

**BEFORE THE MINNESOTA  
BOARD OF DENTISTRY**

In the Matter of  
Jeffrey J. Soule, D.D.S.  
License No. D8071

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

The above-entitled matter came on for a hearing on March 5, 2008, before Administrative Law Judge (“ALJ”) Raymond R. Krause 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 Hearing (“Notice of Hearing”) issued by the Committee on January 29, 2008. Manuel J. Cervantes, Assistant Attorney General, represented the Committee. Jeffrey J. Soule, D.D.S. (“Respondent”), made no appearance.

On March 6, 2008, the ALJ issued Findings of Fact, Conclusions and Recommendation (“ALJ’s report”), recommending that the Board take disciplinary action, including revocation, 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 June 27, 2008, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Daphne A. Lundstrom, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Respondent did not appear. Board members Linda Boyum, R.D.A., Mark Harris, D.D.S., and Joan Sheppard, D.D.S. did not participate in deliberations and did not vote in the matter. Board members Kristin Heebner, J.D. and Susan Osman were not present for the meeting. Tiernee Murphy, Assistant Attorney General, was present as legal advisor to the Board.

## FINDINGS OF FACT

The Board is authorized pursuant to Minnesota Statutes chapter 150A (2006) 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 (2006) to review complaints against dentists, to refer such complaints to the Attorney General's Office, and to initiate appropriate disciplinary action.

The Board has reviewed the record of this proceeding and hereby accepts the March 6, 2008, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 5 of the ALJ's Findings of Fact states, "Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact."

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

1. On July 12, 1991, the Board adopted a Stipulation and Order ("1991 Order"), imposing a stayed suspension and placing conditions on Respondent's license to practice dentistry in the State of Minnesota. The 1991 Order addressed the following issues: fraud, performing unnecessary services, auxiliary misuse, unprofessional conduct, and chemical dependency. After completing the requirements of the 1991 Order, the Board granted Respondent an unconditional license on June 9, 1995.

2. On September 23, 2004, the Board suspended Respondent's dental license after receiving a Notice of Revocation from the Minnesota Department of Revenue ("MDOR") indicating that Respondent had an outstanding tax liability. After receiving a tax clearance certificate from MDOR, the Board reinstated Respondent's dental license on November 3, 2004.

3. From November 2005 through early August 2006, the Board received several complaints against Respondent alleging improper billing procedures, failure to complete prosthodontic and orthodontic treatments, failure to remit corporate report filing fee to the Board, patient abandonment, auxiliary misuse, inadequate endodontic treatment, failure to transfer patient records, and procuring monetary funds in advance from patients without rendering completed dental services, which were forwarded to the Committee. The Committee received and reviewed the complaints against Respondent which it referred to the Minnesota Attorney General's Office for investigation.

4. On July 24, 2006, an investigator from the Attorney General's Office ("investigator") interviewed Respondent. During the interview, Respondent admitted that he failed to meet his patient obligations by not completing treatment on certain patients and failing to properly inform all of his patients by letter about his practice status. In a few named cases, Respondent also admitted that parents prepaid him for orthodontic treatment on their children which was not completed by Respondent.

5. On July 24, 2006, Respondent also delivered boxes of patient dental records from his dental practice to the Board office. Respondent's conduct is unbecoming a person licensed to practice dentistry and contrary to the best interest of the public by failing to properly transfer dental records to the patient or subsequent dental provider.

6. From late August through September 2006, the Committee received additional complaints against Respondent alleging failure to complete orthodontic treatment, patient abandonment, and procuring monetary funds in advance from patients without rendering completed dental services. The Committee reviewed these additional complaints against Respondent.

7. On October 28, 2006, Respondent agreed to and signed a Stipulation to Cease Practicing Dentistry (“2006 Stipulation to Cease”) from the Board which prohibited Respondent from practicing dentistry in any manner in the State of Minnesota until the Board issues its Final Order. Respondent’s 2006 Stipulation to Cease was based on the numerous complaints received by the Board and the investigative report from the Attorney General’s Office.

