

Effective 1/3/98

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**BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH**

**In the Matter of Joseph J. Jerkovich,
Hearing Instrument Dispenser**

**STIPULATION
AND CONSENT ORDER**

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

1. Except as otherwise specified herein; this Stipulation and Order, investigative reports, and related documents shall constitute the entire record herein upon which this Order is based and shall be filed with the Department. The Stipulation and Order 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 Order and shall maintain the data classifications to which they are entitled under the MGDPA. The following shall constitute the factual basis for the Order:

a. Practitioner is a certified hearing instrument dispenser and has engaged in hearing instrument dispensing in the State of Minnesota since November 1, 1994;

b. During December 1994, Practitioner was employed as a hearing instrument dispenser by Precision Hearing Center, located at 544 25th Avenue North, St. Cloud, Minnesota, 56303;

c. In December of 1994, Practitioner conducted a case history with Client A.S. in preparation of performing a hearing test, providing a hearing instrument recommendation, and calculating a hearing instrument purchase quote for her;

d. The results of the case history Practitioner obtained from A.S. indicated that A.S. had been treated by an ENT physician in the past. Practitioner then conducted a visual inspection of A.S.' ears and observed a loose P.E. tube in one of A.S.' auditory canals. At the time of the visual inspection, Practitioner also noted a central perforation in the tympanic membrane;

e. After performing the visual inspection of A.S.' ears, Practitioner inquired of A.S. as to whether she had been to the doctor to have the P.E. tube checked or removed. A.S. indicated to Practitioner that she had not been back to the physician's office since having the P.E. tube inserted;

f. Instead of advising A.S. to have her ear checked by a licensed physician, Practitioner removed the tube himself;

g. In a notice of complaint letter dated September 8, 1995, the Department informed Practitioner that it had received a complaint concerning the P.E. tube removal and requested Practitioner to respond to the allegations within fourteen days;

h. On September 14, 1995, the Department received Practitioner's response to its notice of complaint letter. Practitioner stated that he was familiar with P.E. tubes, and removed A.S.' tube because the dislodged tube was not lying deep within the canal. Practitioner also stated that the tube removal required a significant amount of time to perform and that he had no prior experience with tube removal. Practitioner stated that after removing the tube, he advised A.S. to have the ear examined by a physician and provided A.S. with a MDH consumer brochure;

i. On December 2, 1997, the Department approved Practitioner's November 28 1997 request to include the following personal statement as part of the factual basis for the Order:

"As I had stated in my original response to this complaint in September 1995, I realize that in retrospect, it was not the right thing to do, but I thought I was being helpful. To me, the removal of the P.E. tube at the time did not seem inappropriate since I knew what it was and know that it is quite normal for them to come loose on their own from the eardrum. In addition, removing the P.E. tube was no more difficult than taking deep ear impressions, which is a required skill and just as invasive. Although, at the time, I did not believe that I was in violation of state law, I now realize that interpretation of the law prohibits such actions. However, I do not believe that I acted in a willful or incompetent manner, and my conduct for the last three years since this incident took place has been professional, competent and without incident."

2. Practitioner admits and acknowledges that, for purposes of this Stipulation and Consent Order and any future disciplinary proceedings, proof at hearing that he inappropriately removed a PE tube from a client's ear canal constitutes a violation of Minnesota Statutes § 153A.15, subd. 7 (demonstrating a willful or careless disregard for the health, welfare, or safety of a consumer) and Minnesota Statutes §153A.15 subd. 12 (performing the services of a certified hearing instrument dispenser in an incompetent or negligent manner) and justifies action by the Commissioner to suspend or take other action under Minnesota Statutes §153A.15 against Practitioner's certification;

3. Practitioner expressly waives the formal hearing and all other procedures before the Commissioner of Health to which Practitioner may be entitled under the Minnesota or United States constitutions, statutes, or rules;

