BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Michael J. Bussa, D.D.S.
License No. D9268

FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The above-entitled matter came on for a prehearing conference on June 22, 2015, before Administrative Law Judge ("ALJ") Ann C. O'Reilly 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 14, 2015. Gregory J. Schaefer, Assistant Attorney General, represented the Board Complaint Committee. William D. Paul, Esq., represented Michael J. Bussa, D.D.S. ("Respondent").

On November 18, 2015, the ALJ issued an Order Granting Motion for Partial Summary Disposition ("ALJ's report"), concluding that the Board had authority to take disciplinary action against Respondent's license to practice dentistry under the grounds for discipline contained in Minn. Stat. § 150A.08, subd. 1(1), (2), (3), (6), (7), (13), and (14) and Minn. R. 3100.6200, subps A, D, H, and I. The ALJ's report recommended that the Committee's Motion for Partial Summary Disposition be granted. (A true and accurate redacted copy of the ALJ's report is attached hereto and incorporated herein as Exhibit A.)[1]

[1] *Doe v. State Bd. of Med. Exam'rs*, 435 N.W.2d 45, 50-51 (Minn. 1989) (holding that portions of the ALJ's Memorandum be redacted to exclude information that bears on the issue that has not been substantiated).

On December 1, 2015, the ALJ issued an Order on Request to Certify to the Board the Recommended Order Granting Motion for Partial Summary Disposition ("ALJ's supplemental report"). (A true and accurate copy of the ALJ's supplemental report is attached hereto and incorporated herein as Exhibit B.) The ALJ's supplemental report certified the ALJ's report to the Board for a final decision pursuant to Minnesota Rules 1400.7600 and concluded that the undisputed facts were sufficient to conclude that Respondent had committed seven violations of the Dentistry Practice Act and that disciplinary action against Respondent's license is in the public interest based upon these undisputed violations.

The Board convened to consider the matter on January 15, 2016, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Gregory J. Schaefer, Assistant Attorney General, appeared and presented oral argument on behalf of the Board Complaint Committee. William Paul, Esq., appeared and presented oral argument on behalf of Respondent. Board members David S. Gesko, D.D.S.; Terese M. Youngdahl, L.D.A.; Douglas Wolff, D.D.S., J.D.; and John M. Manahan, J.D., did not participate in deliberations and did not vote in the matter. Joyce Nelson, L.D.A., Interim Executive Director; and Deborah Endly, Compliance Officer, did not participate in the deliberations. 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 November 18, 2015, ALJ's report and the December 1, 2015, ALJ's supplemental report. Accordingly, the Board adopts and incorporates by reference the Undisputed Facts and Analysis

therein. The Undisputed Facts contained in the November 18, 2015, ALJ's report include the following:

> Respondent is a dentist licensed to practice in Minnesota since 1982.
>
> On November 21, 2013, the United States Attorney for the District of Minnesota filed a criminal complaint (Information) against Respondent alleging one count of felony Health Care Fraud, a violation of 18 U.S.C. § 1347 (2013). The information alleged that from January 1, 2006 to December 31, 2008, Respondent "did willfully and knowingly execute a scheme to obtain, by means of false pretenses, money owned by and under the custody and care of Medicaid, a federal health care benefits program."
>
> The information asserted that Respondent submitted false Medicaid claims to the Minnesota Department of Human Services (DHS), the agency that administers the Medicaid program in Minnesota, in the amount of $50,000. Specifically, the Information charged that Respondent "caused claims to be submitted for specific services that had not been performed," including a claim for services to a patient purportedly performed on December 6 and 19, 2007, but which were not actually performed.
>
> On July 14, 2014, Respondent pleaded guilty to the single count of felony Health Care Fraud asserted in the Information. The court sentenced Respondent to probation for three years and imposed various terms and conditions as part of the probation. The terms of the sentence required, among other things, that Respondent reside in a residential reentry center for 120 days; participate in location monitoring for 90 days; pay a fine of $10,000; pay a $100 assessment to the Crime Victims Fund; and pay restitution in the amount of $50,000 to DHS.
>
> In addition to his criminal sentence on February 7, 2014, Respondent entered into a civil Settlement Agreement (Settlement Agreement) with the United States Department of Justice on behalf of the Office of Inspector General of the U.S. Department of Health and Human Services, Minnesota Department of Human Services, and the Medicaid Fraud Control Unit of the Minnesota Office of the Attorney General. Under the Settlement Agreement, Respondent agreed to pay $50,000 to the U.S. Attorney's Office in exchange for the release of all civil and administrative monetary claims related to the conduct which formed the basis of Respondent's Health Care Fraud conviction.

ALJ's report (footnotes omitted) Ex. A at 3-4.

During Respondent's oral argument before the Board on January 15, 2016, Respondent argued that revoking his license would prevent him from delivering voluntary dental care to patients in need. The Board finds Respondent's argument unavailing. The Board agrees that the

delivery of dental care to patients in underserved areas is needed, but solving the problem by subjecting patients to a practitioner who has engaged in unethical conduct is not the answer. Accordingly, the Board finds that a revocation of Respondent's license is warranted in this matter.

