BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED
DISCIPLINARY TREATMENT OF THE
LICENSE OF DR. SHAWN TOLNAY, A
LICENSED DENTIST, LICENSE NO. 2149

Docket No. CC-09-0342-DEN
Complaint Nos. DEN-2009-0029 & DEN-2009-0036

NOTICE OF SUMMARY SUSPENSION
NOTICE OF PROPOSED BOARD ACTION
AND OPPORTUNITY FOR HEARING

TO: Dr. Shawn Tolnay
c/o Ed Guza
Attorney at Law
Guza, Williams, & Nesbitt, PLLC
25 Apex Dr., Ste B
Bozeman, MT 59718

PLEASE TAKE NOTICE THAT:

The Screening Panel of the Montana Board of Dentistry (Screening Panel) met to review
evidence regarding the complaint against you in complaint number DEN-2009-0029 & DEN-
2009-0036. Title 37, Chapters 1 and 4, of Montana Code Annotated and Title 24, Chapter 138, of
the Administrative Rules of Montana govern the conduct of members of the professions
governed by the Board of Dentistry. The Screening Panel found reasonable cause to believe that
you have violated the statutes and rules identified below. Such violations justify disciplinary
sanctions to be imposed against your Montana license. The Board of Dentistry (Board) has such
authority pursuant to Montana Code Annotated §§37-1-307, 37-1-316, and 37-4-201.

The Screening Panel has reason to believe that you committed the following violations:


2. Failing to maintain patient records in a manner consistent with the protection of the welfare of the patient, in violation of Admin. R. Mont. 24.138.410.

3. Failing to comply with the regulations concerning the administration of anesthesia, in violation of Admin. R. Mont. 24.138.2301(i).

THEREFORE, pursuant to Montana Code Annotated §37-1-307, the Board proposes to impose against you one or more of the sanctions authorized under Montana Code Annotated §37-1-312.

REASONS FOR ACTION

There is reasonable cause to believe that the following assertions will be proven and will justify the imposition of sanctions against the license of Shawn Tolnay.

FACTUAL ASSERTIONS

1. Dr. Shawn Tolnay is licensed by the Montana Board of Dentistry to practice as a Dentist, holding Montana license number 2149.

2. On November 19, 2008, Allison Collins filed a complaint against Dr. Tolnay. The Complainant stated:

   I am extremely concerned for the safety of [the Licensee’s] IV sedation patients. I am concerned that patients are not being treated fairly when it comes to getting a thorough diagnosis & follow through on a treatment plan. I am concerned that excessive prescriptions have been written. I am concerned that too little value is being placed on having a sanitary environment, and on critical documentation like exam results, treatment notes and drug logs. I am concerned that precautions to ensure the security of IV sedation drugs are not being taken. I am also concerned for the staff at Bridger Dental. Due to never-ending turnover with Dr. Tolnay, I worry there is not enough sufficiently trained staff to assist during the risky procedures he attempts to complete each day. I'm afraid that too many corners are being cut and that it is only a matter of time before something goes terribly wrong.
3. The Screening Panel for the Board of Dentistry reviewed the complaints and responses at their meeting on December 18, 2008. At that time the Panel moved to investigate the matter further.

4. Bill Woods, an investigator with the Department of Labor and Industry, was assigned to investigate the complaint. In addition, the Screening Panel requested that the Department retain an expert to assist Mr. Woods in assessing standard of practice issues related to Dr. Tolnay’s dental practice. The Screening Panel was specifically interested in an individual who could evaluate Dr. Tolnay’s sedation practices, and consequently, the Department entered into a contract with Terry Klise, D.D.S., who is also a licensed anesthesiologist, to assist Mr. Woods with these aspects of the investigation. As a result of his investigation and in consultation with Dr. Klise, Mr. Woods prepared a Report of Investigation, which documented the following:

a. The complaint issues that came to the forefront included the length of time of conscious sedation, the amounts and types of drugs given, and the level of sedation. Also the treatment records were examined for content and timeliness with concerns noted.

b. The dental clinic was found to be sanitary and consistent with accepted protocols as required.

c. Allison Collins’ job duties included being responsible for the proper logging and documenting of the drug cabinet. These had also been the duties of the prior office manager, Heidi Kahn. Ms. Kahn stated in her Letter, dated December 16, 2008, that she was the office manager from February 2006 Until October 2007. Heidi Kahn stated, "Once I became office manager, Teresa Tolnay and I were the only people that had a key to the drug cabinet. At that time, Dr. Tolnay did not have a key to the cabinet. It was my job to open the cabinet and retrieve what was needed for a patient. This cabinet was kept locked at all other times."

