

Eff 3-5-1992

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

91354

In the Matter of Mickey Parson,
Hearing Instrument Seller

STIPULATION
AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Mickey Parson, (hereinafter "Permittee"), 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, Permittee has been and is subject to the jurisdiction of the Commissioner of Health from whom he holds a permit to sell hearing instruments in the State of Minnesota;
2. Permittee notified Department staff that he was represented by legal counsel when his attorney, Mr. Keller, responded to a July 1, 1991 Department letter to Permittee requesting a written response by August 1, 1991. On January 14, 1992, Mr. Keller informed the Department's attorney that he was no longer representing Permittee in this matter. Permittee chose not to be represented by legal counsel;
3. On January 16, 1992 Permittee attended a conference at the Minnesota Department of Health, 717 S.E. Delaware Street, Minneapolis, Minnesota 55440 in Room 211. Present at this conference were Mr. Tom Hiendlmayr, Director of Health Occupations Program, Ms. Susan Winkelmann, Legal Analyst in Health Occupations Program, Mr. Richard Wexler, Assistant Attorney General and Permittee. Permittee chose not to be represented by legal counsel at this conference;
4. For purposes of this Stipulation and Consent Order only, both parties agree that the following shall constitute the factual basis for the order:
 - a. Permittee has a valid hearing instrument seller permit issued by the Commissioner of Health pursuant to Minn. Stat. Ch. 153A. He was the owner and operator, acting as President of and hearing instrument seller for MN Hearing Health, Inc., 8609 Lyndale Avenue South, Suite 101-A, Bloomington, Minnesota 55420 at the time the facts below occurred.
 - b. In October of 1990, Permittee published a direct mail advertisement in Little Falls, Minnesota which stated the following: "THE CITY OF LITTLE FALLS WILL BE HAVING A CERTIFIED HEARING CARE SPECIALIST TO PERFORM ELECTRONIC HEARING CHECK-UPS, FREE OF CHARGE, TO ALL SENIOR CITIZENS. IF YOU ARE HAVING TROUBLE HEARING OR UNDERSTANDING IT IS MEDICALLY RECOMMENDED THAT ANYONE OVER THE AGE OF 60 HAVE A COMPLETE HEARING CHECK-UP ANNUALLY. SINCE A COMPLETE HEARING CHECK-UP TAKES ONLY 8 TO 12 MINUTES WE HOPE TO SEE EVERYONE THERE. THE HEARING SPECIALIST IS PROVIDED BY MINNESOTA HEARING HEALTH CARE." Permittee admitted that he does not know of any medical literature that concludes that anyone over the age of 60 should have a complete hearing check-

up. Permittee admitted that he is not certified by the National Hearing Aid Society nor any other organization. Permittee did not intend to mislead readers by implying that he was sponsored or endorsed by the City of Little Falls;

c. On October 20, 1990 F.B. signed a purchase agreement to purchase two hearing instruments from Permittee for a total cost of \$1498. Permittee delivered the hearing instruments to F.B. on October 29, 1990. On November 20, 1990, F.B. mailed Permittee a certified letter cancelling the hearing aid sale and requesting a refund. Permittee refunded F.B.'s money on March 21, 1991, more than 30 days after the written request for cancellation was deposited in the mail;

1) The United States Post Office attempted delivery of the certified letter from F.B. at Permittee's place of business on November 21, 1990 and on November 26, 1990. The Post Office returned the certified letter to F.B. on December 6, 1990 because Permittee did not claim the letter;

2) In a letter dated January 24, 1991 to Permittee, Health Department staff notified Permittee that the Health Systems Development Division had received a complaint about his services, detailed the facts of the complaint, and requested a written response by February 7, 1991. Permittee did not respond to the Department's letter. In a letter dated February 8, 1991 Department staff wrote again to Permittee and requested a written response to the January 24, 1991 letter to Permittee by February 22, 1991. Permittee provided his written response on February 11, 1991 and in the letter stated that since he did not know of the existence of the cancellation letter, Permittee did not owe F.B. a refund. Contrary to the provisions of Minn. Stat. §145.43, subd. 1a(a), Permittee refused to refund F.B.'s money because Permittee failed to collect his mail from the post office. On February 14, 1991, Department staff talked to Permittee over the telephone and Permittee then agreed to refund F.B.'s money. On the same day, Department staff mailed Permittee a confirmation letter regarding Permittee's agreement to refund F.B.'s money. On March 7, 1991, F.B. contacted Department staff to say that F.B. had not received his refund from Permittee.

