

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

**In the Matter of the  
Hearing Instrument Dispenser Certificate  
of Michelle M. Lee  
Certificate Number: 2275**

**STIPULATION AND  
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between Michelle M. Lee ("Practitioner"), and the Minnesota Department of Health ("Department"), and that without trial or adjudication of any issue or fact or law herein, as follows;

1. During all times herein, Practitioner has been and now is subject to the jurisdiction of the Department from which she has held a certificate to dispense hearing instruments in the State of Minnesota, pursuant to Minnesota Statutes, Chapter 153A.
2. During all times herein, Practitioner has been represented by Kathryn K. Smith, Sherrill Law Offices, PLLC, 4756 Banning Avenue, Suite 212, White Bear Lake, MN 55110-3205, telephone (651) 426-2400.

**FACTS**

The parties agree, solely and exclusively for the purposes of resolving this matter and all previous matters pending before the Department of Health, and not for any other purpose including but not limited to civil litigation and or criminal prosecution, that the following facts are considered as true.

3. On October 25, 1995, Practitioner was certified by the Commissioner of Health to dispense hearing instruments in the State of Minnesota, under certificate number 2275.

Practitioner renewed her certificate annually, by the due date, expect for her 2010 and 2015 renewal applications.

4. On July 1, 2013, the Division Director of the Health Regulation Division in the Minnesota Department of Health (“Director”) issued a Determination suspending Practitioner’s certificate to dispense hearing instruments in the State of Minnesota. The Order was based on Practitioner’s failure to cooperate with the commissioner, the commissioner’s designee or the advisory council in an investigation.
5. On October 14, 2014, and made effective on October 17, 2014, the Director adopted a Stipulation and Consent Order (“2014 Order”). The 2014 Order established the conditions upon which the Department would STAY Practitioner’s suspended certificate and issue Practitioner a conditional certificate to dispense hearing instruments.
6. On March 24, 2015, the Director issued an Order Amending the Stipulation and Consent Order (2015 Order). The 2015 Order STAYED the suspension and set forth certain conditions to allow Practitioner to renew her certificate to dispense hearing instruments.
7. On May 15, 2015, the Department issued Practitioner a conditional certificate to dispense hearing instruments. The conditions required Practitioner to comply with the 2014 Order, all application requirements and requests by Department staff. The Order further required Practitioner comply with the provisions of Minnesota Statutes, Chapter 153A in a timely manner.
8. By letter dated August 7, 2015, the Department notified Practitioner she had to renew her hearing instrument certificate by November 1, 2015. The Department further

notified Practitioner to avoid a late fee, she had to submit her renewal by October 1, 2015. Practitioner did not initially respond.

9. On November 19, 2015, Practitioner submitted her online renewal application and the application fees of \$900. Department staff examined Practitioner's renewal application, the 2014 and 2015 Orders, and Practitioner's credentialing records for the renewal periods commencing in November 2009 and through November 2015. Staff noted multiple violations of the practice act, including but not limited to: failure to renew on time, failure to submit the required continuing education hours or submitting the hours late, dispensing hearing instruments on a lapsed certificate, dispensing hearing instruments on a suspended certificate, and failure to respond to staff requests for information. Practitioner did not respond to the Department's 2015 notice of renewal, which cause her certificate to lapse. Practitioner allowed her certificate to lapse even though she was required by the regulations to renew by November 1, 2015 and she was under the terms of the 2014 and 2015 Orders, which required that she respond to the Department in a timely manner and adhere to the provisions in the dispensing regulations. Further, Practitioner did not submit evidence she completed the six continuing education course hours required by the October 2014 Order.
10. By letter dated December 22, 2015, the Department denied Practitioner's application to renew her certificate to dispense hearing instruments. The Department notified Practitioner she had 30 days upon receipt of its notice to request a contested case hearing.

11. On January 20, 2016, Practitioner's attorney contacted the Department to explain that Practitioner had issues that affected her hearing instrument dispensing business and services. These issues started around the time of her 2009-2010 renewal application and through the 2015 renewal period. Practitioner's attorney asked the Department to reconsider its decision to deny Practitioner's application to renew her certificate to dispense hearing instruments in Minnesota. Practitioner's attorney further appealed the Department's denial contending that while Practitioner violated procedural rules related to her dispensing business and activities, Practitioner did not cause patient harm.