CONCLUSIONS

The Board accepts the November 18, 2015, ALJ's report and the December 1, 2015, ALJ's supplemental report and accordingly adopts and incorporates the conclusions therein. The Summary of Conclusions contained in the November 18, 2015, ALJs report includes the following:

> The Administrative Law Judge concludes that there are no genuine issues of material fact related to whether Respondent engaged in conduct warranting disciplinary action within the meaning of Minn. Stat. § 150A.08, subd. 1(1), (2), (3), (6), (7), (13), (14); Minn. R. 3100.6200, subps. A, D, H, I. Accordingly, there is no need for an evidentiary hearing on these violations and the Committee is entitled to disposition as a matter of law. Based upon the undisputed violations of law and rules, the Board is authorized to take disciplinary action against Respondent's license to practice dentistry in the State of Minnesota, pursuant to Minn. Stat. § 150A.08.

ALJ's report Ex. A at 2.

ORDER

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the May 21, 2014, Agreement for Corrective Action, issued to Respondent for substandard care, radiographic diagnoses, and recordkeeping, is hereby **RESCINDED** and shall have no future force or effect.

2. IT IS FURTHER ORDERED that Respondent's license to practice dentistry in the State of Minnesota is **REVOKED** immediately for an indefinite period of time.

3. IT IS FURTHER ORDERED that during the period of revocation, 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 apply for licensure following 72 months from the date of this Order and upon demonstration satisfactory to the Board of rehabilitation and fitness to practice. At the time of Respondent's application, Respondent shall meet with the Complaint Committee and comply with, at a minimum, the following:

a. ***Civil Penalty.*** Respondent shall pay to the Board a civil penalty in the amount of $25,000.

b. ***Terms and Conditions of Probation and Settlement Agreement.*** Respondent shall satisfactorily complete the terms and conditions of his probation, including paying a fine of $10,000 and restitution of $50,000 to DHS. In addition, Respondent shall satisfactorily comply with the requirements of his civil Settlement Agreement, including the payment of $50,000 to the U.S. Attorney's Office.

c. ***Licensure Application and Licensure Fee.*** Respondent shall submit a completed application for licensure, pay all required application and licensure fees, and meet all other licensure requirements in effect at the time of application.

d. ***Additional Information.*** Respondent shall provide any additional information relevant to his application reasonably requested by the Complaint Committee.

e. ***Fitness to Practice.*** Respondent must prove by a preponderance of the evidence that he is fit and competent to practice dentistry. Respondent's mere completion of the

requirements set forth in paragraphs 4.a.-d. above does not in any way require the Board to find that Respondent is currently fit and competent to practice dentistry or that he has been sufficiently rehabilitated from conduct unbecoming a person licensed to practice dentistry. The Board shall be the sole determiner of whether Respondent is rehabilitated and fit and competent to practice dentistry.

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.

IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's application pursuant to paragraph 4 above, take any of the following actions:

a. Grant a license to Respondent to practice dentistry;

b. Grant a license to Respondent with limitations upon the scope of Respondent's practice and/or with conditions for Respondent's practice; or

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

Dated: 2/10/2016

STATE OF MINNESOTA

BOARD OF DENTISTRY

Steven W. Sperling, DDS

Steven W. Sperling, D.D.S., M.A.G.D., F.I.C.O.I.
Board Chair

THIS DOCUMENT CONTAINS NOT PUBLIC DATA

OAH 65-0902-32522

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF DENTISTRY

In the Matter of Michael J. Bussa, D.D.S.

ORDER GRANTING MOTION FOR PARTIAL SUMMARY DISPOSITION

This matter comes before Administrative Law Judge Ann C. O'Reilly pursuant to a Motion for Partial Summary Disposition filed by the Complaint Review Committee of the Minnesota Board of Dentistry.

Gregory J. Schaefer, Assistant Attorney General, appears on behalf of the Complaint Review Committee (Committee) of the Minnesota Board of Dentistry (Board). William D. Paul, William D. Paul Law Office, appears on behalf of Respondent Michael J. Bussa, D.D.S. (Respondent).

The Committee served its Motion for Partial Summary Disposition on October 16, 2015. Respondent failed to respond. Accordingly, the Motion record closed on November 2, 2015, the deadline for Respondent to respond to the Motion.

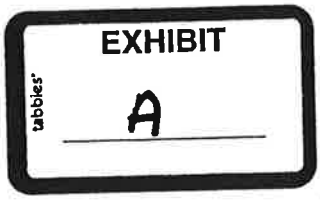
STATEMENT OF ISSUES

1. Is there a genuine issue of material fact as to whether Respondent engaged in fraud or deception in connection with the practice of dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(1) (2014)?

