chair arms being moved from their normal location. K.M., who worked in the Eagan office and helped order nitrous oxide supplies for that location, also noticed they seemed to be going through a lot of nitrous oxide. She told office manager G.C. to tell somebody to quit using it.

#### **Improper Use of Nitrous Oxide with H.T.**

31. In the summer of 1997, while Licensee was still dating M.F., he also began dating another young woman by the name of H.T. They dated from that time until January, 1998. H.T. never saw Licensee as a dental patient. On two of his dates with H.T., Licensee took her to his

Eagan dental office in the evening where he administered nitrous oxide to both of them recreationally. Licensee also told H. T. that he had used nitrous oxide himself before. On one of the two Eagan after hours office visits M.F. happened to witness Licensee going to the Eagan office late at night and followed him. Because the door was locked she looked in the window and saw Licensee and H. T. using nitrous oxide together. H.T. and Licensee were not fully dressed. Becoming angry, M.F. called M.E.H., the office hygienist, to tell her that Licensee was in the office with a young woman and to ask her to come down and let her in. M.E.H. told M.F. that she did not have a key and could not come down. M.F. then bought a disposable camera to take pictures through the window. H.T. remembered seeing flashes of light coming from the window one of the times she was in the office using nitrous oxide with Licensee.

32. When earlier asked by the Attorney General's investigator whether H.T. was ever in his Eagan office in the evening hours, Licensee answered, "I don't believe so." Licensee now admits that on the two occasions he took H.T. to his office he played with the nitrous oxide tanks by placing the mask on his nose. According to Licensee, though, he only playfully feigned turning on the nitrous oxide tanks. When H.T. first was asked if she used nitrous oxide with Licensee, she denied it.

33. In Dr. Swift's opinion the non-dental use of nitrous oxide by dentists on themselves is improper and dangerous to both their health and their professional ability to practice dental procedures. Dr. Swift believes that self-administration of nitrous oxide by dentists constitutes conduct unbecoming a dentist because of the potential to cause harm in such abuse. In Dr. Swift's opinion it is below the standard of care for dentists to allow others to use nitrous oxide recreationally in their presence. Dr. Swift concluded that there is no reasonable

explanation for any dentist "playfully" putting a nitrous oxide mask on himself or others without turning it on, and that it would be inappropriate to do so.

#### **Dating Patient E.S.**

34. On July 27, 1997, while Licensee was still dating M.F., he had a date with another young woman named E.S., who was also a current patient. E.S. began seeing Licensee for dental treatment on May 7, 1997. On July 27, 1997, she had a mid-day appointment for root canal work. Because she experienced some pain during the appointment, Licensee gave her a prescription for pain pills, which she filled afterward on the way to work. She took one pill.

35. Later that evening Licensee called E.S. at home and asked her out for a boat ride on Lake Minnetonka. While she thought the call "a little odd," E.S. accepted the date "against my better judgment." She was having problems with her boyfriend and was looking for an excuse to break up with him.

36. When Licensee picked her up that evening, he asked if she had her painkillers with her, and she replied, "yes". On the date Licensee first stopped at a liquor store to get some beer. They then drove to Lake Minnetonka and went out on jet skis, took Licensee's boat out on the lake, and had dinner at a restaurant. They drank alcoholic beverages and smoked cigars. On the way back from dinner, after dark, Licensee anchored the boat where they could go swimming and tried to persuade E.S. to go skinny-dipping with him. At one point Licensee took off his swimsuit while in the water, so that he was naked. E.S. went swimming but kept her swimsuit on. After getting back on the boat, Licensee and E.S. kissed for approximately 15 to 30 minutes. They did nothing more than kiss, and Licensee never forced himself upon her. After kissing, Licensee and E.S. drove the boat back to the dock.

37. M.F. was waiting for them at the dock and she confronted Licensee about going out with another woman. M.F. was angry and yelled at the Licensee. Licensee did not react to the confrontation, however. According to E.S. and M.F. Licensee was intoxicated. Because E.S. did not want to drive home with Licensee, she got a ride with M.F. E.S. never went back to Licensee for dental work again because she felt he "was not someone I would consider I could trust at that point."

38. Licensee admitted both in the Attorney General's investigation and at the March, 2000, hearing in this case, that dentists dating patients is not a good idea. Licensee also admits it was not a good idea when he dated his patients M.F. and E.S.

39. In Dr. Swift's opinion it is below the standard of care in Minnesota for a dentist to date a patient who is under active treatment by that dentist.

