

STATE OF MINNESOTA
COUNTY OF HENNEPIN

Eff. 06.10.1994
BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH
94702
STIPULATION
AND CONSENT ORDER

In the Matter of Earl Hauser,
Hearing Instrument Seller

IT IS HEREBY STIPULATED AND AGREED by Earl Hauser, (hereinafter "Practitioner"), and the Minnesota Department of Health (hereinafter "Department"), and that without trial or adjudication of any issue of fact or law herein and without any evidence or admission by any party with respect to any issue:

1. During all times herein, Practitioner has been and is subject to the jurisdiction of the Commissioner of Health (hereinafter "Commissioner") from whom he held a permit to sell hearing instruments in the State of Minnesota from 6/22/90 to 3/31/94 when his permit expired.
2. The Department alleges and the Practitioner unconditionally admits for purposes of these and any future disciplinary proceedings the following allegations:
 - a. Since June 26, 1990, Practitioner was the sole owner and operator of Hear Now Hearing Clinics, (hereinafter "Hear Now"), formerly located at 6950 France Avenue South, Suite 120, Edina, Minnesota 55435.
 - b. Practitioner sold a pair of hearing aids to J.N. in his home for \$1660 on October 2, 1991. Practitioner delivered the hearing aids to J.N. on December 2, 1991. J.N. was not satisfied with the hearing aids and J.N. requested a refund from Practitioner in January of 1992. In a letter to the Attorney General's Office dated September 8, 1992, Practitioner agreed to refund to J.N. the full \$1660 purchase price in three equal installments. On

January 4, 1993, the Department received a copy of a payment schedule Practitioner drafted for J.N. To date, Practitioner owes J.N. an unpaid balance of \$312. Practitioner has paid J.N. a total of \$1348.

c. Practitioner sold a pair of hearing aids to R.S. in his home for \$1600 on August 27, 1992. R.S. wrote a check for \$1600. Practitioner delivered the hearing aids to R.S. on October 3, 1992. After numerous adjustments between October of 1992 and January of 1993, the hearing aids still did not work properly. On January 5, 1993, R.S. requested a refund. Practitioner refused to give R.S. his money back. On January 27, 1993, R.S. filed a complaint with the Better Business Bureau of Minnesota. On March 1, 1993, Practitioner wrote a letter to the Better Business Bureau in response to R.S.'s complaint. Practitioner stated that, while the hearing aids were under the one year warranty, he would remake the hearing aids as often as necessary to satisfy R.S. However, when R.S. complained to Practitioner that the hearing aids still did not fit or work properly, Practitioner stated that R.S. would have to learn to adjust to them. R.S. has been unable to get in contact with Practitioner because Practitioner vacated his office and left no forwarding address.

d. Practitioner sold a pair of hearing aids to P.T. in her home for \$2200 on September 23, 1992. P.T. paid \$1600 in cash and received a \$600 credit for the trade-in on her old hearing aids. Practitioner delivered the hearing aids to P.T. on November 5, 1992. On November 23, 1992, P.T. mailed the hearing aids back to Practitioner certified mail along with a written notice of cancellation. On March 16, 1993, the Department received from Practitioner a proposed payment schedule. In April of 1993, P.T. received one \$480 payment from Practitioner. On July 14, 1993, P.T. obtained a default judgment in

Dakota County District Court against Practitioner in the amount of \$996.13. Practitioner has not paid the judgment.

e. Practitioner sold two hearing aids to G.W. in his home for \$2200 on March 6, 1993. G.W. paid \$1500 and received \$700 for the trade-in on an old pair of hearing aids. Practitioner delivered the aids to G.W. on April 27, 1993. G.W. was not satisfied with the hearing aids. In May of 1993, G.W. verbally informed Practitioner that he wanted to return the hearing aids and get his money back. Practitioner made two appointments to come out to G.W.'s home and each time Practitioner failed to appear for the appointment. At the end of May 1993, G.W. was hospitalized for ten days. Practitioner came out to G.W.'s home in June of 1993. At this time Practitioner refused G.W.'s request for a refund on the grounds that the 30 day trial period had expired.

f. Practitioner sold two hearing aids to L.S. in his home for \$1500 on March 12, 1993. Practitioner delivered the hearing aids in late April of 1993. L.S. was not satisfied with the hearing aids. In June of 1993, Practitioner came out to L.S.'s home and took another impression of L.S.'s ears. On June 18, 1993, L.S. received the hearing aids in the mail from Prairie Labs of Cologne, Minnesota. The hearing aids still did not work or fit satisfactorily. L.S. telephoned Practitioner's business number several times and left messages. Practitioner did not return L.S.'s telephone calls. On August 11, 1993, Practitioner stopped by L.S.'s home and left a note, but L.S. was not home. When L.S. next telephoned Practitioner, the telephone number was disconnected. L.S. telephoned Prairie Labs and was informed that the hearing aids Practitioner sold to him were used and not new as Practitioner represented.

