

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Kenneth J. Starcznski, D.D.S.
License No. D9703

**STIPULATION AND ORDER
FOR CONDITIONAL LICENSE**

STIPULATION

Kenneth J. Starcznski, 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 Minnesota Statutes chapter 150A, section 214.10, and section 214.103 to license and regulate dentists and to take disciplinary action when appropriate.

2. Licensee holds a license from the Board to practice dentistry in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Order.

II.

CONFERENCE

3. On September 13, 2013, 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 Conference dated August 15, 2013. Jennifer C. Middleton, Assistant Attorney General, represented the Committee at the conference.

4. Although Licensee was informed at the conference that he could be represented by legal counsel, Licensee has knowingly and voluntarily waived that opportunity.

III.

FACTS

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

Substandard Infection Control and Safety/Sanitary Conditions

a. Licensee failed to maintain adequate safety and sanitary conditions for a dental office. Licensee also failed to comply with the most current infection control recommendations and guidelines of the Centers for Disease Control (CDC), as described below:

- 1) Licensee failed to consistently wash his hands between patients.
- 2) Licensee failed to routinely wear gloves when providing endodontic treatment to patients. Licensee also failed to consistently remove his contaminated gloves before touching his face or nose and before leaving the operatory room.
- 3) Licensee failed to replace his protective mask in a timely manner when it became soiled or dirty from the treatment of patients.
- 4) Licensee failed to consistently wear appropriate protective eyewear equipped with side shields when providing dental treatment to patients.
- 5) Licensee failed to remove his laboratory coat or gown when leaving the office.
- 6) Licensee failed to require his staff to wear heavy-duty puncture resistant utility gloves, instead of latex gloves, when processing contaminated dental instruments.
- 7) Licensee failed to maintain as part of his comprehensive immunization policy documentation for all employees who received the hepatitis B vaccination.

8) Licensee failed to properly bag and sterilize all dental instruments and other dental items, such as a handpiece, air/water syringe tip, dental burs, impression trays, endodontic files/reamers, the nosepiece for the nitrous oxide unit, and digital radiograph equipment.

9) Licensee opened operatory drawers and retrieved instruments or materials while wearing contaminated gloves or by using a contaminated cotton pliers, exposing the rest of the drawer's contents to contamination.

10) Licensee failed to appropriately launder blankets and/or sheets used to cover patients during treatment procedures after each procedure.

11) Licensee failed to properly maintain his inventory of dental products used during treatment procedures on patients. Licensee had expired dental products including root canal preparation cream, Copalite varnish, polishing paste, restorative material, bonding material, impression material, and an adhesive in his operatory rooms or supply cabinets.

12) Licensee failed to create an infection control manual specifically for his office regarding instrument processing that complies with the current CDC Guidelines for Infection Control.

Substandard Diagnosis and Treatment Planning, Restorative, and Prosthodontic Care

b. Licensee failed to consistently document and provide appropriate diagnoses and treatment planning, restorative care, and prosthodontic care to his patients. For more than one patient, Licensee failed to provide a documented diagnosis and treatment plan that addressed either: the notching of certain teeth caused during the preparation of adjacent teeth; impacted teeth; decay or large abscesses on certain teeth; his rationale for performing certain

endodontic treatment; or a broken endodontic file inside a tooth. For more than one patient, Licensee placed inadequate build-ups using pins that resulted in microfractures and perforations of the tooth structure. For more than one patient, Licensee placed inadequate permanent crowns that either had overextended margins, open or short margins, or open contacts.

Improper Prescribing

c. Licensee improperly or in an unauthorized manner prescribed, dispensed, or administered a legend drug, other chemical, or controlled substance. For more than one patient, Licensee inappropriately prescribed antibiotics and pain medications without documenting his diagnosis or the source of the pain. Licensee also inappropriately prescribed antibiotics for patients to treat a virus. During the conference with the Committee, Licensee stated that he has prescribed antibiotics and pain medications to patients going on vacation or for others accompanying the patient who may experience a medical emergency, which is beyond the scope of practice for dentistry.

