

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
John A. Petty, D.D.S.
License No. D11708

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

The above-entitled matter came on for a prehearing conference on January 27, 2009, before Administrative Law Judge (“ALJ”) Beverly Jones Heydinger at the request of the Complaint Committee (“Committee”) of the Minnesota Board of Dentistry (“Board”). The matter was initiated pursuant to the Notice of and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Committee on November 7, 2008. Angelina M. Barnes, Assistant Attorney General, represented the Committee. John A. Petty, D.D.S., (“Respondent”) made no appearance.

On February 2, 2009, the ALJ issued Findings of Fact, Conclusions and Recommendation (“ALJ’s report”), recommending that the Board take disciplinary action against the dental license of Respondent. (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 March 27, 2009, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Angelina M. Barnes, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Respondent did not appear. Board members Nadene Bunge, D.H., Candace Mensing, D.D.S., and Freeman Rosenblum, D.D.S. did not participate in deliberations and did not vote in the matter. Tiernee Murphy, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

1. The Board is authorized pursuant to Minnesota Statutes sections 150A et seq. 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. The Board has reviewed the record of this proceeding and hereby accepts the February 2, 2009, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 6 of the ALJ's Findings of Fact states, "Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are taken as true and incorporated into these Findings of Fact." The allegations contained in the Notice of Hearing are as follows:

Substandard Care

3. Respondent failed to provide appropriate dental treatment when providing dental care to patient 1, a five year old minor, as follows:

a. Respondent failed to obtain adequate clinical examination records, including radiographs, to properly diagnose treatment of patient 1's existing oral health status and/or Respondent failed to refer patient 1 to a pedodontist. On August 29, 2006, patient 1 presented to Respondent complaining of soreness in his upper anterior teeth. Respondent performed an examination on patient 1 without taking any radiographs because the parent requested no radiographs were to be taken unless necessary. No restorative treatment was diagnosed by Respondent for patient 1. On May 3, 2007, patient 1 saw a subsequent dental provider who diagnosed deep caries in 11 of patient 1's teeth.

b. Respondent failed to recommend any preventative measures to patient 1's parent regarding the home care of patient 1's teeth.

Failure to Cooperate

4. Respondent failed to cooperate with the Board, its agents, or those working on behalf of the Board. In particular, Respondent failed to timely comply with the Board's letter of inquiry request, to change his address with the Board, to attend an informational conference with the Committee, and to attend a recent disciplinary conference with the Committee as follows:

a. Respondent failed to comply with the Board's request to provide in writing a full and complete explanation of the allegations under consideration regarding patient 1 within 14 days of the Board's June 29, 2007 letter of inquiry.

b. On July 7, 2007, the Board office received a short note from Respondent indicating that he had no recollection of patient 1 and no response at that time.

c. On both July 20 and August 2, 2007, the Board sent letters to Respondent requesting that he contact the Board and come to the Board office to review patient 1's record and provide an adequate response to the allegations.

d. Respondent failed to contact the Board office by the designated deadlines. On August 15, 2007, Respondent presented to the Board office and reviewed patient 1's record, after which he submitted his response to the Board office on August 24, 2007.

e. Respondent failed to timely notify the Board office of his change in mailing address within 30 days after changing as required under Minnesota Statutes section 150A.09, subd. 3.

f. On July 25, 2008, Respondent was scheduled to meet with the Committee for an informational conference to discuss the aforementioned allegations of substandard care

and Respondent's previous failure to cooperate with the Board. Prior to this date, Respondent confirmed with the Board office that he would be present at the conference. However, Respondent failed to attend the July 25, 2008 conference with the Committee or make any further attempt to contact the Board regarding this matter.

g. On October 24, 2008, Respondent was scheduled to meet with the Committee for a disciplinary conference to discuss the aforementioned allegations of substandard care and Respondent's previous failure to cooperate with the Board. On September 16, 2008, Respondent was served with Notice of Conference with the Board Complaint Committee by U.S. mail at two addresses. Respondent failed to respond to the Board's notice, to attend the October 24, 2008 conference with the Committee, or to make any further attempt to contact the Board in this matter.

CONCLUSIONS

The Board accepts the February 2, 2009, 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 dental license of Respondent to practice dentistry in the State of Minnesota is indefinitely **SUSPENDED** immediately.

2. IT IS FURTHER ORDERED that Respondent shall not engage in any conduct which constitutes the practice of dentistry as defined in Minnesota Statutes section 150A.05, and

shall not imply to any persons by words or conduct that Respondent is authorized to practice dentistry in the State of Minnesota.

3. IT IS FURTHER ORDERED that Respondent surrender to the Board his original license and current renewal certificate. Respondent shall deliver them personally or by first-class mail to the Minnesota Board of Dentistry, c/o Marshall Shragg, Executive Director, Minnesota Board of Dentistry, 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 no earlier than one year from the date of this Order. Respondent's license may be reissued, 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. At the time of Respondent's petition, Respondent must meet with a Complaint Committee to review his response to the Findings of Fact. 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 contained in the Findings of Fact.
- b. Evidence of compliance with the provisions of this Order.
- c. Any additional information relevant to Respondent's petition reasonably requested by the Complaint Committee.

5. IT IS FURTHER ORDERED that if Respondent petitions to have the suspended status removed from his license two (2) years or more after the date of this Order, Respondent

shall be required to attain a passing score on a Board approved regional clinical examination. Respondent's compliance with this requirement shall not create a presumption that he should be granted a license to practice dentistry in the State of Minnesota.

