

Effective 7-10-93

92428

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA  
COMMISSIONER OF HEALTH

In the Matter of John Meers,  
Hearing Instrument Seller

STIPULATION  
AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by John Meers, (hereinafter "Permittee"), and the Minnesota Department of Health (hereinafter "Department"), and that without trial or adjudication of any issue of fact or law herein and without any evidence or admission by any party with respect to any issue:

1. During all times herein, Permittee has been and is subject to the jurisdiction of the Commissioner of Health from whom he holds a permit to sell hearing instruments in the State of Minnesota;

2. For purposes of this Stipulation and Consent Order only, both parties agree that the following shall constitute the factual basis for the order:

a. MDH File #92428: On 4/3/92, permittee sold a hearing instrument to MN for \$900.00. MN signed a check made out to Senior Hearing Care for \$450.00. MN claims that Permittee used high pressure sales tactics to make the sale to her. Permittee denies that he used high pressure sales tactics to make a sale to MN. MN stopped payment on the check and canceled the purchase agreement. MN has not lost any money in this matter. Permittee is now working outside of the State of Minnesota and has changed professions. Permittee has no plans to re-enter the hearing aid selling field in any state. Permittee agrees that revocation of his permit to sell hearing instruments in Minnesota is the best way to resolve this matter.

b. MDH File #92455: On 7/14/92, Permittee sold a pair of hearing aids to RG for \$1000.00. RG paid \$500.00 down on the transaction. RG claims that Permittee used high pressure sales tactics to make the sale to her. Permittee denies that he used high pressure sales tactics to make a sale to RG. RG canceled the purchase agreement and received a full refund from Permittee. Permittee is now working outside of the State of Minnesota and has changed professions. Permittee has no plans to re-enter the hearing aid selling field in any state. Permittee agrees that revocation of his permit to sell hearing instruments in Minnesota is the best way to resolve this matter.

3. For purposes of this Stipulation, Permittee expressly waives all procedures and proceedings before the Commissioner of Health to which Permittee may be entitled under the Minnesota and/or United States constitutions, statutes, rules and also waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minn. Stat. §480A.06, or otherwise from the order issued by the Commissioner of Health pursuant to this stipulation;

4. Except as otherwise specified herein, this Stipulation and Consent Order, investigative reports, and related documents shall constitute the entire

record of the proceedings herein upon which this order is based and shall be filed with the Department. Any reports or other material related to this action and received after the date this Stipulation and Consent Order is executed shall become part of the record and may be considered by the Department in future aspects of this proceeding. These items shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13. They shall not be considered a part of this Stipulation and Consent Order and shall not, to the extent they are not already public documents, become public merely because they are referenced herein;

5. In the event the Commissioner in her discretion does not approve this settlement, or a lesser remedy than specified herein, this Stipulation and Consent Order shall be null and void and shall not be used for any purpose by either party hereto; provided however, that this should occur and thereafter an administrative contested case is initiated pursuant to Minn. Stat. Ch. 14 and §153A.15, Permittee agrees that he will not raise any objection on any administrative level or in any court action to the Department's proceeding and hearing the case on the basis that the Commissioner has become disqualified due to her review and consideration of this Stipulation and record. In exchange for this agreement by Permittee, the Commissioner agrees, in the event she does not approve this stipulation, to grant Permittee all legal rights and remedies available to him under the Minnesota and United States constitutions, Minnesota Statutes, and rules of the Department, except as expressly provided for in this paragraph;

6. This Stipulation shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Permittee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Permittee justifying disciplinary action which occurred before or after the date of this Stipulation and which is not directly related to specific facts and circumstances set forth herein;

7. Upon this Stipulation and Consent Order and all of the facts, records, and proceedings herein, and without further notice or hearings herein, Permittee does hereby consent that the Commissioner may make and enter an order affecting Permittee's authorization to sell hearing instruments in the State of Minnesota as follows:

a. Permittee agrees to pay a civil penalty of \$167.50 to the Department to cover the costs incurred in investigating the cases described in paragraph 2. Permittee agrees to provide this civil penalty to the Department within 45 days of the date the Stipulation and Consent Order is fully executed and received by the Permittee. Permittee shall mail the civil penalty to: Rich Diffatte, Legal Analyst, Health Occupations Program, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, MN, 55440;

b. Permittee agrees to a revocation of his permit (#620) to sell hearing instruments for three years in accordance with Minnesota Statute §153A.15 subd. 2(3). This revocation shall commence immediately on the date this Stipulation and Consent Order is fully executed and received by the Permittee;

c. Permittee agrees to comply with Minnesota Statutes Chapter §153A in its entirety;

8. If Permittee fails to comply with the terms, conditions, and requirements specified in paragraph 8 above, the Permittee shall be liable for, and confess judgment to, an additional civil penalty of \$1000.00 in favor of the State of Minnesota and judgment shall be entered therefor without a hearing or judicial review. Before invoking the \$1000.00 civil penalty, the Department shall inform the Permittee of the violation and ask for an explanation. The Department shall mail the notice of the violation via first class mail to the last known address of the Permittee. Such mailing shall be considered personal service upon Permittee. If the explanation is unsatisfactory as determined by the Department, then the Commissioner shall be informed of the violation and of the Permittee's explanation. The Commissioner may then assess the \$1000.00 civil penalty. The Commissioner shall be the sole judge of whether Permittee violated the Stipulation and Order and of whether Permittee should be assessed the \$1000.00 civil penalty. The Commissioner's Order for a civil penalty shall not be subject to judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minnesota Statutes §480A.06 or otherwise. The Commissioner may also initiate a hearing under Minnesota Statute Chapter 14 to determine what additional disciplinary action should be taken;

9. Any appropriate federal or state court shall, upon application of the Commissioner, enter an order of enforcement of any or all of the terms of this Stipulation and Consent Order;

10. Permittee hereby acknowledges that he has read, understood, and agreed to this Stipulation and Consent Order and has freely and voluntarily signed it. In signing this Stipulation and Consent Order, Permittee acknowledges that he is fully aware that it must be approved by the Commissioner. The Commissioner may either approve the Stipulation and Consent Order as proposed, approve it subject to specified changes, or reject it. If the Commissioner approves the Stipulation or makes a change acceptable to the Permittee, the Commissioner will issue the Order and the Stipulation will take effect. If the changes are unacceptable to Permittee or the Commissioner rejects the Stipulation and Consent Order, it will be of no effect;

11. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation;

12. Upon this Stipulation and Consent Order and all other evidence made available to the Commissioner, the Commissioner may at any time after she has approved this Stipulation and Consent Order issue it to Permittee without further notice. A copy of the Stipulation and Consent Order when issued by the Commissioner shall be served by first class mail on Permittee, which service will be considered personal service upon Permittee. This Stipulation and Consent Order is effective upon service.


Dated: 5-7-93, 1993

  
John Meers, Permittee

Dated: \_\_\_\_\_, 1993

John Mulligan, Attorney for Permittee

Dated: 6/24/93, 1993

  
Rich Diffatte  
Legal Analyst  
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 this 30<sup>th</sup> day of June, 1993.

STATE OF MINNESOTA  
DEPARTMENT OF HEALTH

  
MARLENE E. MARSCHALL  
Commissioner of Health