

Eff. 11/21/1991
91337

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Robert Vosika,
Hearing Instrument Seller

STIPULATION
AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Robert Vosika, (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 and had a valid hearing instrument seller permit issued by the Commissioner of Health;
2. 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 published an advertisement in the "Wright Way Shopper" on August 21, 1991 stating the following, "WRIGHT HEALTH WAY Robert Vosika Ph.D. FREE Hearing Testing FREE On Site Troubleshooting..." The advertisement did not disclose that he is a candidate for a Ph.D. in language education with a concentration in foreign language education and does not have a doctorate degree in hearing science;
 - b. Permittee also uses a business card that states the following, "WHW Hearing 1-800-285-HEAR Robert J. Vosika, Ph.D." and does not disclose anywhere on his business card that he does not have a Ph.D. in hearing science;
3. 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;
4. Except as otherwise specified herein, this Stipulation and 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 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 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 Order shall be null and void and shall not be used for any purpose by either party hereto; provided, however, that if 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;

6. Permittee 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 Minn. Stat. §153A.15, subd. 1(4) and is 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;

7. 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;

8. 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 affecting Permittee as follows:

a. Permittee agrees to discontinue advertising himself as a Ph.D. in hearing instrument sales advertisements without clearly stating on the advertisement that Permittee's Ph.D. degree is in language education;

b. Permittee agrees to comply with Minnesota Statutes, §153A.15, subd. 1(4) which prohibits presenting advertising that is false or misleading;

9. Permittee's violation of any of the terms and conditions specified in this Stipulation and Consent Order constitutes a basis for further action by the Commissioner of Health under Minnesota Statutes, §153A.15, subd. 2 (1988);

10. If the Commissioner or one of the Commissioner's employees or agents receives evidence that Permittee has violated the terms of the Stipulation and Consent Order, or has made misrepresentations to the Department, the

Commissioner shall so notify the Permittee in writing at his last known address. Permittee shall have the opportunity to contest the allegations by submitting a written request to so contest within 30 days after receiving the Notice of Opportunity to Contest Allegations:

a. If Permittee does not submit a written request to contest the allegations within 30 days after receiving the Notice, the issues set forth in the Notice may be taken as true or deemed proven without further evidence. Upon a report to the Commissioner of such allegations of Permittee's failure to contest, the Commissioner may impose additional disciplinary action. Any Commissioner order issued under this paragraph shall be final and binding upon Permittee and shall not be subject to judicial or administrative review or to a judicial stay pending any attempts to seek such review;

b. If Permittee submits a written request to contest the allegations, the Commissioner may initiate either a proceeding conducted pursuant to Minnesota Statutes, Chapter 153A or a contested case hearing pursuant to Minnesota Statutes, Chapter 14 to determine whether Permittee can show cause as to why additional disciplinary action should not be imposed. In any such proceeding, the Commissioner shall have the burden of going forward to provide a sufficient factual basis supporting the allegations. The Commissioner shall provide sufficient evidence to meet the substantial evidence standard used by appellate courts in reviewing administrative actions, that is, evidence demonstrating that the Commissioner is not acting unreasonably, arbitrarily, or capriciously, and that some reasonable evidence exists to support the allegations. Upon such a showing by the Commissioner, the burden of proof as to why additional disciplinary action should not be imposed shall be upon Permittee;

11. 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;

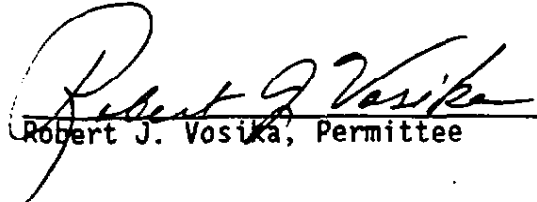
12. Permittee (and Permittee's legal counsel, if applicable) acknowledges that he has read, understood, and agreed to this Stipulation and Order and has freely and voluntarily signed it. In signing this Stipulation and Order, Permittee acknowledges that he is fully aware that it must be approved by the Commissioner. The Commissioner may either approve the Stipulation and Order as proposed, approve it subject to specified changes or reject it. If the Commissioner approves the stipulation or makes a change acceptable to 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 Order, it will be of no effect, except as specified in paragraph 5 above;

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

14. Upon this Stipulation and 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.

Copies of the Stipulation and Consent Order when issued by the Commissioner shall be served by first class mail on Permittee and/or Permittee's legal counsel, which service will be considered personal service upon Permittee. This Stipulation and Consent Order is effective upon service.

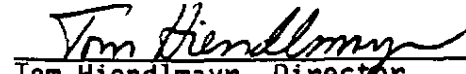
Dated: 11/8/91, 1991


Robert J. Vosika, Permittee

Dated: _____, 1991

Legal Counsel for the Permittee
(If applicable)

Dated: 11/12/91, 1991


Tom Hiendlmayr, 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 18th day of November, 1991.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH


MARLENE MARSCHALL
Commissioner of Health