



Effective 4-12-16

PROTECTING, MAINTAINING & IMPROVING THE HEALTH OF ALL MINNESOTANS

March 9, 2016

James D. Sopland
[REDACTED]
[REDACTED]

RE: MDH File Number: HDC16003 & HDC16004

Dear Mr. Sopland:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined that you: [1] dispensed hearing instruments without giving your client a consumer rights brochure, in violation of Minnesota Statutes 153A.15, subdivision 1 (19), section 148.5195, subdivision 3 (20) (iii), and section 148.5197, subdivision 3; [2] failed to disclose, in a written contract that is in plain English and in 12- point bold face font, the right to cancel the purchase of hearing instruments within 45 days, in violation of Minnesota Statutes, section 153A.15, subdivision 1 (19), section 158.5195, subdivision 3 (20) (iv), and section 148.5198, subdivision 1 (c); [3] failed to display your hearing instrument dispenser certificate number on contracts, bill of sales, and receipts used in the sale of hearing aids, in violation of Minnesota Statutes 153A.15, subdivision 1 (19) and section 148.5197, subdivision 2; [4] failed to satisfy all terms of the contract between the customers who purchased hearing instruments from you, in violation of Minnesota Statutes 153A.15, subdivision 1 (19), and 148.5197, subdivision 4; and [5] failed to respond to an MDH inquiry in a timely manner and failed to cooperate with MDH in an investigation, in violation of Minnesota Statutes 153.15, subdivision 1 (11) and section 148.5197, subdivision 4. Therefore, MDH is issuing a reprimand with a civil penalty of \$10,350 for violating Minnesota Statutes and to reimburse MDH for the cost of the investigation. This action is authorized under Minnesota Statutes, sections 153A.15, subdivision 2, clauses (4), (5), (8), and (9).

This decision will be made final and effective 30 days from the date it is received by you. During that 30-day period, you have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send a written hearing request, within 30 days of your receipt of this letter, to:

Anne Kukowski
Manager, Health Occupations Program
Minnesota Department of Health
PO Box 64882
Saint Paul, MN 55164-0882

James Sopland
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You may also deliver your request to 85 East Seventh Place, Suite 220, Saint Paul, MN; or fax it to Anne Kukowski at (651)201-3839. If you have any questions about this matter, please contact Chee Lee at (651)201-3728.

Sincerely,

A handwritten signature in cursive script that reads "Stella French".

Stella French, Assistant Director
Health Regulation Division

Enclosure

cc: Anne Kukowski, Manager, Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
James D Sopland
Hearing Instrument Dispenser**

AUTHORITY

1. Minnesota Statutes, section 148.5195, subdivision 3 (20), in part, authorizes the Minnesota Department of Health (MDH) to take disciplinary action against a dispenser of hearing instruments, upon proof the individual has:
 - a. (iii) Failed to provide the consumer rights brochure required by section 148.5197, subdivision 3.
 - b. (iv) Failed to comply with restrictions on sales of hearing instruments in sections 148.5197, subdivision 3, and 148.5198.
2. Pursuant to Minnesota Statutes, section 148.5197, subdivision 2, the certified dispenser's certificate number must appear on all contracts, bills of sales, and receipts used in the sale of hearing aids.
3. Pursuant to Minnesota Statutes, section 148.5197, subdivision 3, a certified dispenser shall, at the time of the recommendation or prescription, give each potential consumer of a hearing aid a consumer rights brochure prepared by the commissioner and containing information about legal requirements pertaining to dispensing of hearing aids. The brochure must contain information about the consumer information center described in section 153A.18. A contract for a hearing aid must note the receipt of the brochure by the consumer, along with the consumer's signature or initials.
4. Pursuant to Minnesota Statutes, section 148.5197, subdivision 4, owners of entities in the business of dispensing hearing aids and hearing aid dispensers conducting the transaction at issue are liable for satisfying all terms of the contracts, written or oral, made by their agents, employees, assignees, affiliates, or trainees, including terms relating to products, repairs, warranties, service, and refunds. The commissioner may enforce the terms of hearing aid contracts against the principal, employer, supervisor, or dispenser who conducted the transaction and may impose any remedy provided in this chapter.
5. Pursuant to Minnesota Statutes, section 148.5198, subdivision 1 (c), a certified dispenser shall provide the buyer with a contract written in plain English. The contract must include in immediate proximity to the space reserved for the signature of the

buyer, a clear and conspicuous disclosure of the following specific statement in all capital letters of no less than 12-point boldface type:

