

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of  
Charles W. Sims, D.D.S.  
License No. D9005

**STIPULATION AND ORDER FOR  
CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, §§ 214.10 and 214.103, to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

The Board received complaints against Charles W. Sims, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaints and referred the matter to the Attorney General's Office for investigation. Following the investigation, the Committee held a conference with Licensee. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order for conditional license.

**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A.     Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Licensee states that he does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

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

Unprofessional Conduct and/or Inability to Practice With Reasonable Skill and Safety

1. Licensee engaged in personal conduct which brings discredit to the profession of dentistry, and he may be unable to practice dentistry with reasonable skill and safety due to a physical, mental, emotional, or other disability based on the following:

a. On February 26, 1993, Licensee met with a Committee to discuss allegations concerning his arrest and charges of possession of alcohol cannabis (marijuana) while operating a motor vehicle. During the conference, Licensee stated he completed six to nine months of outpatient chemical dependency treatment for cannabis and cocaine addiction in 1987 or 1988 (at the approximate age of 36 or 37), and he had been drug-free since completing that treatment. Based on his chemical dependency, on April 16, 1993, the Board adopted a stipulation and order ("1993 order"), which placed conditions on Licensee's license to practice dentistry in Minnesota. Terms of the 1993 order required Licensee to abstain from the use of mood-altering drugs. On June 12, 1998, the Board granted an unconditional license to Licensee.

b. On July 26, 2002, Licensee was scheduled to appear before the Committee for an informational conference regarding a malpractice payment report. On or about July 23, 2002, the Board was informed Licensee would not be attending the conference because he was "extremely depressed." The conference was rescheduled for September 13, 2002.

c. On September 13, 2002, Licensee appeared before the Committee. Licensee denied mental health problems and indicated his health issues were related to high blood pressure. Following the conference, a closure letter was sent to Licensee that included information about the Health Professionals Services Program ("HPSP"), St. Paul, Minnesota. Licensee chose not to contact HPSP. The Committee subsequently learned that on July 21, 2002, Licensee had entered an inpatient treatment program at New Beginnings in Waverly, Minnesota,

and completed treatment on August 10, 2002. Licensee's final diagnoses were cocaine and cannabis dependence. His treatment recommendations included completing aftercare, attending AA/NA twice a week, and obtaining and utilizing a sponsor

d. On October 16, 2002, the Board received a report that Licensee had relapsed with cocaine. The following day, the Committee sent a letter to Licensee requiring him to enter into a Participation Agreement and Monitoring Plan with HPSP.

e. On November 19, 2002, Licensee reentered the inpatient treatment program at New Beginnings. During an intake interview at New Beginnings, Licensee stated he used "pot" and alcohol socially from the ages of 45 to 49. Regarding his use of cocaine, Licensee stated he was using two to four grams, one to two times a week before participating in treatment in August 2002. Licensee reported since leaving treatment in September 2002 he had relapsed twice with cocaine, with his last use on October 30, 2002. Licensee was discharged from New Beginnings on November 27, 2002. Licensee's discharge was conditional pending his successful completion of 12 weeks of aftercare. In addition to completing aftercare, Licensee's treatment recommendations included that he remain abstinent from all mood-altering chemicals; obtain and utilize a male sponsor weekly; attend a minimum of two NA meetings a week; participate in individual therapy; and address occupational concerns with HPSP.

f. On November 19, 2002, Licensee signed a Participation Agreement with HPSP for monitoring of his substance abuse disorder. Terms of Licensee's Monitoring Plan included a "no practice" restriction until authorized or amended by HPSP.

g. In a letter dated February 5, 2003, Licensee's treating professional at Nystrom & Associates, Ltd., New Brighton, Minnesota, reported to Licensee's HPSP case

manager he began seeing Licensee in August 2002. The treating professional stated he was seeing Licensee "to assist him in treatment aftercare for chemical dependency related issues."

h. On February 27, 2003, Licensee informed his HPSP case manager he "was handling [dental] emergencies in December" but had not seen patients since then.

i. On February 27, 2003, Licensee was discharged from HPSP due to noncompliance, including but not limited to violating the no-practice restriction; failing to attend AA three times per week; failing to attend a professional support group at least once a month; and failing to submit quarterly reports (self-assessment, sponsor, professional support group).

j. By letter dated March 19, 2003, Licensee's treating professional at Nystrom & Associates reported to Licensee's HPSP case manager that Licensee had maintained sobriety for five months, had been seeing the treating professional on a "regular basis," and "is connected with his aftercare treatment group and has been in attendance on a regular basis." Licensee's treating professional also stated he has been encouraging him "to continue his weekly AA meetings [and] his weekly spiritual care group." Licensee's treating professional suggested "[Licensee] return to work since he has a strong recovery-support and accountability program in place."

