

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Gene W. Swain, Jr., D.D.S.
License No. D10406

**STIPULATION AND ORDER
ACCEPTING VOLUNTARY
SURRENDER OF LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minnesota Statutes chapter 150A, sections 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 including accepting a voluntary surrender of license.

Gene W. Swain, Jr., D.D.S. ("Licensee") desires to voluntarily surrender his license to practice dentistry in the State of Minnesota. The Board's Complaint Committee ("Committee") and Licensee agree that the matter may be resolved by this stipulation and order accepting voluntary surrender of Licensee's 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:

1. Licensee is a dentist, licensed in the State of Minnesota.

2. On April 29, 2011, the Board received a complaint alleging that Licensee is unable to practice dentistry due to his diagnosis of multiple sclerosis. The Committee asked Licensee to contact the Health Professionals Services Program (“HPSP”).

3. On July 14, 2011, Licensee enrolled with the HPSP to determine if monitoring is warranted for his health condition(s).

4. On October 4, 2011, the HPSP notified the Board that Licensee was discharged from the HPSP due to Licensee’s decision to not participate in the program. Licensee told the HPSP that he was no longer interested in practicing as a dentist due to his health condition(s).

C. Violations. The Committee concludes that the facts described above constitute a violation of Minn. Stat. § 150A.08, subd. 1(8) (physical, mental, emotional or other disability which adversely affects ability to perform as a licensed dentist) and is sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order accepting the **VOLUNTARY SURRENDER** of Licensee’s license to practice dentistry in the State of Minnesota in accordance with the following terms:

1. Surrender. Effective the date of this Order, Licensee’s license to practice dentistry in the State of Minnesota is terminated. Within ten days of the date the Order is adopted by the Board, Licensee shall surrender to the Board his original license and current renewal certificate by delivering them personally or by first class mail to Marshall Shragg, Executive Director, Minnesota Board of Dentistry, 2829 University Avenue Southeast, Suite 450, Minneapolis, Minnesota 55414.

2. Prohibitions. Licensee shall not engage in any act which constitutes the practice of dentistry as defined in Minn. Stat. § 150A.05 and shall not imply to former patients or other persons by words or conduct that Licensee is licensed to practice dentistry.

3. Transfer of Patient Records. No later than 30 days after the effective date of this Order, if applicable, Licensee shall notify his patients that he is no longer practicing and they may request that their patient records be provided to them or their new treating dentists. Licensee shall comply with record requests within 15 days of receipt. Within 30 days after the date of this Order, Licensee shall provide the Board with written verification he has complied with this paragraph.

E. Requirements for Licensure. Licensee may apply to the Board for licensure at any regularly scheduled Board meeting no earlier than one year after the effective date of the Board's order. Licensee must comply fully with the applicable statutes and rules in effect at the time of Licensee's application, including the payment of all fees relating to licensure and completing the Professional Development requirements.

Moreover, if Licensee is out of practice for more than two (2) years after the effective date of this stipulation and order, he shall successfully complete the regional clinical examination specified in Minnesota Rules part 3100.1100, subp. 2. Licensee's compliance with the above-referenced requirements shall not create a presumption that he should be granted a license to practice dentistry in the State of Minnesota.

In addition to the reinstatement requirements contained in the applicable statutes and rules in effect at the time of Licensee's application, Licensee shall have the burden of proving to the Board by clear and convincing evidence that he is capable of conducting himself in a

qualified and competent manner, is able to perform the duties of a licensed dentist with reasonable skill and safety, and has complied fully with the terms of the Board's order.

F. Meeting with a Complaint Committee. Licensee shall meet with a Complaint Committee of the Board at least 60 days prior to the Board meeting to consider Licensee's application for licensure. The Complaint Committee shall review and discuss with Licensee his application and supporting evidence. After meeting with Licensee, the Complaint Committee shall forward a report containing its recommendations to the Board.

G. Board Action. At any regularly scheduled Board meeting following Licensee's application for licensure and meeting with a Complaint Committee, the Board may take any of the following actions:

1. Reissue a license to Licensee;
2. Reissue a license to Licensee with limitations and/or conditions placed upon the scope of Licensee's practice of dentistry; or
3. Deny the application for licensure upon Licensee's failure to meet the burden of proof.

H. Judicial Relief. If Licensee violates paragraph D above, a district court of this state may, upon application of the Committee, enter an order enjoining Licensee from such practice and grant the Board costs, reasonable attorney fees, and other appropriate relief.

I. Right to an Attorney. Through this stipulation and order, Licensee is further notified that Licensee may choose to be represented by legal counsel in this matter. Licensee has elected not to be represented by counsel. The Committee involved with this matter is comprised of Board members Joan Sheppard, D.D.S., David Linde, D.D.S., and Teri

Youngdahl, L.D.A. Assistant Attorney General Geoffrey S. Karls is representing the Committee.

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 Minnesota Statutes chapter 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

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

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

date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

M. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 5. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes chapter 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. If approved by the Board, a copy of this stipulation and order shall be served personally or by first class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE

Gene W. Swain DDS By:
GENE W. SWAIN, JR., D.D.S.

COMPLAINT COMMITTEE

Marshall Shragg
MARSHALL SHRAGG, MPH
Executive Director

Dated: 1-27, 2012

Dated: January 31st, 2012

ORDER

Upon consideration of the foregoing stipulation and based upon all the files, records and proceedings herein, the Board approves and adopts the terms of the stipulation, orders the recommended action set forth in the stipulation, and accepts the **VOLUNTARY SURRENDER** of Licensee's license to practice dentistry in the State of Minnesota effective this 23rd day of March, 2012.

MINNESOTA BOARD
OF DENTISTRY

By: Neal Benjamin DSS
Presiding Board Member