"MINNESOTA STATE LAW GIVES THE BUYER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO MIDNIGHT OF THE 45TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID(S). THIS CANCELLATION MUST BE IN WRITING AND MUST BE GIVEN OR MAILED TO THE AUDIOLOGISTS OR CERTIFIED DISPENSER. IF THE BUYER DECIDES TO RETURN THE HEARING AID(S) WITHIN THE 45-CALENDAR DAY PERIOD, THE BUYER WILL RECEIVE A REFUND OF THE TOTAL PURCHASE PRICE OF THE AID(S) FROM WHICH THE AUDIOLOGISTS OR CERTIFIED DISPENSER MAY RETAIN AS A CANCELLATION FEE NO MORE THAN \$250."

6. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1 (11), MDH may take disciplinary action against a hearing instrument dispenser for failing to provide information in a timely manner in response to a request by the commissioner.
7. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1 (13), MDH may take disciplinary action against a hearing instrument dispenser for failing to cooperate with MDH in any investigation.
8. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1 (19), MDH may take disciplinary action against a hearing instrument dispensing for violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197, 148.5198; and 153A.13 to 153A.18.
9. Pursuant to Minnesota Statutes, section 153A.15, subdivision 2, the Minnesota Department of Health (MDH) has statutory authority to discipline Hearing Instrument Dispensers for violations of Minnesota Statutes, section 153A. The types of discipline MDH may impose include, but are not limited to, public reprimand, suspension, revocation, and denial of a certificate renewal. MDH may also 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 MDH for the costs of the investigation.
10. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.

FINDINGS OF FACT

1. James D. Sopland (hereinafter "Practitioner") first obtained a hearing instrument dispenser trainee authorization on July 21, 1999, which expired on July 31, 2000.
2. On November 1, 2005, MDH certified Practitioner as a hearing instrument dispenser, under certificate #2532. Practitioner renewed his hearing instrument dispenser

certification in 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013. Practitioner's hearing instrument dispenser certification expired on October 31, 2014.

3. Practitioner operated Valley Hearing Concepts with offices in Roseville and Stillwater. Offices in Roseville and Stillwater have since closed down. Practitioner no longer dispenses hearing instruments in Minnesota; however, Practitioner is licensed to dispense hearing instruments in Wisconsin.
4. On August 14, 2015, MDH received a complaint from a client who purchased hearing instruments from Practitioner (hereinafter "Client #1"). In the complaint, Client #1 stated he purchased hearing instruments from Practitioner on March 6, 2014. Client #1 explained, "He [Practitioner] closed all of his offices, telephone and e-mails were cut off, so we have no way of contacting provider for services that he had promised in our purchase agreement." Along with the complaint, Client #1 also enclosed a copy of the purchase agreement signed by Practitioner and Client #1 on March 6, 2014.
5. MDH staff review of the purchase agreement reveals Client #1 paid \$5,490 for the hearing instruments. Further, Client #1's purchase included a 5 year warranty- free remote, a three-year Loss and Damage Protection plan with a \$300 deductible, and a Service Plan for free lifetime cleaning, testing, and programming.
6. On December 17, 2015, an MDH staff spoke with the complainant over the phone. Client #1 stated his hearing instruments were no longer functioning properly and needed repair. Client #1 stated he has since purchased new hearing instruments from another provider since he was not able to contact Practitioner.
7. On October 12, 2015, MDH received another complaint from a client who purchased hearing instruments from Practitioner (hereinafter "Client #2"). In the complaint, Client #2 stated he purchased hearing instruments from Practitioner in June of 2014. Client #2 stated at the time of the purchase of the hearing instruments, Client #2 "was not informed of many things- specific oversights" by Practitioner regarding his purchase of hearing instruments. Specifically, Client #2 stated Practitioner:
 - a. Did not provide Client #2 with the consumer rights brochure as required by law.
 - b. Did not tell client #2 verbally or in writing he had 45 day trial period and right to cancel the purchase of the hearing instruments.
 - c. Did not memorialize Client #2's purchase of hearing instruments on a written purchase agreement signed by both Client #2 and Practitioner.
 - d. Only gave Client #2 an invoice for the hearing instruments.
8. Along with the written complaint, Client #2 included a copy of the invoice and a September 2, 2015 letter Client #2 sent to Practitioner. In his letter to Practitioner, Client #2 requested a refund because his hearing instruments were still not working properly.

