

*Effective
12/29/2018*

HEALTH OCCUPATIONS PROGRAM
HEALTH REGULATION DIVISION

**In the Matter of Martin W. Tjaden
Hearing Instrument Dispenser, Certification No. 2630**

Stipulation and Consent Order:

IT IS STIPULATED AND AGREED by Martin W. Tjaden ("Regulated Party") and the Minnesota Department of Health ("Department" or "MDH"), and that without trial or adjudication of any issue of fact or law:

(1). Purpose and Scope of Stipulation

The purpose of this Stipulation is to resolve the violation alleged in paragraph 3 of this Stipulation and to ensure that appropriate actions are taken. These actions will prevent future violations by the Regulated Party. In entering into this agreement, the Regulated Party and MDH are settling a disputed matter.

(2). Statements of Facts

1. Minnesota Statutes, Chapter 153A authorizes MDH to regulate hearing instrument dispensers in Minnesota. This authority includes, but is not limited to, the authority to discipline hearing instrument dispensers for violations of Minnesota Statutes, Sections 153A.13 to 153A.18 and 148.5198. Pursuant to Minnesota Statutes, Section 153A.15, subdivision 2, the types of discipline MDH may impose include, but are not limited to, revocation or suspension of certification, reprimand, or any other action reasonably justified by the individual case. Pursuant to Minnesota Statutes, Section 153A.15, subdivision 2(8), the Department also has the authority to issue a civil penalty of up to \$10,000 for each separate violation of the statutes governing hearing instrument dispensers.
2. On August 24, 2006, MDH issued the Regulated Party a certificate to dispense hearing instruments in Minnesota.
3. On September 21, 2017, MDH received a complaint from an audiologist on behalf of a consumer ("Complainant") who had been sold and fitted with hearing aids by the Regulated Party. In the complaint, the audiologist alleged that the hearing aids were rusty and appeared to be used. It was also alleged that the Regulated Party had sold the hearing aids to Complainant as new with a two year warranty. The audiologist indicated to the Department that she confirmed with the manufacturer of the hearing aids that the hearing aids had been sold by the Regulated Party to another individual in 2014 and the warranty had expired in October 2016
4. On October 6, 2017, the Complainant provided the Department with additional information regarding the hearing aids, including information concerning her dissatisfaction with the hearing

aids, her attempts to return the hearing aids to the Regulated Party, and statements from the Regulated Party and his wife discouraging her from returning the hearing aids.

5. On December 7, 2017 the Department notified the Regulated Party that an investigation was opened regarding this matter and requested information from the Regulated Party regarding the hearing aids sold to the Complainant.
6. On January 5, 2018, the Regulated Party responded to MDH by letter and admitted that the Complainant's hearing aids had been sold to another individual and were subsequently exchanged and returned to inventory. The Regulated Party admitted that an error had occurred with regards to the warranty dates for the Complainant's hearing aids and provided a warranty change for the hearing aids from the manufacturer, which indicated that the warranty expiration date was changed to July 25, 2018, shortening the Complainant's warranty period from two years to one year.
7. The Department reviewed the records provided by the audiologist, the Complainant and the Regulated Party, including the purchase agreement for the hearing aids, and found that the Complainant had purchased the hearing aids as new from the Regulated Party on July 25, 2017, at a cost of \$3,962.80, and with a two year warranty against damage, loss, or manufacturer's defects. Pursuant to Minnesota Statutes, Section 148.5198, subdivision 1(b), the Complainant had 45-calendar days after receiving the hearing aids to return the hearing aids for any reason to the Regulated Party, for a full refund, minus a cancellation fee not to exceed \$250, by providing written notice of cancellation to the Regulated Party. The Department found that the Complainant had provided written notice of cancellation to the Regulated Party within the 45-calendar-day period, but the Regulated Party refused to accept the hearing aids and provide Complainant with a refund in accordance with Minnesota Statutes, Section 148.5198, subdivision 1(b).
8. On September 3, 2018, the Department notified the Regulated Party that it determined ("Determination") the Regulated Party violated several provisions of the statutes governing hearing instrument dispensers. In its Determination, the Department assessed a civil penalty of \$35,000 and revoked the Regulated Party's certificate to dispense hearing instruments.
9. On October 8, 2018, the Regulated Party submitted a written request for a contested case hearing regarding the Department's September 3, 2018 Determination.

(3). Violation

The Regulated Party has violated Minnesota Statutes, Section 153A.15, subdivision 1(19), which subjects a dispenser of hearing instruments to discipline for violating any of the provisions of, including but not limited to, sections 148.5198 and 153A.13 to 153A.18. The Regulated Party violated Minnesota Statutes, Section 153A.15, subdivision 1(19) by refusing to accept the return of the Complainant's hearing aids within the 45-calendar day period required by Minnesota Statutes, Section 148.5198, subdivision 1(b).

(4). Regulated Party Requirements

The Regulated Party agrees to refund the Complainant in the amount of \$3,712.80 within 90 days of the effective date of this Stipulation. The Regulated Party must provide written evidence to the Department within 100 days of the effective date of this Stipulation of payment of the \$3,712.80 to the Complainant. The amount of \$3,712.80 is the cost of the hearing aids less the \$250 cancellation fee authorized by Minnesota Statutes, Section 148.5198, subdivision 1(b).

(5). Civil Penalty

Minnesota Statutes, Section 153A.15, subdivision 2(8), provides the Department with authority to issue a civil penalty of up to \$10,000 for each separate violation of the statutes governing hearing instrument dispensers.