#### **LEGAL AUTHORITY**

12. Pursuant to Minnesota Statutes, section 153A.15, subdivision 2, the Department is authorized to take disciplinary action against hearing instrument dispensers. The types of disciplinary action the Department may impose include, but are not limited to one or more of the following: revocation or suspension of the certificate, imposition of a civil penalty not to exceed \$10,000 for each violation, a civil penalty that deprives the dispenser of any economic benefit gained by the violation and that reimburses the Department for the costs of the investigation and proceedings; or any other action reasonably justified by the individual case. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.
13. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1(19), the Department is authorized to take enforcement action under subdivision 2 against a dispenser of hearing

instruments for violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197, 148.5198; and 153A.13 to 153A.18.

14. Pursuant to Minnesota Statutes, section 153A.175, the penalty fee for holding oneself out as a hearing instrument dispenser without a current certificate after the certificate has expired but before it is renewed is one-half the amount of the certificate renewal fee for any part of the first day, plus one-half the certificate renewal fee for any part of any subsequent days up to 30 days.

#### **ORDER**

IT IS HEREBY ORDERED, upon this Stipulation and all of the files, records and proceedings herein, and without any further notice or hearing, the Division Director hereby ORDERS:

1. Upon the effective date of this Stipulation, the Commissioner's granting of certification to dispense hearing instruments to Practitioner is conditioned as follows:
  - a. Practitioner's hearing instrument dispensing certificate shall be issued with conditions for a period of not less than two years.
  - b. Within fifteen days of the effective of this Order, Practitioner shall contact the Health Professionals Services Program (hereinafter "HPSP"). Practitioner shall enroll in HPSP, sign a Participation Agreement and Monitoring Plan, and cooperate with all requirements and instructions of HPSP.
  - c. Within six months of the effective date of this Order, Practitioner shall complete the continuing education requirements as described in paragraph 1.g of the 2014 Order. Practitioner must send the description of the course for pre-approval, along with the certificate of completion, to: Investigation and Enforcement Unit, Health

Occupations Program, Department of Health, PO Box 64882, St. Paul, MN 55164-0882 or email to Ms. Catherine Lloyd at [Catherine.lloyd@state.mn.us](mailto:Catherine.lloyd@state.mn.us).

- d. The continuing education requirements in paragraph 1.c of this Order are in addition to the ten course hours of continuing education Practitioner will need to submit with her 2016 application to renew her certificate. On or about August 1, 2016, the Department will send Practitioner information on how to renew her certificate to dispense hearing instruments. The information will be sent to the Practitioner, as she has designated for receipt of correspondence from the Department, at: 6528 West Lake Street, Minneapolis, MN 55426.
- e. Practitioner is required to notify the Department within 30 days and in writing of any change in her name, business, telephone number, email address or physical address. Practitioner must notify Department staff of these changes at by mailing a notice to: Hearing Instrument Dispenser Certification Program, Health Occupations Program, Minnesota Department of Health, PO Box 64882, Saint Paul, MN 55164-0882 or by email at [Health.HID@state.mn.us](mailto:Health.HID@state.mn.us).
- f. Practitioner must be indirectly supervised by a supervisor approved by the Department for twelve months. Practitioner shall meet monthly with the pre-approved supervisor.
  - i. Practitioner must maintain a log of consumer transactions related to the purchase of new hearing instrument for review with Practitioner's supervisor. Review must include review of Practitioner's recommendations and dispensing records to assure compliance with Minnesota Statutes,

period of conditional certification and successful completion of the HPSP program.

