

STATE OF MINNESOTA
BEFORE THE COMMISSIONER OF HEALTH

*Effective
7/26/17*

SETTLEMENT STIPULATION AND CONSENT ORDER

In the Matter of Martin Tjaden,
Hearing Instrument Dispenser
in the State of Minnesota.

IT IS HEREBY STIPULATED AND AGREED, by Martin Tjaden, and the Minnesota Department of Health (“Department”):

1. The Department has statutory authority to discipline hearing instrument dispensers for violations of Minn. Stat. ch. 153A. The types of discipline the Department may impose include, but are not limited to, public reprimand, suspension, revocation, and denial of certificate renewal. The Department also may assess a civil penalty, not to exceed \$10,000 for each separate violation, that deprives the dispenser of any economic advantage gained by the violation and that reimburses the Department for the cost of the investigation.

2. Pursuant to Minn. Stat. § 153A.15, subd. 1(19), the Department may take disciplinary action against a hearing instrument dispenser for violating any of the provisions of Minn. Stat. §§ 148.5195, subd. 3, cl. 20; 148.5197, 148.5198; and 153A.13 to .18.

3. Pursuant to Minn. Stat. § 148.5198, subd. 1(b), a certified hearing instrument dispenser must provide the buyer of a hearing instrument with a 45-calendar-day written money-back guarantee. The guarantee must permit the buyer to cancel the purchase for any reason within 45 calendar days after receiving the hearing aid by giving or mailing written notice of cancellation to the certified dispenser. The guarantee must authorize the buyer, upon cancellation, to receive a refund of payment within 30 days of return of the hearing aid to the hearing instrument dispenser.

4. Pursuant to Minn. Stat. § 153A.13, subd. 5, a dispenser of hearing instruments includes “natural person who engages in hearing instrument dispensing whether or not certified by the Commissioner of Health or licensed by an existing health-related board ... a person who offers to dispense a hearing instrument, or a person who advertises, holds out to the public, or otherwise represents that the person is authorized to dispense hearing instruments must be certified by the Commissioner.”

5. Pursuant to Minn. Stat. § 153A.15, subd. 1(5), the Department may take disciplinary action against a hearing instrument dispenser for engaging in conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a customer.

6. Pursuant to Minn. Stat. § 153A.14, subd. 1(9), the Department may take disciplinary action against a hearing instrument dispenser for failure to provide consumers with information about the legal requirements pertaining to sales of hearing instruments.

7. Pursuant to Minn. Stat. § 153A.14, subd. 4b(a), the Department may take disciplinary action against a hearing instrument dispenser for failing to administer bone conduction tests on clients as part of their hearing tests.

8. Pursuant to Minn. Stat. § 153A.15, subd. 1(17), the Department may take disciplinary action against a hearing instrument dispenser for failing to disclose certain previous discipline when applying for certification.

9. Pursuant to Minn. Stat. § 13.41, disciplinary actions are public data.

10. The Department certified Mr. Tjaden as a hearing instrument dispenser in Minnesota on August 24, 2006, and Mr. Tjaden has renewed his certificate annually. He is an employee at [REDACTED]

11. The Department was informed that the Minnesota Department of Commerce (“Commerce”) previously revoked Mr. Tjaden’s insurance producer license when it determined that Mr. Tjaden violated Minn. Stat. § 60K.43, subd. 1(8) for demonstrating fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility as an insurance producer.

12. The Department determined that Mr. Tjaden violated Minn. Stat. § 153A, 15 subd. 1(17) after receiving information from Commerce that Mr. Tjaden signed an August 18, 2004 consent to entry of an Order that revoked his insurance provider order on October 30, 2015.

13. On January 15, 2016, the Department demanded original records for clients from January 20, 2011 to October 11, 2011 based on complaints from those time periods. The Department reviewed records for 65 of Mr. Tjaden’s clients during these dates. From these records, the Department determined that Mr. Tjaden failed to provide a bone conduction test, or the Department found the conduction test “invalid,” in 16 separate transactions. [REDACTED] and Mr. Tjaden charged a total of \$65,159.20 for these 16 transactions.

14. The Department determined that none of the records provided by the clients included a bone conduction score at the time of the purchase, whereas the Mr. Tjaden’s records for those transactions had a bone conduction score in 11 of those 16. The Department determined that this discrepancy meant that Respondent failed to take bone conduction tests with these clients and instead added these scores after the purchase.

15. The Department ultimately determined, after a review of these records, that Mr. Tjaden failed to comply with Minn. Stat. § 153A.14, subd. 4b(a) and 21 C.F.R. § 801.420 when he failed to administer bone conduction tests on clients as part of their hearing tests.

16. The Department further determined that Mr. Tjaden failed to comply with Minn. Stat. § 153A.14, subd. 9 and Minn. Stat. § 153A.15, subd. 1(5) when he did not provide consumers with information about the legal requirements pertaining to the sales of hearing instruments. The Department found that consumer signatures on FDA waivers were different signatures on three of the waivers and non-existent on 12 other forms provided by the clients. The Department found three signatures on HIPAA waivers that were different than the signatures Mr. Tjaden provided. The Department determined that these discrepancies meant that Mr. Tjaden never had the clients review the FDA or HIPAA waivers, and the Department found that demonstrated a willful or careless disregard for the health and safety of the consumers.