2. Is there a genuine issue of material fact as to whether Respondent was convicted of, found guilty of, or made an admission of guilt to a felony or gross misdemeanor reasonably related to the practice of dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(2) (2014)?

3. Is there a genuine issue of material fact as to whether Respondent was convicted of, found guilty of, or made an admission of guilt to an offense involving moral turpitude within the meaning of Minn. Stat. § 150A.08, subd. 1(3) (2014)?

4. Is there a genuine issue of material fact as to whether Respondent engaged in conduct unbecoming of a person licensed to practice dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(6) (2014), including engaging in personal conduct that brings discredit to the profession of dentistry, in violation of Minn. R. 3100.6200A (2015); charging for services not rendered, in violation of Minn. R. 3100.6200D (2015); falsifying



records related to payment for services, in violation of Minn. R. 3100.6200H (2015); and/or perpetrating fraud upon patients, third-party payers, or others relating to the practice of dentistry, in violation of Minn. R. 3100.6200I (2015)?

5. Is there a genuine issue of material fact as to whether Respondent engaged in acts constituting gross immorality within the meaning of Minn. Stat. § 150.08, subd. 1(7) (2015)?

6. Is there a genuine issue of material fact as to whether Respondent violated provisions of Minn. Stat. §§ 150A.01-.12 (2014) and/or the rules of the Board of Dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(13)?

7. Is there a genuine issue of material fact as to whether Respondent knowingly provided false or misleading information directly related to the care of a patient within the meaning of Minn. Stat. § 150A.08, subd. 1(14)?

8. If there are no genuine issues of material fact as to the conduct and violations asserted, is the Board authorized to take disciplinary action against Respondent's license to practice dentistry in the state of Minnesota?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that there are no genuine issues of material fact related to whether Respondent engaged in conduct warranting disciplinary action within the meaning of Minn. Stat. § 150A.08, subd. 1(1), (2), (3), (6), (7), (13), (14); Minn. R. 3100.6200, subps. A, D, H, I. Accordingly, there is no need for an evidentiary hearing on these violations and the Committee is entitled to disposition as a matter of law. Based upon the undisputed violations of law and rules, the Board is authorized to take disciplinary action against Respondent's license to practice dentistry in the State of Minnesota, pursuant to Minn. Stat. § 150A.08.

Based upon the submissions of the parties and the hearing record,

RECOMMENDATION

IT IS RESPECTFULLLY RECOMMENDED THAT:

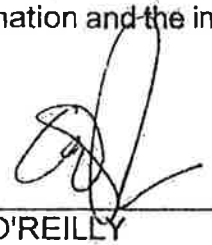
1. The Committee's Motion for Partial Disposition be **GRANTED.**

2. The one remaining allegation not subject to the Committee's Motion shall proceed to an evidentiary hearing.

ORDER

The Committee asserts eight violations of rule or law in the Notice and Order for Prehearing Conference and Hearing. Based upon the Administrative Law Judge's grant of partial summary disposition on seven of the eight alleged violations, there is only one issue remaining for a contested case hearing. That single alleged violation shall proceed to hearing, as previously scheduled, on **December 7 and 8, 2015**. All other violations shall proceed directly to the Board for final determination and the imposition of disciplinary sanction.

Dated: November 18, 2015



ANN C. O'REILLY
Administrative Law Judge

MEMORANDUM

Undisputed Facts

Respondent is a dentist licensed to practice in Minnesota since 1982.[1]

On November 21, 2013, the United States Attorney for the District of Minnesota filed a criminal complaint (Information) against Respondent alleging one count of felony Health Care Fraud, a violation of 18 U.S.C. § 1347 (2013).[2] The Information alleged that from January 1, 2006 to December 31, 2008, Respondent "did willfully and knowingly execute a scheme to obtain, by means of false pretenses, money owned by and under the custody and care of Medicaid, a federal health care benefits program."[3]

The Information asserted that Respondent submitted false Medicaid claims to the Minnesota Department of Human Services (DHS), the agency that administers the Medicaid program in Minnesota, in the amount of $50,000.[4] Specifically, the Information charged that Respondent "caused claims to be submitted for specific services that had not been performed," including a claim for services to a patient purportedly performed on December 6 and 19, 2007, but which were not actually performed.[5]

On July 14, 2014, Respondent pleaded guilty to the single count of felony Health Care Fraud asserted in the Information.[6] The court sentenced Respondent to probation for three years and imposed various terms and conditions as part of the probation.[7] The

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[1] NOTICE AND ORDER FOR PREHEARING CONFERENCE AND HEARING dated May 14, 2015.
[2] Affidavit of Gregory Schaefer (Schaeffer Aff.) at Ex. B.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Schaeffer Aff. at Exs. A, D.
[7] *Id.*

terms of the sentence required, among other things, that Respondent reside in a residential reentry center for 120 days; participate in location monitoring for 90 days; pay a fine of $10,000; pay a $100 assessment to the Crime Victims Fund; and pay restitution in the amount of $50,000 to DHS.[8]