2. Practitioner is responsible for all of her costs incurred as a result of her compliance with this Stipulation and Order.
3. Once all conditions as set forth in paragraph one (1) of this Stipulation have been met, Practitioner may petition the Commissioner for an unconditional certificate to dispense hearing instruments.
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 administrated 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. A copy of the Stipulation, when issued by the Division Director, shall be served by first class mail at Practitioner's attorney's office at: Kathryn K. Smith, Sherrill Law Offices, PLLC, 4756 Banning Avenue, Suite 212, White Bear Lake, MN 55110-3205. 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 Division Director, enter an order of enforcement of any or all of the terms of this Stipulation.

section 148.5195, subdivision 3, clause (20); 148.5197; 148.5198; and sections 153A.13 to 153A.19.

- ii. Practitioner's supervisor shall submit monthly reports for the first three months to report on Practitioner's dispensing transactions and Practitioner's compliance with the continuing education requirements of the 2014 Order. Thereafter, Practitioner's supervisor can submit one report every three months for the final three quarters of the twelve-month period of supervision. The monthly reports must be sent to the attention of:  
  
Investigation and Enforcement Unit, Health Occupations Program, Minnesota Department of Health, PO Box 64882, St. Paul, MN 55164-0882.
  - iii. If Practitioner obtains a new supervisor during the twelve-month supervision period, the new supervisor must be approved by the Department and must agree to resume the schedule of reports.
  - iv. Practitioner must sign whatever releases are necessary for the supervisor to report Practitioner's dispensing activities directly to the Department.
- g. Within twelve months of the effective date of this Stipulation and Order, Practitioner shall pay a civil penalty of \$10,500 and \$1,600 to reimburse the Department for the costs of the investigation and proceeding to date, including the period of illegal practice as contained in the 2014 Order.
- i. The Department agrees to forgive the civil penalty and costs of investigation described in this paragraph upon Practitioner's completion of the two-year



**CONSENT**

Practitioner hereby acknowledges that she has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Department or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

DATED: 2/3, 2016 Michelle Lee  
Michelle M. Lee

DATED: 2/4, 2016 Anne Kukowski  
Anne Kukowski, Assistant Manager  
Health Occupations Program

Upon consideration of this stipulation and all the files, records, and proceedings herein,  
IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the  
Department this 8<sup>th</sup> day of February, 2016.

STATE OF MINNESOTA  
DEPARTMENT OF HEALTH

Darcy Miner  
Darcy Miner, Division Director  
Health Regulation Division

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

**In the Matter of the  
Hearing Instrument Dispenser Certificate  
of Michelle M. Lee  
Certificate Number: 2275**

**DIRECTOR ORDER AMENDING  
STIPULATION AND CONSENT  
ORDER**

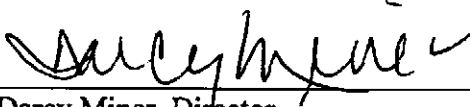
1. During all times herein, Michelle M. Lee ("Practitioner"), has been and now is subject to the jurisdiction of the Minnesota Department of Health ("Department") from which she has held a certificate to dispense hearing instruments in the State of Minnesota, pursuant to Minnesota Statutes, Chapter 153A.
2. On July 1, 2013, the Director of the Health Regulation Division in the Minnesota Department of Health ("Director") issued a Determination (2013 Determination) suspending Practitioner's certificate to dispense hearing instruments in the State of Minnesota.
3. On October 14, 2014, and made effective on October 17, 2014, the Director adopted a Stipulation and Consent Order ("2014 Order").
4. Paragraph 1(f) of the 2014 Order provides that the Practitioner may submit an application to renew her certificate to dispense hearing instruments once all conditions set forth in paragraph 1(a) through 1(e) are met. Paragraph 1(f) further states Practitioner must adhere to the renewal requirements of Minnesota Statutes, section 153A.14, and submit requests for information in a timely manner as requested by the Department. Upon review of Practitioner's completed application, the Department may issue Practitioner a conditional certificate to dispense hearing instruments.

