

Effective 09/04/2007

**BEFORE THE MINNESOTA
DEPARTMENT OF HEALTH
HEALTH OCCUPATIONS PROGRAM**

**In the Matter of Scott Erickson
Hearing Instrument Dispenser**

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Scott C. Erickson, (hereinafter "Practitioner"), and the Minnesota Department of Health (hereinafter "Department"), and that without trial or adjudication of any issue of fact or law herein:

Except as otherwise specified herein; this Stipulation and Consent Order (hereinafter "Stipulation"), investigative reports, and related documents shall constitute the entire record herein upon which this Stipulation is based and shall be filed with the Department. This Stipulation is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA"). All other data comprising the record shall not be considered a part of this Stipulation and shall maintain the data classifications to which they are entitled under the MGDPA.

LEGAL AUTHORITY

1. The Department has statutory authority to discipline hearing instrument dispensers under Minnesota Statutes, Section 153A.15. The types of disciplinary action the Department may impose include issuance of public reprimands, suspension, revocation, denial of a certificate renewal, revocation or suspension of the right to supervise trainees or be a trainee, the assessment of civil penalties not to exceed \$10,000 for each separate violation, or any other action reasonably justified by the individual case. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.

2. Minnesota Statutes, section 153A.14, subdivision 11 requires a hearing instrument dispenser to notify the Department, within 30 days, of the occurrence of any of the following: 1) a change of address, home or business telephone number or business name; 2) the occurrence of conduct prohibited by section 153A.15; 3) a settlement, conciliation court judgment, or award based on negligence, intentional acts, or contractual violations committed in the dispensing of hearing instruments by the dispenser; and 4) the cessation of hearing instrument dispensing activities as an individual or as a business.
3. For hearing instrument purchased before August 1, 2005, Minnesota Statutes, section 153A.15, subdivision 2(a) requires certified hearing instrument dispensers and audiologists to give buyers the right to cancel their purchase of hearing instruments for any reason within 30 days. The guarantee must entitle the buyer to receive a full refund of payment within 30 days of return of the hearing instrument to the dispenser. The certified dispenser or audiologist may retain a cancellation fee of no more than 10% of the purchase price. This 30-day guarantee and buyer right to cancel must be included in the contract as specified by Minnesota Statutes, section 153A.15, subdivision 2(b).
4. Minnesota Statutes, section 153A.15, subdivision 1(19) states the commissioner may take an enforcement action against a dispenser for violating any of the provisions of section 148.5195, subdivision 3, clause (2); 148.5197; 148.5198; and 153A.13 to 153A.18.

FACTS

The Department alleges and the Practitioner unconditionally admits for the purposes of these and any future disciplinary proceedings the following allegations:

1. Practitioner was certified as a hearing instrument dispenser effective November 10, 1998. Practitioner's certificate to dispense hearing instruments was renewed annually on November 1 in the years 1999, 2000, 2002, 2004, 2005, and 2006. In the year 2003, Practitioner's certificate to dispense hearing instruments was renewed on December 30, 2003.
2. On October 1, 2001, the Department received Practitioner's November 1, 2001 renewal application. Practitioner listed his business name as "Audibel Hearing Health Centers," located at 308 4th Avenue NW, Austin, Minnesota 55912. In the space marked "My current supervisor/manager is," Practitioner marked "my self." [sic]
3. On October 17, 2002, the Department received Practitioner's November 1, 2002 renewal application. Practitioner listed his business name as "Hearing Health Center, Audibel, 308 4th Avenue NW, Austin, Minnesota 55912." In the space marked "Employer address," Practitioner marked "self."
4. On December 22, 2003, the Department received Practitioner's November 1, 2003 renewal application. Practitioner was asked if since the date of his last renewal if he worked for, or had an ownership interest in a hearing aid dispensing company which ceased operations. Practitioner marked "yes" and indicated the name of the company ceased operations was "Audibel Hearing Center." In the same renewal application, Practitioner was asked if he violated any of the prohibited acts. Practitioner checked "no" indicating he did not fail to comply with the restrictions on sales of hearing aids in Minnesota Statutes Chapter 153A.19, subdivision 2. Practitioner signed these statements on December 15, 2003.

5. On September 29, 2004, the Department received Practitioner's November 1, 2004 renewal application. Practitioner was asked if since the date of his last renewal if he worked for, or had an ownership interest in a hearing aid dispensing company which ceased operations. Practitioner marked "yes" and indicated the name of the company ceased operations was "Hearing Health Center." In the same renewal application, Practitioner was asked if he violated any of the prohibited acts. Practitioner checked "no" indicating he did not fail to comply with the restrictions on sales of hearing aids in Minnesota Statutes Chapter 153A.19, subdivision 2. Practitioner signed these statements on September 26, 2004.
6. On April 1, 2003, Practitioner tested and recommended Client 1 purchase Audibel Canal binaural hearing instruments in the amount of \$2,437.80. Client 1 made a down payment of \$1,237.80. According to the terms of the purchase agreement and Minnesota Statutes, section 153A15, subdivision 2(a) signed by Practitioner and Client 1, Client 1 had the right to cancel the purchase, for any reason, within 30 days of receipt of the hearing instrument(s) and upon receipt of a written notice of cancellation. Client 1 had a right to full refund, less 10% for a total refund of \$2,157.80. Practitioner told Client 1 the hearing instrument would be available for delivery in three to four weeks. On April 21, 2003, Client 1 paid the remaining \$1,200.00 on the hearing instruments and received the hearing instruments. Practitioner advised Client 1 if he had problems with the hearing instruments, he could return the instruments.
7. On May 20, 2003, Client 1 returned the right hearing instrument. Practitioner accepted the hearing instrument and issued a signed receipt to Client 1 stating, "Refund for right hearing of \$1,097.01 due by June 20, 2003."