In addition to his criminal sentence, on February 7, 2014, Respondent entered into a civil Settlement Agreement (Settlement Agreement) with the United States Department of Justice on behalf of the Office of Inspector General of the U.S. Department of Health and Human Services, Minnesota Department of Human Services, and the Medicaid Fraud Control Unit of the Minnesota Office of the Attorney General.[9] Under the Settlement Agreement, Respondent agreed to pay $50,000 to the U.S. Attorney's Office in exchange for the release of all civil and administrative monetary claims related to the conduct which formed the basis of Respondent's Health Care Fraud conviction.[10]

On or about May 14, 2015, the Committee filed a Notice and Order for Prehearing Conference and Hearing asserting eight violations of law or rule entitling the Board to take disciplinary action against Respondent.[11] The eight charges included:

> Violation 1: Engaging in fraud or deception in connection with the practice of dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(1);
>
> Violation 2: A conviction for a felony or gross misdemeanor reasonably related to the practice of dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(2);
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> Violation 3: A conviction to an offense involving moral turpitude within the meaning of Minn. Stat. § 150A.08, subd. 1(3);
>
> Violation 4: Engaging in conduct unbecoming of a person licensed to practice dentistry within the meaning of Minn. Stat. § 150A.08, subd. 1(6), including engaging in personal conduct that brings discredit to the profession of dentistry, in violation of Minn. R. 3100.6200A; charging for services not rendered in violation of Minn. R. 3100.6200D; falsifying records related to payment for services in violation of Minn. R. 3100.6200H; and/or perpetrating fraud upon patients, third-party payers, or others relating to the practice of dentistry in violation of Minn. R. 3100.6200I;
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> Violation 5: Engaging in acts constituting gross immorality within the meaning of Minn. Stat. § 150.08, subd. 1(7);

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[8] *Id.*
[9] *Id.* at Ex. E.
[10] *Id.*
[11] NOTICE AND ORDER FOR PREHEARING CONFERENCE AND HEARING dated May 14, 2015.

Violation 6: Violation of provisions of Minn. Stat. §§ 150A.01 to 150A.12 and/or the rules of the Board of Dentistry within the meaning of Minn. Stat. § 150A.08. subd. 1(13);

Violation 7: Knowingly providing false or misleading information that is directly related to the care of a patient within the meaning of Minn. Stat. § 150A.08. subd. 1(14); and

On October 16, 2015, the Committee served and filed a Motion for Partial Summary Disposition on Violations 1 through 7. The Committee did not seek summary disposition on Violation 8.

Respondent had until November 2, 2015 to file a response to the Committee's Motion. Neither Respondent nor his attorney of record responded to the Committee's Motion, and the record closed on November 2, 2015, the deadline to file a response.

Standard of Review

Summary disposition is the administrative law equivalent to summary judgment. Summary disposition is appropriate where there is no genuine issue of material fact and where the application of law to undisputed fact will resolve the controversy.[13] The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.[14]

The Administrative Law Judge's function on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but solely to determine whether genuine factual disputes exist with regard to material issues.[15] The judge does not weigh the evidence on a motion for summary disposition.[16]

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.[17] All doubts and factual inferences must

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[12] *Id.*
[13] *See* Minn. R. Civ. P. 56.03; *Gaspord v. Washington Cnty. Planning Comm'n*, 252 N.W.2d 590, 590-591 (Minn. 1977); *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chem. Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); Minn. R. 1400.5500K (2015).
[14] *See* Minn. R. 1400.6600 (2015).
[15] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[16] *Id.*
[17] *Ostendorf v. Kenyon*, 247 N.W.2d 834, 836 (Minn. Ct. App. 1984).

be resolved against the moving party.[18] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[19]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.[20] A material fact is a fact whose resolution will affect the result or outcome of the case.[21]

To successfully defeat a motion for summary disposition, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.[22] It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[23] A genuine issue is one that is not sham or frivolous.[24]

While the purpose and useful function of summary disposition is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.[25] Summary disposition is only proper in cases in which there are no fact issues to be decided.[26]

Analysis

A. Violation 1: Fraud or Deception in Connection with the Practice of Dentistry

Minnesota Statutes section 150A.08, subdivision 1(1) provides that the Board may suspend, limit, revoke, or impose conditions upon the license of a dentist who engages in fraud or deception in connection with the practice of dentistry. The Committee asserts that Respondent's conviction to Health Care Fraud is undisputed and establishes the Board's authority to impose disciplinary sanction against Respondent. The Administrative Law Judge agrees.