g. Practitioner sold B.T. two hearing aids in his home for \$1300 on March

13, 1993. Practitioner delivered the hearing aids on May 12, 1993. The hearing aids whistled and had constant feedback. Despite repeated adjustments by Practitioner, the hearing aids did not improve for B.T. B.T. called Practitioner several times and left messages demanding his money back. Practitioner never returned B.T.'s telephone calls.

h. Practitioner sold a pair of hearing aids to E.L. in his home for \$1100 on March 17, 1993. E.L. never received the hearing aids. On April 6, 1993, E.L. sent a written notice of cancellation to Practitioner and demanded his money back. On May 19, 1993, our office received a proposed payment schedule from Practitioner. To date, E.L. has not received a refund from Practitioner.

i. Practitioner sold a pair of hearing aids to C.L. in his home for \$1300 on March 30, 1993. Practitioner delivered the hearing aids on April 30, 1993. C.L. mailed the hearing aids back to Practitioner with a written notice of cancellation on May 22, 1993. To date, C.L. has not received a refund from Practitioner.

j. Practitioner sold a pair of hearing aids to L.W. in his home for \$1600 on April 13, 1993. Practitioner delivered the hearing aids in late May of 1993. L.W. was unhappy with the fit and quality of the hearing aids. In June of 1993, Practitioner came out to L.W.'s home and took a second impression of his ears. In Mid-July of 1993, L.W. received a new pair of hearing aids in the mail. The new hearing aids did not work properly. L.W. called Practitioner several times, but Practitioner did not return L.W.'s phone calls. On or about October 1, 1993, L.W. wrote to Practitioner and requested his money back. On October 6, 1993, Practitioner came out to L.W.'s home and took a third impression of L.W.'s left ear. L.W. received the new left hearing aid in the mail in mid-December of 1993. The hearing aid whistled and

irritated L.W.'s ear. In December of 1993, L.W. sent Practitioner another letter in which he requested a refund. L.W. went to Practitioner's office and discovered that Practitioner had vacated his office and left no forwarding address.

k. Practitioner sold one hearing aid to A.J. in his home for \$600 in September of 1993. The hearing aid was delivered in October of 1993. The hearing aid came with a two year warranty. The hearing aid does not work satisfactorily. A.J. has been unable to get in contact either by telephone or by mail with Practitioner in order to have his warranty honored because Practitioner vacated his office and left no forwarding address.

l. Practitioner sold two hearing aids to C.K. in his home for \$1300 on September 7, 1993. Practitioner delivered the hearing aids on November 24, 1993. On November 26, 1993, one of the hearing aids stopped working. C.K. has attempted to contact Practitioner to cancel his contract. Practitioner's telephone number was disconnected and mail sent to Practitioner's business office was returned with no forwarding address.

m. Practitioner sold a pair of hearing aids to W.B. in his home for \$1200 on September 20, 1993. Practitioner delivered the hearing aids on November 29, 1993. The right aid had a great deal of static. W.B. attempted to get in contact with Practitioner in December 1993. Practitioner's telephone number was disconnected and Practitioner had vacated his business office without leaving a forwarding address or telephone number.

n. Practitioner sold one hearing aid to W.M. in his home for \$600 on October 22, 1993. W.M. wrote a personal check for \$600. W.M. never received the new hearing aid. On December 13, 1993, W.M. sent Practitioner a written notice of cancellation by certified mail. Practitioner signed for the notice

on December 16, 1993. W.M. has received no response from Practitioner. To date, W.M. has not received either a hearing aid or a refund of \$600.

o. Practitioner sold a pair of hearing aids to J.S. in his home for \$1,000 on November 2, 1993. J.S. paid \$500 on November 2, 1993 and was to pay the remaining \$500 when Practitioner delivered the hearing aids. Practitioner never delivered the hearing aids to J.S. J.S. has been unable to get in contact with Practitioner because Practitioner vacated his office and left no forwarding address.

p. Practitioner sold a pair of hearing aids to L.L. in his home for \$1300 on November 20, 1993. The right hearing aid whistled. Practitioner came out to L.L.'s home on December 20, 1993. Practitioner took L.L.'s right hearing aid to have it repaired at Prairie Labs in Cologne, Minnesota. L.L. has never received the right hearing aid. L.L. called Prairie Labs in January of 1994. L.L. was informed that his hearing aid had been repaired and returned to Practitioner. To date, L.L. has not been able to get in contact with Practitioner because Practitioner vacated his office and left no forwarding address.