#### **Use of Alcohol**

40. Although Licensee drinks socially, he has never consumed, or been under the influence of, alcohol while at work. No patient or employee has ever made a comment that they smelled alcohol on Licensee's breath during working hours.

41. On the night of August 23-24, 1997, while H.T. was on a date with Licensee in his boat, Licensee was arrested for Boating While Intoxicated. The arresting officer observed Licensee driving his boat on Lake Minnetonka at a speed exceeding the nighttime limit, with no white 360-degree light, and violating a slow "no wake" zone. Licensee's eyes were red and watery, his speech slurred, his coordination off, and there was an odor of consumed alcoholic beverage coming from him. He was polite and cooperative. Licensee failed the field sobriety test and the preliminary breath test. After his arrest, Licensee was tested on the Intoxilizer with a result of .12 blood alcohol content. Licensee eventually plead guilty to careless watercraft

operation, which was not an unusual disposition given his lack of previous alcohol related offenses.

42. Licensee's friend, R.H., saw Licensee drunk once at a New Year's Eve party, and also saw Licensee close to being drunk on other occasions. One of those times was on Halloween night, 1997, when R.H. said that he could tell Licensee had had a few beers. Generally Licensee's friends describe him as a moderate social drinker.

43. On December 6-7, 1997, Licensee was out on a date with H.T. The two of them were drinking beer and both had too much to drink. Licensee decided, because of his drinking and the watercraft conviction, to give his car keys to H.T. However, H.T.'s driving caused an accident resulting in a rollover of Licensee's vehicle. H.T.'s alcohol concentration that night tested at .17. After this incident, Licensee broke up with H.T., although he paid for an attorney to defend her against the drunk driving charges to which she ultimately pled guilty.

44. The Committee has not proved by a preponderance of the evidence that Licensee habitually over-indulged in the use of intoxicating liquors in violation of Minn. Stat. § 150A.08, subd. 1(4); or in violation of the prohibition against conduct unbecoming a dentist in Minn. Stat. § 150A.08, subd. 1(6) or Minn. R. 3100.6200A.

#### **General Facts**

45. At the hearing in this matter, Licensee's patients and staff generally described the quality of his dental work as very good and said that he is a competent and good technician.

46. The Committee has proved violations of statute and rule in this proceeding but has not proved that Licensee's continued practice would create an imminent risk of harm to others.

C. Violations. Licensee admits that the facts and conduct specified above constitute the following violations of Minn. Ch. 150A and Rules adopted thereunder and are sufficient grounds for the disciplinary action specified in paragraph D below:

1. Licensee committed conduct unbecoming a dentist, or contrary to the best interests of the public, by unnecessarily resting his forearm on female patients' chests, and by dating female patients M.F. and E.S. during their course of treatment in a manner bringing discredit to the profession, in violation of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 A.

2. Licensee improperly administered nitrous oxide to himself and others (M.F. and H.T.) for nondental purposes in violation of Minn. Stat. § 150A.08, subd. 1(5); and in violation of the prohibition against conduct unbecoming a dentist in Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 A.

3. Licensee improperly or in an unauthorized manner prescribed a legend drug, chemical, or controlled substance in violation of Minn. Stat. § 150A.08, subd. 1(5) for M.F. and G.C.

4. Licensee failed to make or maintain adequate dental records on each patient in violation of Minn. Stat. § 150A.08, subd. 1(6) and 13; Minn. R. 3100.6200 B; and Minn. R. 3100.9600 subp. 10 in that he failed to record the use of nitrous oxide for all patients and he failed to record all medications prescribed.

D. Disciplinary Action.

1. Suspension. Licensee's license to practice dentistry in the State of Minnesota is hereby SUSPENDED for a period of 413 days. Licensee shall receive credit against this suspension for the 413 days during which his license was temporarily suspended by the

Committee's Order of Temporary Suspension dated August 4, 2000 and the Board's Order to Continue Temporary Suspension dated August 16, 2000. Upon the Board's approval of this stipulation and order, the Board's Order dated August 16, 2000, is rescinded and Licensee may resume the practice of dentistry with his license subject to the following limitations and conditions.

