

**BEFORE THE MINNESOTA**

**BOARD OF DENTISTRY**

In the Matter of  
JoAnn M. Bassing, D.D.S.  
License No. D8639

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
FINAL ORDER**

The above-entitled matter came on for hearing at a meeting of the Minnesota Board of Dentistry ("Board") on July 24, 2015, convened in Conference Room A, Fourth Floor, 2829 University Avenue S.E., Minneapolis, Minnesota 55414. The Board conducted a hearing pursuant to the procedure set forth in paragraph 16 of the Stipulation and Order for Stayed Suspension and Conditional License issued by the Board to JoAnn M. Bassing, D.D.S. ("Respondent"), on May 2, 2014 ("2014 Order"). At the hearing, the Board Complaint Committee presented affidavit evidence of Respondent's violations of the 2014 Order. Jennifer C. Middleton, Assistant Attorney General, appeared and presented oral argument on behalf of the Board Complaint Committee. Attorney Daniel M. Scott appeared and presented oral argument on behalf of Respondent. Board members Terese M. Youngdahl, L.D.A.; John M. Manahan, J.D.; and David S. Gesko, D.D.S., did not participate in deliberations and did not vote in the matter. Hans A. Anderson, Assistant Attorney General, was present as legal advisor to the Board.

**FINDINGS OF FACT**

The Board has reviewed the record of this proceeding and hereby issues the following Findings of Fact:

1. The Board is authorized pursuant to Minnesota Statutes chapter 150A to license, regulate, and discipline persons who apply for, petition, or hold licenses as dentists and is further

authorized pursuant to Minnesota Statutes sections 214.10 and 214.103 to review complaints against dentists, to refer such complaints to the Attorney General's Office, and to initiate appropriate disciplinary action.

2. Respondent agreed to and signed the 2014 Order issued by the Board on May 2, 2014. In paragraph 16 of the 2014 Order, Respondent expressly acknowledged and agreed to several procedures the Board Complaint Committee may use to resolve alleged noncompliance with or violation of the 2014 Order, Minnesota Statutes chapter 150A, or Minnesota Rules chapter 3100. The 2014 Order remained in full force and effect at the time the conduct described in paragraph 5 below occurred.

3. Respondent expressly acknowledged and agreed in paragraph 16 of the 2014 Order that, if Respondent violates the 2014 Order, the Board Complaint Committee may seek additional disciplinary action.

4. Respondent expressly acknowledged and agreed in paragraph 16 of the 2014 Order that, in the event the Board received evidence Respondent violated the terms of the 2014 Order, Minnesota Statutes chapter 150A, or Minnesota Rules chapter 3100, she would be notified of such allegations in writing and, following the opportunity to contest the allegations, the Board may impose additional disciplinary action against Respondent's license.

5. The Board received information Respondent violated the terms of the 2014 Order and engaged in acts or omissions which would be a violation of Minnesota Statutes section 150A.08 and Minnesota Rules 3100.6200 and 3100.6350 as follows:

a. Respondent has held a license from the Board to practice dentistry in the State of Minnesota since March 26, 1978, and is subject to the jurisdiction of the Board with respect to the matters described therein.

b. On March 20, 2014, Respondent appeared before the Committee for a disciplinary conference to discuss her chemical dependency issues, improper prescribing, and failure to maintain adequate infection control and safety or sanitary conditions for a dental office.

c. On May 2, 2014, the Board adopted the 2014 Order, which placed conditions on Respondent's license to practice dentistry in the State of Minnesota. The 2014 Order provided that any violation of the terms in the order would violate the conditions of the stay, constitute violation of a Board order for purposes of Minnesota Statutes section 150A.08, subdivision 1(13), and provide grounds for further disciplinary action. Among other things, the 2014 Order required Respondent to participate in the Health Professionals Services Program ("HPSP") and abstain from the use of mood-altering drugs.

d. On or about April 25, 2014, Respondent signed a Participation Agreement and Monitoring Plan with the HPSP for monitoring of her chemical dependency, mental health, and physical health. Respondent was required to provide toxicology screens at the request of the HPSP and comply with the HPSP Toxicology Screening Protocols.

