

eR. 4/28/98

**BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH**

**In the Matter of Al Udeen,
Hearing Instrument Dispenser**

**STIPULATION
AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Al Udeen, (hereinafter "Practitioner"), and the Minnesota Department of Health (hereinafter "Department"), and that without trial or adjudication of any issue of fact or law herein:

1. Except as otherwise specified herein; this Stipulation and Order, investigative reports, and related documents shall constitute the entire record herein upon which this Order is based and shall be filed with the Department. The Stipulation and Order is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA"). All other data comprising the record shall not be considered a part of this Stipulation and Order and shall maintain the data classifications to which they are entitled under the MGDPA. The following shall constitute the factual basis for the Order:

a. Practitioner dispensed hearing instruments as an authorized hearing instrument dispenser trainer in the State of Minnesota from May 9, 1995 to December 31, 1995;

b. On June 15, 1995, Practitioner sold a Lori Canal hearing instrument to G.B. in the amount of \$912.90;

c. On the face of the June 15, 1995 purchase agreement language informing the consumer of the right to cancel the purchase agreement within thirty days of delivery was set forth in the following manner:

Minnesota Law gives the buyer the right to cancel this purchase for any reason at any time prior to midnight of the 30th calendar day after receipt of the hearing aid(s). This cancellation must be in writing and must be given or mailed to Low Cost Hearing Aid Sales. If the buyer decides to return the hearing aid(s) within 30 day period, the buyer will receive a refund of \$803.71.

The Practitioner did not comply with Minn. Stat. §153A.19, subd. 2(b) which requires the cancellation notice to be in all capital letters of at least 12-point boldface type;

d. Practitioner failed to provide G.B. with proper notice of her right to cancel the purchase agreement;

e. In a letter dated January 13, 1997, the Department advised Practitioner of its determination that Practitioner had violated Minn. Stat. § 153A.19, subd. 2. The Department asked Practitioner to refund G.B.'s purchase price less 10% as a service settlement. Practitioner failed to respond to the Department's letter;

f. In a letter dated July 24, 1997, the Department provided Practitioner with a second notice of its proposed service settlement. Practitioner failed to respond to the second notice;

g. In a letter dated October 2, 1997, the Department provided Practitioner with final notice of its proposed service settlement. Practitioner failed to respond to the final notice;

2. Practitioner admits and acknowledges that, for purposes of this Stipulation and Consent Order and any future disciplinary proceedings, proof at hearing that Practitioner failed to provide proper 30-day cancellation notice, as referenced in paragraph 1, would constitute a violation of Minn. Stat. §153A.19, subd. 2(b) and would justify enforcement action by the Commissioner against Practitioner under Minn. Stat. § 153A.15, subd. 2. Practitioner admits and acknowledges that, for purposes of this Stipulation and Consent Order and any future disciplinary proceedings, proof at hearing that Practitioner failed to provide information in a timely manner in response to the Department's proposed service settlement, would constitute a violation of Minn. Stat. § 153A.15, subd. 1(14) and would justify enforcement action by the Commissioner against Practitioner under Minn. Stat. § 153A.15, subd. 2;

3. Practitioner expressly waives the formal hearing and all other procedures before the Commissioner of Health to which Practitioner may be entitled under the Minnesota or United States constitutions, statutes, or rules;

4. Upon this Stipulation record, as set forth in paragraph 1 above, and without any further notice of proceedings, the Commissioner hereby **ORDERS**:

a. That practitioner is hereby publicly reprimanded;

b. Practitioner must make restitution to G.B. in the amount of \$912.90 and provide the Department with evidence thereof within thirty days of the effective date of this order;

c. Within 30 days of the effective date of this order, Practitioner must pay a civil penalty of \$70.80 pursuant to Minn. Stat. §153A.15, subd 2(4) to reimburse the Department for the costs of its investigation. Practitioner shall remit the \$70.80 civil penalty, by check or money order, made payable to "State of Minnesota, Treasurer", to: Legal Analyst, Minnesota Department of Health, Health occupations Program, 121 East Seventh Place, P.O.Box 64975, St. Paul, MN 55164-0975. Practitioner may prepay at any time without penalty;

5. This Stipulation and Consent Order shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Practitioner by initiating a contested case

hearing or by other appropriate means on the basis of any act, conduct, or admission of the Practitioner, justifying disciplinary action which occurred before or after the date of this stipulation and which is not directly related to specific acts and circumstances set forth herein;

6. If the Department receives evidence that Practitioner has made a misrepresentation to the Department or a client, or has engaged in acts or omissions that would constitute a violation of Minn. Stat. Chapter 153A, the Department shall notify Practitioner in writing at the last known address filed with the Department. Practitioner shall have the opportunity to explain the alleged violation or misrepresentation. If Practitioner fails to submit an explanation within 30 days of the Department's notice or if the explanation is unsatisfactory, the Commissioner may suspend Practitioner's certification;

7. In the event the Commissioner in her discretion does not approve this settlement or a lesser remedy than specified herein, this Stipulation and Order shall be of no evidentiary value and shall not be relied upon or used for any purpose by either party. If this should occur and thereafter an administrative contested case is initiated pursuant to Minn. Stat. Chapter 14 and Minn. Stat. §153A.15, Practitioner agrees he will assert no claim that the Commissioner was precluded by her review and consideration of this Stipulation or any records relating hereto;

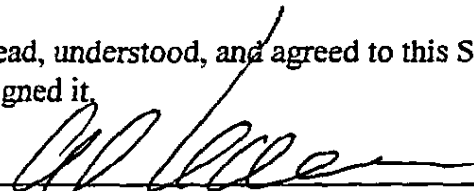
8. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. Practitioner understands that this agreement is subject to the Commissioner's approval. If the Commissioner either approves the Stipulation or makes changes acceptable to the Practitioner, an Order will be issued by the Commissioner, upon this Stipulation and Consent Order and all other evidence made available to the Commissioner, once the Commissioner has approved it, the Commissioner may issue the Stipulation and Consent Order to Practitioner at any time without further notice;

9. A copy of the Stipulation and Consent Order when issued by the Commissioner, shall be served by first class mail on Practitioner, at Practitioner's last known address. Service via first class mail shall be considered personal service upon Practitioner, at which time this Stipulation and Consent Order shall become effective. Any appropriate federal or state court shall, upon application of the Commissioner, enter its decree enforcing the Order of the Commissioner;

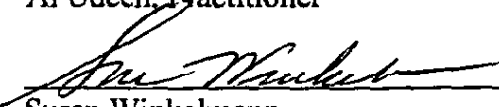
CONSENT:

Practitioner hereby acknowledges that he has read, understood, and agreed to this Stipulation and Consent Order and has freely and voluntarily signed it.

Dated: 4 3 98, 1998

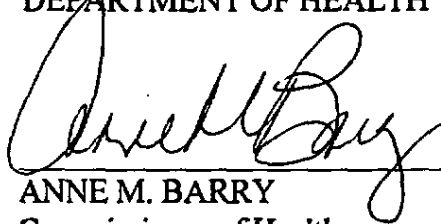

Al Udeen, Practitioner

Dated: 4/6, 1998


Susan Winkelmann
Investigations and Enforcement Supervisor
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 on this 16th day of April, 1998.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH



ANNE M. BARRY
Commissioner of Health