

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of the License of  
Thomas Garvin, D.D.S.  
License Number: D9881

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

The above-entitled matter came on for a prehearing conference on May 19, 2015, before Administrative Law Judge (“ALJ”) Stephen D. Swanson at the request of the Minnesota Board of Dentistry (“Board”) Complaint Committee. The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Board Complaint Committee on May 13, 2015. Jennifer C. Middleton, Assistant Attorney General, represented the Board Complaint Committee. Thomas Garvin, D.D.S., made no appearance.

On May 20, 2015, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendation (“ALJ’s report”), recommending the Board take disciplinary action against Respondent’s Dentistry license. (A true and accurate copy of the ALJ’s report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on July 24, 2015, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Jennifer C. Middleton, Assistant Attorney General, appeared and presented oral argument on behalf of the Board Complaint Committee. Respondent did not appear. Board members Neal Benjamin, D.D.S, Nancy Kern, D.H., Allen Rasmussen, and Steven W. Sperling, D.D.S., M.A.G.D., F.I.C.O.I., did not participate in deliberations and did not vote in the matter. Hans A. Anderson, Assistant Attorney General, was present to provide legal advice to the Board.

## FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the May 20, 2015, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 9 of the ALJ's Conclusions of Law states,

Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Hearing, appended hereto as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

The allegations contained in the Notice of Hearing are as follows:

1. Respondent was licensed to practice dentistry in the State of Minnesota on February 12, 1986.
2. On or about April 1, 2014, the Minnesota Board of Dentistry referred Respondent to the Health Professionals Services Program ("HPSP") based on his history of Driving While Intoxicated ("DWI") convictions. Respondent was convicted of misdemeanor DWI on January 3, 2003, in Hennepin County District Court; gross misdemeanor DWI on August 4, 2006, in Hennepin County District Court; and felony DWI on October 26, 2010, in Carver County District Court.
3. On or about April 24, 2014, Respondent completed an intake interview with his case manager at the HPSP. During the intake interview, Respondent disclosed that he has a history of alcohol dependence and was diagnosed with situational depression in approximately 2000-2001. He provided that his longest period of sobriety was three years and he relapsed on April 10, 2014, after one year of sobriety. Respondent provided that he has experienced blackouts while drinking and has suffered symptoms of withdrawal including shaking. Respondent stated that he has been convicted multiple times for DWI. Respondent

provided that his treatment history includes participating in outpatient treatment programs in 2002, 2003, 2006, 2010, and 2013.

4. On May 2, 2014, the Board adopted a Stipulation and Order for Conditional License (“2014 Order”), conditioning Respondent’s license to practice dentistry on his participation in the HPSP. The 2014 Order was based on Respondent’s multiple DWI convictions, substandard diagnostic and prosthodontics care, substandard recordkeeping, and failure to cooperate with an investigation of the Board.

5. On or about May 6, 2014, Respondent signed a Participation Agreement and Monitoring Plan (collectively “Participation Agreement”) with the HPSP.

6. Paragraph D.3. of the Participation Agreement provided that Respondent would see a therapist at least twice a month after Respondent completed chemical dependency treatment.

7. Paragraph D.4.a. of the Participation Agreement provided that Respondent would take medications only as prescribed and only for the condition for which they are prescribed.

8. Paragraph D.4.c. of the Participation Agreement provided that Respondent would notify the HPSP within 24 hours if prescribed or administered any controlled or mood-altering substances and that Respondent would provide corresponding documentation to the HPSP within three business days.

9. Paragraph D.7. of the Participation Agreement provided that Respondent would notify the HPSP in advance of obtaining any planned surgical procedure.

10. Paragraph D.8.b. of the Participation Agreement provided that Respondent would ensure that HPSP received documentation of any unexpected medical care within three business days of receiving the unexpected medical care.

11. Paragraph F.1. of the Participation Agreement provided that Respondent would abstain from the use of alcohol, controlled substances, and any other mood altering substances unless prescribed by a physician.

12. Paragraph G. of the Participation Agreement provided that Respondent would comply with HPSP's toxicology screening protocols.

13. On or about May 19, 2014, Respondent entered inpatient chemical dependency treatment.

14. On or about June 9, 2014, Respondent was discharged upon successful completion of inpatient chemical dependency treatment. It was recommended that Respondent enter and complete outpatient treatment, attend the monthly meeting of Dentists Concerned for Dentists, attend weekly Alcoholics Anonymous meetings, obtain and utilize a sponsor weekly, and remain abstinent from alcohol.

15. On or about August 29, 2014, Respondent was required to provide a toxicology screen per his Participation Agreement but failed to do so.