9. MDH staff review of the purchase agreement revealed the following:
 - a. Client #2 paid \$3,264 for the hearing instruments.
 - b. The purchase included a 3 year warranty, three-years of free battery replacement, and three-year loss and damage plan with a \$300 deductible.
 - c. Client #2 did not sign or initial receipt of the MDH consumer rights brochure as required by law.
 - d. Practitioner did not include his hearing instrument certificate number as required by law.
 - e. The invoice did not include the required 45-calendar day trial period and right to cancel.
10. Client #2 stated he has since purchased new hearing instruments from another provider since he was not able to get Practitioner to repair them.
11. By letters dated December 17, 2015, and January 19, 2016, MDH sent Practitioner a Notice of Investigation letter. The letters requested a response from Practitioner no later than January 18, 2016 and February 1, 2016, respectively. MDH did not receive any response from Practitioner.
12. In the letters, MDH asked Practitioner:
 - a. What plan does he have in place to honor the warranties promised to clients now that his establishment closed down.
 - b. For a copy of the purchase agreement between Valley Hearing Concepts and Client #2.

CONCLUSION

1. Practitioner dispensed hearing instruments without giving Client #2 a consumer rights brochure. Consequently, Client #2 did not sign or initial that he received a consumer rights brochure as required by law. Therefore, Practitioner violated Minnesota Statutes, section 153A.15, subdivision 1 (19) as he did not comply with Minnesota Statutes, section 148.5195, subdivision 3 (20) (iii), and Minnesota Statutes, section 148.5197, subdivision 3.
2. Practitioner failed to disclose to Client #2, the right to cancel the purchase of the hearing instruments within 45 days, in the form of a contract that is written in plain English and in 12- point boldface font. Therefore, Practitioner violated Minnesota Statutes, sections 153A.15, subdivision 1 (19), as he did not comply with Minnesota Statutes, section 158.5195, subdivision 3 (20) (iv), and Minnesota Statutes, section 148.5198, subdivision 1 (c).
3. Practitioner issued Client #2 an invoice for the purchase of hearing instruments. However, the invoice failed to set forth Practitioner's certificate number. Therefore,

Practitioner did not comply with provisions of Minnesota Statutes, section 153A.15, subdivision 1 (19), and Minnesota Statutes, section 148.5197, subdivision 2.

4. Practitioner dispensed hearing instruments to Client #1 and Client #2. The hearing instruments have warranties. Client #1 and Client #2 attempted to contact Practitioner numerous times as hearing instruments were not functioning properly. Practitioner has not replied back to Client #1 and Client #2 inquiries. Therefore, Practitioner did not comply with provisions of Minnesota Statutes, 153A.15 subdivision 1 (19), and Minnesota Statutes, section 148.5197, subdivision 4.
5. MDH sent two letters to Practitioner. MDH requested a written response from Practitioner. Practitioner never responded back to MDH. Therefore, practitioner did not comply with provisions of Minnesota Statutes, section 153A.15, subdivision 1 (11), and Minnesota Statutes, section 153A.15, subdivision 1 (13).