2. Limitations and Conditions. Licensee and the Committee recommend that the Board issue an order which places LIMITATIONS and CONDITIONS on Licensee's license to practice dentistry in the State of Minnesota as follows:

### **LIMITATIONS**

3. Licensee's license shall be subject to the following limitations:

a. Prescribing Limitation. Licensee is prohibited from prescribing, administering, or dispensing any controlled substances listed in Minnesota Statutes. Within 10 days of the effective date of this stipulation and order Licensee shall surrender to the Board his Drug Enforcement Administration (DEA) Certificate of Registration and also provide two signed copies of DEA Form 104, Voluntary Surrender of Controlled Substances Privileges. Licensee shall not apply for a new DEA certificate of registration until such time as Licensee successfully petitions the Board to remove this limitation from his license, pursuant to paragraph E below. Licensee may refer a patient to other dentists for controlled substance prescribing but such other dentists must themselves follow the acceptable and prevailing standards of dental practice in issuing the prescription, to include conferring with the patient in person or by telephone, making their own evaluation of the patient's need for the prescription, and properly recording it on the patient's dental record.

b. Nitrous Oxide Inhalation Analgesia. Effective immediately, Licensee is prohibited from administering nitrous oxide inhalation analgesia to his patients. Within 10 days of the effective date of this stipulation and order Licensee shall remove the nitrous oxide tanks and associated equipment from any dental offices he owns and/or where he provides dental treatment to patients.

#### **CONDITIONS**

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

a. Sobriety. Effective immediately, for a period of one year from the effective date of this stipulation and order Licensee shall totally abstain from ingesting, injecting, or otherwise taking or using any mood-altering chemical, drug or inhalant, including, but not limited to alcohol and nitrous oxide. This prohibition does not apply to legend drugs, including controlled substances, which are prescribed for Licensee by a licensed physician or dentist as part of a course of treatment. At the end of this period, Licensee shall provide proof satisfactory to the Committee of documented, uninterrupted sobriety.

b. Enrollment in HPSP. Within fourteen (14) days of the effective date of this stipulation and order, Licensee shall enroll in Health Professionals Services Program (HPSP) for monitoring of his sobriety. Licensee shall provide HPSP with a copy of this stipulation and order at the time of enrollment. Licensee must return the signed Participation Agreement to HPSP within 14 days of receiving the Participation Agreement from HPSP. Failure to meet either of these deadlines will be considered a violation of this stipulation and order. Licensee shall be monitored by HPSP until HPSP determines Licensee is qualified to practice without conditions. Licensee shall comply with all provisions of his HPSP Participation Agreement, including revisions subsequent to this stipulation and order. Licensee's failure to



comply with his HPSP Participation Agreement shall be considered a violation of this stipulation and order.

c. Mental Health Evaluation and Ongoing Psychotherapy.

1) Evaluation. Within seven (7) days of the effective date of this stipulation and order Licensee shall make an appointment with an evaluating psychiatrist or psychologist (evaluator) pre-approved by the Committee and shall inform the Committee of the appointment date. Within 30 days of the effective date of this stipulation and order Licensee shall meet with the evaluator for the purpose of undergoing a comprehensive mental evaluation. Such an evaluation shall take into account all of Licensee's cross-examination testimony at the hearing in this matter held on November 13-30, 2000, and shall also take into account the Findings of Fact, Conclusions of Law and Recommendation (and attached Memorandum) of Administrative Law Judge George A. Beck issued in this matter on May 9, 2001. The Committee feels that it is in Licensee's own best interest to acknowledge and admit the problems illustrated by the facts herein, so that he can gain the benefits of effective evaluation and therapy. Within 14 days of the completion of the evaluation Licensee shall cause the evaluator to provide to the Committee a report of the evaluation and subsequent treatment recommendations. Licensee shall bear the costs of the evaluation, the preparation of the report, and compliance with any treatment recommendations. Licensee shall comply with all treatment recommendations or aftercare plans the evaluator may make. These may include a course of individualized psychotherapy for Licensee with the evaluator or with someone recommended by the evaluator and pre-approved by the Committee. Termination of therapy shall be at the recommendation of the approved treatment provider.

2) Therapy. If the evaluator recommends individualized therapy for Licensee, Licensee shall cause the treatment provider to submit at least quarterly reports directly to Marshall Shragg, the Board's Executive Director, 2829 University Avenue Southeast, Suite 450, Minneapolis, MN 55414. These reports shall be submitted every three months with the first report due within three months of the effective date of this stipulation and order. The reports shall summarize Licensee's progress in therapy and with the terms of this stipulation and order. Each report shall address and/or provide:

- a) Verification that the treatment provider has been provided with and reviewed a copy of this stipulation and order;
- b) The status of Licensee's therapy and prognosis;
- c) The dates Licensee attended therapy sessions and an explanation if Licensee failed to attend any sessions;
- d) The degree to which Licensee cooperated with and participated in the sessions and Licensee's attitude at those sessions; and
- e) Any other information which the reporter deems relevant.