q. Practitioner sold one hearing aid to C.S. in his home for \$550 on December 7, 1993. C.S. canceled the contract in writing by certified mail on December 8, 1993. Practitioner signed for the letter on December 16, 1993. To date, C.S. has not received any refund from Practitioner.

r. Practitioner sold two hearing aids to D.Y. in his home for \$1250 on December 7, 1993. Practitioner never delivered the hearing aids to D.Y. In March of 1994, D.Y. sent Practitioner written notice of cancellation. To date, D.Y. has not received his refund.

s. Practitioner sold two hearing aids to L.M. in his home for \$1100 on

December 18, 1993. Practitioner never delivered the hearing aids to L.M. L.M. has been unable to get in contact either by telephone or by mail with Practitioner in order to obtain his refund because Practitioner vacated his office and left no forwarding address.

t. Practitioner sold one hearing aid to G.H. in his home for \$950 on December 21, 1993. Practitioner never delivered the hearing aid to G.H. G.H. has been unable to get in contact either by telephone or by mail with Practitioner in order to obtain his refund because Practitioner vacated his office and left no forwarding address.

u. Practitioner sold one hearing aid to J.J. in her home for \$1,000 on December 22, 1993. Practitioner never delivered the hearing aid to J.J. J.J. has been unable to get in contact by telephone or mail with Practitioner in order to obtain her refund because Practitioner vacated his office and left no forwarding address.

v. Practitioner sold two hearing aids to A.H. in his home for \$1,000 on December 23, 1993. Practitioner never delivered the hearing aids to A.H. A.H. has been unable to get in contact either by telephone or by mail with Practitioner in order to obtain his refund because Practitioner vacated his office and left no forwarding address.

w. Practitioner sold two hearing aids to L.O. for \$700. L.O. paid \$200. L.O. was unhappy with the hearing aids. Practitioner told L.O. to return the hearing aids and he would refund his \$200. To date, Practitioner has not refunded the \$200 to L.O.

x. On February 15, 1994, the Department mailed Practitioner a hearing instrument seller permit renewal application form to Hear Now Hearing Clinics, 6950 France Avenue South, Edina, MN 55435. The application was returned to

the Department unopened with a notation from the Post Office indicating that the Practitioner had moved and left no forwarding address.

3. For purposes of this Stipulation, Practitioner expressly waives all procedures and proceedings before the Commissioner of Health to which Practitioner may be entitled under the Minnesota and/or United States constitutions, statutes, rules and also waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minn. Stat. §480A.06 or otherwise from the order issued by the Commissioner of Health pursuant to this stipulation;

4. Except as otherwise specified herein, this Stipulation and Consent Order, investigative reports, and related documents shall constitute the entire record of the proceedings herein upon which this Order is based and shall be filed with the Department. Any reports or other material related to this action and received after the date this Stipulation and Consent Order is executed shall become part of the record and may be considered by the Department in future aspects of this proceeding. These items shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13. They shall not be considered a part of this Stipulation and Consent Order and shall not, to the extent they are not already public documents, become public merely because they are referenced herein;

5. In the event the Commissioner in her discretion does not approve this settlement, or a lesser remedy than specified herein, this Stipulation and

Consent Order shall be null and void and shall not be used for any purpose by either party hereto; provided however, that this should occur and thereafter an administrative contested case is initiated pursuant to Minn. Stat. Ch. 14 and §153A.15, Practitioner agrees he will not raise any objection on any administrative level or in any court action to the Department's proceeding and hearing the case on the basis that the Commissioner has become disqualified due to her review and consideration of this Stipulation and record. In exchange for this agreement by Practitioner, the Commissioner agrees, in the event she does not approve this stipulation, to grant Practitioner all legal rights and remedies available to him under the Minnesota and United States constitutions, Minnesota Statutes, and rules of the Department, except as expressly provided for in this paragraph;

6. Practitioner admits and acknowledges that for the purpose of this Stipulation and Consent Order only, the facts and conduct specified in paragraph 2 above constitute violations of Minnesota Statute §153A.19, subd. 2(a), formerly Minnesota Statute §145.43 (requiring sellers to abide by a 30-day written money-back guarantee); §153A.15, subd. 1(6) (prohibiting conduct likely to deceive, defraud or harm the public); subd. 1(9) (prohibiting sellers from obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud); and subd. 1(10) (requiring sellers to abide by the 30-day refund period and buyer right to cancel laws); §325G.09 (requiring sellers to abide by a 10-day money-back guarantee after cancellation of a home solicitation sale); and are grounds for disciplinary action by the Commissioner. In addition, Practitioner admits and acknowledges that the

facts and conduct specified in paragraph 2 above constitute evidence, pursuant to Minnesota Rule 4692.0030, subp. 5(3), that Practitioner has violated state or federal court order or judgment issued to manage the activities of the Practitioner in hearing instrument selling business. Practitioner further acknowledges and admits that the Commissioner has a reasonable basis of law and fact to justify the actions specified in the order and waives any argument that no such reasonable basis exists;