**Fraud, Unprofessional Conduct, Failure to Complete  
Prosthodontic and Orthodontic Treatment**

8. Respondent engaged in unprofessional conduct and perpetrated fraud upon patients, third-party payors, and/or others relating to the practice of dentistry in that he provided substandard treatment to patients and/or accepted payment for that treatment which he failed to complete, as follows:

a. For patient 2, Respondent failed to provide adequate prosthodontic treatment and failed to complete prosthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In 1999, Respondent received prepayment from patient 2 for prosthodontic treatment on her upper arch, receiving four upper implants performed by an oral surgeon and a full upper denture provided by Respondent. After completing treatment, patient 2 was dissatisfied with the appearance of the full upper denture provided by Respondent but was unaware that the denture could look any different.

2) In March 2001, patient 2 prepaid \$12,000 to Respondent for prosthodontic treatment on her lower arch to include five implants and a full denture. Respondent gave patient 2 a discount for paying in advance and explained that he would pay the oral surgeon for performing the implant procedure on her.

3) In June 2001, patient 2 stated that Respondent extracted some of her lower teeth and gave her a temporary lower denture to wear until additional lower teeth were extracted and the implants were placed by the oral surgeon.

4) In April 2002, the oral surgeon placed three implants in patient 2's lower arch and placed the remaining two implants in June 2003. Respondent charged patient 2 a total of \$10,000 for five implants according to the patient's billing history. Patient 2's billing history also indicated Respondent charged her \$2000 for a permanent full lower denture. However, patient 2 states that she never received her permanent full lower denture from Respondent and that Respondent had asked her later for more money to finish treatment. During the investigation, Respondent admitted to the investigator that patient 2 paid him up front for prosthodontic treatment which was never entirely completed by Respondent.

5) In December 2005, patient 2 saw a subsequent treating dentist, a prosthodontist, to complete her prosthodontic treatment. After examining patient 2, the subsequent treating prosthodontist found the following: lack of interocclusal space and a Class III appearance; the upper denture is unstable and the esthetics are poor, having a notable cant to the maxillary teeth and the midline is off; and the lower denture lacks retention and is unstable, having an uneven occlusal plane. The prosthodontist recommended to patient 2: modifications to the upper implants and new upper and lower dentures. Patient 2 completed the recommended treatment paying \$17,656.

b. For patient 3, Respondent failed to provide adequate orthodontic care and failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) According to patient 3's parents, Respondent examined patient 3, recommending orthodontic treatment that included appliances and full braces for possibly five to six years for a total fee of \$5000. In March 2004, Respondent began orthodontic treatment on patient 3 and received \$2300 prepaid by the parents for services. In or about July 2005, Respondent's office sent patient 3's parents a billing statement indicating all insurance carrier(s) have made payment on this orthodontic claim and the remaining account balance is \$350.56. In December 2005, patient 3's parents paid the balance of \$350.56 to Respondent.

2) Respondent's office also called patient 3's parents to cancel and reschedule numerous appointments, giving various reasons, such as Respondent being in Arizona and caring for an ill parent.

3) In June 2006, patient 3's fixed retainer broke which resulted in a metal bar sticking out and poking patient 3's mouth. Patient 3's parents attempted to contact Respondent numerous times by telephone, but no emergency instructions were provided through Respondent's answering machine message, nor did Respondent respond to any of the messages left by the parents. Finally, patient 3's parents took him to a subsequent treating dentist, an orthodontist, to resolve the problem. During the investigation, Respondent admitted to the investigator that patient 3's parents paid him up front for orthodontic treatment on their child which was never entirely completed by Respondent.

4) In July 2006, patient 3 again saw the subsequent treating orthodontist to continue with orthodontic care. The subsequent treating orthodontist recommended that patient 3's permanent teeth were erupted enough to proceed with upper and lower full braces for a period of 24-30 months.

c. For patient 4, Respondent failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In or about January 2005, Respondent saw patient 4 and took diagnostic orthodontic records charging patient 4's parents a fee of \$190 which was paid by the parents to Respondent. At patient 4's consultation appointment in late 2005, Respondent recommended orthodontic treatment that included appliances and full braces for a fee of \$2500 to be paid by the parents plus the parent's insurance benefits. In November 2005, Respondent received \$2500 prepaid by patient 4's parents and Respondent began orthodontic treatment on patient 4 in early 2006.