3) Failure to Follow Treatment Recommendations. The terms of any treatment recommendations or aftercare plan made by the treatment provider, to the extent not superseded by this stipulation and order, are hereby incorporated by reference. Failure to follow these treatment recommendations shall constitute violation of this stipulation and order.

4) Records Release. Licensee shall sign all necessary releases allowing the Board access to all medical, chemical dependency, and/or mental health evaluations,

therapy or other records from any treating health professional or evaluator. Licensee shall allow the Board or its designee to communicate with all Licensee's treating professionals.

5) Adverse Reports to the Board. Licensee shall instruct the evaluator and any treatment providers to report immediately to the Board by telephone and in writing if the evaluator or treatment provider has any reason to believe any of the following:

a) Licensee is not totally abstaining from taking or using any mood-altering chemical or drug, including alcohol and nitrous oxide;

b) Licensee is showing ongoing personality disorder symptoms which he is unwilling or unable to address;

c) Licensee has failed to comply with treatment recommendations; or

d) Licensee is unsafe to practice dentistry.

d. Attendants with Female Patients. Licensee shall have another female present in the operatory at all times when he is examining and/or providing dental treatment to a female patient.

e. Coursework. Within one year of the effective date of this stipulation and order 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. The course instructor shall forward results of Licensee's final examination to the Board within 30 days of its completion. 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 requirements of Minn. R. 3100.4100, subps. 1 and 2. The coursework is as follows:

1) Professional Boundaries. Within 30 days of the effective date of this stipulation and order Licensee shall arrange to enroll in the individualized professional boundaries training course taught by John Hung, Ph.D., L.P., or an equivalent course approved in advance by the Committee. Successful completion of the boundaries course shall be determined by the Committee based on input from Dr. Hung or the instructor of the equivalent course.

2) Pharmacology. Licensee shall successfully complete a pharmacology course taught at the University of Minnesota by Leonard Lichtblau, Ph.D., or an equivalent course approved in advance by the Committee.

3) Ethics. Within six months of the date of this stipulation and order Licensee shall successfully complete the ethics course at the University of Minnesota that is taught by Muriel Bebeau, Ph.D., or an equivalent course approved in advance by the Committee.

4) Recordkeeping. Licensee shall complete a minimum of 6 hours of instruction in dental recordkeeping through coursework approved in advance by the Committee.

f. Written Reports and Information. Licensee shall submit or cause to be submitted to the Board the reports and/or information described below. All reports and information are subject to approval by the Committee:

1) Within 30 days of completing any coursework taken pursuant to paragraph D.4.e. above, 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 what Licensee learned in the course and how Licensee has implemented this knowledge into Licensee's practice.

Licensee's report shall be typewritten in Licensee's own words, double-spaced, at least two but not more than three pages in length, and shall list references used to prepare the report. The report on the recordkeeping coursework shall include sample recordkeeping forms that Licensee has begun to use in his practice.

g. Office Visit. After completing the coursework and submitting the reports described above, Licensee shall submit to at least one unannounced office visit. The visit shall be conducted by a representative of the Board for the purpose of reviewing Licensee's recordkeeping practices. The representative shall conduct the office visit during normal business hours and shall randomly choose and temporarily remove five to ten original patient records for duplication and review by the Committee. Licensee shall fully and timely cooperate with such inspections of Licensee's patient records.

h. Staff Review of the Limitations and Conditions in This Stipulation and Order. Within 30 days of the effective date of this stipulation and order, Licensee shall have each current partner, associate, or employee in Licensee's practices review a copy of the synopsis of these Limitations and Conditions, attached as an appendix hereto, and sign and date it to verify its review. Each signed verification shall be submitted to the Board. Within 10 days of hire or new association, Licensee shall inform the Board in writing of the hire or new association and within 30 days he shall submit to the Board a signed verification from the new staff person verifying that the staff person has received and reviewed a copy of the synopsis of Limitations and Conditions.

i. Jurisprudence Examination. Licensee shall take and pass the Minnesota jurisprudence examination with a score of at least 90 percent within 90 days of the date of this stipulation and order. Licensee may take the jurisprudence examination within the 90-day period as many times as necessary to attain a score of 90 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.