The Heidi Kahn Letter further stated, "the initial log book for the medicine cabinet was set up by Teresa Tolnay. When I became office manager, I continued to use the same set up and mark in the book when drugs were taken out of the cabinet and which patient. I also logged if any
drugs were destroyed if all were not used on a patient. As I mentioned before, this cabinet was always locked unless a drug was being retrieved for a patient. I was never told to leave the drug cabinet open or unlocked over the weekend."

Dr. Shawn Tolnay advised in his responses and during interview that he is not allowed to possess keys to the drug cabinet. Dr. Tolnay stated that it has been a condition of the Montana Professional Assistance Program (MPAP) restricting his access to the drug cabinet in order to be licensed by the Board of Dentistry. Dr. Tolnay stated he does not and never has had a key to the drug cabinet.

d. Allison Collins was also assigned the job duty to insure that the treatment records were properly kept. However her complaint cites that Dr. Tolnay fails to properly document cases.

A review of the patient files provided by Dr. Tolnay indicates that the patient records often fail to properly document patient treatment. Dr. Klise notes in his report, dated May 8, 2009, that there is a lack of organization of office documents and insufficient documentation.

In the interview of April 24, 2009, Dr. Shawn Tolnay admitted that his patient records may not have previously been properly kept. Dr. Tolnay agreed that although he had assigned those duties to staff he is still ultimately the person responsible for those records as he is the licensee. Dr. Tolnay has advised that since the complaints have been filed he has improved on the documentation in the patient files and feels that he has corrected any deficiency that existed.

e. It was determined that Allison Collins lacks sufficient knowledge to determine whether Dr. Tolnay was writing excessive or unnecessary prescriptions.

f. It was determined that Allison Collins lacks sufficient knowledge to determine whether patients were misdiagnosed or not.

5. Dr. Klise’s report, which was identified as a supporting document and attached to Mr. Woods’ report of investigation, described the following relevant additional information:

a. Following [the] investigation four areas were found to have just cause for
concern:

1. Lack of organization of office documents and insufficient documentation
2. Lack of timely completion of treatment, based on document reviews
3. Over-sedation of patients to levels of anesthesia deeper than legally permitted by definition of the Montana Code Annotated, 37-4-101-e(i).
4. There is the impression that Dr. Tolnay lacks the understanding of adequate preoperative assessments on potentially higher risk patients.

b. Regarding documentation issues, the investigators found:

1. Notes were incomplete in thought without documentation of initial examination findings, patient's chief complaint or radiographic interpretation where appropriate.
2. Lack of clear, concise treatment plan formulation justifying treatment.
3. Lab values were requested and results present, but no documentation regarding having been reviewed or evaluation of clinical relevance to patient's care.
4. Poor organization of documents regarding patient care such as consents for intravenous light general anesthesia, preoperative documentation, etc.
5. Intravenous light general anesthesia sedation logs without patient names and dates on documents.
6. Light general anesthesia sedation logs were present without adequate documentation of clinical treatment progress notes.
7. Clinical treatment progress notes indicating that light general anesthesia sedation was provided, without accompanying sedation log.
8. Within the sedation logs, specific documentation was lacking regarding the following:
   a. Use of oxygen (as per Dr. Tolnay's interview, oxygen is routinely utilized but this is not reflected on the sedation logs).
   b. The taking of vital signs throughout periods of drug dosing.

c. Regarding lack of timely completion of treatment, the investigators found:

1. Endodontic therapy initiated in July 2007, remained unfinished in October 2007 with sketchy treatment notes between these dates.
2. Endodontic therapy was initiated with subsequent implant placement, yet no documentation was present regarding failure of endodontic therapy nor tooth extraction.
3. Multiple light general anesthesia procedures provided to patients without maximizing sedation time.

