

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of  
Ayman Risha, B.D.S.  
Applicant for Licensure

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

The above-entitled matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Credentialing and Licensure Committee (“Committee”) of the Minnesota Board of Dentistry (“Board”) on February 9, 2011. A prehearing conference was held at the Office of Administrative Hearings on June 15, 2011. Daphne A. Lundstrom, Assistant Attorney General, appeared on behalf of the Committee. Ayman Risha, B.D.S. (“Respondent”) appeared and elected to proceed without counsel.

The matter came on for hearing on October 11, 2011, before Administrative Law Judge Beverly Jones Heydinger (“ALJ”). Respondent failed to appear at the hearing or to otherwise respond, and the Committee moved for default judgment on October 17, 2011. On October 31, 2011, the ALJ issued Findings of Fact, Conclusions, and Recommendation (“ALJ’s report”), recommending the Board deny Respondent’s application for a Minnesota dentist’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 March 23, 2012, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Geoffrey S. Karls, Assistant Attorney General, appeared and presented oral argument on behalf of the Board Committee. Respondent did not appear. Board members David A. Linde, D.D.S., and Allen Rasmussen did not participate in deliberations and did not vote in

the matter. Karen B. Andrews, 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 adopts the Findings of Fact outlined in the October 31, 2011 ALJ's report, as follows:

1. The Notice of Hearing initiating this contested case proceeding, dated February 8, 2011, was served upon Respondent's counsel on February 9, 2011.

2. Pursuant to the Notice of Hearing, a prehearing conference was originally scheduled for March 16, 2011, but was rescheduled to June 15, 2011, to accommodate Respondent. Both Respondent and his counsel attended, but at the start of the conference, Respondent notified the ALJ that he was discharging his counsel, that he would proceed on his own behalf, and that his counsel should not receive a copy of the Prehearing Order or other correspondence. The ALJ allowed Respondent's counsel to withdraw from representation.

3. At the prehearing conference, Respondent requested a copy of the Committee's file concerning this matter, and the Committee agreed to provide it to him, with confidential information redacted, as required by law. The dates for hearing were set. A Prehearing Order was issued on June 16, 2011, setting the dates for hearing, and served on the Committee and Respondent.

4. The Notice of Hearing included the following notice:

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 its proposed action may be upheld.

5. The Notice of Hearing also stated:

Disciplinary action may include the denial of Respondent's application to practice dentistry in the State of Minnesota, the imposition of limitations or conditions

upon his practice, censure or reprimand, and/or other action authorized by Minn. Stat. § 150A.08 or Minn. Stat. ch. 214.

6. Because Respondent failed to appear, he is in default.

7. As a result of Respondent's default, paragraph 7 of the ALJ's Findings of Fact, states: "Pursuant to Minnesota Rules 1400.6000, and the supporting materials submitted by the Committee, the allegations contained in the Notice and Order for Prehearing Conference and Hearing are taken as true and incorporated into these Findings of Fact."

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

[a.] Respondent is not now and has never been licensed to practice dentistry in the State of Minnesota.

[b.] In November 2009, the Board received a complaint that Respondent was engaged in the unlicensed practice of dentistry.

[c.] In December 2009, the Licensure Committee initiated an investigation into Respondent's conduct. The Committee now alleges the following grounds for disciplinary action:

[1]] *Unlicensed ownership of dental practice.* Respondent unlawfully owned a dental practice in St. Cloud.

[2]] *Unlicensed practice of dentistry.* Respondent directed patient care by adding procedures to care plans, executed by allied staff, that were not authorized by a Minnesota licensed dentist. Respondent demanded all patients have full-mouth radiographs and instructed hygienists to make up periodontal probing numbers to justify scaling and root planning.

[3]] *Infection control/safety deficiencies.* Respondent's practice had no disposal program, safety training, or exposure plan. Respondent scratched expiration dates off products and directed allied staff to use expired products. Respondent directed allied staff to follow inadequate safety and infection control procedures.

[d.] On March 17, 2010, the Board issued a letter to Respondent requesting that he Cease and Desist from the unlicensed practice of dentistry.

[e.] On May 28, 2010, the Board received Respondent's application for a limited general license by examination to practice dentistry.

[f.] On July 22, 2010, the Licensure Committee sent Respondent a letter informing him that it would recommend denial of his application for a limited general license.

[g.] On August 31, 2010, Respondent requested a contested case hearing.

9. The hearing record also contains additional evidence concerning Respondent's unauthorized practice of dentistry. The affidavits filed by the Committee include interviews with persons employed in the clinic operated by Respondent in St. Cloud, Minnesota. The interviews support each of the factual allegations of the Board.