j. Meeting with the Committee. As part of the process of petitioning the Board for an unconditional license pursuant to paragraph E, below, Licensee shall arrange to meet with the Committee to discuss his petition and his compliance with the 1995 Order and this stipulation and order. Based on the discussion with Licensee at this conference, the Committee may decide to recommend that the Board continue, modify, or remove conditions set forth in this stipulation and order.

k. Reimbursement of Costs. Licensee shall pay the Board the sum of \$18,000 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: \$9,000 within one year of the effective date of this stipulation and order, and the balance of \$9,000 within two years, or by the time Licensee petitions to have the conditions removed from Licensee's license, whichever occurs first.

I. Other Conditions.

1) The Board's 1995 Order remains in full force and effect to the extent that any of its provisions still apply, and Licensee shall comply with its terms and with all 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.

2) 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. Rules 3100.6350 shall be applicable to such requests.

3) In Licensee's practice of dentistry, Licensee shall comply with the most current infection control recommendations, guidelines, precautions, procedures, practices, strategies, and techniques. Currently, those guidelines are presented in Centers for Disease Control and Prevention, Public Health Service, United States Department of Health and Human Services, Recommended Infection-Control Practices for Dentistry, 1993, Morbidity and Mortality Weekly Report, May 28, 1993, at 1.

4) 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 Licensee's dental office(s) during normal office hours without prior notification and to inspect and temporarily

remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

5) 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 with this stipulation and order.

E. Removal of Limitations and Conditions. Licensee may petition to have the limitations and 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 and after completing the requirements set forth in paragraph D above, 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 limitations and conditions and that Licensee is qualified to practice dentistry without limitations and conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the limitations should be removed. 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 stipulation and 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 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. Representation by Counsel. Licensee continues to be represented by Ron Meshbeshier and Konstandinos Nicklow, Meshbeshier & Spence, 1616 Park Avenue, Minneapolis, MN 55404, (612) 339-9121, who have 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 appropriateness 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 the 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, and the contested case hearing record related to this matter, shall constitute the entire record of the proceedings herein upon which the stipulation and order is based. The contested case hearing record, if it has not already been filed, may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received pursuant to this stipulation and order 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, subject to appropriate objections from the parties, which objections shall be resolved by the Board.

M. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4 (1998). 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 disciplinary action contained in this stipulation and order must be reported 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. The Licensee's agreement to this stipulation is not an admission of the facts stated but is only an acknowledgment that such facts were found by the ALJ, and that Licensee relinquishes his right to contest such findings for the purpose of entering into this stipulation and to terminate these proceedings. 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

William P. Rolfe, Jr. D.D.S.  
By: William P. Rolfe, Jr. D.D.S.

Dated: Aug 27, 2001

COMPLAINT COMMITTEE

Marshall Shragg  
MARSHALL SHRAGG  
Executive Director

Dated: September 28<sup>th</sup>, 2001

\* \* \*


### ORDER

Upon consideration of the foregoing stipulation in the matter of William P. Rolfe, Jr., D.D.S., License No. D8343, and based upon all the files, records, and proceedings herein,

1. The Board's 1995 Order remains in full force and effect.
2. The Board's Order for Continuation of Temporary Suspension dated August 16, 2001 is superseded by this Stipulation and Order, the terms of this Stipulation and Order are approved and adopted, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing LIMITATIONS AND CONDITIONS on Licensee's license effective this 21 day of September, 2001.

MINNESOTA BOARD  
OF DENTISTRY

By:

  
PHYLLIS GILBERT, R.D.A.  
President

AG: 482134

## MINNESOTA BOARD OF DENTISTRY

William P. Rolfe, Jr., D.D.S.  
License No. D8343

### Synopsis of Limitations and Conditions

Until he receives an unconditional license from the Board of Dentistry, Dr. Rolfe has agreed to comply with the following limitations and conditions on his license to practice dentistry:

1. Dr. Rolfe is prohibited from writing prescriptions for or dispensing controlled substances for himself, his family, his staff, and his patients. Dr. Rolfe's associate dentists may write prescriptions for Dr. Rolfe's patients provided the associate follows the acceptable and prevailing standards of dental practice, confers with the patient in person or by telephone and appropriately documents the prescription into the patient's progress notes.

2. Dr. Rolfe is prohibited from administering nitrous oxide to his patients and shall remove the nitrous oxide tanks and associated equipment from any dental office where he provides treatment to patients.