7. This Stipulation shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Practitioner by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Practitioner justifying disciplinary action which occurred before or after the date of this Stipulation and which is not directly related to specific facts and circumstances set forth herein;

8. Upon this Stipulation and Consent Order and all of the facts, records, and proceedings herein, and without further notice or hearings herein, Practitioner does hereby consent that the Commissioner may make and enter an Order revoking Practitioner's legal authorization to sell hearing instruments in the State of Minnesota for a period of three years from the effective date of this Stipulation and Consent Order. Once the period of revocation is over, Practitioner may petition the Commissioner to be given the right to apply for hearing aid dispenser certification pursuant to Minnesota Statutes, Chapter 153A (1993). Practitioner's legal authorization to sell hearing instruments in Minnesota shall remain revoked, regardless of the length of time, until the Commissioner finds that he has complied with all the terms of this

Stipulation. In order for the Practitioner to be entitled to apply for dispenser certification, Practitioner must demonstrate to the Commissioner by clear and convincing evidence that he has fully complied with the terms and conditions of this paragraph as follows:

a. Within 120 days of the effective date of the Stipulation, Practitioner must refund by certified check or money order directly to each consumer the following amounts: \$312 to J.N.; \$1,600 to R.S.; \$996.13 to P.T; \$2,200 to G.W.; \$1,500 to L.S.; \$1,300 to B.T.; \$1,100 to E.L.; \$1,300 to C.L.; \$1,600 to L.W.; \$600 to A.J.; \$1,300 to C.K.; \$1,200 to W.B.; \$600 to W.M.; \$500 to J.S.; \$650 to L.L.; \$550 to C.S.; \$1250 to D.Y.; \$1,100 to L.M.; \$950 to G.H.; \$1,000 to J.J.; \$1,000 to A.H; \$200 to L.O. The total amount Practitioner is required to refund is \$22,808.13.

b. Before Practitioner petitions to have his revocation lifted, Practitioner must pay a civil penalty of \$675 to the Department for costs incurred in investigating the cases described in paragraph 2;

c. Practitioner must comply with Minnesota Statutes, §§153A.14; 153A.15; 153A.19; and 325G.09.

9. If Practitioner fails to comply with the terms, conditions and requirements specified in paragraph 8 above, the Commissioner will not lift Practitioner's revocation. After completing the above terms and conditions, Practitioner may make a written petition to the Commissioner to lift the revocation of his legal authorization to sell hearing instruments in Minnesota;

10. Any appropriate federal or state court shall, upon application of the Commissioner, enter an order of enforcement of any or all of the terms of this Stipulation and Consent Order;

11. Practitioner hereby acknowledges that he has read, understood, and agreed to this Stipulation and Consent Order and has freely and voluntarily signed it. In signing this Stipulation and Consent Order, Practitioner acknowledges that he is fully aware that it must be approved by the Commissioner. The Commissioner may either approve the Stipulation and Consent Order as proposed, approve it subject to specified changes or reject it. If the Commissioner approves the Stipulation or makes a change acceptable to the Practitioner, the Commissioner will issue the Order and the Stipulation will take effect. If the changes are unacceptable to Practitioner or the Commissioner rejects the Stipulation and Consent Order, it will be of no effect, except as specified in paragraph 7 above;

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

13. Upon this Stipulation and Consent Order and all other evidence made available to the Commissioner, the Commissioner may at any time after she has approved this Stipulation and Consent Order issue it to Practitioner without further notice. A copy of the Stipulation and Consent Order when issued by the Commissioner shall be served by first class mail on Practitioner at his

last known address, which service will be considered personal service upon Practitioner. This Stipulation and Consent Order is effective upon service.

Dated: 5/5, 1994 *Earl Hauser*
Earl Hauser, Practitioner

Dated: 5/12, 1994 *Susan Winkelmann*
Susan Winkelmann
Investigations and Enforcement Supervisor
Health Occupations Program

Upon consideration of this stipulation and all the files, records and proceedings herein by the Commissioner,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Commissioner this 18th day of May, 1994.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

Mary Jo O'Brien
MARY JO O'BRIEN
Commissioner