D. Regarding over-sedation of patients to levels of anesthesia deeper than legally permitted by definition in the Montana Code Annotated, the investigators found:

1. Multiple documents where a propofol infusion is used in conjunction with 100 μg fentanyl and 10 mg of versed or more.
2. Documented use of a propofol infusion in conjunction with 10 mg versed and 11 mg morphine; versed and morphine documented to be given within 15 minutes.
time period.
3. Multiple cases with high drug dosages capable of producing levels of sedation
deeper than light general anesthesia.

e. Regarding Dr. Tolnay's understanding of adequate preoperative assessments on
potentially higher risk patients, the investigators found:

In review of a diabetic patient's chart:
• No indication of acquiring a medical consult
• No documentation regarding targeted questioning for current state of diabetes
• No established preoperative blood glucose levels

Specifically, Mr. [M.U., (patient's name redacted)] . . . was seen on 2/18/2008. He
was rescheduled "...due to blood sugars being too low." The entry went on to state
that "PT. dropped 20 pt's in last hour" without elaboration as to how this was
determined, how it might have occurred, or how the patient was counseled.

When specifically asked on interview about the patient, Dr. Tolnay recalled the
incident. He stated that he did not have a glucometer in his practice, and relies on
patients to utilize their own glucometer. I can agree with this practice. However,
his "did not know how low [M.U.'s] blood glucose was that day." He none the less
discharged the patient without further investigation according to the records and
interview.

Additionally, he provided sedation to [M.U.] in the afternoon on other sedation
appointments. It is the recommended standard of care that individuals with
diabetes be sedated in the morning due to "nothing by mouth!" requirement for
sedation procedures and potential interaction with diet, medication, and blood
glucose levels seen especially when fasting. This potentially complicates
treatment of the diabetic, causing erratic and unpredictable blood glucose levels.
Finally, there is no evidence where [M.U.'s] blood glucose was addressed prior to
any sedation appointment or at the time of discharge.

This incident suggests that Dr. Tolnay perhaps does not understand the potential
gravity that patients with tenuous underlying medical conditions can present.
Although this case represents only a small glimpse into his overall practice, it is
nonetheless disturbing that one out of sixteen voluntarily presented charts holds
such a significant event.

6. In addition, with respect to over-sedation of patients, Dr. Klise stated as follows in
his report:

Based on my experience, I have a solid respect and understanding of how patients
respond to the drugs and drug combinations used in anesthesia. In my opinion, Dr.
Tolnay is using drug combination and dosages that carry a high risk of sedation
beyond what his state permit allows. Although not specifically banned from use
by Montana laws and statutes, the Diprivan® (propofol) prescribing information
specifically states that when used for sedation or anesthesia, propofol "should be
administered only by persons trained in the administration of general anesthesia

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and not involved in the conduct of the surgical/diagnostic procedure." In my opinion, this alone should ethically prevent any practitioner holding a light general anesthesia permit from using propofol.

When questioned on how many sedations a month Dr. Tolnay provides, he responded with "2 to 3 a day". Additionally, he was asked if his sedations are ever unsuccessful. The answer was as follows:

"Most patients tolerate sedation well, however, if a patient does not tolerate the procedure well, we will terminate the sedation. These patients are then re-appointed, and often a pre-operative oral anxiolytic medication is prescribed. We also counsel with patients to determine any possible contributing factors; i.e. psychological, caffeine, drug and alcohol usage. The next appointment will be in the beginning of the day and a different regimen of conscious sedation will be performed. Most of the time this works, but on the rare occasion this does not, the patient is referred to a hospital based dentist to complete treatment, under the care of an anesthesiologist"

In my experience, light general anesthesia is not an adequate level of sedation for many anxious patients. Deep sedation is required more frequently than Dr. Tolnay implies.

7. The Screening Panel found reasonable cause to believe that the statutes and rules identified above were violated by the Licensee. Accordingly, the Screening Panel of the Board of Dentistry directed that this formal Notice of Proposed Board Action and Opportunity for Hearing be served upon Shawn Tolnay pursuant to Mont. Code Ann. §37-1-309.

8. In addition to the Screening Panel's finding of reasonable cause to believe the Licensee committed the violations described herein, the Panel made a finding that public health, safety, or welfare imperatively required emergency action and moved to summarily suspend Dr. Tolnay's light general anesthesia (sedation) permit pending the outcome of the disciplinary proceedings in this case.

CONCLUSIONS OF LAW

The information contained in the fact assertions herein justify the following Conclusions of Law:

1. The Board of Dentistry has jurisdiction over the person, license, and the subject matter herein pursuant to Sections 37-1-131 and 37-1-307, Montana Code Annotated.