3. Dr. Rolfe shall have a female attendant present in the operatory at all times when he is examining and/or providing dental treatment to a female patient.

4. Dr. Rolfe shall submit to at least one unannounced office visit to be conducted by a representative of the Board for the purpose of reviewing Dr. Rolfe's recordkeeping practices.

5. Dr. Rolfe shall have each staff person review a copy of this synopsis and sign and date it, verifying its review. Each signed verification shall be submitted to the Board.

This is a synopsis from a public document, the Stipulation and Order for Limited and Conditional License for William P. Rolfe, Jr., D.D.S., adopted by the Board of Dentistry on September 21, 2001. Should you have any questions concerning the information provided here, please contact the Board at (612) 617-2250.

### Verification

I, \_\_\_\_\_, certify that I have reviewed a copy of this synopsis.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of  
William P. Rolfe, Jr., D.D.S.  
License No. D8343

**AMENDED  
STIPULATION AND ORDER FOR  
LIMITED AND 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.

On September 21, 2001, the Board adopted a Stipulation and Order for Limited and Conditional License ("2001 Order") which placed limitations and conditions on the dental license of William P. Rolfe, Jr., D.D.S. ("Licensee"). The 2001 Order was based on allegations and evidence of unprofessional conduct, improper administration of nitrous oxide, improper prescribing, and substandard recordkeeping.

Pursuant to Licensee's 2001 Order, the Board's representative shall conduct a recordkeeping inspection at Licensee's dental office. In this instance, the Board's representative requested of Licensee to submit patient records to the Board's Complaint Committee ("Committee"). Prior to the inspection, the Board received a complaint against Licensee. On May 20, 2005, Licensee met with the Committee to discuss his deficiencies and the complaint and the parties have agreed that the matter may now be resolved by this Amended 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 and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

### Background

Licensee was issued a license to practice dentistry in the State of Minnesota on August 18, 1976, and is currently subject to the jurisdiction of the Minnesota Board of Dentistry.

2. On March 31, 1995, the Board adopted a Stipulation and Order ("1995 Order"), which placed conditions on Licensee's license to practice dentistry in the State of Minnesota. The 1995 Order was based on allegations and evidence that Licensee had perpetrated billing fraud; provided substandard diagnostic, operative, periodontal, and radiographic treatment to one or more of his patients; failed to make or maintain adequate patient records; failed to comply with current infection control guidelines; permitted auxiliary staff to provide services beyond their legal scope; and engaged in personal conduct which brought discredit to the dental profession.

3. In 1997 and 1998, Board staff and the Committee reviewed a number of Licensee's patient records pursuant to the 1995 Order and discovered certain



deficiencies in Licensee's recordkeeping practices. In addition, the Board received other complaints and allegations concerning Licensee, which the Committee forwarded to the Minnesota Attorney General's Office for investigation.

4. Based on the information obtained in that investigation, and upon a July 27, 2000, report by the Rush Behavioral Health Center concerning its evaluation of Licensee, the Committee temporarily suspended Licensee's license to practice dentistry on August 4, 2000. On August 16, 2000, the Board ordered that the suspension would continue in effect during the pendency of the disciplinary proceedings.

5. Commencing on November 13, 2000, a contested case hearing was held involving Licensee and the Board at the Office of Administrative Hearings. The hearing resulted in a Findings of Fact, Conclusions of Law and Recommendation being filed by Administrative Law Judge, George A. Beck, on May 9, 2001.

6. Subsequently on September 21, 2001, the Board adopted a Stipulation and Order for Limited and Conditional License ("2001 Order") which placed limitations and conditions on the dental license of Licensee. The 2001 Order was based on allegations and evidence of unprofessional conduct, improper administration of nitrous oxide, improper prescribing, and substandard recordkeeping. Pursuant to paragraphs F, G, and H of Licensee's 2001 Order, Licensee shall be subject to the language stated within relative to fines, additional discipline, and other procedures for resolution as determined by the Board's Committee.

7. In July 2004, the Board received a complaint against Licensee alleging substandard care and unprofessional conduct and forwarded it to the Committee. Licensee was notified of the complaint and submitted his response to the allegations to

the Committee.

8. Pursuant to paragraph D.4.g. of Licensee's 2001 Order, the Board's representative shall conduct a recordkeeping inspection at Licensee's dental office. However, in this instance, the Board's representative requested of Licensee to randomly select, duplicate, and submit six patient records to the Committee for their review. The patient records were received on October 8, 2004, and the Board's representative submitted a report to the Committee.