d. On January 11, 1991, E.P. signed a purchase agreement with Permittee to purchase two hearing instruments for a total cost of \$1450. The purchase contract stated that should E.P. cancel the sales transaction within 30 days of the date of delivery that E.P. would receive a full refund. Permittee delivered the instruments to E.P. on January 28, 1991. On February 6, 1991, E.P. returned the hearing instruments to Permittee certified mail with a request for a refund. E.P. did not receive his refund from Permittee within the 30 days required by state law. Minn. Stat. §145.45, subd. 1a(a). Permittee mailed a copy of a check in the amount of \$1305 to E.P. on April 3, 1991. Permittee owes E.P. a balance of \$145 because the contract stated that E.P. would receive a full refund;

e. On October 7, 1991, R.R. signed a purchase agreement with Permittee to purchase two hearing instruments for a total cost of \$1598. R.R. did not pay any part of the purchase price and cancelled the transaction in writing on October 8, 1991. The purchase contract did not contain Permittee's hearing

instrument seller permit number as required by Minn. Rule, Part 4692.0030, subp. 3. The purchase contract did not contain the correct language relating to the 30-day money-back guarantee period and required by state law. Minn. Stat. §145.43, subd. 1a(b). The purchase contract did not contain the amount of refund that R.R. would receive should she decide to cancel the sale as required by Minn. Stat. §145.43, subd. 1a(b). Permittee showed R.R. a business card that identified Permittee as an "Audioprosthologist". Permittee was not a member nor had he ever been a member of the American Conference of Audioprosthology. Health Department staff notified Permittee that the Health Systems Development Division had received a complaint about his services and purchase contract, detailed the facts of the complaint, and requested a written response by November 4, 1991. The United States Post Office returned the November 13, 1991 letter to the Department on January 10, 1992 because MN Hearing Health Care had moved and left no forwarding address. Permittee did not inform Department staff that he changed his address and telephone number, nor did he inform Department staff of his new address or telephone number as required by Minn. Rule, Part 4692.0025, subp. 2;

f. On March 26, 1991, E.F. signed a purchase contract with Permittee to purchase two hearing instruments for a total price of \$1198. The purchase contract stated that should E.F. cancel the sales transaction for one hearing instrument within 30 days of the date of delivery that E.F. would receive a full refund for that one instrument. The hearing aids were delivered in April of 1991 and E.F. requested a cancellation of the sale for one of the hearing instruments within 30 days after delivery of the aid pursuant to Minn. Stat. §145.43, subd. 1a(a). On September 30, 1991, in response to a letter from the Better Business Bureau, Permittee promised to refund E.F. by October 25, 1991. To date, Permittee has not refunded the amount of \$599 to E.F.;

g. On June 20, 1991 G.W. signed a purchase agreement to purchase two hearing instruments for a total cost of \$1198. G.W. paid \$599 on June 20, 1991. On June 21, 1991 G.W. contacted Permittee and cancelled the contract for the second hearing instrument. On July 11, 1991 Permittee delivered the one hearing instrument. On July 22, 1991 G.W. cancelled the sales transaction for the one hearing instrument pursuant to Minn. Stat. §145.43, subd. 1a(a) and Permittee picked up the aid on the same day. Permittee told G.W. that she would receive her refund within two weeks. To date, Permittee had not refunded the amount of \$599 to G.W.;

h. On May 17, 1991 M.W. signed a purchase agreement in M.W.'s home to purchase two hearing instruments from Permittee for a total price of \$1498. M.W. paid Permittee \$749 on May 17, 1991. Permittee delivered M.W.'s aids three weeks later in June of 1991. On the day of delivery, Permittee took one of M.W.'s aids with him when he left because it was not functioning satisfactorily. Within one week Permittee returned to M.W.'s home and brought a replacement aid for M.W. The replacement aid did not function well and M.W. requested that the sale transaction be cancelled pursuant to Minn. Stat. §145.43, subd. 1a(a). Permittee took both hearing instruments from M.W. and Permittee promised that M.W. would receive a refund within 10 days. In response to a Better Business Bureau inquiry, Permittee promised to refund M.W.'s money by November 15, 1991. To date, Permittee has not refunded the amount of \$749 to M.W.;