k. On July 18, 2003, the Committee met with Licensee to discuss his chemical dependency recovery. During the conference, Licensee stated since being discharged from HPSP his random urine toxicology screens had all been negative. Copies of the toxicology screens obtained from HPSP confirmed Licensee's statement. Licensee stated his sobriety date is November 1, 2002, and he is maintaining sobriety by attending AA twice a week, communicating with his sponsor at least weekly, attending a Bible study group once a week, and

seeing his therapist. Licensee provided a copy of a letter from his therapist dated July 17, 2003, in which the therapist stated:

[Licensee] has been involved in a treatment and recovery plan which still includes regular weekly support and recovery and accountability groups. He also continues to see me for therapy as part of his after care program.

I have seen [Licensee] gain a greater ability to handle life and its stressors as he has grown in learning to surrender and recover from his past addiction. As a result, I believe that he can be effective in his professional duties and responsibilities.

#### Substandard Oral Surgery

2. Licensee failed to provide appropriate oral surgery to one or more patients as follows:

- a. On October 20, 1999, Licensee performed oral surgery on patient 1 by extracting tooth #32, which was a boney impaction. Licensee fractured patient 1's mandible on the right side, and a radiograph revealed a dental bur in the socket.
- b. On November 8, 2001, Licensee performed oral surgery on patient 2 by extracting teeth #4, #20, and #29. Licensee immediately realized he incorrectly extracted patient 2's teeth and reimplanted them. Licensee was interviewed by an investigator with the Attorney General's Office and stated before performing the extractions, he was confused about which teeth to extract because "[i]t didn't make sense because of her occlusion." Licensee stated he questioned the staff assistant and patient about the extraction-request form, and both told him the referral form reflected the correct numbers. Despite their statements and the information on the referral, Licensee stated he proceeded "[using his] own judgment."
- c. In a written response to the allegations and during the July 2003 conference with the Committee, Licensee stated he no longer performs surgical extractions of impacted teeth. Licensee also provided evidence of a current malpractice insurance policy.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(6), and Minn. R. 3100.6200 A (personal conduct which brings discredit to the profession of dentistry); Minn. Stat. § 150A.08, subd. 1(6), and Minn. R. 3100.6200 B (repeated performance of dental treatment which falls below accepted standard); and Minn. Stat. § 150A.08, subd. 1(8) (has a physical, mental, emotional, or other disability which adversely affects Licensee's ability to perform as a dentist) and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend the Board issue an order which places **CONDITIONS** on Licensee's license to practice dentistry in the State of Minnesota as follows:

1. Enrollment in HPSP. Within fourteen (14) days of the effective date of this stipulation and order for conditional license, Licensee shall enroll in HPSP for monitoring of his chemical dependency.

2. Participation Agreement. Within fourteen (14) days of receiving a Participation Agreement from HPSP, Licensee must return the signed Participation Agreement to HPSP. Failure to meet either the enrollment or the Participation Agreement deadlines will be considered a violation of this stipulation and order for conditional license. Licensee shall be monitored by HPSP until HPSP determines Licensee is qualified to practice without conditions. Licensee shall comply with all provisions of his Participation Agreement, including revisions subsequent to this stipulation and order for conditional license. Licensee's failure to comply with his Participation Agreement shall be considered a violation of this stipulation and order for conditional license. At a minimum, the Participation Agreement must include the following terms:

a. Licensee shall abstain completely from alcohol and all mood-altering chemicals unless they are prescribed by a physician or another dentist who has first been informed of Licensee's drug use history.

b. Licensee shall be subject, without notice, to unannounced blood and urine tests at the request of HPSP. Blood and urine screens may be requested at any time. Licensee shall provide the requested sample within the time frame directed. The blood and urine screens shall be:

1) Collected and tested consistent with protocols established by HPSP;

2) Handled through legal chain-of-custody methods; and

3) Paid for by Licensee.

c. The biological fluid collection and testing shall take place at a laboratory as directed by HPSP. Testing shall screen for opiates, cocaine, barbiturates, amphetamines, Benzodiazepines, marijuana, and other drugs of abuse, including alcohol. The laboratory will provide test results directly to HPSP. Ingestion of poppy seeds will not be accepted as a reason for a positive drug screen.

d. Licensee shall attend meetings of a self-help program such as AA or NA in support of abstinence at least two times per week and his spiritual care group at least one time per week. Licensee is not required to attend meetings of a professional support group such as Dentists Concerned for Dentists. Quarterly reports shall be submitted to HPSP from Licensee's designated AA or NA sponsor(s) and a member of Licensee's spiritual care group regarding Licensee's attendance and participation.