7. IT IS FURTHER ORDERED that Respondent shall meet all relicensure 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 professional development requirements.

8. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 150A.08, subdivision 3a (2008), when Respondent petitions for reinstatement of his dental license, he must pay to the Board the total costs of the proceedings which resulted in the suspension of his license, including the costs paid by the Board at the Office of Administrative Hearings. The total costs of the proceedings are \$382.50 and shall be paid by cashier's check(s) or money order(s) made payable to the Minnesota Board of Dentistry, c/o Marshall Shragg, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, MN 55414.

9. 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 148.261, subdivision 1(18), and provide grounds for further disciplinary action.

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

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

c. Deny Respondent's petition for licensure based upon his failure to meet the burden of proof.

Dated: April 3, 2009

MINNESOTA BOARD
OF DENTISTRY



KRISTIN HEEBNER, J.D.
Secretary of the Board

AG: #2413537-v1

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

In the Matter of John A. Petty, D.D.S.,
License No. D11708

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

This matter came on for a Prehearing Conference before Administrative Law Judge Beverly Jones Heydinger on January 27, 2009, at 1:30 p.m., at the Office of Administrative Hearings. Angelina M. Barnes, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101, appeared for the Board of Dentistry, Complaint Committee. John A. Petty ("Respondent") did not appear in person or by counsel. The record closed on the date of the Prehearing Conference.

STATEMENT OF ISSUES

1. Did the Respondent engage in conduct unbecoming a person licensed to practice dentistry and/or conduct contrary to the best interest of the public, specifically:

- a. Gross ignorance or incompetence in the practice of dentistry and/or repeated performance of dental treatment which falls below accepted standards, in violation of Minn. Stat. § 150A.08, subd. 1 (6) and (13), and Minn. R. 3100.6200 B;
- b. Failing to cooperate with the Board, its agents, or those working on behalf of the Board, in violation of Minn. Stat. § 150A.08, subd. 1 (6) and (13), and Minn R. 3100.6200 J and 3100.6350.

2. Did the Respondent fail or refuse to attend, testify, or produce records as directed by the Board, in violation of Minn. Stat. § 150A.08, subd. 1 (12)?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 12, 2008, the Notice of and Order for Prehearing Conference and Hearing in this matter was served by first class mail upon John A. Petty, D.D.S., at two addresses: 11256 Deer Ridge Lane, Minnetonka, MN 55343, and 8637 Saratoga Lane, Eden Prairie, MN 55347, the last known addresses on file with the Board. It notified the Respondent of the Prehearing Conference scheduled for January 27, 2009. Neither of the Notices was returned to the Board as undeliverable.

2. On December 11, 2008, the Administrative Law Judge sent a letter to the Respondent at both addresses, providing supplemental information. Neither letter was returned as undeliverable.

3. On January 27, 2009, the Respondent failed to appear at the Prehearing Conference, or to notify the Board or the Administrative Law Judge that he was unable to appear.

4. The Notice of and Order for Prehearing Conference and Hearing informed Respondent that if he failed to appear at the Prehearing Conference the allegations against him, set forth in the Notice of and Order for Prehearing Conference and Hearing, could be taken as true, and a default order could be issued. He was informed that such an order could result in disciplinary action, including loss of his license.

5. Because the Respondent failed to appear, he is in default.

6. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are taken as true and incorporated into these Findings of Fact.

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

CONCLUSIONS

1. The Board of Dentistry and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and § 150A.08 (2008).

2. The Board has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The facts set out in the Notice of and Order for Prehearing conference and Hearing constitute violations of Minn. Stat. § 150A.08 and the rules cited. The statute provides that disciplinary action may be taken for the following reasons:

a. The Respondent engaged in conduct unbecoming a person licensed to practice dentistry and/or conduct contrary to the best interest of the public, specifically:

1. Gross ignorance or incompetence in the practice of dentistry and/or repeated performance of dental treatment which falls below accepted standards, in violation of Minn. Stat. § 150A.08, subd. 1 (6) and (13), and Minn. R. 3100.6200 B;
2. Failing to cooperate with the Board, its agents, or those working on behalf of the Board, in violation of Minn. Stat. § 150A.08, subd. 1 (6) and (13), and Minn R. 3100.6200 J and 3100.6350;

b. The Respondent failed or refused to attend, testify, or produce records as directed by the Board, in violation of Minn. Stat. § 150A.08, subd. 1 (12).

4. Respondent's conduct constitutes grounds for the Board to take disciplinary action against him.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board take disciplinary action against John A. Petty, D.D.S.

Dated this 2nd day of February, 2009.


BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Minnesota Board of Dentistry will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61 (2008), the Board shall not make a final decision until this Report has been made available to the parties for at least

ten days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact the Minnesota Board of Dentistry at 2829 University Avenue SE, Suite 450, Minneapolis, MN 55414, Attn. Marshall Shragg, Executive Director, or by telephone at (612) 617-2250 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner 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 Commissioner 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 Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1 (2008), the Board 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.

MEMORANDUM

The Respondent did not appear at the prehearing conference to refute the allegations against him, nor did he contact the Board or the Administrative Law Judge to ask for a continuance of this matter. The facts alleged by the Board are taken as true. Absent any evidence to the contrary, the facts reasonably support the conclusions

B.J.H.