

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of  
Joshua D. Johnson, L.D.A.  
License No. A13719

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

The above-entitled matter came on for a prehearing conference on August 30, 2012, before Administrative Law Judge ("ALJ") Ann O'Reilly at the request of the Minnesota Board of Dentistry ("Board") Complaint Committee ("Committee"). The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing ("Notice of Hearing") issued by the Committee on July 17, 2012. Geoffrey Karls, Assistant Attorney General, represented the Committee. Joshua D. Johnson, L.D.A. ("Respondent"), made no appearance.

On October 23, 2012, the ALJ issued Findings of Fact, Conclusions, and Recommendation ("ALJ's report"), recommending the Board take disciplinary action against Respondent's 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 December 14, 2012, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Geoffrey Karls, Assistant Attorney General, appeared and presented oral argument on behalf of the Board Complaint Committee. Respondent did not appear. Board members Joan Sheppard, D.D.S. and Terese M. Youngdahl, L.D.A. did not participate in deliberations and did not vote in the matter. Benjamin R. Garbe, 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 accepts the October 23, 2012, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 10 of the ALJ's Findings of Fact states, "Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference and Hearing are taken as true, deemed proved 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 pleaded guilty to driving while intoxicated (DWI), a gross misdemeanor, in Goodhue County on March 24, 2011.

2. Respondent disclosed the above conviction to the Board in his application for licensure as a licensed dental assistant. The Board referred Respondent to the Health Professionals Services Program ("HPSP"), and Respondent contacted the HPSP on May 3, 2011.

a) The HPSP directed Respondent to undergo a chemical dependency evaluation. At the conclusion of the evaluation, Respondent was diagnosed with alcohol abuse.

b) During the evaluation, Respondent revealed that he had previously used marijuana and crack cocaine.

c) Respondent signed a participation agreement with the HPSP on May 20, 2011.

3. The Board licensed Respondent as a dental assistant on May 26, 2011.

4. On August 1, 2011, Respondent submitted a sample for urinalysis. The sample tested positive for alcohol and cocaine. When contacted by the HPSP, Respondent admitted to consuming alcohol, but denied cocaine use.

5. On August 10, 2011, the HPSP informed the Board that Respondent had voluntarily withdrawn from the monitoring program.

6. The Board has made multiple attempts to contact Respondent by telephone and by mail. Respondent has failed to respond to the Board's attempts at contact.

### **CONCLUSIONS**

The Board accepts the October 23, 2012, ALJ's report and accordingly adopts and incorporates the Conclusions 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 license of Respondent as a licensed dental assistant in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time.

2. IT IS FURTHER ORDERED that during the period of suspension Respondent shall not engage in any conduct which constitutes the practice of licensed dental assisting as defined in Minn. Stat. § 150A.10, subd. 2. and Minn. R. part 3100.8500 and shall not imply to former patients or other persons by words or conduct that Respondent is licensed to practice dental assisting.

3. IT IS FURTHER ORDERED that if Respondent is in possession of his dental assisting license, Respondent shall surrender and personally deliver or mail the certificate to the Minnesota Board of Dentistry, c/o Marshall Shragg, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

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 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 licensed dental assisting, is successfully participating in a program of chemical dependency rehabilitation, and has been sober and free from mood-altering chemicals during the 12 months immediately preceding his petition. At the time of Respondent's petition, Respondent must meet with a Board Complaint Committee to review his response to the Findings of Fact and provide documentation of 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 his petition:

- 1) Reports from two adult persons, at least one of whom is not related to Respondent, who can attest to Respondent's sobriety. Each report shall provide and address:

- a) Respondent's active participation in a chemical dependency rehabilitation program;

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

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

2) A report from Respondent's employment supervisor(s), if any, during the 12 months immediately preceding the petition. This report shall provide and address:

- a) Respondent's attendance and reliability;
- b) Respondent's ability to carry out assigned functions;
- c) Respondent's ability to handle stress;
- d) Respondent's sobriety; and
- e) Any other information the supervisor believes would assist the Board in its ultimate review of this matter.

3) A report from Respondent himself. This report shall provide and address:

a) Respondent's sobriety, including the date he last used mood-altering chemicals, including alcohol, and the circumstances surrounding any use while this Order is in effect;

b) Respondent's treatment and weekly participation in 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) which have been signed or initialed and dated by a participant who has attended the weekly meeting;

- c) Respondent's ability to handle stress;
- d) Respondent's employment, if any;

e) Respondent's future plans for licensed dental assisting and the steps he has taken to prepare himself to return to practice;

f) Evidence Respondent has maintained the knowledge, skills, and ability to practice licensed dental assisting safely; and

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

4) A report from any and all physicians and dentists and any other health professional who has prescribed mood-altering chemicals to Respondent during the 12 months preceding his petition. This report shall provide and address:

a) The name, dosage, frequency, and purpose of the mood-altering chemicals prescribed to Respondent;

b) Confirmation the prescribing health professional has been informed of Respondent's chemical dependency history; and

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

5) Within 60 days prior to petitioning, Respondent shall complete a chemical dependency evaluation performed by a chemical dependency 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 prior to the evaluation.

6) Respondent shall comply with any recommendations for additional evaluation and treatment made by the chemical dependency evaluator.

7) At any time while this Order is in effect and at the request of the Board, Respondent shall complete and sign health records waivers and chemical dependency 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, and chemical dependency records from his physician, therapist, chemical dependency counselor, or others from whom Respondent has sought or obtained support or assistance.