4. Upon this Stipulation record, as set forth in paragraph 1 above, and without any further notice of proceedings, the Commissioner hereby **ORDERS**:

a. Practitioner must pay a civil penalty of \$160.97 pursuant to Minnesota Statutes § 153A.15, subd. 2(4) to reimburse the Department for the cost of its investigation;

b. Practitioner's right to engage in hearing instrument dispensing in the State of Minnesota shall be restricted by requiring Practitioner to be supervised, for a period of six months after the effective date of this Order, by a certified hearing instrument dispenser who shall be appointed by the Department. Practitioner, shall, within two weeks of the effective date of this Order, provide the Department with the names, business addresses and phone numbers of four certified hearing instrument dispensers who have agreed to be nominated as Practitioner's supervisor. If, after diligent effort, Practitioner is unable to locate a supervisor acceptable to the Department, the Department will seek to appoint a supervisor. Practitioner's supervisor shall sign a Consent to Supervise form, attached as Exhibit A, and shall comply with the requirements set forth in Exhibit A, including the monthly filing of written reports with the Department, summarizing Practitioner's level of competence in rendering hearing instrument dispensing services and Practitioner's compliance with state and federal laws governing hearing instrument dispensers;

5. *This Stipulation and Consent Order 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 the Practitioner, justifying disciplinary action which occurred before or after the date of this stipulation and which is not directly related to specific acts and circumstances set forth herein;*

6. If the Department receives evidence that Practitioner has made a misrepresentation to the Department or a client, or has engaged in acts or omissions that would constitute a violation of Minn. Stat. Chapter 153A, the Department shall notify Practitioner in writing at the last known address filed with the Department. Practitioner shall have the opportunity to explain the alleged violation or misrepresentation. If Practitioner fails to submit an explanation within 30 days of the Department's notice or if the explanation is unsatisfactory, the Commissioner may suspend Practitioner's certification;

7. In the event the Commissioner in her discretion does not approve this settlement or a lesser remedy than specified herein, this Stipulation and Order 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 Minn. Stat. Chapter 14 and Minn. Stat. §153A.15, Practitioner agrees he will assert no claim that the Commissioner was prejudiced by her review and consideration of this Stipulation or any records relating hereto;

8. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. Practitioner understands that this agreement is subject to the Commissioner's approval. If the Commissioner either approves the Stipulation or makes changes acceptable to the Practitioner, an Order will be issued by the Commissioner. Upon this Stipulation and Consent Order and all other evidence

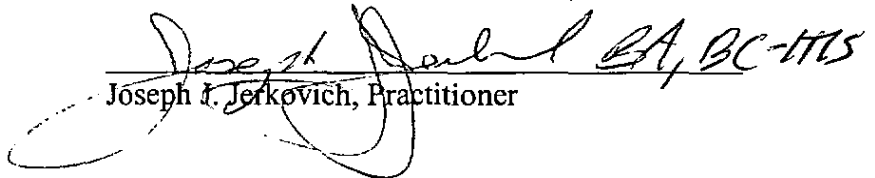
made available to the Commissioner, once the Commissioner has approved it, the Commissioner may issue the Stipulation and Consent Order to Practitioner at any time without further notice;

9. A copy of the Stipulation and Consent Order when issued by the Commissioner, shall be served by first class mail on Practitioner, at Practitioner's last known address. Service via first class mail shall be considered personal service upon Practitioner, at which time this Stipulation and Consent Order shall become effective. Any appropriate federal or state court shall, upon application of the Commissioner, enter its decree enforcing the Order of the Commissioner;

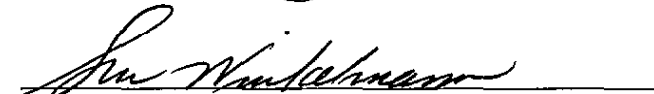
CONSENT:

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

Dated: 12/22, 1997

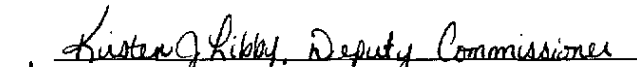

Joseph F. Jerkovich, Practitioner

Dated: 12/29, 1997


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 on this 30 day of December, 1997.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH


JOANNE M. BARRY
Commissioner of Health.