MDH notified the Regulated Party by letter dated September 3, 2018, that the Department had determined the Regulated Party had violated several provisions of the statutes governing hearing instrument dispensers, and the Department assessed the Regulated Party a civil penalty in the amount of \$35,000. In order to settle this dispute, the Department agrees to waive the \$35,000 civil penalty if the Regulated Party complies with the corrective actions set forth in Paragraph 4. The Department also agrees not to revoke the Regulated Party's certificate to dispense hearing instruments.

(6). Right to Counsel

The Regulated Party has been advised he has the right to be represented by counsel in connection with this Stipulation, and in these proceedings generally. The Regulated Party has chosen not to be represented by counsel.

(7). Rights and Waivers

In connection with this matter, the Regulated Party agrees to withdraw his request for a contested case hearing concerning MDH's determination that the Regulated Party committed the violations alleged in the Determination. The Regulated Party waives his right to contest any determination or order of MDH that the Regulated Party failed to meet the requirements to this Stipulation. The Regulated Party also waives the right to any judicial review of these decisions, or appeal under the Administrative Procedures Act, by writ of certiorari under Minnesota Statutes, Section 480A.06.

The Regulated Party also waives any claim that it may have against MDH, the State of Minnesota, or any employee thereof, under the Equal Access to Justice Act, Minnesota Statutes, Sections 15.471 to 15.474.

(8). Penalties for Violations of this Agreement

If MDH determines that the Regulated Party has failed to comply with or remain in compliance with the requirements outlined in Paragraph 4 of this Stipulation within 100 days of the effective date of this Stipulation, then the Regulated Party shall pay the Department \$5,000 of the \$35,000 civil penalty. The Regulated Party shall pay the \$5,000 penalty within 30 days of receipt of MDH's determination that the Regulated Party failed to comply with Paragraph 4 of this Stipulation.

(9). Binding Effect

This Stipulation is binding upon the parties, their employees, agents, heirs, administrators, representatives, executors, successors and assigns, and the parties will assure that their employees, agents, heirs, administrators, representatives, executors, successors and assigns are made aware of this Stipulation.

(10). Other Remedies Reserved

This Stipulation does not in any way or manner limit or affect the authority of MDH to proceed against the Regulated Party [Click or tap here to enter text.](#) by initiating a contested case hearing, or by other appropriate means, on the basis of any act, conduct or omission of the Regulated Party justifying enforcement that is not the subject of this Stipulation.

(11). Procedure

This Stipulation contains the entire agreement between the Department and the Regulated Party, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. The Regulated Party understands that this agreement is subject to the approval of the Assistant Division Director of the Health Regulation Division of the Department ("Assistant Division Director").

(12). Resolution of Disputes

The parties to this Stipulation shall attempt to resolve disputes regarding the meaning of any part of this Stipulation through an exchange of correspondence. If a dispute cannot be informally resolved within 30 days of one party notifying the other party of a dispute, the Assistant Division Director shall issue a determination on the disputed issue. Following issuance of this determination, the Regulated Party shall have 30 days in which to file a complaint seeking a declaratory judgment resolving the issue in dispute. If the Regulated Party does not file a complaint in 30 days, the Regulated Party agrees to comply with the Assistant Division Director's determination of the disputed portion of this Stipulation. Throughout any dispute resolution, the Regulated Party shall continue to comply with the terms of the Stipulation that the Department determines are not in dispute.

(13). Venue

Disputes regarding the meaning of this Stipulation or actions to enforce this Stipulation shall be venued in the Ramsey County District Court, in Saint Paul, Minnesota.

(14). Access

The Regulated Party agrees to provide MDH access to the Regulated Party's facilities and records related to compliance with this Stipulation upon the presentation of proper credentials.

(15). Retention of Records

The Regulated Party shall retain in its possession all records and documents related to the implementation of this Stipulation. The Regulated Party shall preserve these records and documents for a minimum of three years following the execution of this Stipulation despite any document retention policy of the Regulated Party to the contrary.

(16). Other Applicable Laws and Permits

All actions required to be taken pursuant to this Stipulation shall be undertaken in accordance with the requirements of all applicable local, State and Federal laws and regulations. This includes laws and regulations related to the dispensing of hearing instruments.

(17). Successors

All rights injure to, and obligations bind, successors, heirs and assignees of all parties involved.

(18). Effective Date

This Stipulation shall be effective upon the date it is signed by all of the parties.

(19). Service of Agreement:

The Regulated Party agrees that a fully executed copy of the Stipulation will be sent by the Department to this mailing address: 68348 215th St., Darwin, MN 55324. Service at this address shall be considered personal service upon the Regulated Party..

(20). Data Practices

This Stipulation is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Section 13.41.

(21). Execution

BY THEIR SIGNATURES HEREON, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT, THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES.

Martin W. Tjaden
Martin W. Tjaden [Print name]

Martin W. Tjaden
Signature

12-12-18
Date

Catherine Dittberner Lloyd
Catherine Dittberner Lloyd, Manager
Health Occupations Program and Mortuary
Science Section [Print name]

Catherine Dittberner Lloyd
Signature

12-19-2018
Date

Upon consideration of this Stipulation, by the Assistant Division Director, it is ordered that the terms in this Stipulation are adopted on this 20th day of December, 2018.

SUSAN WINKELMANN, ASSISTANT DIVISION DIRECTOR

MINNESOTA DEPARTMENT OF HEALTH
HEALTH REGULATION DIVISION

Susan Winkelmann
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