2) From early 2006 to June 2006, Respondent's office called patient 4's parents to cancel and reschedule numerous appointments, giving various reasons, such as Respondent being in Arizona and caring for an ill parent. When arriving at Respondent's office on one occasion for a scheduled appointment, patient 4 and his parents found Respondent's office closed and made numerous attempts to contact Respondent, but eventually Respondent's telephone was disconnected. During the investigation, Respondent admitted to the investigator that patient 4's parents paid him up front for orthodontic treatment on their child which was never entirely completed by Respondent.

3) Afterward, patient 4's parents contacted another dentist, an orthodontist, to continue patient 4's orthodontic care. After examining patient 4, the subsequent treating orthodontist recommended removing and replacing the upper and lower fixed appliances and estimated treatment completion to be 18 to 24 months.

d. For patient 5, Respondent failed to provide adequate prosthodontic treatment and failed to complete prosthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In July 2005, patient 5 prepaid \$1,659 to Respondent for prosthodontic treatment involving a porcelain bridge on his upper left teeth. In or about August 2005 according to the patient, Respondent placed patient 5's bridge after grinding down the porcelain to adjust the fit. Respondent told patient 5 that the bridge would need to be fixed by sending it out to be "re-porcelained."

2) In or about February 2006, patient 5 said that he had an appointment with Respondent to fix his bridge. Instead, Respondent told patient 5 to wait six more months before doing so. Currently, patient 5 claims that his bridge does not fit properly, needs to be re-porcelained, and is not permanently cemented to his teeth. However, Respondent's office is permanently closed. Respondent failed to complete patient 5's bridge after receiving monetary funds in advance from the patient.

e. For patient 6, Respondent failed to provide adequate orthodontic care and failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In April 2001, patient 6's parents prepaid \$2500 to Respondent for orthodontic treatment referred to as Phase I treatment or early interceptive correction. After completing Phase I orthodontic treatment, the next stage is Phase II orthodontic treatment.

2) In November 2004, patient 6's parents prepaid \$2000 to Respondent for orthodontic treatment referred to as Phase II treatment or full banding. On numerous occasions during treatment, Respondent's office called patient 6's parents to cancel

and reschedule appointments, giving various reasons, such as Respondent being or going to be out of town. In June 2006, Respondent saw patient 6 to remove some loose braces on her lower teeth; however, Respondent never scheduled another appointment to put them back. During the investigation, Respondent admitted to the investigator that patient 6's parents paid him up front for (Phase II) orthodontic treatment on their child which was never entirely completed by Respondent.

3) Afterward, patient 6's parents contacted another dentist, an orthodontist, to continue patient 6's orthodontic care. After examining patient 6, the subsequent treating orthodontist recommended removing and replacing the upper and lower fixed appliances and estimated treatment completion to be nine months for a fee of \$2985.

f. For patient 7, Respondent failed to provide adequate orthodontic care and failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In January 2003, patient 7's parents prepaid \$2500 to Respondent for orthodontic treatment referred to as Phase I treatment or early interceptive correction. After completing Phase I orthodontic treatment, the next stage is Phase II orthodontic treatment.

2) In December 2005, patient 7's parents prepaid \$2000 to Respondent for orthodontic treatment referred to as Phase II treatment or full banding. On numerous occasions during treatment, Respondent's office called patient 7's parents to cancel and reschedule appointments, giving various reasons, such as Respondent being or going to be out of town. On one occasion, patient 7 developed a sore on the inside of her cheek from a poking wire that was loose from her braces. However, patient 7's parents were unable to contact Respondent to fix the problem. During the investigation, Respondent admitted to the

investigator that patient 7's parents paid him up front for (Phase II) orthodontic treatment on their child which was never entirely completed by Respondent.