The criminal charge of Health Care Fraud is set forth in 18 U.S.C. § 1347 (2013). Section 1347 provides that whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice: (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of

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[18] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[19] *DLH*, 566 N.W.2d at 69.
[20] *Thiele*, 425 N.W.2d at 582.
[21] *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *see also O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).
[22] *Thiele*, 425 N.W.2d at 583; *Hunt v. IBM Mid-America Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).
[23] Minn. R. Civ. P. 56.05.
[24] *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984, *review denied* (Minn. Feb. 6, 1985).
[25] *Sauter*, 70 N.W.2d at 353.
[26] *Id.*

the money or property owned by, or under the custody or control of, any health care benefit program, shall be guilty of a felony.[27]

It is undisputed that Respondent pleaded guilty to felony Health Care Fraud in connection to the allegations contained in the Information filed in federal court in 2013.[28] In pleading guilty to that offense, Respondent admitted that he knowingly and willfully executed a scheme or artifice to defraud a health care program or to obtain, by means of false or fraudulent pretenses, money owned by Medicaid and DHS. Based upon the Information upon which Respondent pleaded guilty,[29] Respondent admitted to submitting false Medicaid claims to DHS totaling $50,000 for dental services that were not actually performed between January 1, 2006 and December 31, 2008.

Due to Respondent's undisputed plea of guilty to, and conviction of, felony Health Care Fraud, under the facts set forth in the Information, there is no issue of material fact that Respondent engaged in fraud or deception in connection with his dental practice. Accordingly, the Board is authorized to take disciplinary action against Respondent based upon Violation 1, and there is no need for an evidentiary hearing on this issue.

B. Violation 2: Conviction, Guilty Plea, or Admission to a Felony Charge

Minnesota Statutes section 150A.08, subdivision 1(2) provides that the Board may suspend, limit, revoke, or impose conditions upon the license of a dentist on the grounds of a:

> conviction, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court of a felony or gross misdemeanor reasonably related to the practice of dentistry as evidenced by a certified copy of the conviction.

It is undisputed that Respondent pleaded guilty to Health Care Fraud on July 14, 2014, as evidenced by the certified copy of the Judgment of Conviction from the United States District Court for the District of Minnesota, filed by the Committee in support of its Motion.[30] Federal law classifies an offense as a felony if the maximum term of imprisonment authorized by the criminal statute is more than one year.[31] The maximum term of imprisonment for Health Care Fraud is 10 years.[32] Accordingly, Health Care Fraud is a felony offense under federal law.

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[27] Schaeffer Aff. at Ex. C; *see also* 18 U.S. C. § 3559(a), which classifies an offense as a felony if the maximum term of imprisonment authorized by statute is more than one year. 18 U.S.C. § 1347 authorizes a maximum of 10 years in prison. Hence, Health Care Fraud is a felony under federal law.

[28] Schaeffer Aff. at Exs. A, D.

[29] By not responding to the Committee's Motion for Summary Disposition, Respondent is not disputing that the facts alleged in the federal Information formed the factual basis for his plea of guilty to felony Health Care Fraud.

[30] Schaeffer Aff. at Ex. A.

[31] 18 U.S.C. § 3559(a) (2013).

[32] 18 U.S.C. § 1347.

There is no dispute that Respondent was convicted of a felony related to his practice of dentistry. Consequently, the Board is authorized to take disciplinary action against Respondent's dental license, and summary disposition of Violation 2 is warranted.

C. Violation 3: Conviction, Guilty Plea, or Admission to an Offense Involving Moral Turpitude

Minnesota Statutes section 150A.08, subdivision 1(3) provides that the Board may suspend, limit, revoke, or impose conditions upon the license of a dentist on the grounds of a:

> conviction, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court of an offense involving moral turpitude as evidenced by a certified copy of the conviction.

While the Board's rules and statutes do not define "moral turpitude," the Minnesota Supreme Court has adopted a definition of the phrase. In the case of *In re Application for the Discipline of James E. Bunker*,[33] the Minnesota Supreme Court accepted the definition of "moral turpitude" advanced by the Wisconsin Supreme Court in an attorney discipline case.[34] In *State v. McCarthy*,[35] the Wisconsin Supreme Court defined "moral turpitude" as follows:

> Moral turpitude is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.[36]

The definition adopted by the Minnesota Supreme Court in *Bunker* is consistent with federal courts' interpretations of the phrase, most frequently applied in immigration cases. The Eighth Circuit Court of Appeals has defined "moral turpitude" to refer "generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."[37]

Unfortunately, neither the definition advanced by the Minnesota Supreme Court in *Bunker* nor the Eighth Circuit's definition is particularly helpful when determining whether the phrase, "crimes involving moral turpitude," applies to financial crimes. Fortunately, the United States Supreme Court has been more specific in its application of these terms. In *Jordan v. DeGeorge*,[38] the Supreme Court concluded that the "phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."[39]

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[33] 294 Minn. 47, 199 N.W.2d 628 (1972).
[34] 294 Minn. 47, 453, 199 N.W.2d 628, 631.
[35] 255 Wis. 234, 38 N.W.2d 679 (1949).
[36] 255 Wis. 234, 249, 38 N.W.2d 679, _ (1949).
[37] *Hernandez-Perez v. Holder*, 569 F.3d 345, 347 (8th Cir. 2009), citing *Chanmouny v. Ashcroft*, 376 F.3d 810, 811 (8th Cir. 2004).
[38] 341 U.S. 223, 71 S. Ct. 703 (1951).
[39] *Jordan*, 341 U.S. 223, 232, 71 S. Ct. 703, 708.