9. Based on the information contained in the inspection report and in the complaint, the Committee held a conference with Licensee on May 20, 2005, and discussed the Committee's ongoing concerns with Licensee's recordkeeping practices to include substandard periodontal diagnosis and treatment planning and improper billing.

#### **Substandard Recordkeeping**

10. Licensee failed to make or maintain adequate records for one or more of his patients. Examples include the following:

a. Licensee failed to adequately obtain the patients' informed consent prior to providing dental treatment to patients 1 through 7. Licensee did obtain the patient's signature on his Consent for Dental Treatment form; however, he failed to properly complete the form when he failed to indicate the specific dental treatment that the patient was consenting to on that date. Moreover, Licensee failed to obtain patient 1's signature on the sticker entitled "Informed Consent" located in the patient's progress notes on November 11, 2002, for oral surgery treatment.

b. Licensee failed to document a complete record of the patient's existing oral health status to include a periodontal charting and/or screening. For patients 1 and 3

through 6, Licensee failed to document his periodontal charting and/or screening on more than one occasion. Licensee did, however, do a complete and full mouth periodontal charting for patients 1 and 3 through 6 every two years.

c. Licensee failed to properly document the date on his treatment plans for patients 1 through 7.

d. Licensee failed to thoroughly document his review of medical information provided by the patient in medical histories for patients 4 and 7.

e. On June 8, 2004, Licensee indicated in patient 2's progress notes to extract teeth #1 and #16; however, Licensee failed to document his diagnosis to extract these teeth.

f. On November 10, 2003, Licensee referred patient 3 to a periodontist; however, Licensee failed to clearly indicate his referral in the patient's progress notes. Licensee did, however, keep and have a copy of the referral note in the patient's chart.

g. For patient 7, Licensee prepared tooth #20 for a crown on June 16, 2004; however, he failed to document his diagnosis for crowning this tooth.

11. During the conference, the Committee discussed and reviewed with Licensee his diagnosis and treatment of tooth #20 for patient 7. From Licensee's responses, the Committee determined the following inadequacies:

a. Licensee failed to prepare an appropriate treatment plan that addresses the appropriateness of providing a bridge involving teeth #18 and #20.

b. Licensee failed to obtain a periapical radiograph of the entire area surrounding teeth #18 and #20 prior to commencing treatment.

c. Licensee failed to diagnose the periodontal condition of tooth #18 for a

bridge.

d. Licensee failed to note in patient 7's chart who prescribed the patient's pre-medication and the amount of the prescription.

12. During the conference, the Committee also discussed with Licensee his recordkeeping practices involving inaccurate billings. Although Licensee properly filed insurance claims for services he provided to patients, the Committee found that for work performed specifically by dental hygienists, Licensee submitted insurance claims for such work under the name of another dentist in the practice. This resulted in an inaccurate billing practice. The following are examples of patients and dates where this occurred: patient 1 on October 22, 2001; patient 3 on February 7 and August 16, 2002, and March 13 and September 30, 2003; patient 4 on April 26, 2002 and May 7, 2004; and patient 6 on March 4, 2003, January 29 and August 5, 2004.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(6) and 13; Minn. R. 3100.6200 B; and Minn. R. 3100.9600 and are sufficient grounds for the disciplinary action specified in paragraph D below.

D. Disciplinary Action.

1. Limitations and Conditions. Licensee and the Committee recommend that the Board issue an order which places LIMITATIONS and CONDITIONS on Licensee's license to practice dentistry in the State of Minnesota as follows:

**LIMITATIONS**

2. Licensee's license shall be subject to the following limitations:

a. Prescribing Limitation. Licensee shall remain prohibited from prescribing, administering, or dispensing any controlled substances listed in Minnesota Statutes. Pursuant to his 2001 Order, Licensee previously surrendered to the Board his Drug Enforcement Administration (DEA) Certificate of Registration and also provided two signed copies of DEA Form 104, Voluntary Surrender of Controlled Substances Privileges. Licensee shall not apply for a new DEA certificate of registration until such time as Licensee successfully petitions the Board to remove this limitation from his license, pursuant to paragraph E below. Licensee may refer a patient to other dentists for controlled substance prescribing but such other dentists must themselves follow the acceptable and prevailing standards of dental practice in issuing the prescription, to include conferring with the patient in person or by telephone, making their own evaluation of the patient's need for the prescription, and properly recording it on the patient's dental record.

b. Nitrous Oxide Inhalation Analgesia. Licensee shall remain prohibited from administering nitrous oxide inhalation analgesia to his patients. Pursuant to his 2001 Order, Licensee previously removed the nitrous oxide tanks and associated equipment from any dental offices he owns and/or where he provides dental treatment to patients.