3) Afterward, patient 7's parents contacted another dentist, an orthodontist, to continue patient 7's orthodontic care. After examining patient 7, the subsequent treating orthodontist recommended removing and replacing the upper and lower fixed appliances for a fee of \$3815.

g. For patient 8, Respondent failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In September 2004, patient 8's parents prepaid a total of \$4000 to Respondent for orthodontic treatment that included both Phase I (\$2000) and Phase II (\$2000) treatments. Respondent gave patient 8's parents a discount for paying in advance. After completing the Phase I orthodontic treatment, Respondent advised patient 8's parents to continue with monthly appointments to monitor final eruption of patient 8's permanent teeth before beginning Phase II.

2) From February to May 2006, Respondent's office called patient 8's parents to cancel and reschedule numerous appointments, giving various reasons, such as Respondent being out of town or having other commitments. In July 2006, patient 8's parents attempted to contact Respondent to schedule an appointment for their son but were unsuccessful and found Respondent's office vacated. Respondent failed to complete patient 8's Phase II orthodontic treatment after receiving monetary funds in advance from patient 8's parents.

h. For patient 10, Respondent failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) According to patient 10's parents, Respondent examined patient 10 recommending orthodontic treatment that included an appliance and full braces for 18-24 months for a total fee of \$5000. In September 2005, Respondent began orthodontic treatment on patient 10 and submitted claims to the parents' two insurance carriers who paid a total of \$4,300 directly to Respondent.

2) In July 2006, Respondent's office called patient 10's parents to cancel her orthodontic appointment with Respondent. When patient 10's parents attempted to contact Respondent to schedule another appointment, the parents found Respondent's office closed and the telephone disconnected. Respondent failed to complete patient 10's orthodontic treatment after receiving monetary funds in advance from the parents' insurance carriers.

3) Afterward, patient 10's parents contacted another dentist, an orthodontist, to continue patient 10's orthodontic care. After examining patient 10, the subsequent treating orthodontist recommended upper and lower braces for a fee of \$5,200.

i. For patient 12, Respondent failed to complete orthodontic treatment, even though he accepted payment for that treatment, as follows:

1) In March 2004, patient 12's parents prepaid a total of \$1,975 to Respondent for orthodontic treatment including an appliance and full braces. On numerous occasions during treatment, Respondent's office called patient 12's parents to cancel and reschedule appointments, giving various reasons, such as Respondent being out of town or unavailable.

2) In May 2006, Respondent told patient 12's parents that her permanent teeth had erupted enough to proceed with the full braces. Patient 12 had an appointment with Respondent in August 2006 for the braces, but the parents found Respondent's

office closed and the telephone disconnected. Respondent failed to complete patient 12's orthodontic treatment after receiving monetary funds in advance from patient 12's parents.

**Unprofessional Conduct, Abandonment of Patients, Failure to Respond to Patients' Telephone Calls and Requests for Records**

9. Respondent engaged in unprofessional conduct, abandoned patients, failed to respond to patients' telephone calls, frequently cancelled appointments, failed to provide patients with their records, and closed his dental practice without proper notification to patients, as follows:

a. On numerous occasions in 2004, 2005, and 2006, Respondent's office called to cancel and reschedule appointments for patients 3, 4, 6, 7, 8, and 12, giving various reasons, such as Respondent being out of town, unavailable, in Arizona, having other commitments, and caring for an ill parent.

b. In 2005 and 2006, Respondent failed to respond to telephone calls from patient 2 and the parents of patients 3, 4, 6, 7, and 8 regarding emergency situations and scheduling appointments.

c. Respondent failed to properly transfer or provide access to dental records upon the patient's or parent's request for patients 1, 3, 4, 6, and 7. In addition, Respondent failed to properly transfer dental records to the patient or another dental provider when he delivered boxes of patient dental records from his dental practice to the Board office on July 24, 2006.

d. Respondent failed to provide written notification to all his patients, including patients 1 through 12, regarding the closing of his dental practice in a timely manner. During the investigation, Respondent admitted to the investigator that he failed to properly inform all of his patients by letter about his practice status.

e. After closing his dental practice in early July 2006, Respondent failed to contact the parents of patients 10 and 12 who had appointments scheduled with Respondent but found the office closed. The parents of patients 4 and 8 also found Respondent's office closed when arriving at his office to schedule appointments.