2. Mont. Code Ann. §37-1-316(18), defines unprofessional conduct as conduct that
does not meet the generally accepted standards of practice. It was unprofessional conduct for the Licensee to fail to keep and maintain sufficient patient records, properly supervise employees and assistants to ensure that appropriate documentation was kept, timely complete treatment, properly sedate patients, and take appropriate precautions when dealing with high risk patients.

3. Failing to maintain patient records in a manner consistent with the protection of the welfare of the patient, is a violation of Admin. R. Mont. 24.138.410.

4. Failing to comply with the regulations concerning the administration of anesthesia, is a violation of Admin. R. Mont. 24.138.2301(1)(i). The regulations concerning the administration of anesthesia include the following:

24.138.3201 PRACTICE OF ANESTHESIA (1) Dentists licensed in this state shall not apply general anesthesia or conscious sedation techniques, unless and until they have met all of the requirements set forth in these anesthesia rules. To "apply" general anesthesia or conscious sedation means to administer the agent to the patient and does not include performing dental procedures upon a patient to whom another person, qualified under 37-4-511, MCA, has given the agent. (2) Violation of these rules shall constitute grounds for disciplinary actions as provided in 2-4-631(3) and 37-1-136, MCA. (3) Performing anesthetic procedures after the effective date of this rule without an appropriate permit will be interpreted by the board as unprofessional conduct under ARM 24.138.2301. This is an interpretive section.

24.138.3202 PERMIT REQUIRED FOR ADMINISTRATION OF ANESTHESIA (1) To administer general anesthesia or conscious sedation, a Montana licensed dentist must possess a permit. (2) To obtain a permit, the dentist makes application and must meet specific minimum qualifying standards as set forth in the rules. (3) Anesthesia administration permits must be renewed every year. (4) The board may grant to a Montana licensed dentist, upon receipt of an application and payment of the initial inspection fee, a temporary permit authorizing the dentist to administer general anesthesia, light general anesthesia, or conscious sedation for a period not to exceed 120 days or until the inspectors are able to make the inspection. This temporary permit may be extended upon board approval.

24.138.3203 MINIMUM QUALIFYING STANDARDS (1) With respect to general anesthesia, no dentist shall be permitted to administer or monitor general anesthesia during a dental procedure or dental-surgical procedure unless and until he or she satisfies the qualifications set forth in 37-4-511(1), MCA. (2) Dentists providing general anesthesia or conscious sedation must present evidence of successful completion of an advanced course in cardiac life support within the three most recent years. As used in this subchapter, the terms "general anesthesia" and "conscious sedation" do not include "nitrous oxide/oxygen sedation" used alone or in conjunction with a single oral sedative agent.
(3) With respect to conscious sedation, no dentist shall administer drugs to achieve the state known as conscious sedation during a dental procedure or a dental-surgical procedure unless he or she has received formal training in conscious sedation techniques from an institution, organization, or training course approved by the board consisting of a minimum of 40 clock hours of didactic instruction and 20 clock hours of additional patient contact. The dentist must furnish evidence of having completed this training.
(a) This requirement does not apply to the administration of an oral drug for the purpose of providing mild relaxation.
(b) All requirements for the use of conscious sedation or general anesthesia will apply as indicated, regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than mild relaxation.
(4) With respect to nitrous oxide/oxygen sedation used alone or in conjunction with a single oral sedative agent, no dentist shall use nitrous oxide/oxygen on a patient unless he has completed a course of instruction of at least 14 clock hours of didactic and clinical training. This instruction must include didactic and clinical instruction in an accredited dental school, hospital, or dental society sponsored course, and must include instruction in the safety and management of emergencies.
(a) A dentist who practices dentistry in Montana who can provide satisfactory evidence of competence and skill in administering nitrous oxide/oxygen sedation by virtue of experience and/or comparable alternative training shall be presumed by the Montana Board of Dentistry to have appropriate credentials for the use of nitrous oxide/oxygen sedation.