e. On April 18, 2015, Respondent appeared at Range Mental Health Treatment Center to provide a toxicology screen. A staff member perceived Respondent as acting suspiciously during the collection process.

f. On April 22, 2015, Respondent's HPSP Case Manager received a faxed report from Range Mental Health Treatment Center describing what the staff member perceived to be Respondent's suspicious behavior when submitting her urine sample on April 18, 2015. Specifically, the report indicates Respondent submitted her urine sample in a container with a cover on it, although Respondent was not witnessed placing a cover on the container. Also, the temperature of the urine sample was taken promptly and it registered at less than room

temperature. Another concern was that, after Respondent had left the room, a search of the wastepaper basket revealed an empty urine sample container without a cover. Respondent did not remain at the testing site to give another sample and the staff member did not require Respondent to stay.

g. On May 6, 2015, the HPSP unsatisfactorily discharged Respondent due to the reported suspicions of the staff member at Range Mental Health Treatment Center that Respondent had tampered with the drug testing screen. The HPSP referred the case to the Board.

h. On May 29, 2015, Respondent was served with a Notice of Removal of Stay of Suspension, Imposition of Suspension, and Hearing (“Notice”) and Order of Removal of Stay of Suspension by first-class mail at her last known address on file with the Board. The Notice informed Respondent of the alleged violations and of the date, time, and place of the hearing. The Notice also informed Respondent she was required to submit a response to the allegations in the Notice within seven days after the Notice was mailed.

i. The Complaint Committee had probable cause to remove the stay of suspension.

j. During the July 24, 2015, hearing before the Board, Respondent described her perception of the April 18, 2015, toxicology screen. The Board determined that, due to possible failures in the toxicology collection process at Range Mental Health Treatment Center, such as the staff member’s failure to watch Respondent throughout the entire collection process, as well as Respondent’s explanations for her behavior during the collection process and her one-year history of clean toxicology screens, it was unable to conclude that Respondent had tampered with the toxicology screen.

## CONCLUSIONS

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions:

1. The Board has jurisdiction in this matter pursuant to Minnesota Statutes chapter 150A, including Minnesota Statutes sections 150A.08, subdivision 1, as well as Minnesota Statutes sections 214.10, and 214.103.

2. The Board Complaint Committee gave proper notice of the alleged violations to Respondent, pursuant to paragraph 16 of the 2014 Order.

3. The Board Complaint Committee has the burden of establishing the statutory violations charged by a preponderance of the evidence.

4. The Board Complaint Committee has proved by a preponderance of the evidence that Respondent has violated Minnesota Statutes section 150A.08, subdivision 1(6), (8), and (13); section 214.335; Minnesota Rules 3100.6200 A.; and the 2014 Order.

5. As a result of the violations set forth above and pursuant to the terms of the 2014 Order, the Board has the authority to impose additional disciplinary action against Respondent's license to practice dentistry.

## ORDER

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the 2014 Order issued to Respondent on May 2, 2014, is hereby **RESCINDED** and shall have no future force or effect, except as identified herein.

2. IT IS FURTHER ORDERED that Respondent's license to practice dentistry in the State of Minnesota is **SUSPENDED** and that the suspension is **STAYED** so long as Respondent complies with the following conditions:

a. Participation in HPSP.

1) Within 14 days after the effective date of this Order, Respondent shall re-enroll in the Health Professionals Services Program ("HPSP") for monitoring of her chemical dependency recovery. Respondent shall provide the HPSP with a copy of this Stipulation and Order at the time of enrollment. Respondent must return the signed Participation Agreement to the HPSP within 14 days of receiving the Participation Agreement from the HPSP. Failure to meet either of these deadlines will be considered a violation of this Order.

2) Respondent shall be monitored by the HPSP until HPSP determines Respondent is qualified to practice without conditions.

3) Respondent shall comply with all provisions of her HPSP Participation Agreement, including revisions subsequent to this Order. Respondent's failure to comply with her HPSP Participation Agreement shall be considered a violation of this Order.