5. Practitioner met the requirements of paragraph 1(a) and 1(e) of the 2014 Order within the established deadline. Practitioner did not meet the established deadlines in paragraphs 1(b), 1(c), and 1(d) of the 2014 Order. However, Practitioner has met the material requirements of said paragraphs.
6. The Director, having duly considered Practitioner's request to renew her certificate, issues the following:

**ORDER**

7. IT IS HEREBY ORDERED that the suspension of Practitioner's certificate to dispense hearing instruments in the State of Minnesota, provided in the 2013 Determination, is STAYED, and Practitioner may submit an application to renew her certificate to dispense hearing instruments. Practitioner must adhere to all application requirements and requests by Department staff and must comply with all provisions of Minnesota Statutes, Chapter 153A in a timely manner and as requested by Department staff.
8. IT IS FURTHER ORDERED that all terms and conditions of the 2014 Order remain in effect.
9. IT IS FURTHER ORDERED that this Director Order amending the Stipulation and Consent Order is hereby adopted and implemented this 24<sup>th</sup> day of MARCH, 2015.

STATE OF MINNESOTA  
DEPARTMENT OF HEALTH

  
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Darcy Miner, Director  
Health Regulation Division

HEALTH OCCUPATIONS PROGRAM  
MINNESOTA DEPARTMENT OF HEALTH

**In the Matter of Michelle M. Lee**  
**Hearing Instrument Dispenser**

**STIPULATION AND**  
**CONSENT ORDER**

**IT IS HEREBY STIPULATED AND AGREED** by Michelle M. Lee (hereinafter "Practitioner"), and the Minnesota Department of Health (hereinafter "MDH"), and that without trial or adjudication of any issue or fact or law 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 MDH. This Stipulation is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (hereinafter "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.

**I. LEGAL AUTHORITY**

1. Pursuant to Minnesota Statutes, section 148.5197, subdivision 1, oral statements made by a hearing instrument dispenser regarding the provisions of warranties, refunds, and service on the hearing aids dispensed must be written on, and become part of, the contract of sale, specify the items or items covered, and indicate the person or business entity obligated to provide the warranty, refund or service; and section 148.5197, subdivision 4, authorizes the commissioner to enforce the terms of hearing aid contracts against the principal, employer, supervisor, or dispenser who conducted the transaction and impose any remedy provided for in the chapter.

2. Pursuant to Minnesota Statutes, section 148.5198, subdivision 1(b), a hearing instrument dispenser must provide the buyer of a hearing instrument with a 45-calendar-day written money-back guarantee. This section entitles the buyer of a hearing instrument, upon written cancellation and return of the hearing instrument, to receive a refund of payment within 30 days of the return of the hearing instrument; and sections 148.5198, subdivision 1(b) and 1(c) authorizes the dispenser to retain no more than \$250.00 as a cancellation fee.

3. Pursuant to Minnesota Statutes, section 148.5198, subdivision 3, any guarantee of hearing aids must be in writing and delivered to the owner of the hearing aid, stating the repairing dispenser's or company's name, address, telephone number, length of guarantee, model, and serial number of the hearing aid and all other terms and conditions of the guarantee.

4. Pursuant to Minnesota Statutes, section 153A.14, subdivision 9, a hearing instrument dispenser shall comply with the requirements of sections 148.5195, subdivision 3, clause (20); 148.5197 and 148.5198.

5. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1(11) and (13), MDH may take enforcement action against a practitioner for failing to provide information in a timely manner in response to a request by the commissioner, commissioner's designee, or the advisory council; and for failing to cooperate in an investigation.

6. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1(19), MDH may take enforcement action against a practitioner for violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197; 148.5198; and 153A.13 to 153A.18.

7. Pursuant to Minnesota Statutes, section 153A.15, subdivision 2, MDH is authorized to take disciplinary action against hearing instrument dispensers. The types of disciplinary action MDH may impose include, but are not limited to one or more of the following: revocation or

suspension of the certificate, imposition of a civil penalty not to exceed \$10,000 for each violation, a civil penalty that deprives the dispenser of any economic advantage gained by the violation and that reimburses the MDH for costs of the investigation and proceedings; or any other action reasonably justified by the individual case. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.