Substandard Periodontal Care

d. Licensee failed to provide appropriate periodontal care to his patients. For more than one patient, Licensee failed to thoroughly assess and document the status of each patient's periodontal conditions, including probing depth measurements, plaque, calculus, recession, attachment level, bone height/loss, furcation, mobility, and sulcular bleeding. Licensee also failed to consistently provide a periodontal diagnosis and treatment plan for each patient.

Substandard Recordkeeping

e. Licensee failed to make or maintain adequate patient records for his patients. For more than one patient, Licensee failed to properly and consistently document

within patient records one or more of the following: the name and telephone number of the patient's emergency contact person; the name and identification number of the patient's insurance carrier; the patient's existing oral health status; diagnoses for dental treatment; appropriate treatment plans; the patient's informed consent prior to performing treatment; or corrections made properly in the patient's record.

Unprofessional Conduct and Improper Billing

f. Licensee engaged in unprofessional conduct and improper billing of patients, third-party payers, or others relating to the practice of dentistry when he followed improper billing procedures for services rendered. For more than one patient, Licensee improperly billed for the following: dental services on a tooth where the existing restoration had been removed prior to taking the radiograph used for submission to the patient's insurance company for determining coverage of the dental procedure; and dental services on a date different than the date the completed dental services were rendered.

IV.

LAWS

6. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 150A.08, subdivisions 1(5), (6), (10), and (13), Minnesota Rules 3100.6200 B, 3100.6200 I, 3100.6200 K, 3100.6300, and 3100.9600, and justifies the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

CONDITIONS

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

a. Infection Control Consultant. Within three months of the effective date of this Order, Licensee shall hire an infection control consultant **pre-approved in advance by the Committee** for an evaluation involving consultative and inspection services specifically for his dental office. Licensee must provide to the consultant a copy of this Order prior to receiving an evaluation. Within 14 days after the completion of the evaluation, Licensee shall cause the consultant to provide to the Committee a detailed written report of the evaluation and compliance recommendations. Licensee shall bear the costs of this evaluation, the preparation of the report, and compliance with any infection control recommendations. Within 30 days of the consultant's report, Licensee shall comply with the consultant's recommendations and submit a written report to the Committee that indicates the changes relative to infection control that Licensee has made in his dental office.

Along with his written report, Licensee must also submit a copy of his entire infection control manual for review which must be current and in compliance with guidelines established by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration. Licensee's infection control manual shall also include a signed verification from all staff, including dentists, dental hygienists, licensed and unlicensed dental assistants, that they have fully read and reviewed Licensee's infection control manual and have received annual infection control staff training.

b. Prescription Report. Within three months of the effective date of this Order, Licensee shall submit a written report regarding his protocol for writing prescriptions for pain medications and antibiotics when treating tooth pain and bacterial and viral infections.

Licensee's report shall be typewritten in his own words, double-spaced, at least two pages in length but no more than three pages, and shall list references used to prepare the report. Licensee's report shall be subject to approval by the Committee.

c. Coursework. Licensee shall successfully complete the coursework described below. **All coursework must be approved in advance by the Committee.** Licensee is responsible for locating, registering for, and paying for all coursework taken pursuant to this stipulation and order. 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 Minnesota Rules 3100.5100, subpart 2. The coursework is as follows:

1) Fixed Prosthodontics. Within three months of the effective date of this Order, Licensee shall successfully complete a minimum of one full-day of one-on-one instruction in fixed prosthodontics through the University of Minnesota School of Dentistry, or another accredited dental institution. The fixed prosthodontic instruction must have a hands-on component and focus on crowns and current standards for restorative build-ups including retention pins and restorative materials. The crown instruction shall focus on diagnosis, treatment planning, tooth preparation, gingival margin integrity, impressions, and finishing techniques. If Licensee decides to complete this fixed prosthodontics instruction through the University of Minnesota School of Dentistry, Licensee must first contact the University's director, Craig Selden, D.D.S., regarding enrollment as indicated within the attached cover letter to this Order.