24.138.3204 MINIMUM MONITORING STANDARDS

(1) Minimum standards for monitoring patients for general anesthesia shall include the following:
(a) preoperative:
   (i) vital signs - to include blood pressure, pulse and respiratory rate.
   Temperature may be necessary, and
   (ii) electrocardiac monitoring.
(b) intraoperative:
   (i) vital signs - to include blood pressure, pulse and respiratory rate to be taken and recorded every five minutes, and
   (ii) precordial stethoscope used to monitor respiratory rate and pulse rate, and
   (iii) pulse oximetry, and
   (iv) continuous electrocardiac monitoring, and
   (v) an intravenous line, and
   (vi) continuous monitoring of skin and mucosal color, and
   (vii) additional monitoring devices as indicated.
(c) postoperative:
   (i) vital signs - to include blood pressure, pulse, respiratory rate recorded at the completion of the procedure and prior to discharge, and
   (ii) the patient must not leave the recovery area until the cardiovascular and respiratory stability are assured and the patient is awake and oriented.

(2) The minimum standards for monitoring conscious sedation patients shall include the following:
(a) preoperative:
   (i) vital signs to include blood pressure, pulse and respiratory rate,
(ii) blood pressure monitoring for pediatric patients only as indicated.
(b) intraoperative:
(i) monitoring need not be applied to the fully-awake and alert patient.
(ii) vital signs - to include blood pressure, pulse and respirations to be
monitored and recorded at appropriate intervals. Only appropriate blood pressure
monitoring for pediatric patients need be recorded,
(iii) a precordial stethoscope used to continually monitor respiration and
pulse rate, and
(iv) pulse oximetry, and
(v) continuous monitoring skin and mucosal color.
(c) postoperative:
(i) vital signs, blood pressure pulse and respirations should be taken at
completion of the procedure and prior to discharge,
(ii) only appropriate blood pressure monitoring for pediatric patients need be
recorded,
(iii) prior to discharge cardiovascular and respiratory systems must be
adequate.
(3) Minimum standards for monitoring nitrous oxide/oxygen sedation used
alone or in conjunction with a single oral sedative agent shall include the following:
(a) when the dentist who administers the nitrous oxide/oxygen is not in the
operatory there must be a dental auxiliary who remains with the patient and provides
direct observation. The dental auxiliary must have specific instruction in the
observation of nitrous oxide/oxygen sedated patients and shall monitor the patient
until discharged.
(4) During dental procedures the facility must be staffed by supervised
monitoring personnel all of whom are capable of handling procedures, problems,
and emergency incidents and have successfully completed basic life support.
(a) With respect to a full general anesthesia facility, in addition to the dentist
and dental assistant, there must be at least one person present to monitor vital
signs. That person must be either:
(i) an anesthesiologist licensed to practice medicine in the state of Montana;
or
(ii) a certified registered nurse anesthetist recognized in that specialty by the
Montana Board of Nursing; or
(iii) a trained health professional who has received at least one year of
postgraduate training in the administration of general anesthesia.
(b) With respect to light general anesthesia, in addition to the dentist and
dental assistant, there must be one person present whose duties are to monitor vital
signs. This person must be trained in basic life support and their task dedicated to
monitoring.
(c) When conscious sedation is used, the dentist shall be qualified and
permitted to administer the drugs and appropriately monitor the patient, and have
successfully completed a course in advanced cardiac life support. In addition to the
dentist, at least one other person on staff and present in the office must have
successfully completed basic life support.

24.138.3205 FACILITY STANDARDS
(1) A general anesthesia facility
under these rules must contain a minimum of equipment, supplies and drugs,
including, but not limited to, the following:
(a) a positive pressure oxygen delivery system;
(b) stethoscope and sphygmomanometer;
(c) laryngoscope, endotracheal tubes and a Magill forcep;
(d) oral pharyngeal and/or nasopharyngeal airways;
(e) electrocardiac monitor and defibrillator;
(f) appropriate drugs for emergencies to include drugs to provide advanced
cardiac life support;
(g) a precordial stethoscope;
(h) pulse oximeter; and
(i) suction devices.
(2) A conscious sedation facility under these rules must contain a minimum
of equipment, supplies, and drugs, including, but not limited to, the following:
(a) a positive pressure oxygen delivery system;
(b) precordial stethoscope;
(c) pulse oximeter;
(d) stethoscope and sphygmomanometer;
(e) oral pharyngeal and/or nasopharyngeal airways;
(f) appropriate drugs for emergencies; and
(g) suction devices.
(3) A facility in which nitrous oxide/oxygen, used alone or in conjunction with
a single oral sedative agent, is administered must contain a minimum of equipment
and supplies appropriate to meet emergencies.

5. As a result of the above, it is appropriate that the license of Shawn Tolnay be
sanctioned as permitted pursuant to Mont. Code Ann. § 37-1-312 due to the Licensee’s
unprofessional conduct.