In deciding that federal income tax evasion constituted a crime involving moral turpitude, the Court reasoned that "fraud is the touchstone by which the case should be judged."[40]

Following this reasoning, the Office of Administrative Hearings (OAH) has consistently interpreted the phrase "crimes involving moral turpitude" to include financial crimes.[41] The OAH has ruled that crimes involving moral turpitude include, but are not limited to, the crimes of Medicaid Fraud, misdemeanor Financial Card Fraud, Theft by Swindle, Wrongfully Obtaining Public Assistance, and even Shoplifting.[42]

Submitting $50,000 in false invoices for payment by Medicaid for dental services not performed is a crime of dishonesty that is inherently base, contrary to the accepted rules of morality, and in breach of the duties owned by medical professionals to third-party payers and society at large. By defrauding the Medicaid program, Respondent bilked U.S. taxpayers and breached the trust the public places in health care providers. Accordingly, Health Care Fraud is a crime of moral turpitude for purposes of Board rules and laws.

It is undisputed that Respondent pleaded guilty to Health Care Fraud on July 14, 2014, as evidenced by the certified copy of the Judgment of Conviction. Because the Administrative Law Judge has determined that Health Care Fraud is a crime involving moral turpitude, the Committee is entitled to summary disposition recommending that the Board impose disciplinary action against Respondent for Violation 3.

D. Violation 4: Conduct Unbecoming a Licensed Dentist

Minnesota Statutes section 150A.08, subdivision 1(6) provides that the Board may suspend, limit, revoke, or impose conditions upon the license of a dentist who engages in "conduct unbecoming" of a person licensed to practice dentistry or conduct contrary to the best interest of the public, as such conduct is defined by the Board's rules. Board Rule 3100.6200 (2015) provides that conduct unbecoming of a dentist includes, among other things:

- Engaging in personal conduct that brings discredit to the profession of dentistry (subpart A);
- Dentists charging for services not rendered (subpart D);

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[40] *Id.*

[41] *See, e.g., In The Matter of the Insurance Producers License Application of Chandra Dayland*, Docket No. 84-1004-30827 (Oct. 11, 2013) (involving the crimes of Conspiracy to Defraud the State and Medicaid Fraud); *In The Matter Of The Insurance Producers License Of Aaron Jenne*, Docket No. 14-1004-31733 (Feb. 3, 2015) (involving misdemeanor financial card fraud); *In The Matter of the Application of Michael Lauen for an Insurance Producers License*, Docket No. 68-1004-30526 (May 6, 2013) (involving Theft by Swindle); and *Application for an Insurance Producers License of Danielle Healy*, Docket No. 3-1004-22145 (Sept. 12, 2011) (involving Theft by Wrongfully Obtaining Public Assistance and misdemeanor Theft for shoplifting).

[42] *Id.*

- Falsifying records relating to payment for services rendered (subpart H); and

- Perpetrating fraud upon patients, third-party payers, or others relating to the practice of dentistry (subpart I).

By pleading guilty to the charge of Health Care Fraud, as set forth in the 2013 Information, Respondent admitted to defrauding the Medicaid program by submitting claims in the amount of $50,000 for services not rendered. Such an offense was committed by falsifying records and perpetrating fraud on DHS and the Medicaid program, both of which are third-party payers. This fraud was directly related to the practice of dentistry and brings discredit to the profession. Therefore, Respondent's conviction establishes that he engaged in conduct unbecoming of a dentist.

Based upon Respondent's plea of guilty to, and conviction for, Health Care Fraud under the facts set forth in the Information, it is undisputed that Respondent engaged in conduct unbecoming of a dentist. The Board is, therefore, authorized to take disciplinary action against Respondent's dental license and no evidentiary hearing is warranted.

E. Violation 5: Gross Immorality

Minnesota Statutes section 150A.08, subdivision 1(7) provides that the Board may suspend, limit, revoke, or impose conditions upon the license of a dentist who engages in "gross immorality." The Committee contends that Respondent's conviction to Health Care Fraud amounts to gross immorality.

The Board statutes and rules do not define "gross immorality." However, the definitions of those terms are common and well-known. "Immorality" is a state of being immoral.[43] "Immoral" is defined by Black's Law Dictionary as:

> Contrary to good morals; inconsistent with the rules and principles of morality; inimical to public welfare according to the standards of a given community, as expressed in law or otherwise.[44]

"Gross," as used in this context, is defined by Black's Law Dictionary as, "[g]reat; culpable; general; absolute...flagrant; shameful...Such conduct not to be excused."[45]

Health Care Fraud -- and fraud in general -- are contrary to the rules and principles of morality established in federal and state law. Fraud is also contrary to the public welfare. Health Care Fraud totaling $50,000 is not insubstantial. In fact, it is "great" and "flagrant." Accordingly, Respondent's plea of guilty to, and conviction of, Health Care Fraud amounts to "gross immorality," as those terms are used in Minn. Stat. § 150A.08, subd. 1(7).