8) 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 dental assisting license to Respondent.

b. Issue a dental assisting license 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: 12-18-2012

STATE OF MINNESOTA

BOARD OF DENTISTRY

  
NEAL U. BENJAMIN, D.D.S.  
Board President

AG: #3135702-v1



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF DENTISTRY

In the Matter of Joshua D. Johnson, L.D.A.  
License No. A13719

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION UPON  
DEFAULT**

This matter came before Administrative Law Judge ("ALJ") Ann O'Reilly for a Pre-Hearing Conference on August 30, 2012. The Prehearing Conference was held pursuant to a Notice and Order for Prehearing Conference, dated July 17, 2012.

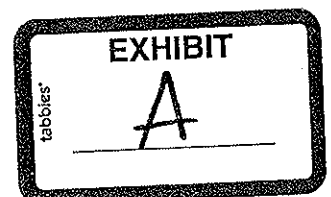
Geoffrey Karls, Assistant Attorney General, appeared on behalf of the Board of Dentistry ("Board"). There was no appearance by or on behalf of Joshua D. Johnson ("Respondent").

On September 4, 2012, the Administrative Law Judge received the Department's request for default judgment, pursuant to Minn. R. 1400.6000. Respondent was sent a copy of the request for default judgment at Respondent's last known address. The hearing record closed on September 18, 2012, ten (10) working days after receipt of the Department's letter requesting a default judgment.

Based upon the submissions of counsel and the hearing record,

**STATEMENT OF THE ISSUES**

1. Whether Respondent has demonstrated conduct unbecoming of a person licensed to practice dental assisting and/or conduct contrary to the best interest of the public, within the meaning of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200A, thereby subjecting Respondent to disciplinary action by the Board.
2. Whether Respondent suffers from a physical, mental, emotional, or other disability which adversely affects Respondent's ability to perform as a dental assistant, within the meaning of Minn. Stat. § 150A.08, subd. 1(8).
3. Whether Respondent's failure to cooperate with a Board investigation, within the meaning of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200J, subjects Respondent to disciplinary action by the Board.



The ALJ concludes that Respondent is in default and recommends that Default Judgment be **GRANTED**. The ALJ further recommends that the allegations in the Notice and Order for Prehearing Conference and Hearing be accepted as true and be deemed proven.

Based on the proceedings herein, the Administrative Law Judgment makes the following:

### **FINDINGS OF FACT**

1. On July 23, 2012, a Notice of and Order for Prehearing Conference and Hearing ("Notice of Hearing") was served upon Respondent by first class mail at the address for Respondent on file and of record with the Board.

2. The Notice of Hearing advised Respondent of a Prehearing Conference scheduled for August 30, 2012 at 1:30 p.m., at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

3. The Notice of Hearing specifically provided:

Respondent's failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and Hearing may be accepted as true, and that its proposed action may be upheld.

4. On August 23, 2012, Administrative Law Judge Manual Cervantes served upon Respondent, at the address on file and of record with the Board, a notice reassigning the case to Administrative Law Judge Ann O'Reilly, and advising the parties that the prehearing conference would be conducted by telephone on August 30, 2012, at 1:30 p.m. The parties were provided with the conference call-in number and conference passcode.

5. The letter advising the parties of the telephone prehearing conference was not returned to the Office of Administrative Hearings as undeliverable.

6. No Notices of Appearance were filed with the Office of Administrative Hearings by Respondent.

7. A Prehearing Conference was held on August 30, 2012, at 1:30 p.m., before Administrative Law Judge Ann O'Reilly, via a telephone conference.

8. There was no appearance by Respondent at the Prehearing Conference on August 30, 2012. Respondent did not appear at the Office of Administrative Hearings or appear by telephone.

9. Respondent did not contact the ALJ, the Office of the Attorney General, or the Department to seek a continuance of the Prehearing Conference or request other relief.

10. Respondent has not contacted the Administrative Law Judge, the Office of Administrative Hearings, the Office of the Attorney General, or the Board.

11. Respondent's failure to appear was without consent of the Administrative Law Judge.

12. Because Respondent failed to appear at the Prehearing Conference, Respondent is in default.

10. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference and Hearing are taken as true, deemed proved without further evidence, and incorporated by reference into these Findings of Fact.

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge and the Board have jurisdiction in this matter pursuant to Minn. Stat. § 14.50, Minn. Stat. § 150A.08, and Minn. Stat. Chapter 214.

2. Respondent received due, proper, and timely notice of the allegations, as well as of the time and place of the pretrial conference and hearing. The matter is, therefore, properly before the Commissioner and Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, the Department and Administrative Law Judge may dispose of a contested case adverse to a party who defaults.<sup>1</sup> Upon default, the allegations of or the issues set out in the Notice of and Order for Hearing may be taken as true or deemed proved without further evidence.<sup>2</sup> A default occurs when a party fails to appear without the prior consent of the Administrative Law Judge at a prehearing conference or a hearing.<sup>3</sup>

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<sup>1</sup> Minn. R. 1400.6000.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

5. Respondent is in default as a result of Respondent's failure to appear, without the prior consent of the Administrative Law Judge, at the prehearing conference on August 30, 2012.

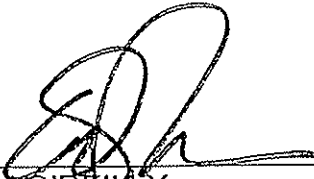
6. Accordingly, the allegations and the issues set forth in the Notice and Order for Prehearing Conference and Hearing are accepted as true and deemed proved.

Based upon the Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

**IT IS HEREBY RECOMMENDED** that the Board take appropriate disciplinary action against Joshua D. Johnson.

Dated: October 19, 2012

  
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ANN O'REILLY  
Administrative Law Judge

Reported: Default

### NOTICE

This report is a recommendation, not a final decision. The Board of Dentistry will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Marshall Shragg, Executive Directive, Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, MN 55414, to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.