Practitioner and MDH hereby agree as follows:

## II. FACTS

This agreement is based on the following facts:

1. Practitioner was approved and certified as a hearing instrument dispenser, under certificate number 2275, effective October 25, 1995. Since Practitioner's 2001 renewal application and through September 27, 2012 when Practitioner submitted her renewal for the period from November 1, 2012 to October 31, 2013, Practitioner provide the address "4037 West Broadway, Robbinsdale, MN 55422" as her designated address for receiving correspondence from MDH regarding her credential.

2. Regarding MDH File No. HDC12015:

a. By letter and Determination dated May 16, 2013, MDH sent Practitioner a notice her certificate to dispense hearing instruments was suspended for failure to cooperate with a MDH investigation regarding WH and MDH File NO.

HDC12015. Practitioner was given 30 days to challenge the decision.

Practitioner did not respond.

b. Practitioner's right to dispense hearing instruments was suspended effective July 1, 2014. According to the terms of the Determination, in order to reinstate her certificate to dispense hearing instruments, Practitioner was required to respond to

MDH's investigation, make a written request to MDH to reinstate her certificate, and pay a civil penalty of \$265 representing the cost of the investigation related to File No. HDC12015.

- c. Practitioner did not attempt to reinstate her certificate or resolve the issues related to the Determination.
- d. By letter dated July 3, 2013, MDH sent Practitioner a letter and copy of the July 1, 2013 Determination. In its letter to Practitioner, MDH notified Practitioner it is unlawful and a gross misdemeanor for a person not holding a valid certificate to dispense hearing instruments. MDH asked Practitioner to identify the name of each hearing instrument dispenser, in good standing, that will provide hearing instrument dispensing services to clients of "the Hearing Store" located in Robbinsdale, St. Louis Park, Saint Paul, Maplewood and any other location Practitioner was engaged in dispensing hearing instruments. MDH asked Practitioner to respond on or before August 5, 2013. Practitioner did not respond.

3. Regarding MDH File No. HDC10010:

- a. On April 12, 2010, MDH received information related to DS, referenced in MDH File No. HDC10010. By letter dated April 27, 2010, MDH asked Practitioner to provide information related to DS's purchase of hearing instruments. By letter dated May 24, 2010, Practitioner responded to MDH's request for information. The following facts represent the issues in this matter.
  - i. On February 9, 2010, Practitioner recommended and sold Behind the Ear hearing instruments to DS in the amount of \$2,800 for each instrument, plus \$119.98 for ear molds and \$114.40 for Minnesota Care Tax, for a total of

\$5,834.38. DS paid for the instruments by credit. According to Minnesota requirements, the written contract gave DS a 45-calendar-day right to cancel the purchase for a full refund, less a \$250.00 cancellation fee.

- ii. On February 12, 2010, Practitioner delivered and fit the hearing instruments on DS. According to the February 12, 2010 hearing instrument delivery checklist signed by DS, the hearing instruments included a two-year factor warranty for loss or damage. Under the title "Factory Warranty" is a statement, "Less deductible. One-time replacement per ear." There is no line item on the delivery checklist or purchase agreement memorializing a fee for replacing an ear mold or a fee for making a loss or damage claim.
- iii. On February 20, 2010, DS submitted a claim to Practitioner under the loss and damage warranty to replace the right hearing instrument due to loss.
- iv. On March 8, 2010, DS sent a letter and the left hearing instrument to Practitioner. DS requested a refund for the left hearing instrument due to Practitioner's lack of follow-up calls, failure to return phone calls or schedule service checks.
- v. By letter March 12, 2010, Practitioner sent DS a credit memo indicating the total amount DS would receive as a refund on the returned left hearing instruments. Practitioner also instructed DS to return to her office to fit the right hearing instrument which was replaced under the loss and damage warranty. In her letter, Practitioner instructed DS to make a follow-up appointment four weeks after the fitting, and stated she deducted the cost of



his replacement mold and a deductible for the loss and damage claim from his refund.

