

Effective January 9, 2014

OAH Docket No. 8-0900-30639

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Application for
Certification as a Hearing Instrument
Dispenser by David R. Oswalt.

SETTLEMENT AGREEMENT

This Settlement Agreement, hereinafter "Agreement" is entered into by and between the Minnesota Department of Health, Division of Compliance Monitoring, (hereinafter "Department") and David R. Oswalt (hereinafter "Practitioner"); as follows:

WHEREAS, the Department has statutory authority to discipline hearing instrument dispensers under Minnesota Statute Section 153A.15. The types of disciplinary action the Department may impose include public reprimands, suspension, revocation, denial of certificate renewal, revocation or suspension of the right to supervise trainees, the assessment of civil penalties not to exceed \$10,000 for each separate violation, or any other action reasonably justified by the individual case.

WHEREAS, This settlement agreement is public data pursuant to the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13. All other data comprising the record shall not be considered a part of this Stipulation and shall maintain the data classifications to which they are entitled under MGDPA.

WHEREAS, in December 2012, the Department refused to renew Practitioner's certificate due to allegations from multiple consumers that they had been harmed financially by the manner that Practitioner closed his prior business. Specifically, the allegations of financial harm were from consumers who wanted to make returns to his prior business or had warranties that Practitioner's prior business was responsible for servicing. Practitioner denied these allegations.

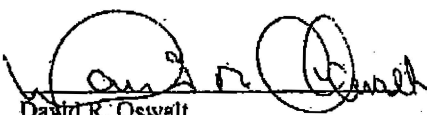
WHEREAS, in an effort to avoid the cost and uncertainty of a contested hearing on the matter, the parties have mutually agreed to resolve this matter as set forth herein:

1. In exchange for the promises and agreements contained herein, Practitioner agrees that he shall dismiss his request for a hearing. The above-entitled matter shall be dismissed and the hearing shall be cancelled.

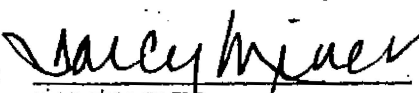
2. The Department agrees to waive any civil penalty assessed to Practitioner and the Department further waives the Department's costs related to the investigation and proceedings.
3. The Department and Practitioner agree that he may withdraw his application to renew his certificate to dispense hearing instruments that he submitted on November 28, 2011.
4. Practitioner agrees that he shall not submit an application to renew a certificate to dispense hearing instruments for five (5) years from July 15, 2013.
5. The Department will issue a letter to Practitioner that states that his certification is not "suspended, terminated or revoked." The Department is excused from continued performance of this paragraph if subsequent events make said statement untrue.
6. Practitioner agrees to restitution in the amount of eighteen thousand dollars (\$18,000). Practitioner agrees to present the Department with cashier's checks made out to the below named individuals in the prescribed amounts prior to the Department signing the agreement. Restitutions payments will be paid as follows:
 - a. RN in the amount of \$3,372
 - b. WK in the amount of \$2,072
 - c. CG in the amount of \$2,609
 - d. RDN in the amount of \$3,372
 - e. MO in the amount of \$3,203
 - f. DS in the amount of 3,372

IT IS HEREBY AGREED:

Dated 10-8, 2013.

BY: 
 David K. Oswald
 Applicant

Dated 1/9 ²⁰¹⁴ 2013.

BY: 
 DARCY MINER
 Division Director
 Division of Compliance Monitoring
 Minnesota Department of Health
 85 East 7th Place
 P.O. Box 64900

St. Paul, MN 55164-0900