16. On or about September 15, 2014, Respondent was required to provide a toxicology screen per his Participation Agreement but provided the screen past the deadline.

17. On or about October 25, 2014, Respondent visited the emergency room after he was assaulted. Respondent failed to have his medical records from this visit sent to the HPSP.

18. On or about October 27, 2014, Respondent saw his doctor due to pain suffered as a result of an assault on October 25, 2014. Respondent was prescribed Tramadol which he obtained from the pharmacy on October 27, 2014.

19. On or about October 28, 2014, Respondent's HPSP case manager requested that Respondent submit medical documentation regarding his condition that required Tramadol.

20. On or about November 12 and 13, 2014, Respondent's HPSP case manager again requested that Respondent submit medical documentation for his condition requiring Tramadol as well as his Tramadol prescription. Respondent did not submit the required paperwork until December 4 and 31, 2014.

21. On or about December 3, 2014, Respondent exhibited agitation toward his HPSP case manager during a phone conversation.

22. On or about December 9, 2014, Respondent exhibited agitation and became irritated and accusatory toward his HPSP case manager during a phone conversation.

23. On or about December 9, 2014, Respondent's case manager was informed by Respondent's therapist that the therapist had not seen Respondent since Respondent enrolled in the HPSP despite Respondent's Participation Agreement requiring semi-monthly visits.

24. On or about December 16, 2014, Respondent informed his HPSP case manager that he had a pre-op appointment for an upcoming hip surgery that was to take place on December 18, 2014.

25. On or about December 18, 2014, Respondent's HPSP case manager filed a complaint with the Board of Dentistry due to Respondent's pattern of noncompliance with his Participation Agreement, including:

a. Failure to submit copies of his Tramadol prescription and documentation from his appointment with his physician on October 27, 2014, within three business days;

b. Failure to see a therapist after Respondent's chemical health treatment ended on November 6, 2014;

c. Failure to inform his HPSP case manager in a timely manner of his hip surgery and arrange for clearance from his toxicology screens; and

d. Evasive, resistant, and argumentative behavior toward his HPSP case manager with regard to requests made by the case manager for information from Respondent.

26. On or about December 23, 2014, Respondent's HPSP case manager was informed by Respondent's worksite monitor that Respondent was agitated, experienced outbursts at work, and was behind in his charting.

27. On or about December 29, 2014, Respondent's HPSP case manager requested that Respondent obtain a psychiatric assessment.

28. On or about December 31, 2014, Respondent's HPSP case manager received Respondent's medical records for his emergency room visit on October 25, 2014. The records provided that Respondent was seen for swelling in his right leg and weakness in his left hand. Respondent was prescribed Oxycodone for which the HPSP did not receive a copy of the prescription.

29. On or about December 31, 2014, Respondent exhibited agitation, was sarcastic and argumentative, and used profanity during a phone conversation with his HPSP case manager.

30. On or about January 2, 2015, Respondent was argumentative and used profanity during a phone conversation with his HPSP case manager.

31. On or about January 5, 2015, Respondent left his HPSP case manager a voicemail in which he blamed her for pain he experienced as a result of walking to provide a toxicology screen that the case manager requested.

32. On or about January 5, 2015, Respondent's HPSP case manager received copies of prescriptions that Respondent had prescribed himself, including:

- a. Oxycodone (40 quantity) on December 20, 2014;
- b. Aspirin EC tablets (42 quantity) on December 20, 2014; and
- c. Hydroxyzine pamoate (40 quantity) on December 23, 2014.

33. On January 5, 2014, Respondent's case manager followed up with the psychiatrist assigned to complete Respondent's psychiatric evaluation to see if Respondent scheduled the psychiatric evaluation; however, Respondent had failed to do so.

34. On or about January 7, 2015, Respondent informed his HPSP case manager that he was entering jail as part of a prior conviction for DWI. Respondent informed the case manager that he could not call the toxicology line because he was in jail and would inform her when he was released.

35. On or about January 29, 2015, Respondent's HPSP case manager was informed that Respondent had been granted work release from jail. The case manager left a message for Respondent to contact her regarding outstanding assessments and additional testing that would be required. Respondent did not return the HPSP case manager's voicemail.

36. On or about February 2, 2015, Respondent's HPSP case manager left Respondent a voicemail to return her call; however, Respondent failed to do so.

37. On or about February 9, 2015, Respondent was argumentative and sarcastic with his HPSP case manager during a phone conversation.

38. On or about February 24, 2015, Respondent's HPSP case manager received Respondent's Minnesota Prescription Monitoring Program ("PMP") data per Respondent's signed release of information. The PMP data shows that Respondent received a prescription for oxycodone on January 7, 2015. Respondent did not submit a copy of the January 7, 2015, prescription to the HPSP as required per Respondent's Participation Agreement.