2) Professional Boundaries. Within six months of the effective date of this Order, Licensee shall arrange to enroll in an individualized professional boundaries training course taught by John Hung, Ph.D., L.P. in Edina, Minnesota, or another equivalent

course approved in advance by the Committee. The professional boundaries course shall address proper patient communication, writing prescriptions, and billing. Licensee's signature on this Order is authorization for the Committee to communicate with the instructor/practitioner before, during, and after Licensee takes the course about his needs, performance, and progress. Licensee's signature also constitutes authorization for the instructor/practitioner to provide the Committee with copies of all written evaluation reports. Successful completion of the boundaries course shall be determined by the Committee based on input from Dr. Hung, or the instructor/practitioner of an equivalent course.

3) Treatment Planning / Recordkeeping. Within nine months of the effective date of this Order, Licensee shall personally attend and successfully complete the recordkeeping / treatment planning course entitled "Essentials of Recordkeeping and Principles of Treatment Planning" offered at the University of Minnesota School of Dentistry or a course deemed equivalent by the Committee.

4) Periodontics. Within nine months of the effective date of this Order, Licensee shall personally attend and successfully complete one full-day course in periodontics through the University of Minnesota School of Dentistry or another accredited dental institution that focuses on periodontal diagnosis, treatment planning, and proper recordkeeping.

d. Coursework Reports. Within 30 days after completing each of the courses listed above, Licensee shall submit to the Committee:

- 1) proof of Licensee's attendance and completion of the course;
- 2) copies of all materials used and/or distributed in the courses; and

3) a summary report of what Licensee learned in the course and specific information addressing how Licensee will incorporate this recently gained knowledge into Licensee's practice.

4) Licensee's reports shall be typewritten in Licensee's own words, double-spaced, at least two pages in length but no more than three pages, and shall list references used to prepare the report.

5) All coursework reports submitted by Licensee are subject to review and approval by the Committee.

e. Office Inspections.

1) Infection Control Inspection. Licensee shall fully cooperate with all unannounced office visits by a representative of the Board conducted for the purpose of inspecting the safety and sanitary conditions present in Licensee's office. The Board's representative shall conduct the inspection during normal business hours. The Board's representative shall complete at least one unannounced office visit pursuant to this paragraph, additional visits shall be at the discretion of the Committee.

2) Patient Records Inspection. Licensee shall cooperate with all unannounced office visits during normal business hours by a representative of the Board, additional visits shall be at the discretion of the Committee. The representative shall randomly select, remove, and make copies of five original patient records, including radiographs, to provide to the Committee for its review of Licensee's recordkeeping practices.

Removal of Conditions

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

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

9. 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.

10. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minnesota Rules 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.

11. 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 3100.6350 shall be applicable to such requests.

12. 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

13. 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

14. If Licensee fails to comply with or violates this Stipulation and Order or it is determined Licensee has further violated Minnesota Statutes chapter 150A or Minnesota Rules chapter 3100, the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a written response to the

allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

b. The Committee, in its discretion, may schedule a conference with the Licensee prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through the procedures of Minnesota Statutes section 214.103, subdivision 6.

c. Prior to the hearing before the Board, the Committee and Licensee may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Licensee may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. The Committee shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Licensee has failed to submit a timely response to the allegations, Licensee may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Licensee waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Licensee's correction of a violation prior to the conference, hearing or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek discipline when it first learns of a violation will not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while this order is in effect.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the

Board may impose additional discipline, including additional conditions or limitations on Licensee's practice, suspension, or revocation of Licensee's license.

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Licensee's license pursuant to Minnesota Statutes section 150A.08, subdivision 8, based on a violation of this Stipulation and Order or based on conduct of Licensee not specifically referred to herein.

VII.

ADDITIONAL INFORMATION

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

23. 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.

24. 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

25. 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.

26. 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


KENNETH J. STARCZNSKI, D.D.S.

By:

COMPLAINT COMMITTEE


MARSHALL SHRAGG, MPH
Executive Director

Dated: 11/5, 2013

Dated: NOVEMBER 7TH, 2013

ORDER

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

The terms of the Stipulation are approved and adopted, and the recommended disciplinary action set forth in the Stipulation is hereby issued as an Order of this Board effective this 22 day of November, 2013

MINNESOTA BOARD
OF DENTISTRY

By: Nancy Kearns D.H.
NANCY KEARN, D.H.
President