

Eff. 8/16/90

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Sammy K. Doamekpor,
Hearing Instrument Seller

STIPULATION
AND CONSENT ORDER
FN 88182

IT IS HEREBY STIPULATED AND AGREED by Sammy K. Doamekpor, (hereinafter "Permittee"), and the Minnesota Department of Health (hereinafter "Department"), 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. Permittee has a valid hearing instrument seller permit issued by the Commissioner of Health;
2. On May 7, 1990, Department staff notified Permittee in writing that:
 - a. staff had a copy of one of his hearing instrument selling advertisements in which Permittee's name was printed with the letters "PhD" [sic] immediately following his name;
 - b. staff had information that Permittee had earned his Ph.D. degree in animal science, not in hearing science;
 - c. Minnesota Statutes, sec. 153A.15, subd. 1 (4) prohibits presenting advertising that is false or misleading;
 - d. Minnesota Statutes, sec. 153A.15, subd. 1 (6) prohibits engaging in conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a consumer;
 - e. Minnesota Statutes, sec. 153A.15, subd. 1 (9) prohibits obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud;
 - f. violations of state or federal law can result in an enforcement action pursuant to Minnesota Statutes, sec. 153A.15, subd. 2;
 - g. Permittee was requested to respond in writing to the Department's letter by May 21, 1990;
3. On May 10, 1990, Permittee called Susan E. Winkelmann, Hearing Instrument

Sales Analyst of the Department, and explained why he chose to advertise himself as having a Ph.D. in a hearing instrument sales advertisement without indicating that the Ph.D. was not in hearing science, but rather in animal science;

4. On May 21, 1990, Department staff received Permittee's written response in which Permittee stated that he wanted to avoid any possible misrepresentations in the advertisement by using the letters Ph.D. instead of the title Dr. in the advertisement;
5. Permittee expressly waives the formal hearing and all other procedures before the Commissioner of Health to which he may be entitled under the Minnesota and/or United States constitutions, statutes, or rules;
6. This stipulation shall constitute the entire record herein;
7. In the event the Commissioner in her discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party. Permittee agrees that if the Commissioner rejects this stipulation and this case proceeds to hearing, Permittee will assert no claim that the Commissioner was prejudiced by her review and discussion of this stipulation or of any records relating hereto;
8. Permittee does not contest the facts referred to below:
 - a. Permittee used a direct-mail advertisement campaign that stated that his office name is "Hearing Professional Associates". Permittee's own name is printed under the office address information with "PhD" [sic.] immediately following his name;
 - b. The Ph.D. degree referred to in Permittee's advertisement was earned by him in animal science, not in hearing science;
 - c. Nowhere on the advertisement did Permittee disclose that his Ph.D. degree was in animal science;
9. Permittee acknowledges that the facts and conduct specified in paragraph 8 above may constitute a violation of Minnesota Statutes, sec. 153A.15, subd. 1 (4) (1988);
10. Permittee and the Department acknowledge that Permittee's conduct specified in paragraph 8 above was not exercised in bad faith;
11. Permittee acknowledges and admits that proof at hearing of any one or more of the facts and conduct specified in paragraph 8 above, including proof by the Department's introduction of admissions made by Permittee to Department's staff, would authorize the Commissioner of Health to take action against the

Permittee's permit pursuant to Minnesota Statutes, sec. 153A.15, subd. 2 (1988);

12. 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;

13. In consideration of the facts contained herein, the Permittee agrees to the following terms and conditions:

a. Permittee agrees to discontinue advertising himself as a Ph.D. in hearing instrument sales advertisements without clearly stating on the advertisement that Permittee's Ph.D. degree is in animal science;

b. Permittee agrees to comply with Minnesota Statutes, sec. 153A.15, subd. 1 (4) which prohibits presenting advertising that is false or misleading;

14. Permittee's violation of any of the terms and conditions specified in this Stipulation and Consent Order constitutes a basis for further disciplinary action by the Commissioner of Health under Minnesota Statutes, sec. 153A.15, subd. 2 (1988);

15. Once the Order is signed by the Commissioner, it shall become effective immediately and Department staff will close the complaint file in this matter;

16. Permittee hereby acknowledges that he has read and understood this Stipulation and Consent Order, and agrees to this Stipulation and Consent Order and has freely and voluntarily signed the Stipulation without threat or promise by the Commissioner or any of her employees, or agents. When signing the stipulation, Permittee acknowledges that he is fully aware that the Stipulation and Consent Order will take effect immediately upon signature of the Commissioner;

17. If the Commissioner or one of her employees or agents receives evidence that Permittee has violated the terms of the Stipulation and Consent Order, or has made misrepresentations to the Department, the Commissioner shall so notify the Permittee in writing at his last known address. Permittee shall have the opportunity to contest the allegations by submitting a written request to so contest within 30 days after service of the Notice of Opportunity to Contest Allegations:

a. If Permittee does not submit a written request to contest the allegations within 30 days of service of the notice, the issues set forth in the notice may be taken as true or deemed proven without further evidence.

Upon a report to the Commissioner of such allegations and of Permittee's failure to contest, the Commissioner may either impose additional disciplinary action. Any Commissioner order issued under this paragraph shall be final and binding upon Permittee and shall not be subject to judicial or administrative review or to a judicial stay pending any attempts to seek such review;


b. If Permittee submits a written request to contest the allegations, the Commissioner may initiate either a proceeding conducted pursuant to Minnesota Statutes, chapter 153A or a contested case hearing pursuant to Minnesota Statutes, chapter 14 to determine whether Permittee can show cause as to why additional disciplinary action should not be imposed. In any such proceeding, the Commissioner shall have the burden of going forward to provide a sufficient factual basis supporting the allegations. The Commissioner shall provide sufficient evidence to meet the substantial evidence standard used by appellate courts in reviewing administrative actions, that is, evidence demonstrating that the Commissioner is not acting unreasonably, arbitrarily, or capriciously, and that some reasonable evidence exists to support the allegations. Upon such a showing by the Commissioner, the burden of proof as to why additional disciplinary action should not be imposed shall be upon the Permittee.

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

Dated: August 13, 1990.


Sammy K. Doamekpor
Permittee

Dated: 8/17, 1990.


Tom Hiendlmayr, Director
Health Occupations Program
Minnesota Department of Health

IT IS SO ORDERED:

MINNESOTA COMMISSIONER OF HEALTH

Dated: August 21, 1990.


By: Nancy Feldman
Assistant Commissioner

John A. Quillen personally delivered Stipulation and Consent Order for In the Matter of Sammy Doamekpor, Hearing Instrument Seller, on August 13, 1990, to Louis Zupancic, Attorney at Law, 1255 West Larpenteur Avenue, St. Paul, Minnesota, 55113.

John A. Quillen
Signature

8/13/90
Date

John A. Quillen