SUMMARY SUSPENSION ORDER

Pursuant to Mont. Code Ann. § 2-4-631(3) and based on its reasonable cause finding on
the allegations above, the Screening Panel of the Board of Dentistry hereby determines that the
public health, safety and welfare requires immediate action in this matter, and:

IT IS THEREFORE ORDERED that the light general anesthesia (sedation) permit of Dr.
Shawn Tolnay to administer anesthesia be immediately and summarily suspended for an
indefinite period of time pending further investigative and disciplinary proceedings. Pursuant to
Mont. Code Ann. § 37-1-312(4), any and all documentation of the permit must be returned to the
Board of Dentistry in person or by mail to the Board within 24 hours of receiving this suspension
notice. Documents may be mailed to the Board at the following address:

Montana Department of Labor and Industry
Board of Dentistry
301 South Park Avenue
Except as provided in this order, Dr. Tolnay may continue to practice dentistry in a manner consistent with the statutes and regulations governing licensees and in accordance with the terms of any other applicable order by or agreement entered into with the Board of Dentistry.

**UNIFORM PROFESSIONAL LICENSING AND REGULATION PROCEDURE**

You are advised that the law provides:

**MCA 37-1-309. Notice -- request for hearing.**
(1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board’s screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee’s or applicant’s current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee’s receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

**MCA 37-1-312. Sanctions -- stay --costs --stipulations.**
(1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed $1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.
(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

MCA 2-4-631(3). Licenses.
Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

STATEMENT OF RIGHTS
You are entitled to a hearing, promptly instituted and determined, as provided for by the Montana Administrative Procedure Act (§ 2-4-601, MCA, and following, including 2-4-631, MCA) and by §37-1-121(1), MCA. You have a right to be represented by an attorney at such hearing and during related proceedings. If you desire to have a hearing and to resist the proposed action taken under the jurisdiction of the Board, you must so advise Becky Carter, Compliance Unit Supervisor, Business Standards Division, Department of Labor and Industry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, in writing within twenty (20) days of your receipt of this notice.

POSSIBILITY OF DEFAULT
Failure to give notice or to advise the Board of your request for a hearing within the time specified will result in the entry of a default order pursuant to § 37-1-309, MCA, and the Board may enter a decision on the basis of the facts available to it without additional prior notice to you.

DATED June 10, 2009.

Cliff Christofot
Montana Board of Dentistry
Screening Panel Chairman

Notice of Summary Suspension, Proposed Board Action and Opportunity for Hearing
In re Shawn Tolin, Docket No. CC-09-0342-DEN
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Proposed Board Action and Opportunity for Hearing was sent certified mail # 17003 3110 0000 6613 6562, postage prepaid, on June 11, 2009 to the following:

Dr. Shawn Tolnay
c/o Ed Guza
Attorney at Law
Guza, Williams, & Nesbitt, PLLC
25 Apex Dr., Ste B
Bozeman, MT 59718
BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED DISCIPLINARY TREATMENT OF THE LICENSEE OF DR. SHAWN TOLNAY, A LICENSED DENTIST, LICENSE NO. 2149

) Docket No. CC-09-0342-DEN
) Complaint Nos. DEN-2009-0029 & DEN-2008-0036

STIPULATION

The Business Standards Division of the Department of Labor and Industry of the State of Montana (Department), by and through its legal counsel, and Shawn Tolnay, (Licensee), hereby stipulate and agree as follows:

STIPULATION

1. Licensee is licensed by the State of Montana Board of Dentistry, holding Montana license number 2149.

2. The Montana Board of Dentistry has a statutory obligation to protect the public health, welfare and safety under Mont. Code Ann. § 37-1-131, 37-1-307, and 37-4-201.

3. Licensee admits the jurisdiction of the Board of Dentistry over the subject matter of the above-entitled proceeding. Licensee desires to avoid unnecessary expenditure of time and other valuable resources in resolving the issues in this action. Therefore, Licensee specifically and affirmatively waives a contested case hearing and all rights to appeal under the Montana Administrative Procedure Act, and elects to resolve this matter on the terms and conditions set forth herein.