DETERMINATION

1. Practitioner is hereby reprimanded.
2. Within 30 days of the effective date of this Determination, Practitioner shall pay a civil penalty of \$10,350 for violating state statutes mentioned in this determination and which reimburses the Department for the costs of the investigation and proceedings to date. Practitioner must make the payment by check, in the amount of \$10,350 made payable to the "State of Minnesota, Treasurer" and mail the check to the attention of: HOP Investigations and Enforcement, PO Box 64882, Saint Paul, MN 55164-0882.
3. Practitioner may pay the \$10,350 civil penalty in monthly installments for up to 60 months. If Practitioner chooses to make installments, he must notify the Department in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Practitioner must send this information to: HOP Investigations and Enforcement, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this Determination.
4. Each payment will be made by check payable to "State of Minnesota, Treasurer", and mailed to HOP Investigations and Enforcement, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, Practitioner may prepay at any time.
5. The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or proceeding.

ATTENTION: Due to the poor print quality of the signed copy, it is difficult to read and is not accessible to print readers. Pages 1 through 8 of this document are a scanned copy of the original unsigned Settlement Stipulation and Consent Order for James D. Sopland, effective December 28, 2015. If you wish to view a signed copy of the order, please proceed to page 9 of this document.

STATE OF MINNESOTA

BEFORE THE COMMISSIONER OF HEALTH

SETTLEMENT STIPULATION AND CONSENT ORDER

In the Matter of James D. Sopland,
unlicensed hearing instrument dispenser
in the State of Minnesota.

IT IS HEREBY STIPULATED AND AGREED, by James D. Sopland, 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(3), the Department may take disciplinary action against a hearing instrument dispenser for presenting advertising that is false or misleading.

6. 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.

7. Pursuant to Minn. Stat. § 153A.15, subd. 1(8), the Department may take disciplinary action against a hearing instrument dispenser for obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud.

8. Pursuant to Minn. Stat. § 153A.15, subd. 1(13), the Department may take disciplinary action against a hearing instrument dispenser for failing to cooperate with the Department in any investigation.

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

10. Mr. Sopland first obtained a hearing instrument dispenser trainee authorization on July 21, 1999, which expired on July 31, 2000.

11. The Department issued Mr. Sopland a hearing instrument certificate on November 1, 2005. Mr. Sopland renewed his hearing instrument dispenser certification in 2006 through 2013. Mr. Sopland's hearing instrument dispenser certification expired on October 31, 2014. Between 2006 and 2014, Mr. Sopland operated a business known as Valley Hearing Concepts.

12. By letter dated August 15, 2014, the Department sent Mr. Sopland a certification renewal notice letter. The letter gave Mr. Sopland instructions on how to renew his certificate to dispense hearing instruments. The Department instructed practitioner to submit his application and renewal fees by October 1, 2014, to avoid a late fee.

13. By letter dated November 3, 2014, the Department sent practitioner a letter notifying him that his certificate had expired because he failed to renew. In the letter, the Department advised Mr. Sopland that he could renew his certification. The Department also notified Mr. Sopland of the following: "PLEASE NOTE: Sale of hearing instruments without a valid certification issued by the Commissioner of Health is a gross misdemeanor pursuant to Minn. Stat. § 153A.14, subd. 4. Failure to submit your renewal documents and a lapse between expiration of your certification and issuance of a renewal certification may constitute grounds for the Department to initiate an enforcement action against you." Mr. Sopland did not respond to the Department's renewal notice.

14. On or about April 17, 2015, the Department received a complaint that Mr. Sopland had dispensed a hearing instrument to a client on November 26, 2014. The client returned the hearing instrument on January 20, 2015, and Mr. Sopland notified the client that she would not be charged a cancellation fee, and that she would receive a refund of \$5,089.80.