i. On December 12, 1990 R.W. signed a purchase agreement with Permittee to purchase two hearing instruments for a total price of \$1398. On December 12, 1990, R.W. paid Permittee \$699. Permittee delivered the two hearing instruments to R.W. on December 21, 1990. On the date of delivery, R.W. paid the balance of \$699 to Permittee. There was a service warranty for the aids that expired January 2, 1992. In mid-September 1991, R.W. attempted to call Permittee and he was unable to complete the call because Permittee's telephone line was disconnected with no forwarding information. On December 31, 1991, Department staff confirmed the information that Permittee's telephone (612-884-2226) had been disconnected with no forwarding information. On January 6, 1992 Department staff went to the business address for Permittee (8609 Lyndale Avenue South, Suite 101A, Bloomington, Minnesota) and found that neither MN Hearing Health Care, Inc. nor Permittee was listed in the directory for the office building. Suite 101A was not occupied by Permittee and was occupied instead by Suburban Secretarial Services. There was no information either on the directory nor on the door of the Suite that provided a forwarding address for Permittee. Contrary to Minn. Rule, Part 4692.0025, subp. 2, Permittee did not notify the Commissioner of a change in his business phone number and address. In the conference held on January 16, 1992 at the Department, Permittee explained that Suburban Secretarial Services was his answering service and that he never had office space at that address;

5. For purposes of this Stipulation, Permittee expressly waives all procedures and proceedings before the Commissioner of Health to which Permittee 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;

6. 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;

7. 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, Permittee 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 Permittee, the Commissioner agrees, in the event she does not approve this stipulation, to grant Permittee 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;

8. Permittee admits and acknowledges that for the purpose of this Stipulation and Consent Order only, the facts and conduct specified in paragraph 4 above constitute violations of Minn. Stat. §§153A.15, subd. 1(4) (prohibiting false or misleading advertising), 153A.15, subd. 1(6) (prohibiting conduct likely to deceive, defraud or harm the public), 145.43, subd. 1a(a) (requiring sellers to refund money within 30 days of receiving a cancellation request), 145.43, subd. 1a(b) (requiring that certain language relating to the 30-day money-back guarantee period be printed on all purchase agreements), Minn. Rules Part 4692.0030, subp. 3 (requiring that the permit number be placed on all purchase agreements), Minn. Rules Part 4692.0025, subp. 2 requiring hearing aid sellers to notify the Commissioner within 30 days of a change in address or business phone number, and Minn. Rules Part 4692.0030, subp. 5.A.(4) (requiring hearing instrument sellers to make good faith efforts to comply with the Commissioner's internal operating procedures for the hearing instrument seller complaint system) and are grounds for disciplinary action by the Commissioner. Permittee 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;

9. This Stipulation shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Permittee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Permittee 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;

10. Upon this Stipulation and Consent Order and all of the facts, records, and proceedings herein, and without further notice or hearings herein, Permittee does hereby consent that the Commissioner may make and enter an Order suspending Permittee's permit to sell hearing instruments in the State of Minnesota for a period of at least six months. After his permit has been suspended for six months, Permittee may petition the Commissioner to have his permit reinstated pursuant to Minn. Rule, Part 4692.0030, subp. 5.D. and E. Permittee's permit shall remain suspended, 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 Permittee to be entitled to reinstatement of his permit, Permittee must pursuant to Minn. Rule Part 4692.0030, subp. 5.E., 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. By September 1, 1992 Permittee must refund to E.P. the amount of \$145;
- b. By September 1, 1992 Permittee must refund to E.F. the amount of \$599;
- c. By September 1, 1992 Permittee must refund to G.W. the amount of \$599;

d. By September 1, 1992 Permittee must refund to M.W. the amount of \$749;