4. Licensee acknowledges that Licensee, or an authorized agent for Licensee, has read and understands each term of this Stipulation, Final Order, and the Notice of Proposed Board Action issued in this matter. Licensee acknowledges that Licensee enters into this Stipulation voluntarily, and without reservation. Licensee acknowledges that no promise, other than those

Stipulation
In re Shawn Tolnay, Docket No. CC-09-0342-DEN
contained herein, and no threat has been made by the Department or by any member, officer, agent or representative of the Department to induce Licensee to enter into this Stipulation.

5. Based upon the information received, the Department contends as set forth in the Assertion of Facts section of the Notice of Proposed Board Action herein issued in this matter. Licensee admits the Department's contentions and agrees that settlement of this matter is in the best interest of all parties involved.

6. The Department and the Licensee agree that this Stipulation shall be a final compromise and settlement of grounds for license denial and/or discipline as a result of Licensee's conduct.

7. The Department and the Licensee agree that this Stipulation shall be incorporated and made a part of the final order issued by the Montana Board of Dentistry herein.

8. The Department and the Licensee agree that this stipulation and the attached final order are public documents. Licensee understands that this disciplinary action will be reported to data banks as required by law.

9. The following conditions shall apply to the continued licensure of Licensee in the state of Montana:

A. The Licensee agrees that he shall be publicly censured for the violations noted in the Notice of Proposed Board Action and Opportunity for Hearing. The Licensee and Department agree that the Notice, Stipulation, and Final Order shall serve as the public censure, and these documents shall be permanently maintained in the Licensee's file with the board. The Licensee agrees that these documents will be made available to the public. The Licensee recognizes and agrees that these documents place him on notice that the conduct described therein violated the statutes and administrative rules identified therein. Therefore, Licensee understands and agrees that any further instance of misconduct may result in additional disciplinary action against Licensee, and repeated violations may result in more severe sanctions, up to and including revocation of Licensee's license.

Stipulation
In re Shawn Tolnay, Docket No. CC-09-0342-TGN
B. Licensee's conscious sedation permit was suspended when the Notice of Summary Suspension was served on him. The Licensee shall voluntarily and permanently surrender his sedation permit. In the event Licensee desires a new sedation permit or any other anesthesia permit issued by the Board, in addition to any other requirement applicable to all licensees who apply for an anesthesia permit, the Licensee shall satisfy the following conditions and requirements prior to issuance of the permit:

i) the Licensee must previously satisfy all other requirements of this stipulation and the final order of the Board;

ii) the Licensee must complete, at his own expense, an additional 60 hours of board-approved continuing education classes in the area of anesthesia and sedation. The Board may designate an individual board member to review the courses Licensee proposes to take and approve or reject the proposed courses on behalf of the Board. These courses shall be taken in addition to those normally required of a licensee for continuing education and must be obtained within one year of entry of the final order in this matter. Proof of completion, in the form of certificates of completion, must be furnished to the Department before the permit can be reinstated or a new permit can be granted.

C. If Licensee's conscious sedation permit is reinstated or if Licensee receives a different type of sedation or anesthesia permit, in addition to any other conditions that may be imposed at the time the permit is granted or reinstated, the Licensee's permit will be subject to the following conditions for a period of two years following the date the permit is granted or reinstated:

i) Licensee shall submit to a random, unannounced office visit by an individual appointed by the Department at least once during every 120 day period, unless the Board, in its discretion, determines to forego one or more of these office visits. If the Licensee is subject to office visits under the provisions of paragraph 9.D., the visits referred to in this paragraph will occur at the same time as the visits under the provisions of paragraph 9.D., such that the Licensee
shall be subject to only one office visit during any 120 day period;

ii) The individual appointed by the Department shall have access to all records of the Licensee, including patient records. The individual appointed by the Department may select up to ten patients' records at the time of each visit, and, in its sole discretion, the Board may elect to conduct peer reviews of Licensee's treatment of those patients. The Board shall have sole discretion to select the peer reviewer. The Licensee shall be solely responsible for the cost of the peer reviews. Failure to immediately comply with a request for records or promptly pay the peer reviewer will be deemed a sanctionable breach of the Board's Final Order.

D. The Licensee's dental license shall be on probation for a period of one year beginning on the date the Final Order is entered. During the term of this probation, the Licensee shall review and follow all laws and rules under the Board's jurisdiction and ensure that his conduct meets the generally accepted standards of practice.