- vi. On May 21, 2010, DS received two checks from Practitioner and an invoice. One check in the amount of \$2,228.81 and a separate check in the amount of \$56.00, plus two corresponding credit invoices itemizing the amount

Practitioner returned to DS, as follows:

1. Digital hearing instrument	- \$2800.00
2. Sales Tax (2%)	- 56.00
3. Deductible for Loss & Damage	- 250.00
4. Cancellation Fee (left)	- 250.00
5. Ear molds for BTE	- <u>59.99</u>
6. Balance Paid to DS	\$2,284.81

- b. MDH Staff reviewed the written contract and delivery invoices in MDH File No. HDC10010 related to the contract signed by Practitioner and DS. Practitioner did not memorialize the provisions of warranties, including a deductible or ear mold replacement fees, as required by Minnesota Statutes, section 148.5197 and 148.5198. In addition, DS received the refund for the left hearing instruments seventy 70 days after Practitioner received his request for a refund and the returned hearing instrument in violation of Minnesota Statutes, section 148.5198, subdivision 1. Further, Practitioner withheld an additional \$309.99 over the \$250 maximum cancellation from DS's total refund amount in violation of the terms of the written contract and Minnesota Statutes, section 148.5198, subdivision 1.

4. Regarding MDH File No. HDC13005:

a. By letters dated February 22, 2013 and April 24, 2013, MDH asked Practitioner to provide information related to a consumer's purchase of hearing instruments referenced in MDH File No. HDC 13005 (RMT). In its letter, MDH advised Practitioner to submit a response on or before March 22, 2013 and May 24, 2013, respectively, to avoid disciplinary action, including suspension or revocation of the right to dispense hearing instruments and a civil penalty. Practitioner did not respond.

5. By letter dated August 25, 2014 and Determination, Practitioner's right to dispense was revoked. The Determination assessed Practitioner a civil penalty of \$570 to reimburse MDH for the cost of the investigation and proceedings to date and required Practitioner to reimburse DS \$309.00. MDH gave Practitioner 30 days to challenge MDH's decision.

6. On September 17, 2014, Practitioner's attorney, Kathryn Smith, contacted MDH and stated Practitioner was interested in resolving the issues related to the August 25, 2014 Determination revoking her certificate to dispense hearing instruments and stated she did not receive notice of the issues leading to the revocation. Practitioner agreed to respond to MDH's previous requests for information, including the issues leading to the July 1, 2013 suspension of her right to dispense hearing instruments. Practitioner further expressed an interest in reinstating and renewing her certificate to dispense hearing instruments.

### III. ORDER

Under this Stipulation, and without any further notice of proceedings, the Division Director hereby ORDERS:

1. Upon the effective date of the Stipulation, the Commissioner's granting of certification to dispense hearing instruments is conditioned as follows:

- a. Within 30 days of the effective date of this Stipulation, Practitioner must respond to MDH's request for information concerning MDH File No. HDC12015 (WH) and HDC 13015 (RMT).
- b. Within 30 days of the effective date of this Stipulation, Practitioner must reimburse DS by sending a check in the amount of \$309.99 representing the \$250.00 deductible plus \$59.99 for the ear mold Practitioner withheld from DS's refund. Practitioner did not include these fees on the written contract signed by DS to memorialize the purchase agreement in violation of Minnesota regulations. Practitioner must send this to DS at the last known address and send a copy of the check to MDH to verify DS has received the reimbursement.
- c. Within 30 days of the effective of this Stipulation and Order, Practitioner must respond to MDH's July 3, 2013 request for information related to the names of hearing instrument dispenser employed or under contract by her business entity, "The Hearing Store" since July 1, 2013. Practitioner must provide information related to the number of clients receiving hearing instrument dispensing services since July 1, 2013 at her businesses located in Robbinsdale, St. Louis Park, Saint Paul, Maplewood or other locations.
- d. Within 30 days of the effective date of this Stipulation, Practitioner shall pay a civil penalty of \$1,575 to reimburse MDH for the costs of the investigations and proceedings to date. Practitioner must make the payment by check made payable to "State of Minnesota, Treasurer" and mail the check to the attention of Health

Occupations Program, Investigation and Enforcement Unit, P.O. Box 64882,  
Saint Paul, MN 55164-0882.

