

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF DENTISTRY

In the Matter of Mark W. Harris, M.S.D.
License No. D9219

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for a prehearing conference before Administrative Law Judge Manuel J. Cervantes ("ALJ") on March 28, 2011 commencing at 1:30 p.m. at the Office of Administrative Hearings, 600 Robert Street North, St Paul, MN 55164-0620.

Daphne A. Lundstrom, Assistant Attorney General, appeared on behalf of the Complaint Review Panel, Board of Dentistry. Also present was Marshall Shragg, Executive Director of the Board. Respondent did not appear in person or by counsel.

This matter was initially scheduled for March 16, 2011. However, counsel for the Board received a request from the Respondent for a continuance due to his unavailability on March 16. The Board did not object and the matter was rescheduled for March 28. The Board appeared at the prehearing conference scheduled for March 28, prepared to proceed. The Respondent did not appear.

On March 30, 2011, the ALJ received the Board's request for default judgment, pursuant to Minn. R. 1400.6000. The hearing record closed on April 13, 2011; the date upon which Respondent's objection to the motion for default judgment was due. The Respondent did not object.

STATEMENT OF THE ISSUES

Whether the foregoing conduct constitutes one of more of the grounds for disciplinary action:

1. Engaged in conduct unbecoming a person licensed to practice dentistry and/or misconduct contrary to the best interest of the public, specifically, gross ignorance or incompetence in the practice of dentistry and/or repeated performance of dental treatment which falls below accepted standards, within the meaning of Minn. Stat. § 150A.08, subd. 1 (6), and Minn. R. 3100.6200 B;

2. Improper or unauthorized prescribing, dispensing, administering, personal, or other use of a legend drug, chemical, or controlled substance as defined in Minn. Stat. ch. 151 or 152, within the meaning of Minn. Stat. § 150A.08, subd. 1 (5); and

3. Conduct unbecoming a person licensed to practice dentistry and/or conduct contrary to the best interest of the public, specifically, having a physical, mental, emotional, or other disability which adversely affects the Respondent's ability to perform as a dentist, within the meaning of Minn. Stat. § 150A.08, subd. 1 (8).

Based on the proceedings herein, the ALJ the following:

FINDINGS OF FACT

1. On March 8, 2011, a Notice and Order for Prehearing Conference and Hearing ("Notice") was mailed to the Respondent at his last known address. The Notice scheduled a prehearing conference for March 16, 2011.¹

2. Counsel for the Board received a request from the Respondent for a continuance due to his unavailability on March 16. The Board did not object and the matter was rescheduled for March 28. The Respondent did not appear at the prehearing conference, did not file a Notice of Appearance, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not request a continuance, or any other relief.

3. The Notice contained the following informational warning:

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.²

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

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice are taken as true and are incorporated by reference into these Findings of Fact.

Based on these Findings of Fact, the ALJ makes the following:

CONCLUSIONS

1. The ALJ and the Board of Dentistry have jurisdiction, pursuant to Minn. Stat. §§ 14.50, 214.10, and 214.103.

2. The Respondent was given notice of the prehearing conference in this matter and the Board has complied with all relevant procedural requirements.

¹ Notice and Order for Prehearing Conference and Hearing.

² Emphasis added.

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

4. Under Minn. R. 1400.6000, when a party defaults, the allegations set out in the Notice and Order for Prehearing Conference may be taken as true and deemed proven. In this matter, the ALJ takes those allegations as true and they are deemed proven without further evidence.

5. Respondent engaged in conduct unbecoming a person licensed to practice dentistry or engaged in misconduct, contrary to the best interest of the public, specifically, gross ignorance or incompetence in the practice of dentistry and repeated performance of dental treatment which fell below accepted standards, contrary to the meaning of Minn. Stat. § 150A.08, subd. 1 (6) and Minn. R. 3100.6200 B.

6. Respondent improperly or without authorization prescribed, dispensed, administered a legend drug, chemical, or controlled substance as defined in Minn. Stat. ch. 151 or 152, in violation of Minn. Stat. § 150A.08, subd. 1 (5).

7. Respondent engaged in conduct unbecoming a person licensed to practice dentistry or engaged in conduct contrary to the best interest of the public, specifically, having a physical, mental, emotional, or other disability which adversely affects Respondent's ability to perform as a dentist, within the meaning of Minn. Stat. § 150A.08, subd. 1 (8).

RECOMMENDATION

Based upon these Conclusions, the ALJ recommends that the Board of Dentistry take adverse action against Respondent's license and take appropriate disciplinary action.

Dated: April 28, 2011

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Not Digitally Recorded

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 these 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 the Board of Dentistry, Suite 450, 2829 University Ave S.E., Minneapolis MN 55414, (612) 617-2852, 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. 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 ALJ of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the Board is required to serve its final decision upon each party and the ALJ by first-class mail or as otherwise provided by law.