8. Client 1 did not receive the refund of \$1,097.01 by June 20, 2003 and went to Practitioner's place of business shortly thereafter. Practitioner told Client 1 he would receive the refund in two weeks. Client 1 did not receive a refund.
9. Client 1 contacted the hearing instrument manufacturer (Audibel) to request a refund. The manufacturer's representative advised Client 1 that Practitioner's Audibel account had been credited for the hearing instrument Client 1 had returned and Client 1 should have received a refund in the mail.
10. Practitioner filed for bankruptcy under United States Bankruptcy Code, Chapter 13 on December 13, 2003. The case was converted to a Chapter 7 bankruptcy on December 23, 2003; and case was closed on April 20, 2004 with all debts discharged under section 727, Title 11, United States Code. Client 1 was listed as a creditor in the amount of \$1,097.00 for a refund on a hearing aid.
11. Practitioner told Department staff he intended to give Client 1 a refund in two weeks, but he had no money for a refund because he had no more sales and his business was failing. Practitioner stated he closed the doors to his business prior to July 1, 2003. By early July 2003 Practitioner retained an attorney and filed for bankruptcy. According to the documents submitted by Practitioner, Client 1 was listed as an unsecured creditor and Practitioner owed Client 1 \$1,097.00. Practitioner stated he did not notify the department within 30 days of the legal action or business cessation concerning his hearing instrument dispensing business because he was distraught and he forgot to notify the state. Practitioner stated no other consumers were due refunds at the time he closed his business. Practitioner arranged for another certified dispenser to take over his client files, honor the warranties and service the hearing instruments.

12. On August 6, 2006 the issues in the case were presented to the Hearing Instrument Dispensers Advisory Council Competency Review Committee (CRC). CRC members recommended the Department take disciplinary action against the Practitioner for failure to make a refund and include a civil penalty for the costs of the investigation including CRC member per diem and expenses allowed by state law.

ORDER

1. Upon this Stipulation, and without any further notice of proceedings, the Division Director hereby ORDERS:
 - A. Practitioner is publicly reprimanded.
 - B. Practitioner shall pay a civil penalty of \$652.00 as authorized under Minnesota Statutes, Section 153A.15, subdivision 2(4) to reimburse the Department for the costs of the investigation and proceeding resulting in disciplinary action. The civil penalty must be paid within 30 days of the date this signed Stipulation is served upon Practitioner. Practitioner must make the payment by money order or check, made payable to the "State of Minnesota Treasurer," in the amount \$652.00. Practitioner must mail the payment to Catherine Dittberner Lloyd, Minnesota Department of Health, Health Occupations Program, 85 East Seventh Place, P. O. Box 64882, St. Paul, Minnesota 55164-0882.
2. Regarding the civil penalty described in paragraph 1(A) above, the penalty may be referred to the Minnesota Collection Enterprise (MCE) in the Minnesota Department of Revenue, or other source for collection, if Practitioner misses the deadline set herein by 14 calendar days. When this Stipulation for a penalty becomes public and the Department

refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 6D.17, to obtain a judgment against Practitioner without further notice or additional proceedings.


3. This Stipulation shall not in any way or manner limit or affect the authority of the Department to proceed against Practitioner by initiating a contested-case hearing or by other appropriate means, based on any act, conduct, or admission of the Practitioner which justifies disciplinary action and occurred either before or after the date of this Stipulation and which is not directly related to specific acts and circumstances set forth herein.
4. In the event the Division Director in her discretion does not approve this settlement or a lesser remedy than specified herein, this Stipulation shall be of no evidentiary value and shall not be relied upon or used for any purpose by either party. If this should occur and thereafter an administrative contested case is initiated pursuant to Minnesota Statutes Chapter 14 and Minnesota Statutes, Section 153A.15, Practitioner agrees to assert no claim that the Division Director was disqualified due to the review and consideration of this Stipulation or any records relating hereto.
5. This Stipulation contains the entire agreement between the Department and the Practitioner, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. Practitioner understands that this agreement is subject to the Division Director's approval. If the Division Director either approves the Stipulation or makes changes acceptable to the Practitioner, the Division Director will issue the Stipulation. Upon this Stipulation and all other evidence made available to the Division Director, once the Division Director has approved it, the Division Director may issue the Stipulation to Practitioner at any time without further notice.

6. A copy of this Stipulation, when issued by the Division Director, shall be served by first class mail on Practitioner, at 1535 - 18th Avenue Northwest, Fairbault, Minnesota 55021. Service via first class mail shall be considered as personal service upon Practitioner, at which time this Stipulation shall become effective. Any appropriate federal or state court shall, upon application of the Director, enter an order of enforcement of any or all of the terms of this Stipulation.

CONSENT


Practitioner hereby acknowledges that he has read, understood, and agreed to this Stipulation and has freely and voluntarily signed it.

Dated: 8-8, 2007



Scott C. Erickson

Dated: 8/20, 2007



Susan Winkelmann
Investigations and Enforcement Manager
Health Occupations Program

Upon consideration of this Stipulation and all the files, records, and proceedings herein by the Division Director, **IT IS HEREBY ORDERED** that the terms of this Stipulation are adopted and implemented by the Division Director on this 27th day of August, 2007.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH



Darcy Miner, Director
Division of Compliance Monitoring