10. The Committee also obtained the expert opinion of Nelson L. Rhodus, D.M.D. Among his qualifications, he is Professor and Director of the Division of Oral Medicine, Oral Diagnosis and Oral-Maxillofacial Radiology, Department of Diagnostic and Biological Sciences at the University of Minnesota School of Dentistry; Adjunct Professor of Otolaryngology, University of Minnesota School of Medicine; and Adjunct Professor of Epidemiology, University of Minnesota School of Public Health. Dr. Rhodus reviewed medical records and transcripts of interviews with Respondent and dentists and staff in Respondent's office. Dr. Rhodus developed an expert opinion concerning Respondent and opined that Respondent had engaged in the unlicensed, unethical, and substandard practice of dentistry. Specifically, Dr. Rhodus's expert opinion establishes the following:

a. Respondent functioned as the CEO of the dental clinic in St. Cloud, Minnesota.

b. Respondent directed patient care by adding procedures and altering treatment plans. For example, he would direct hygienists to conduct procedures that were not indicated for the patient. He would add oral hygiene instruction and charge for it, even when it was not indicated. He would dictate care, provide a diagnosis, and prepare a treatment plan.

c. Respondent engaged in fraud or deception in connection with practicing dentistry and securing his license by providing diagnoses and preparing treatment plans that were not warranted, by changing billing codes to justify procedures, and directing other staff to do so. He would demand that staff take radiographs that were not diagnostically necessary.

d. Respondent operated a dental clinic in an unsafe and unsanitary manner. He failed to maintain adequate infection control and did not have a proper disposal program, safety training, or exposure plan. Respondent scratched expiration dates off products and directed staff to use expired products and to follow inadequate safety and infection control procedures.

e. By practicing without a license and operating a dental clinic in the manner described, Respondent engaged in conduct unbecoming a person licensed<sup>1</sup> to practice dentistry and contrary to the best interest of the public.

### CONCLUSIONS

The Board accepts the October 31, 2011, ALJ's report and accordingly adopts the Conclusions therein as follows:

1. The Board and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minnesota Statutes sections 14.50, 150A.08, and 214.103, subdivision 7.
2. Respondent has received due and proper notice of the hearing in this matter, and the Committee has fulfilled all relevant procedural requirements of law and rule.
3. Pursuant to Minnesota Statutes section 150A.11, the Board has the authority to prohibit the unlicensed practice of dentistry in the State of Minnesota. By operating a dental

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<sup>1</sup> For purposes of Minnesota Statutes section 150A.08, subdivision 1(6), an applicant is considered "a person licensed to practice dentistry." Minnesota Rule 3100.6200.

clinic and directing the dental care of patients, Respondent engaged in the unlicensed practice of dentistry, in violation of Minnesota Statutes section 150A.11.

4. The Board may refuse to issue a license if it determines that one or more of the grounds set forth in Minnesota Statutes section 150A.08, subdivision 1, apply. These include:

(1) fraud or deception in connection with the practice of dentistry or the securing of a license certificate;

....

(6) conduct unbecoming a person licensed to practice dentistry, dental therapy, dental hygiene, or dental assisting, or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board;

....

(10) failure to maintain adequate safety and sanitary conditions for a dental office in accordance with the standards established by the rules of the board.

5. The Board's rules also set standards for the practice of dentistry in the State of Minnesota. Minnesota Rules 3100.6200 defines conduct unbecoming a licensee (or applicant), which includes:

B. gross ignorance or incompetence in the practice of dentistry or repeated performance of dental treatment that falls below accepted standards;

...

I. perpetrating fraud upon patients, third-party payers, or others relating to the practice of dentistry;

...

K. failing to maintain adequate safety and sanitary conditions for a dental office specified in part 3100.6300; and

6. Minnesota Rules 3100.6300 enumerates the minimum safety and sanitary conditions for dental offices.

7. Respondent engaged in fraud and deception in connection with practicing dentistry or securing a license or annual registration certificate, within the meaning of Minnesota Statutes section 150A.08, subdivision 1(1).

8. Respondent engaged in conduct unbecoming an applicant for licensure to practice dentistry and/or conduct contrary to the best interest of the public, in violation of Minnesota Statutes section 150A.08, subdivision 1(6), and Minnesota Rules 3100.6200(B), (I) and (K).

9. Respondent failed to maintain adequate safety and sanitary conditions for a dental office, in violation of Minnesota Statutes section 150A.08, subdivision 1(6) and (10), and Minnesota Rules 3100.6200(K) and 3100.6300.

10. Respondent's conduct constitutes grounds for the Board of Dentistry to take disciplinary action against Respondent, including denying his application for a license.

11. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

Based upon these Conclusions, the Board makes the following:

### **ORDER**

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

1. IT IS ORDERED that Respondent's application for a license as a Minnesota dentist is **DENIED**. Respondent shall not engage in any conduct that 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.

2. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 150A.08, subdivision 3a., if Respondent again applies for licensure, he must pay to the Board the total costs of the proceedings which resulted in this denial of his license application, including the costs paid by the Board to the Office of Administrative Hearings. The total costs of the proceedings are \$8,793.90 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, Minnesota 55414.

3. This Order constitutes disciplinary action against Respondent.

4. This Order is a public document and will be forwarded to all appropriate databanks as required by law.

Dated: 03-26-2012

MINNESOTA BOARD  
OF DENTISTRY

  
NEAL U. BENJAMIN, D.D.S.  
President/Presiding Board Member

AG: #2982327-v1