4) Respondent shall totally abstain from ingesting, injecting, or otherwise taking or using any mood-altering chemical or drug, including, but not limited to alcohol. This prohibition does not apply to legend drugs, including controlled substances, which are prescribed for Respondent by a licensed physician or dentist as part of a course of treatment.

b. Infection Control. Respondent must continue to comply with all requirements set forth in Paragraphs 8.b. and c. of the 2014 Order, including, but not limited to,

fully cooperating with all unannounced office visits by Board representatives conducted for the purpose of inspecting the safety and sanitary conditions present in Respondent's office. Respondent shall continue to comply with the most current infection control requirements of Minnesota Rules 3100.6300 and 6950.1000 to 6950.1080, and with the Centers for Disease Control and Prevention, Public Health Service, and the United States Department of Health and Human Services.

3. IT IS FURTHER ORDERED that Respondent may petition to have the stayed suspension removed from her license at any regularly scheduled Board meeting after she has been successfully discharged from the HPSP. Respondent's petition must be received by the Board at least 30 days prior to the Board meeting. Respondent has the burden of proving that she has successfully completed the HPSP and has complied with all other conditions of this Order and that she is qualified to practice without a stayed suspension. Respondent's compliance with the foregoing requirements does not create a presumption that the stayed suspension should be removed. Upon consideration of the evidence submitted by Respondent or obtained through Board investigation, the Board may remove, amend, or continue the stayed suspension imposed by this Order.

4. IT IS FURTHER ORDERED that Respondent shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this Order, including requests for explanations, documents, office inspections, or appearances at conferences. Minnesota Rules 3100.6350 shall be applicable to such requests.

5. IT IS FURTHER ORDERED that Respondent shall be responsible for all payments, reports, evaluations, and documentation required to be filed with the Board pursuant

to this Order. Failure to file payments, reports, evaluations, and documentation on or before their due date shall be a violation of this Order.

6. IT IS FURTHER ORDERED that, if information or a report required by this Order is not submitted to the Board by the due date, or if Respondent otherwise violates this Order, the Committee may fine Respondent \$100 per late report or other violation. Respondent shall pay the fine and correct the violation within five days after service on Respondent of a demand for payment and correction. If Respondent fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

7. IT IS FURTHER ORDERED that, if Respondent violates the terms of this Order, the Committee may remove the stay from the suspension of Respondent's license, thereby imposing the suspension, pursuant to the procedure outlined below:

**Order of Removal of Stayed Suspension**

a. If the Committee has probable cause to believe Respondent has failed to comply with or has violated any of the requirements for staying the suspension as outlined in paragraphs 2 and 3 above, the Committee may remove the stay pursuant to the procedures outlined in paragraph 7.b. below, with the following additions and exceptions:

i. The removal of the stayed suspension shall take effect upon service of an Order of Removal of Stayed Suspension ("Order of Removal"). The Committee shall be authorized to issue an Order of Removal, which shall remain in effect and shall have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph 7.b. below or until the complaint is dismissed and the order

is rescinded by the Committee. The Order of Removal shall confirm the Committee has probable cause to believe Respondent has failed to comply with or has violated one or more of the requirements for staying the suspension of Respondent's license. An Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act.

ii. The Committee shall schedule the hearing pursuant to paragraph 7.b. below to be held within 60 days of service of the Order of Removal.

#### **Noncompliance or Violation of Order**

b. If Respondent fails to comply with or violates this Order, the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

i. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Respondent a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within seven days after the notice is mailed, Respondent shall submit a written response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

ii. The Committee, in its discretion, may schedule a conference with Respondent prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through the procedures of Minnesota Statutes section 214.103, subdivision 6.

iii. Prior to the hearing before the Board, the Committee and Respondent may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Respondent may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Order. The Committee shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Respondent has failed to submit a timely response to the allegations, Respondent may not contest the allegations, but may present argument concerning the appropriateness of additional discipline.

iv. Respondent's correction of a violation prior to the conference, hearing or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek discipline when it first learns of a violation will not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while this Order is in effect.

v. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional conditions or limitations on Respondent's practice, suspension, or revocation of Respondent's license.

Dated: 9/2/15

STATE OF MINNESOTA

BOARD OF DENTISTRY



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JOYCE NELSON  
Interim Executive Director