

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

SETTLEMENT STIPULATION AND CONSENT ORDER

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

Effective December 28, 2015

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.

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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."

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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.

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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 Valkey Hearing Concepts, was closed. The Department representative also determined that Mr. Sopland's business location in Stillwater, also operated under the name Valkey 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 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

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.

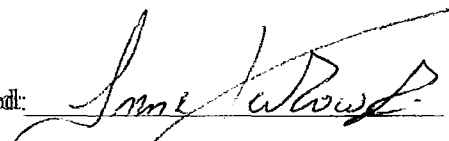
24. This Stipulation and Consent Order contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation.

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: 
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