39. On or about March 8, 2015, Respondent attempted to commit suicide. Respondent cut the inside of his left forearm from his wrist to his elbow. Respondent ingested cough syrup and oxycodone at the time of the suicide attempt. Respondent was transported to the hospital.

40. On or about March 15, 2015, while still in the hospital, Respondent was transferred to the psychiatric unit from the medical unit.

41. On or about March 17, 2015, Respondent was discharged from the psychiatric unit of the hospital. Respondent was diagnosed with Major Depressive Disorder, recurrent, moderate; Generalized Anxiety Disorder, Alcohol Dependence, and Polysubstance Abuse.

42. On or about March 24, 2015, Respondent was unsatisfactorily discharged from the HPSP for noncompliance based on the following:

- a. History of failing to maintain communication with HPSP and cooperate in the monitoring process;
- b. Delays in responding to HPSP requests and scheduling required assessments;

- c. Dishonesty with treatment providers; and
- d. Violating his Board Order by abusing cough syrup and oxycodone.

### **CONCLUSIONS OF LAW**

The Board accepts the May 20, 2015, ALJ's report and accordingly adopts and incorporates the Conclusions of Law therein.

### **ORDER**

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the Stipulation and Order issued upon Respondent by the Board on May 14, 2014, is **RESCINDED**.
2. IT IS FURTHER ORDERED that Respondent's license as a dentist in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time.
3. IT IS FURTHER ORDERED that during the period of suspension Respondent shall not engage in any conduct which constitutes the practice of dentistry as defined in Minnesota Statutes section 150A.05, subdivision 1, and shall not imply or suggest to any persons by words or conduct that Respondent is authorized to practice dentistry in the State of Minnesota.
4. IT IS FURTHER ORDERED that Respondent may petition the Board to have the suspended status removed from his license at such time as he is willing to respond to the Findings of Fact set forth above and following twelve (12) months from the date of this Order. His license may be reinstated, if at all, as the evidence dictates and based upon the need to protect the public. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that he is capable of conducting himself in a fit and competent

manner in the practice of dentistry, is successfully participating in a program of chemical dependency rehabilitation, and has been sober and free from mood-altering chemicals during the twelve (12) months immediately preceding his petition. At the time of Respondent's petition, Respondent shall meet with a Board Complaint Committee to review his response to the Findings of Fact and provide documentation of twelve (12) months of uninterrupted sobriety. In petitioning for removal of the suspension, Respondent shall comply with or provide the Board with, at a minimum, the following:

- a. A response to each separate fact set forth in the Findings of Fact.
- b. Evidence of compliance with the provisions of this Order. As part of the proof of compliance, Respondent shall submit the following in support of <her/his> petition:
  - c. Self-Report. Respondent shall submit to the Board a report from Respondent himself. The report shall be submitted at the time Respondent petitions for reinstatement of his license. The report shall provide and address:
    - 1) Respondent's sobriety, including the date Respondent last used mood-altering chemicals, including alcohol, and the circumstances surrounding any use while this Order is in effect;
    - 2) Respondent's treatment and participation in a chemical dependency rehabilitation program, including weekly attendance at a chemical dependency support group such as Alcoholics Anonymous during the 12 months preceding the petition; evidence of participation shall include, but need not be limited to, attendance sheets on a form provided by the Board that have been legibly signed or initialed and dated by a participant who attended the weekly meeting;

3) Respondent's physical and mental health status, treatment plan, medications, and compliance with treatment;

4) Respondent's work schedule;

5) Respondent's future plans in nursing and the steps he has taken to prepare himself to the practice of dentistry; and

6) Any other information Respondent believes would assist the Board in its ultimate review of this matter.

d. Reports Verifying Sobriety. Respondent shall cause to be submitted to the Board reports from two adult persons, at least one of whom is not related to Respondent by blood or marriage, who can attest to Respondent's sobriety. These reports shall be submitted at the time Respondent petitions for reinstatement of his license. Each report shall provide and address:

1) Respondent's regular participation in a chemical dependency support group such as AA or other structured chemical dependency rehabilitation program;

2) Respondent's sobriety, including the date he last used mood-altering chemicals, including alcohol; and

3) Any other information the reporter believes would assist the Board in its ultimate review of this matter.

e. Report From Employer. Respondent shall cause to be submitted to the Board a report from Respondent's employer. The report shall be submitted at the time Respondent petitions for reinstatement of <her/his> license/registration. The report shall provide and address:

1) Respondent's ability to perform assigned tasks;