17. The Department received an additional complaint regarding Mr. Tjaden on January 10, 2017. The Department has not commenced an investigation into this complaint.

18. In order to resolve this matter and thus avoid the expense and uncertainty of enforcement proceedings under Chapter 153A, Mr. Tjaden, on behalf of himself and [REDACTED], agrees to the following penalties and corrective actions:

A. Administrative Penalties. Mr. Tjaden was assessed a civil penalty of \$30,895. However, \$25,895.00 of the civil penalty shall be stayed so long as Mr. Tjaden complies with the corrective actions set forth in Paragraph B below, and pays a penalty of \$5,000.00, which reflects the Department's costs of investigation. Payment of the penalty amount of \$5,000.00 shall be by check or money order payable to "Treasurer, State of Minnesota." The payment is due within 30 days of the effective date of this Stipulation, and must be submitted to Health Occupations Program, Investigation and Enforcement, whose address is 85 East 7th Place, P.O. Box 64882, St. Paul, MN 55164-0882.

B. Corrective Action. Mr. Tjaden shall take the following corrective actions:

(i) Mr. Tjaden shall successfully complete eight continuing education ("CE") course hours, pre-approved by the Department, as follows:

a. Four CE course hours related to the techniques and methods of hearing instrument dispensing as defined by Minn. Stat. § 153A.14, subd. 4b, hearing testing protocol;

b. Two CE course hours related to the ethics of hearing instrument dispensing;

c. Two CE course hours related to state and federal hearing instrument dispensing regulations;

d. The CE course hours required by this section shall be in addition to the continuing education requirements in Minn. Stat. § 153A.14, subd. 2g and 2i;

e. The CE course hours must be approved by the International Hearing Society, the American Speech-Language-Hearing Association, or the American Academy of Audiology; and

f. Mr. Tjaden shall submit evidence of completion of the CE course hours identified in paragraphs a and b above on forms provided by the Department.

(ii) Mr. Tjaden hereby agrees that he shall complete each hearing examination the day it is conducted, including bone conduction tests. If Mr. Tjaden is unable to complete the examination, he must complete an entire examination on a later date.

C. If the Department determines that Mr. Tjaden has violated any terms of this Stipulation, the Department shall give Mr. Tjaden written notice, specifying the violating actions. The Department will pursue any violations of this Stipulation, including the stayed civil penalty.

D. The Department shall not investigate or pursue violations based solely on the complaint mentioned in paragraph 17.

E. Once all conditions as set forth in paragraphs A through C above have been met, Mr. Tjaden may petition the Commissioner for an unconditional certificate to dispense hearing instruments.

19. For purposes of this Stipulation, Mr. Tjaden expressly waives all procedures and proceedings before the Department to which he may be entitled under the Minnesota and/or the United States Constitution, Statutes, and Rules, and also waives the right to judicial review or appeal under the Administrative Act, by writ of certiorari, or otherwise, from the order issued by the division director pursuant to this Stipulation, and withdraws his request for a hearing under the Administrative Procedures Act.

20. In the event the Assistant Division Director does not approve this settlement, or a lesser remedy than specified herein, this Stipulation shall be null and void and shall not be used for any purpose by either party hereto. Mr. Tjaden agrees not to raise any objection on any administrative level or in any court action to the Department's proceeding and hearing in this case on the basis that the Assistant Division Director has become disqualified due to the Assistant Division Director's review and consideration of this proposed Stipulation and Consent Order.

21. This Stipulation shall not in any way or manner limit or effect the authority of the Department to proceed against Mr. Tjaden by initiating a contested case hearing or by other

appropriate means on the basis of any act, conduct, or omission of Mr. Tjaden justifying action which is not described hereinabove.

22. Any appropriate federal or state court shall, upon application of the director, enter an order of enforcement for any or all of the terms of this Stipulation.

23. Mr. Tjaden hereby acknowledges having read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Mr. Tjaden acknowledges full awareness that it must be approved by the Assistant Division Director. The Assistant Division Director may approve the Stipulation as proposed, approve it subject to specific changes, or reject it. If the division director approves the Stipulation or makes a change acceptable to Mr. Tjaden, the Assistant Division Director will issue the order and it will take effect. If the changes are unacceptable to Mr. Tjaden, or if the Assistant Division Director rejects the Stipulation, it will have no effect, except as specified in Paragraph 20.

24. The parties agree and understand that Mr. Tjaden denies any wrongdoing or liability, and nothing in this Agreement is intended to be, nor will be deemed to be, an admission of liability by Mr. Tjaden that he violated any legal obligation or engaged in any wrongdoing.

25. This Stipulation and Consent Order 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.

**MINNESOTA DEPARTMENT
OF HEALTH**

Signed: Martin W. Tjaden

Dated: 6-8-17

MARTIN TJADEN

Signed: Susan Winkelmann

Dated: 7/5/17

SUSAN WINKELMANN
Assistant Division Director
Division of Health Regulation,
Minnesota Department of Health
85 East 7th Place
P.O. Box 64882
St. Paul, Minnesota 55164-0882

Upon consideration of this Stipulation and of all the files, records, and proceedings herein, IT IS HEREBY ORDERED that the terms of this Stipulation are adopted and implemented by the division director this _____ day of _____, 2017.