- e. Within 60 days of the effective date of this Stipulation, Practitioner must submit a written business plan to MDH describing the efforts she will make to comply with the hearing instrument dispensing regulations, at all business locations, including:
- i. Itemizing all terms, conditions, and costs on the written purchase agreements, contracts and invoices
  - ii. At the time of delivery, providing consumers of hearing instruments with a written copy of warranties, guarantee, service and insurance plans related to their purchase;
  - iii. Promptly and within the legal requirements of the hearing instrument dispensing regulations, respond to consumer requests for a refund and return of their hearing instruments within the 45-calendar-day trial period and provide refunds within the 30-day period.
  - iv. Respond to written requests by MDH staff within the requested time period.
  - v. The written business plan applies only to Practitioner as the owner of her current business venture. Should Practitioner sell all of her interest, or a controlling interest of her current business venture, the business ventured is not controlled by the written business plan as set forth in this section (e). Furthermore, should Practitioner cease ownership of her current business venture, and enter into an employment arrangement with another dispenser

or audiologist, Practitioner has no further obligations under the written business plan referenced in this section (e).

- f. Once all conditions set forth in paragraph 1.a through 1.e are met, Practitioner may submit an application to renew her certificate to dispense hearing instruments. Practitioner must adhere to the renewal requirements of Minnesota Statutes, Section 153A.14, and submit to all requests for information by MDH staff in a timely manner and as requested by MDH. Upon receipt and review of Practitioner's complete renewal application, MDH will issue a conditional certificate to dispense hearing instruments.
- g. Within twelve months of the effective date of this Stipulation, Practitioner shall successfully complete six continuing education (CE) course hours, pre-approved by MDH, as follows:
  - i. Two CE course hours related to state and federal hearing instrument dispensing regulations; two CE course hours related to patient record keeping and documentation; and two CE course hours related to ethics.
  - ii. The CE course hours required by this section shall be in addition to the continuing education requirements of Minnesota Statutes, sections 153A.14, subdivision 2g and 153A.14, subdivision 2i.
  - iii. The CE course hours must be approved by the International Hearing Society, the American Speech-Language-Hearing Association, or the American Academy of Audiology.
  - iv. Practitioner shall submit evidence of completion of the CE course hours identified in paragraphs (i) above, on forms provided by MDH.

2. Once all conditions as set forth in paragraph one (1) of this Stipulation have been met, but not before twelve months of the effective date of this Stipulation, Practitioner may petition the Commissioner for an unconditional certificate to dispense hearing instruments.

3. The civil penalty described in paragraphs 1(d) above may be referred to the Minnesota Collection Enterprise (MC), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner misses the payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or proceedings.

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

6. The Parties hereto reserve the right to amend this Stipulation and Order to include any additional issues that may arise as a result of further investigation related to the facts of this

Stipulation, and in the information provided by Practitioner. Any amendment shall be in writing, and signed by all the Parties to this Stipulation and Order.

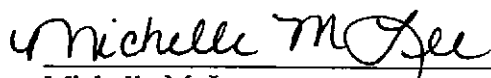
7. This Stipulation contains the entire agreement between MDH and the Practitioner, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. Practitioner understands that this agreement is subject to the Division Director's approval. If the Division Director either 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.

8. A copy of the Stipulation, when issued by the Division Director, shall be served by first class mail at Practitioner's attorney's office at Kathryn K. Smith, Sherrill Law Offices, PLLC, 4756 Banning Avenue, Suite 212, White Bear Lake, MN 55110-3205. 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 Division Director, enter an order of enforcement of any or all of the terms of this Stipulation.

#### IV. CONSENT

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

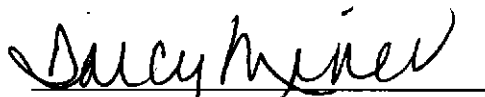
Dated: Oct 8<sup>th</sup>, 2014

  
Michelle M. Lee

Dated: 10-14/2014, 2014

  
Gilbert Acevedo, Director  
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 THE Stipulation are adopted and implemented by the Division Director on this 14<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Darcy Miner, Director  
Compliance Monitoring Division





Effective July 1, 2013

*Protecting, maintaining and improving the health of all Minnesotans*

May 16, 2013

Michelle M. Lee

RE: MDH File Number: HDC12015

Dear Ms. Lee:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined that you did not cooperate with a MDH investigation, in violation of Minnesota Statutes, section 153A.15, subdivision 1(13). Therefore, MDH is suspending your hearing instrument dispenser certification. To reinstatement your certificate, you must cooperate with the investigation, submit a civil penalty of \$265 representing the cost of the investigation to date and make a written request for reinstatement of your certificate to dispense hearing instruments. This action is authorized under Minnesota Statutes, sections 153A.15, subdivision 2, clauses (3), (4) and (9).

