

"Effective 9-4-98"

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Laura Martin,
Hearing Instrument Dispenser

STIPULATION
AND CONSENT ORDER
HDA-98013

IT IS HEREBY STIPULATED AND AGREED by Laura Martin, (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. On November 10, 1997, Practitioner performed a hearing evaluation on D.S.;
- b. On December 19, 1997, Practitioner sold D.S. OT-Micro ITE hearing instruments in the amount of \$3,927.00. D.S. made the purchase with a VISA credit card. Practitioner unsuccessfully attempted to adjust the hearing instruments to meet D.S.' needs. D.S. complained that his ears felt full of wax when using the hearing instruments, that he experienced a terrible screeching noise, and that he was unable to use the telephone when wearing the hearing instruments;
- c. On December 22, 1997, D.S. returned to Practitioner's office for further adjustments. Another staff audiologist advised D.S. that the hearing instruments sold to him by Practitioner were not suited to D.S.' type of hearing loss. D.S. returned the hearing instruments;
- d. On December 29, 1997, Practitioner issued a credit on D.S.' VISA card in the amount of \$3,543.00;
- e. On December 31, 1997, D.S. requested a full refund from Practitioner. Practitioner declined to issue a full refund;
- f. In a letter to Practitioner dated January 23, 1998, the Department notified Practitioner that it had received a complaint concerning Practitioner's services to D.S.;

g. In a letter to the Department dated January 27, 1998, Practitioner responded to the notice of complaint by stating that the hearing instrument recommendation she made was justified by the hearing test results. Practitioner asserted that the test results revealed normal hearing through 1 KHZ, dropping to a moderately-severe sensorineural hearing loss bilaterally. Practitioner further stated that another staff audiologist recommended a BTE model to D.S. due to the precipitous high frequency loss. According to Practitioner, D.S. was opposed to the BTE option;

h. On June 24, 1998, the Department, in conjunction with the Hearing Instrument Dispenser Competency Review Committee, reviewed this matter. The Department determined that:

1. Pursuant to the hearing testing protocol set forth under Minn. Stat. § 153A.14, subd. 4b(4iv), hearing instrument dispensers must perform loudness discomfort level testing when conducting hearing tests for the purpose of hearing instrument dispensing. Practitioner failed to perform such testing in regard to D.S.;

2. Practitioner admits and acknowledges that, for purposes of this Stipulation and Consent Order and any future disciplinary proceedings, proof at hearing that Practitioner failed to comply with the hearing test protocol, as referenced in paragraph 1, would constitute a violation of Minn. Stat. § 153A.14, subd. 4b and would justify enforcement action by the Commissioner under Minn. Stat. § 153A.15, subd. 2 against Practitioner;

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. Within 30 days of the effective date of this Stipulation and Consent Order, Practitioner shall issue a full refund to D.S. and provide the Department with evidence thereof;

b. Within 30 days of the effective date of this Stipulation and Consent Order, Practitioner shall remit to the Department **\$214.15** in civil penalty payment as authorized under Minnesota Statutes § 153A.15, subd. 2(4), to reimburse the Department for the costs of its investigation. Practitioner shall remit the **\$214.15** civil penalty, by check or money order, made payable to "State of Minnesota, Treasurer", to: Legal Analyst, Minnesota Department of Health, Health Occupations Program, 121 East Seventh Place, P.O. Box 64975, St. Paul, MN 55164-0975;

c. That Practitioner fully comply with the hearing test protocol set forth under Minn. Stat. § 153A.14, subd. 4b in all future cases;

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. 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. ch. 14 and Minn. Stat. § 153A.15, Practitioner agrees she will assert no claim that the Commissioner was precluded by her review and consideration of this Stipulation or any records relating hereto;

7. 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;

8. 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 she has read, understood, and agreed to this Stipulation and Consent Order and has freely and voluntarily signed it.

Dated: Aug 11, 1998

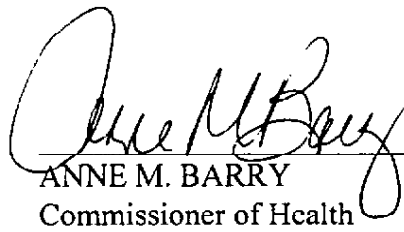
Laura Martin
Laura Martin, Practitioner

Dated: August 14, 1998

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 on this 23rd day of August, 1998.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH



ANNE M. BARRY
Commissioner of Health