15. On or about April 20, 2015, a Department representative made an unannounced visit to Mr. Sopland's Roseville and Stillwater offices. The Department representative determined that the Roseville office, operated under the name Valley Hearing Concepts, was closed. The Department representative also determined that Mr. Sopland's business location in Stillwater, also operated under the name Valley Hearing Concepts, was open, and that Mr. Sopland was consulting with a client in the office.

16. On or about April 20, 2015, the Department sent Mr. Sopland a Notice of Illegal Practice, and asked for a written response no later than May 22, 2015.

17. On or about May 20, 2015, the Department received a letter of response from Mr. Sopland, in which he denied dispensing hearing instruments. Mr. Sopland did indicate that he is not selling hearing instruments in Minnesota, although he does have an office in Wisconsin, and is licensed to dispense hearing instruments in Wisconsin. He also indicated that his website was still advertising the dispensing and sale of hearing instruments, but he stated that he was closing his office and would change the website in the future.

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

A. Administrative Penalties. Mr. Sopland is hereby assessed a civil penalty of \$13,010.00. However, \$10,000.00 of the civil penalty shall be stayed so long as Mr. Sopland complies with the corrective actions set forth in Paragraph B below, and pays a penalty of \$3010.00, which reflects the Department's costs of investigation. Payment of the penalty amount of \$3,010.00 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 Anne Kukowski, whose address is 85 East 7th Place, P.O. Box 64882, St. Paul, MN 55164-0882.

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

(i) Mr. Sopland shall refund \$5,089.80 to Client No. 1 prior to December 1, 2015.

(ii) Mr. Sopland must immediately cease all acts of dispensing of hearing instruments in the State of Minnesota, and may not advertise that he is authorized to sell or dispense hearing instruments in the State of Minnesota until such time as he is properly certified.

(iii) Mr. Sopland hereby agrees that he will not apply for certification as a hearing instrument dispenser in the State of Minnesota for 3 years from the effective date of this Stipulation.

C. If the Department determines that Mr. Sopland has violated the terms of this Stipulation, the Department shall give Mr. Sopland written notice, specifying the violating actions.

19. For purposes of this Stipulation, Mr. Sopland 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 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. Practitioner 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 division director has become disqualified due to the division director's review and consideration of this Stipulation and proposed Consent Order.

21. This Stipulation shall not in any way or manner limit or effect the authority of the Department to proceed against Mr. Sopland by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Mr. Sopland 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. Practitioner hereby acknowledges having read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Mr. Sopland acknowledges full awareness that it must be approved by the division director. The 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. Sopland, the division director will issue the order and it will take effect. If the changes are unacceptable to Mr. Sopland, or if the division director rejects the Stipulation, it will have no effect, except as specified in Paragraph 20.

24. 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.

25. Practitioner agrees that service of this Stipulation and Consent Order by regular mail to his attorney, Mr. Steven Coon, 222 South Ninth Street, Suite 1600, Minneapolis, Minnesota 55402, is due and sufficient service on Mr. Sopland.

**MINNESOTA DEPARTMENT
OF HEALTH**

Signed: _____

Signed: _____

Dated: _____

Dated: _____

JAMES D. SOPLAND

ANNE KUKOWSKI
Division of Compliance Monitoring,
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 _____, 2015.

**MINNESOTA DEPARTMENT
OF HEALTH**

Signed: _____

Dated: _____

DARCY MINER, Division Director
Division of Compliance Monitoring,
Minnesota Department of Health
85 East 7th Place
P.O. Box 64882
St. Paul, Minnesota 55164-0882

ATTENTION: This is the end of the unsigned copy of James D. Sopland's unsigned Settlement Stipulation and Consent Order. The rest of the pages in this document cannot be made accessible to screen readers.

STATE OF MINNESOTA

BEFORE THE COMMISSIONER OF HEALTH

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Effective December 28, 2015

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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.