e. Licensee shall receive therapy from a psychiatrist or therapist approved in advance by HPSP. The therapist shall submit quarterly reports to HPSP regarding Licensee's diagnosis, progress in therapy, and any recommendations for aftercare. Termination of therapy shall be at the recommendation of the approved therapist, with the approval of the treating physician and HPSP. Failure to follow the terms of any treatment or aftercare plan shall constitute violation of this order.

f. Upon request, Licensee shall sign releases authorizing HPSP to obtain Licensee's medical, mental health, or chemical abuse/dependency records from any treating professional or facility.

g. Any limitations on Licensee's practice, including a no-practice restriction, shall be approved in advance by the Complaint Committee.

h. Licensee shall identify a work-site monitor who shall provide quarterly reports to HPSP regarding Licensee's overall work performance. The work-site monitor must work in Licensee's dental office, cannot be a family member, and does not need to be a dentist.

3. 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 and HPSP to communicate with all of Licensee's treating professionals.

4. Adverse Reports to the Board. Licensee shall instruct any treating providers to report immediately to HPSP by telephone and in writing if the evaluator or treating 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;

b. Licensee has failed to comply with treatment recommendations; or

c. Licensee is unsafe to practice dentistry.

5. Course Work. Within six months of this order, Licensee shall complete four hours of instruction on risk management. The course must be approved in advance by the Committee. Licensee is responsible for locating, registering for, and paying for all course work taken pursuant to this stipulation and order for conditional license. None of the course work taken pursuant to this stipulation and order for conditional license may be used by Licensee to satisfy any of the continuing dental education requirements of Minn. R. 3100.4100, subps. 1 and 2.

6. Written Report. Within 30 days of completing the risk-management course taken pursuant to paragraph 5 above, Licensee shall submit to the Board a written report summarizing what Licensee learned in the course and how Licensee has implemented this knowledge into his practice. Licensee's report shall be typewritten in Licensee's own words, double-spaced, at least two pages and no more than three pages in length, and shall list references used to prepare the report.

7. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order for conditional license.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order for conditional

license, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minn. R. 3100.6300 and 6950.1000 through 6950.1080, and with the 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.

d. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order for conditional license, 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 select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

e. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new location within five days. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order for conditional license.

E. Removal of Conditions. Licensee may petition to have the conditions removed from his license at any regularly scheduled Board meeting after he has complied with the conditions of this stipulation and order for conditional license and following his discharge from HPSP after successful completion of the Participation Agreement, provided that Licensee's

petition is received by the Board at least 30 days prior to the Board meeting. At the time of Licensee's petition, Licensee shall have the burden of proving that he has complied with the foregoing conditions and that he is qualified to practice dentistry without conditions. Licensee's completion of the conditions shall not create a presumption that the conditions should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the conditions imposed by this order.

F. Fine for Violation of Order. If information or a report required by this stipulation and order for conditional license is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order for conditional license, 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 for conditional license, 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 for conditional license. 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 for conditional license 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 for conditional license 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 for conditional license or based on the 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 July 18, 2003. 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 Ruth E. Flynn represented the Committee at the conference. Although Licensee was informed in the notice of conference that Licensee could be represented by legal counsel, Licensee has voluntarily and knowingly waived legal representation.

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

K. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order for conditional license 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 § 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

L. Record. This stipulation, related investigative reports, and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with

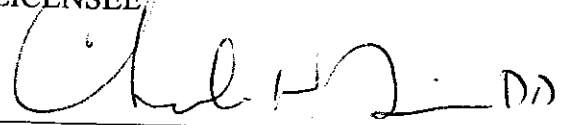
this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order for conditional license shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

M. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order for conditional license is classified as public data. Minn. Stat. § 13.41, subd. 5. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order for conditional license to the National Practitioner Data Bank.

N. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

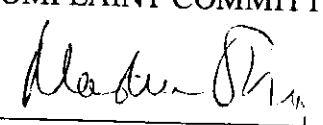
O. Service and Effective Date. If approved by the Board, a copy of this stipulation and order for conditional license shall be served personally or by first-class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE

  
CHARLES W. SIMS, D.D.S.

Dated: 09/10/03, 2003

COMPLAINT COMMITTEE

By:   
MARSHALL SHRAGG  
Executive Director

Dated: 9/10/03, 2003

\* \* \*

**ORDER**

Upon consideration of the foregoing stipulation and based upon all the files, records, and proceedings herein,

The terms of the stipulation are approved and adopted, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing **CONDITIONS** on Licensee's license effective this 19<sup>th</sup> day of September, 2003.

MINNESOTA BOARD  
OF DENTISTRY

By: Freeman Rosenblum, D.D.S.  
FREEMAN ROSENBLUM, D.D.S.

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