### **Substandard Endodontic Treatment / Recordkeeping**

10. Respondent failed to adequately document pertinent information and/or provide appropriate endodontic treatment when providing endodontic care to patient 9. In 1998, patient 9 claims that Respondent broke a "drill bit or reamer" inside of his tooth while performing endodontic treatment and he failed to inform patient 9 about it. In 2000, patient 9 began seeing a subsequent treating dentist. In 2001, the subsequent treating dentist referred patient 9 to an endodontist who found a broken instrument in one of the canals of tooth #3 but was unable to remove it. Respondent failed to maintain a copy of the patient record for patient 9.

### **Failure To Cooperate**

11. Respondent failed to cooperate with the Board, its agents, or those working on behalf of the Board, as follows:

a. On November 8, 2005, February 15 and April 25, 2006, the Board sent letters to Respondent requesting specific information relating to Respondent's professional corporation and a payment of \$25.00 for his annual corporate report filing fee for the year 2005. However, Respondent failed to respond and remit his outstanding liability in the amount of \$25.00 to the Board.

b. From December 2005 to February 2006, Respondent failed to comply with the Board's numerous requests to provide in writing a full and complete explanation addressing the complaints filed against him by patients 1 and 2.

c. From June to July 2006, Respondent failed to comply with numerous requests made by the Attorney General's Office to schedule an interview with one of its investigators. On July 24, 2006, the investigator conducted an interview with Respondent.

d. On July 12 and 17, 2006, Respondent failed to comply with the Board's requests to contact them to discuss the issue of patient access to records which were located at Respondent's vacated dental office.

### **Improper Use of Auxiliary Personnel**

12. Respondent employed, assisted, or enabled auxiliary staff to practice dentistry in that Respondent has inappropriately authorized and permitted a registered dental assistant or a licensed dental hygienist in his office to perform tasks which exceeded their legal scope of practice, as follows:

a. On one occasion for patient 3, a registered dental assistant changed the patient's bands when Respondent failed to be present in the office.

b. On one or more occasions for patient 4, either a registered dental assistant or licensed dental hygienist changed the patient's power chain when Respondent failed to be present in the office.

### **Abuse of Intoxicating Liquors or Chemical Substances**

13. Respondent may be unable to practice dentistry with reasonable skill and safety due to habitual overindulgence in the use of intoxicating liquors or other chemical substances. On February 24, 2006, Respondent was arrested for a DWI in Hennepin County. The Mound police found Respondent asleep in the back of his van which was parked and running behind Respondent's dental office. Respondent admitted to the police that he had a few drinks and had been sleeping in his van for over two hours since consuming the alcohol. Respondent was

initially charged with a Fourth Degree DWI that was later reduced to a charge of careless driving to which Respondent plead guilty. During the investigation, Respondent denied having any problems with chemical use as well as any mental health issues.

### **Substandard Recordkeeping**

14. Respondent failed to make or maintain adequate dental records on his patients, as follows:

a. Respondent failed to adequately document and provide treatment plans for orthodontic treatment for patients 3, 6, and 7.

b. Respondent failed to make and maintain complete and accurate dental records for patients 2 through 10 and 12. Respondent's dental records for these patients were found to be grossly incomplete by the Committee. During the investigation, Respondent told the investigator that his computer records including progress notes, treatment plans, etc. are inaccessible, since "The hard drive is toast on the server."

### **CONCLUSIONS**

The Board accepts the March 6, 2008, 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 **REVOKED** immediately. This Order shall be construed as the Board's Final Order when referencing the 2006 Stipulation to Cease that was agreed to and signed by Respondent on October 28, 2006.

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 (2006), 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 revocation 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 revocation, 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 revocation 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.

6. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 150A.08, subdivision 3a (2006), when Respondent petitions for reinstatement of his license, he must pay to the Board the costs paid by the Board to the Office of Administrative Hearings. The total costs of the proceedings are \$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, Minnesota 55414.

7. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for removal of the revocation 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.

8. 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.

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) (2006), and provide grounds for further disciplinary action and provide grounds for an action for the unlawful practice of dentistry.

Dated: June 27, 2008

MINNESOTA BOARD  
OF DENTISTRY

Nadine Bunge, AH  
NADINE BUNGE  
Board President

AG: #2265972-v1