- 2) Respondent's attendance and reliability;
- 3) Respondent's ability to handle stress;
- 4) Respondent's typical work schedule; and
- 5) Any other information the employer believes would assist the

Board in its ultimate review of this matter.

f. Report From Mental Health Treatment Professional. Respondent shall cause to be submitted to the Board a report from any mental health treatment professional whom Respondent consults while this Order is in effect. The report shall be submitted to the Board at the time Respondent petitions for reinstatement of his license. The report shall provide and address:

- 1) Verification the mental health professional has reviewed this Order;
- 2) Identification of a plan of treatment, including any medications, devised for Respondent;
- 3) A statement of the involvement between Respondent and the mental health treatment professional, including the number and frequency of meetings;
- 4) Respondent's progress with therapy and compliance with the treatment plan;
- 5) Respondent's awareness of his personal problems;
- 6) The mental health treatment professional's conclusion as to the need for continuing therapy and Respondent's discontinuance of therapy; and
- 7) Any other information the mental health treatment professional believes would assist the Board in its ultimate review of this matter.

g. Report From Health Care Professional. Respondent shall cause to be submitted to the Board a report from any health care professional whom Respondent consults for physical health, mental health, or chemical dependency treatment while this Order is in effect. The reports shall be submitted at the time Respondent petitions for reinstatement of his license. The report shall provide and address:

- 1) Verification the health care professional has reviewed this Order;
  - 2) Identification of diagnoses and any plans of treatment, including medications, devised for Respondent;
  - 3) Respondent's progress with therapy and compliance with the treatment plan;
  - 4) A statement regarding Respondent's mental health status;
  - 5) A statement regarding Respondent's sobriety;
  - 6) Recommendations for additional treatment, therapy, or monitoring;
- and
- 7) Any other information the health care professional believes would assist the Board in its ultimate review of this matter.

h. Chemical Dependency Evaluation. Within 60 days prior to petitioning, Respondent shall undergo a chemical dependency evaluation performed by a chemical dependency treatment professional. Respondent shall submit, or cause to be submitted, the credentials of the chemical dependency evaluator for review and preapproval by Board staff for purposes of this evaluation. Respondent is responsible for the costs of the evaluation. The results of the evaluation shall be sent directly to the Board and must include a statement

verifying the evaluator has reviewed this Order and the 2012 Order and any evaluation and/or treatment records deemed pertinent by the Board or the evaluator prior to the evaluation.

i. Compliance With Evaluator's Recommendations. Respondent shall comply promptly with any recommendations for additional evaluation and treatment made by the chemical dependency evaluator.

j. Mental Health Evaluation. Within 60 days prior to petitioning, Respondent shall undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Respondent shall submit, or cause to be submitted, the credentials of the evaluator for review and preapproval by Board staff for purposes of this evaluation. Respondent is responsible for the cost of the evaluation. The results shall be sent directly to the Board and shall provide and address:

- 1) Verification the evaluator has reviewed a copy of this Order;
- 2) Diagnosis and any recommended treatment plan;
- 3) Respondent's ability to handle stress;
- 4) Recommendations for additional evaluation or treatment; and
- 5) Any other information the evaluator believes would assist the

Board in its ultimate review of this matter.

k. Compliance With Evaluator's Recommendations. Respondent shall comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

l. Waivers. If requested by the Board at any time during the petition process, Respondent shall complete and sign health records waivers and chemical dependency treatment records waivers supplied by the Board to allow representatives of the Board to discuss

Respondent's case with and to obtain written evaluations and reports and copies of all of Respondent's health, mental health, or chemical dependency records from his physician, mental health treatment professional/therapist, chemical dependency counselor, or others from whom Respondent has sought or obtained treatment, support, or assistance.

m. Any additional information relevant to Respondent's petition reasonably requested by the Board Complaint Committee.

5. IT IS FURTHER ORDERED that Respondent shall meet all licensure requirements in effect at the time of his petition, including but not limited to completing the appropriate application, paying the requisite fees, and completing any necessary continuing education requirements.

6. IT IS FURTHER ORDERED that Respondent's violation of this Order shall constitute the violation of a Board order for purposes of Minnesota Statutes section 150A.08, subdivision 1(13), and provide grounds for further disciplinary action.

7. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement of his license and his meeting with a Board Complaint Committee, take any of the following actions:

- a. Issue a license to practice dentistry to Respondent.
- b. Issue a license to practice dentistry to Respondent with limitations placed upon the scope of Respondent's practice and/or conditional upon further reports to the Board.

c. Continue the suspension of Respondent's license upon his failure to meet the burden of proof.

Dated: 2/31/2015

STATE OF MINNESOTA

BOARD OF DENTISTRY

  
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JOYCE NELSON  
Interim Executive Director