e. By March 1, 1992, Permittee must disclose to the Department the names and addresses of all persons to whom Permittee contracted to sell, repair, or service hearing instruments, orally or in writing, during the period he acted as President of MN Hearing Health Care, Inc., or otherwise was a sole proprietor in the business of selling hearing aids in Minnesota. Permittee must mail this list to: Susan Winkelmann, Legal Analyst, Health Occupations Program, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440;

f. By March 15, 1992 Permittee must contact other persons within the hearing aid manufacturing and selling industry and make arrangements with them so that Permittee's customers, contained in the list developed pursuant to paragraph 10.e., can obtain service and/or repairs for their hearing instruments. Permittee must notify Department staff when he has completed this term by mailing a letter within 7 calendar days of the date of completion to: Ms. Susan Winkelmann, Health Occupations Program, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440;

g. By March 15, 1992 Permittee must notify all persons with whom he has contracted, orally or in writing and contained in the list developed pursuant to paragraph 10.e., and inform them of his present address and telephone number. Permittee must also inform these persons of the status of MN Hearing Health Care, Inc. and of the name and address of where they can obtain hearing instrument service and/or repairs for their hearing instruments. If Permittee changes his address and/or telephone number, he must renotify all of these persons and Department staff within 14 calendar days of the date he changed his address. Permittee must notify Department staff when he has completed this term by mailing a letter within 7 calendar days of the date of completion to: Ms. Susan Winkelmann, Health Occupations Program, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. box 9441, Minneapolis, Minnesota 55440;

h. Before Permittee petitions to have his suspension lifted, Permittee must pay a civil penalty of \$973 to the Department for costs incurred in investigating the cases described in paragraph 2;

i. Permittee must comply with Minnesota Statutes, §§145.43, and 153A.15, and Minn. Rules Part 4692.0030;

j. For any additional complaint made against Permittee after the effective date of the stipulation, Permittee agrees to refund the money to all consumers contained in the list developed pursuant to paragraph 10.e. when the Department of Health determines that Permittee owes refunds to consumers. The Department shall be the sole judge in the determination of whether Permittee owes refunds to consumers. Before determining whether Permittee owes a refund to a consumer, the Department shall notify Permittee in writing of the existence of the complaint and request a written response from Permittee within 14 calendar days. If the Department makes a determination that Permittee owes a refund to a consumer, the Department shall notify Permittee

in writing and by mail at his last known address. This provision shall remain in effect after Permittee's permit is reinstated for all customers contained in the list developed pursuant to paragraph 10.e.;

k. Before his suspension may be lifted by the Commissioner, Permittee must be employed by a hearing instrument seller with a valid hearing instrument seller permit. Permittee must remain employed by a hearing aid seller with a valid hearing aid seller permit for a minimum of one year;

11. If Permittee fails to comply with the terms, conditions and requirements specified in paragraph 10 above, the Commissioner will not lift Permittee's suspension. After completing the above terms and conditions, Permittee may make a written petition to the Commissioner to lift the suspension of his permit;

12. 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;

13. Permittee hereby acknowledges that he has read, understood, and agreed to this Stipulation and Consent Order and has freely and voluntarily signed it. Permittee agreed to attend the conference at the Department of Health on January 16, 1992 unrepresented by legal counsel. Permittee recognized that he could retain legal counsel, but he freely chose not to obtain legal counsel in this matter. In signing this Stipulation and Consent Order, Permittee 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 Permittee, the Commissioner will issue the Order and the Stipulation will take effect. If the changes are unacceptable to Permittee or the Commissioner rejects the Stipulation and Consent Order, it will be of no effect, except as specified in paragraph 7 above;

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

15. 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 Permittee without further notice. A copy of the Stipulation and Consent Order when issued by the Commissioner shall be served by first class mail on Permittee, which service will be considered personal service upon Permittee. This Stipulation and Consent Order is effective upon service.

Dated: 2-10-92, 1992


Mickey Parson, Permittee

Dated: 2/24, 1992

Tom Hiendimayr
Tom Hiendimayr, Director
Health Occupations Program
Minnesota Department of Health

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 28 day of Feb, 1992.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

Marlene E. Marschall
MARLENE E. MARSCHALL
Commissioner of Health