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[43] *See* Merriam-Webster on-line dictionary, http://www.merriam-webster.com/dictionary/immorality
[44] *Black's Law Dictionary*, abridged 6th ed. (West 1991) at 515.
[45] *Id.* at 485.

The facts are undisputed that Respondent pleaded guilty to, and was convicted of, Health Care Fraud in the amount of $50,000. Such criminal act arises to "gross immorality;" as those terms are used in Minn. Stat. § 150A.08, subd. 1(7). Accordingly, an application of law to the undisputed facts warrants summary disposition with respect to Violation 5 and the imposition of disciplinary action by the Board.

F. Violation 6: Knowingly Providing False Information

Minnesota Statutes section 150A.08, subdivision 1(6) provides that the Board may suspend, limit, revoke, or impose conditions upon the license of a dentist who knowingly provides false or misleading information that is directly related to the care of a patient. In pleading guilty to the single count of Health Care Fraud asserted in the federal Information, Respondent admitted to the facts set forth in that Information. Specifically, Respondent admitted that he defrauded Medicaid by submitting false invoices to DHS for medical services which he did not perform in the amount of $50,000. Respondent does not dispute the facts as alleged by the Committee in this proceeding.

By submitting false invoices to DHS for payment by the Medicaid program for services not rendered, Respondent knowingly provided false information to DHS directly related to the care of a patient. Accordingly, an application of law to the undisputed facts warrants summary disposition as to Violation 6 and the imposition of disciplinary action by the Board.

G. Violation 7: Violation of Board Laws and Rules

Minnesota Statutes section 150A.08, subdivision 1(13) provides that a violation of any of the provisions contained in sections 150A.01-.12, or a violation of any of the rules of dentistry are grounds for the Board to suspend, limit, revoke, or impose conditions upon the license of a dentist. As set forth above, the facts are undisputed that Respondent engaged in prohibited conduct described in Minn. Stat. § 150A.08, subd. 1(1), (2), (3), (6), (7), (14), as well as Minn. R. 3100.6200, subps. A, D, H, I. Therefore, the Board is authorized to take disciplinary action against Respondent's dental license and no evidentiary hearing is warranted.

H. Disciplinary Action and Remaining Charge (Violation 8)

Because there is no dispute of material fact as to whether Respondent committed the acts that form the bases of Violations 1 through 7, those matters shall proceed directly to the Board for final determination and disciplinary action. The Administrative Law Judge does not have the legal authority to direct the Board as to what disciplinary action is warranted based upon these violations. Accordingly, with respect to Violations 1 through 7, there are no additional issues for hearing before the Administrative Law Judge.

Pursuant to *Padilla v. Minnesota State Board of Medical Examiners*, the disciplinary sanction to be applied in medal licensing actions is a matter within the special province of the health licensing boards.[46] According to the Court of Appeals:

> Boards and commissions like the Board of Medical Examiners are appointed because of their special expertise regarding the standards of their own professions. When a professional person must be disciplined for breaching these standards, the nature and duration of the discipline is best determined by his or her fellow professionals, who are in a superior position to evaluate the breaches of trust and unprofessional conduct.[47]

The court further instructed:

> '[T]he assessment of penalties and sanctions by an administrative agency is not a factual finding but the exercise of a discretionary grant of power.' *In re Haugen*, 278 N.W.2d 75, 80 n.10 (Minn. 1979). The legislature has conferred upon [the] Board, and not upon the ALJ, discretion to determine the type of discipline to impose. To hold that the ALJ should make a recommendation as to the type of discipline would be to usurp the power delegated to the Board.[48]

Consistent with the appellate court's instruction in *Padilla*, the determination of the type of disciplinary sanction to impose upon Respondent is left to the expert discretion of the Board. Violations 1 through 7 detailed above have been proven by undisputed facts, and an application of law to the undisputed facts establishes the Board's authority to take disciplinary action based upon those violations. Accordingly, Violations 1 through 7 shall proceed directly to the Board for the imposition of disciplinary action and shall not be addressed in an evidentiary hearing.

The Committee seeks partial summary disposition, as opposed to full summary disposition, because there is one violation in the Notice and Order for Prehearing Conference and Hearing (Violation 8) that remains outstanding. [redacted]

Because the facts are apparently in dispute as to that particular charge, Violation 8 shall proceed to an evidentiary hearing on December 7 and 8, 2015. All other violations are disposed of by this Order. The Committee is encouraged to advise the Respondent and Administrative Law Judge if it intends to proceed to hearing on the last remaining issue or dismiss that charge in the interest of economy so that the matter as a whole can proceed to the Board for a determination of the disciplinary sanction to impose.