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cancellation, to receive a refund of payment within 30 days of return of the hearing aid to the hearing instrument dispenser.

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13. By letter dated November 3, 2014, the Department sent practitioner a letter notifying him that his certificate had expired because he failed to renew. In the letter, the Department advised Mr. Sopland that he could renew his certification. The Department also notified Mr. Sopland of the following: "PLEASE NOTE: Sale of hearing instruments without a valid certification issued by the Commissioner of Health is a gross misdemeanor pursuant to Minn. Stat. § 153A.14, subd. 4. Failure to submit your renewal documents and a lapse between expiration of your certification and issuance of a renewal certification may constitute grounds for the Department to initiate an enforcement action against you." Mr. Sopland did not respond to the Department's renewal notice.

14. On or about April 17, 2015, the Department received a complaint that Mr. Sopland had dispensed a hearing instrument to a client on November 26, 2014. The client returned the hearing instrument on January 20, 2015, and Mr. Sopland notified the client that she would not be charged a cancellation fee, and that she would receive a refund of \$5,089.80.

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

A. Administrative Penalties. Mr. Sopland is hereby assessed a civil penalty of \$13,010.00. However, \$10,000.00 of the civil penalty shall be stayed so long as Mr. Sopland complies with the corrective actions set forth in Paragraph B below, and pays a penalty of \$3,010.00, which reflects the Department's costs of investigation. Payment of the penalty amount of \$3,010.00 shall be by check or money order payable to "Treasurer, State of Minnesota." The payment is due

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

(i) Mr. Sopland shall refund \$5,089.80 to Client No. 1 prior to December 1, 2015.

(ii) Mr. Sopland must immediately cease all acts of dispensing of hearing instruments in the State of Minnesota, and may not advertise that he is authorized to sell or dispense hearing instruments in the State of Minnesota until such time as he is properly certified.

(iii) Mr. Sopland hereby agrees that he will not apply for certification as a hearing instrument dispenser in the State of Minnesota for 3 years from the effective date of this Stipulation.

C. If the Department determines that Mr. Sopland has violated the terms of this Stipulation, the Department shall give Mr. Sopland written notice, specifying the violating actions.

19. For purposes of this Stipulation, Mr. Sopland 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 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. Practitioner 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 division director has become disqualified due to the division director's review and consideration of this Stipulation and proposed Consent Order.

21. This Stipulation shall not in any way or manner limit or effect the authority of the Department to proceed against Mr. Sopland by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Mr. Sopland 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. Practitioner hereby acknowledges having read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Mr. Sopland acknowledges full awareness that it must be approved by the division director. The 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. Sopland, the division director will issue the order and it will take effect. If the changes are unacceptable to Mr. Sopland, or if the division director rejects the Stipulation, it will have no effect, except as specified in Paragraph 20.

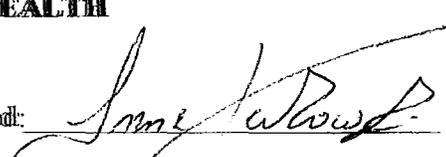
24. This Stipulation and Consent Order contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation.

25. Practitioner agrees that service of this Stipulation and Consent Order by regular mail to his attorney, Mr. Steven Coon, 222 South Ninth Street, Suite 1600, Minneapolis, Minnesota 55402, is due and sufficient service on Mr. Sopland.

**MINNESOTA DEPARTMENT
OF HEALTH**

Signed: 
Dated: 12-13-15

JAMES D. SOPLAND

Signed: 
Dated: 12/28/2015

ANNE KUKOWSKI
Division of Compliance Monitoring,
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 28th day of December, 2015.

**MINNESOTA DEPARTMENT
OF HEALTH**

Signed: Darcy Miner

Dated: 12/28/15

DARCY MINER, Division Director
Division of Compliance Monitoring,
Minnesota Department of Health
85 East 7th Place
P.O. Box 64882
St. Paul, Minnesota 55164-0882