This decision will be made final and effective 30 days from the date it is received by you. During that 30-day period, you have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send a written hearing request, within 30 days of your receipt of this letter, to:

Anne Kukowski, MS, JD  
Assistant Director, Health Occupations Program  
Minnesota Department of Health  
PO Box 64882  
Saint Paul, MN 55164-0882

You may also deliver your request to 85 East Seventh Place, Suite 220, Saint Paul, MN; or fax it to Ms. Kukowski at (651)201-3839. If you have any questions about this matter, please contact Catherine Dittberner Lloyd at (651)201-3706.

Sincerely,

A handwritten signature in cursive script that reads "Darcy Miner".

Darcy Miner, Director  
Compliance Monitoring Division

Enclosure

cc: Anne Kukowski, Assistant Director, Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM  
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of  
Michelle M. Lee  
Hearing Instrument Dispenser**

**AUTHORITY**

1. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1(13), a hearing instrument dispenser is prohibited from failing to cooperate with the commissioner, the commissioner's designee, or the advisory council in any investigation.
2. Minnesota Statutes, Section 153A.15, subdivision 2 authorizes the Department to take disciplinary action against hearing instrument dispensers. The types of disciplinary action the Department may impose include, but are not limited to one or more of the following: revoke or suspend the certificate; impose a civil penalty that reimburses the Department for costs of the investigation and proceedings; censure or reprimand the dispenser; or any other action reasonably justified by the individual case. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.

**FINDINGS OF FACT**

1. Michelle M. Lee (hereinafter "Practitioner") has been a certified hearing instrument dispenser since October 1995.
2. Practitioner owns and operates "The Hearing Store" located in Robbinsdale, Minnesota, with offices in St. Louis Park and Saint Paul, Minnesota.
3. By letters dated April 10, 2012, September 20, 2012, and February 21, 2013, the Minnesota Department of Health (MDH) asked Practitioner to provide information related to a consumer's purchase of hearing instruments referenced in MDH File No. HDC12015.
4. In its February 21, 2013 letter, MDH advised Practitioner to submit a response on or before March 21, 2013 to avoid disciplinary action against her certificate for failure to cooperate in an investigation. Practitioner was further advised the disciplinary action MDH may take include, but is not limited to: revocation of the certificate, suspension of her certificate, imposition of a civil penalty not to exceed \$10,000 for each violation; and a civil penalty that deprives the Practitioner of the economic advantage gained by the violation and that reimburses MDH for the costs of the investigation.
5. Practitioner has not responded.

## CONCLUSION

Practitioner has failed cooperate in MDH's investigation in violation of Minnesota Statutes, section 153A.15, subdivision 1, clause (13).

## DETERMINATION

1. Practitioner right to dispense hearing instruments is hereby suspended.
2. To reinstate her right to dispense hearing instruments in the State of Minnesota, Practitioner must:
  - a. Satisfactorily respond to MDH's investigation.
  - b. Request in writing that her certificate to dispense hearing instruments be reinstated.
  - c. Pay a civil penalty of \$265.00 representing the cost of the investigation to date. The payment of \$265.00 shall be in the form of a money order or check made payable to: "Treasure, State of Minnesota" and mailed to: Health Occupations Program, Investigations and Enforcement Unit, Minnesota Department of Health, P.O. Box 64882, Saint Paul, MN 55164-0882.
3. This Determination does not preclude MDH from taking other disciplinary actions against the Practitioner for other violations of Minnesota Statutes, Chapter 153A.