A. C. O.

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[46] *Padilla*, 382 N.W.2d 876, 886-887 (Minn. Ct. App. 1986), *rev. denied* April 24, 1986.
[47] *Id.*
[48] *Id.*

THIS DOCUMENT CONTAINS NOT PUBLIC DATA

OAH 65-0902-32522

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF DENTISTRY

In the Matter of Michael J. Bussa, D.D.S.

ORDER ON REQUEST TO CERTIFY TO THE BOARD THE RECOMMENDED ORDER GRANTING MOTION FOR PARTIAL SUMMARY DISPOSITION

This matter came before Administrative Law Judge Ann C. O'Reilly pursuant to a request by the Complaint Review Committee to certify to the Board of Dentistry the Order Granting Motion for Partial Summary Disposition dated November 18, 2015.

Gregory J. Schaefer, Assistant Attorney General, appears on behalf of the Complaint Review Committee (Committee) of the Minnesota Board of Dentistry (Board). William D. Paul, William D. Paul Law Office, appears on behalf of Respondent Michael J. Bussa, D.D.S. (Respondent).

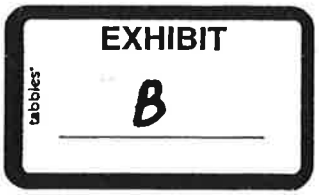
On November 20, 2015, the Committee informed the Administrative Law Judge that it was dismissing the only remaining alleged violation (Violation 8) set forth in the Notice and Order for Prehearing Conference and Hearing in this matter. As a result, the Committee requested that the Administrative Law Judge cancel the contested case hearing scheduled in this matter and certify to the Board the Order Granting Partial Summary Disposition.

Based on the dismissal of alleged Violation 8 and the Administrative Law Judge's Order Granting Partial Summary Disposition, no matters remain for an evidentiary hearing. Accordingly, the Administrative Law Judge makes the following:

ORDER

1. The allegation that Respondent failed to cooperate with the Board by failing to complete preapproved coursework and written reports required under the Agreement for Corrective Action is **DISMISSED**;

2. The hearing scheduled for December 7 and 8, 2015, is **CANCELLED**; and



3. The Committee's request to certify the Recommended Order Granting Motion for Partial Summary Disposition, pursuant to Minn. R. 1400.7600 (2015), is **GRANTED.**

Dated: December 1, 2015

ANN C. O'REILLY
Administrative Law Judge

MEMORANDUM

On October 16, 2015, the Committee moved for partial summary disposition on seven of the eight alleged violations contained in the Notice and Order for Prehearing Conference and Hearing. By Order dated November 18, 2015, the Administrative Law Judge granted partial summary disposition in favor of the Committee on the seven alleged violations. The remaining alleged violation, which was not subject to the Committee's motion for partial summary disposition, was scheduled to proceed to hearing on December 7 and 8, 2015.

On November 20, 2015, the Committee informed the Administrative Law Judge that it was dismissing the remaining alleged violation, and requested that the Administrative Law Judge certify to the Board of Dentistry the Recommended Order Granting Motion for Partial Summary Disposition, pursuant to Minn. R. 1400.7600.

Minnesota Rules Part 1400.7600 provides, in relevant part:

> Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the judge to the agency. In deciding what motions should be certified, the judge shall consider the following:
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> . . .
>
> B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing[.]

The Committee seeks to certify the Recommended Order Granting Motion for Partial Summary Disposition to the Board. The Committee contends that a hearing on the remaining allegation is no longer necessary and that the Board may elect to accept

the Administrative Law Judge's recommendation and impose discipline on the basis of the facts established in the motion record.

The Administrative Law Judge agrees that the most efficient course of action is to certify the November 18, 2015 Recommended Order Granting Motion for Partial Summary Disposition to the Board for a final decision pursuant to Minn. R. 1400.7600. The facts established in the motion record are sufficient to conclude that Respondent committed seven of eight violations alleged in the Notice and Order for Prehearing Conference and Hearing, and that disciplinary action against the Respondent's license is in the public interest based upon those undisputed violations. The Respondent did not respond to the motion. The Administrative Law Judge can see no prejudice to the Respondent if the Board were to forego reliance on the remaining allegation of licensing misconduct and determine that any discipline imposed be based on the facts contained in the motion record.

Accordingly, the Administrative Law Judge finds that certifying the Recommended Order to the Board at this time would materially advance the timely and efficient resolution of this matter.[1] The Board may not make a final decision, however, without waiting at least ten days from receipt of this Order to allow the Respondent an opportunity to file exceptions and present argument to a majority of officials who are to render the decision. Accordingly, the Respondent shall have the opportunity to present argument to the Board as to whether the Board should adopt the Administrative Law Judge's Recommended Order and whether discipline of his license is in the public interest.

A. C. O.

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[1] *See generally* Minn. R. 1400.5500(J) (2015).