E. The Licensee must submit to and cooperate with any and all requests or requirements of Montana Professional Assistance Program (MPAP). This requirement shall also be deemed satisfied if Licensee is discharged from MPAP as a result of full compliance with the requirements imposed on him by MPAP;

E. Licensee is required to complete, at his own expense, an additional four hours of board-approved continuing education classes in the area of ethics. The Board may designate an individual board member to review the course(s) Licensee proposes to take and approve or reject the proposed course(s) on behalf of the Board. These courses shall be taken in addition to those normally required of a licensee for continuing education and must be obtained within one year of entry of the final order in this matter. Proof of completion must be furnished to the Department within one year of entry of the final order in this matter in the form of a certificate of completion.

F. Licensee shall review and obey the provisions of Title 37, Chapters 1 and 4, Montana Code Annotated, and Title 24, Chapter 138 of the Administrative Rules of Montana;

10. All time periods called for in this Stipulation or in any order incorporating this
Stipulation shall be tolled and no days shall be counted during any such time as the Licensee's license is on inactive status. When the license is returned to active status, as indicated by the records of the Department, the time period remaining for a license restriction or for completion of a task by the Licensee will be the balance of time that existed on the day before the license was first made inactive. The Licensee must comply with all Board and Department statutes and rules pertaining to inactive licenses, and the Licensee is solely responsible for taking all steps necessary to maintain the license in the desired status.

11. The Licensee must comply with all Board and Department requirements for renewal in order to maintain his license.

12. In the event the Board of Dentistry, in its 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 in any disciplinary action by either party hereto except that Licensee agrees that should the Board reject this Stipulation, and if this case proceeds to hearing, Licensee will assert no claim that the Board of Dentistry was prejudiced by its review and discussion of this Stipulation or of any records relating hereto. In the event that the Board of Dentistry approves a lesser penalty than the one contemplated by this agreement, both parties agree that imposition of the lesser penalty shall not be a basis for withdrawing from this agreement.

13. If at any time during the term of this Stipulation, the Board finds reasonable cause to believe that the Licensee has violated any of the terms and conditions of this Stipulation or any statutes and rules governing the conduct of Dentist licensees in the State of Montana, and if the Board determines that such violation constitutes an imminent threat to the public health, safety or welfare, Licensee's license shall be automatically and summarily suspended pending a prompt post-suspension hearing. Further action will be taken depending upon the results of a contested case hearing on any factual disputes as to whether the Licensee violated the terms and conditions of this Stipulation or any statutes and rules governing the conduct of Dentist licensees in the State of Montana.

Stipulation
In re Shawn Tolnay, Docket No. CC-09-0342-DEN
This agreement is subject to final approval by the Montana Board of Dentistry.

Don E. Harris
Department Counsel
Montana Board of Dentistry

Shawn Tolnay
Licensee

DATE
12/8/2009

DATE
12/08/07
BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED DISCIPLINARY TREATMENT OF THE LICENSE OF DR. SHAWN TOLNAY, A LICENSED DENTIST, LICENSE NO. 2149) Docket No. CC-09-0342-DEN)
) Complaint Nos. DEN-2009-0029 & DEN-2008-0036)

FINAL ORDER

Based upon the Stipulation between Licensee and the Department, and good cause appearing therefore:

The Board finds that the Licensee’s acts or omissions described in the Notice of Proposed Board Action & Opportunity for Hearing violated the statutes and rules cited in the Notice and justify disciplinary action against Licensee’s license and the imposition of a sanction for the public protection.

IT IS HEREBY ORDERED that the parties’ Stipulated Agreement is approved, adopted and incorporated herein by reference.

NOTICE

YOU ARE HEREBY NOTIFIED that you have the right to request judicial review of this final order by filing a petition for judicial review within thirty days of service of this final order in a district court of the State of Montana, as provided in § 2-4-702, MCA.

DATED this _12_ day of _March_ , 2010.

Chair, Adjudication Panel
Board of Dentistry

Final Order
In re Shawn Tolnay, Docket Number CC-09-0342-DEN
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2010, I caused a true and accurate copy of the foregoing Final Order to be served upon Respondent by placing it in the U.S. mail, postage prepaid, addressed as follows:

Shawn Tolnay
C/o Ed Guza
Attorney at Law
Guza, Williams, & Nesbitt, PLLC
25 Apex Dr., Ste B
Bozeman, MT 59718

and

Don E. Harris
301 South Park
P.O. Box 200513
Helena, MT 59620-0513

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