### **CONDITIONS**

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

a. Coursework. Licensee shall successfully complete the coursework described below. All coursework must be approved in advance by the Committee. None of the required coursework shall be attained through home study courses. 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:

1) Treatment Planning / Recordkeeping. Within nine months of the effective date of this order, Licensee shall complete the treatment planning / recordkeeping course entitled "Dental Patient Management: Dental Records and Treatment Planning Fundamentals" offered by Dr. Riley Nelson at the University of Minnesota Dental School.

2) Periodontics. Within nine months of the effective date of this order, Licensee shall successfully complete at least a one day course on periodontics which emphasizes complete and accurate diagnosis and treatment planning.

b. Written Reports and Information. Licensee shall submit or cause to be submitted to the Board the reports and/or information described below. All reports and information are subject to approval by the Committee:

1) Reports on All Coursework. Within 30 days of completing any 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 report shall be typewritten in Licensee's own words, double-spaced, at least two but not more than three pages in length, and shall list references used to prepare the report. The report on the recordkeeping coursework shall include sample recordkeeping forms that Licensee has begun to use in his practice.

c. Office Visit. Licensee shall submit to at least one unannounced office visit. The visit shall be conducted by a representative of the Board for the purpose of reviewing Licensee's recordkeeping practices, specifically, the records created after the effective date of this stipulation and order. The representative shall conduct the office visit during normal business hours and shall randomly choose and temporarily remove five to ten original patient records for duplication and review by the Committee. Licensee shall fully and timely cooperate with such inspections of Licensee's patient records.

d. Meeting with the Committee. As part of the process of petitioning the Board for an unconditional license pursuant to paragraph E, below, Licensee shall arrange to meet with the Committee to discuss his petition and his compliance with the 2001 Order and this stipulation and order. Based on the discussion with Licensee at this conference, the Committee may decide to recommend that the Board continue, modify, or remove conditions set forth in this stipulation and order.

e. Reimbursement of Costs. Licensee shall pay the Board the remaining sum of \$6,750 as partial reimbursement for the Board's costs relating to his 2001 Order. 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: \$2,250 within one year of the effective date of this stipulation and order, and the balance of \$4,500 within two years, or by the time Licensee petitions to have the conditions removed from Licensee's license, whichever occurs first.

f. Civil Penalty. The Board imposes a civil penalty in the amount of \$2,500 for the conduct described above. The civil penalty shall be paid by certified check, 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, within one year of the effective date of this stipulation and order.

g. Other Conditions.

1) The Board's 2001 Order remains in full force and effect to the extent that any of its provisions still apply, and Licensee shall comply with its terms and with all 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.

2) 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. Rules 3100.6350 shall be applicable to such requests.



3) 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 the 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.

4) 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 Licensee's dental office(s) during normal office hours without prior notification and to inspect and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

5) 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 with this stipulation and order.

E. Removal of Limitations and Conditions. Licensee may petition to have the limitations and 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 and after completing the requirements set forth in paragraph D above, 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 limitations and conditions and that Licensee is qualified to practice dentistry without limitations and conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the limitations should be removed. 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 stipulation and 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 ten days after service on Licensee and his attorney 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:

I. 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 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 May 20, 2005. The following Committee members attended the

conference: Freeman Rosenblum, D.D.S.; Ronald King, D.D.S.; and Nadene Bunge, D.H. Assistant Attorney General Tamar Gronvall represented the Committee at the conference. Licensee is represented by Daniel J. Boivin, 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 appropriateness 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 the 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, and the contested case hearing record related to

this matter, shall constitute the entire record of the proceedings herein upon which the stipulation and order is based. The contested case hearing record, if it has not already been filed, may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received pursuant to this stipulation and order 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, subject to appropriate objections from the parties, which objections shall be resolved by the Board.

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'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

William P. Rolfe Jr. DDS By:

WILLIAM P. ROLFE, JR., D.D.S.

Dated: 11/1/05, 2005

COMPLAINT COMMITTEE

Marshall Shragg

MARSHALL SHRAGG

Executive Director

Dated: 11/9, 2005