

001-PE

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

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| in the Matter of the Proposed Disciplinary FACT, Action Against the Dentist License of LAW, Roger W. Schultz, D.D.S., License No. 7280 RECOMMENDATION | FINDINGS OF CONCLUSIONS OF AND |
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The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson of the State office of Administrative Hearings on April 24, 25, 26, 27, 30 and May 1, 2, 3, 4, 14, 16, 18, 1984 at 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota. The last post-hearing submission was filed on August 28, 1984, at which time the record was closed.

Paul G. Zerby, Special Assistant Attorney General, 136 University Park Plaza, 2829 University Avenue Southeast, Minneapolis, Minnesota 55414, appeared on behalf of the Minnesota Board of Dentistry. Owen L. Sorenson, from the firm of Stringer, Courtney and Rohleder, Ltd., Attorneys at Law, 1200 Norwest Center, 55 East 5th Street, St. Paul, Minnesota 55101, appeared on behalf of the Respondent, Roger W. Schultz.

Notice is hereby given that, pursuant to Minn. Stat. sec. 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, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board at Suite 338, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Pursuant to Minn. Stat. 214.10, subd. 2, a board member who was consulted during the course of an investigation may participate at the hearing, but may not vote on any matter pertaining to the case.

STATEMENT OF ISSUE

The general purpose of this hearing was to determine whether disciplinary action should be taken against the dentist license of Roger W. Schultz because

of various alleged violations of Minn. Stat. 150A.08 (1983 supp.) and
Minn.
Rule 3100.6200.

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

FINDINGS OF FACT

1. on October 12, 1983, the Minnesota Board of Dentistry issued the Notice and order for Hearing in this matter. The Notice listed several legal grounds for the proposed disciplinary action. In addition, the Notice alleged

35 specific charges, or instances of misconduct, against Dr. Schultz which constituted the basis for the enumerated legal grounds for discipline. 1 on December 5, 1983, the Board amended charges l.c.2., l.c.3. and l.e.9. On April 12, 1984, the Board added a new charge l.c.(8). On April 20, 1984, charges l.c. (10) through (13) were added by the Board. On April 24, 1984, the Board added charges l.h., l.i. and l.j. On Noy 4, 1984, during the course of this proceeding, the Board added an unnumbered charge by way of a motion which was granted by the Administrative Law Judge.

On May 4, 1984, after the Board had rested its case, Respondent made a Motion to dismiss several of the charges because of an insufficiency of evidence. The Administrative Law Judge granted the Motion with respect to charges l.a.(2), l.a.(3), l.a.(5), l.b.(3), l.b.(4), l.e.(4), l.g.(1), l.g.(2), l.g.(3), 3., and 6.a. because no Findings can be made to support them. 2, 3

2. Dr. Roger Schultz is a 52 year-old male who has been licensed to practice dentistry in the State of Minnesota since 1967.

1 The charges are set forth in numbered and lettered paragraphs as follows: l.a. (1) though (6); l.b. (1) through (5); l.c. (1) through (7); l.d. (1) and (2); l.e. (1) through (9); l.g. (1) through (3); 5.a.; and 6.a. and b.

2 Charge 3. is a legal ground for discipline which was based upon the allegations contained in l.g.(1) through (3).

3 The purpose of this finding is to point out the number of allegations raised and the fact that several were dismissed because there was either insufficient or inadmissible evidence offered to prove them. The dismissed charges will not be further addressed herein. All remaining charges will be set forth in subsequent findings.

Charge 1.b.(5)

"In February 1981, you inquired about the sexual activities of patient K.M when she brought her daughter in for an appointment. "

8. K.M.'s daughter, E., was a patient of Dr. Schultz. She is presently 13 years old. In February of 1981, K.M. brought E. to Dr. Schultz for an appointment. While in Dr. Schultz's office, he asked K.M. "How my sex life was or if I was living like a nun." K. M. responded by telling Dr. Schultz that she was dating someone who was 42 years old. Dr. Schultz then indicated that he also was 42.

Charge 1.c.(1)

"You billed the Department of Public welfare for a root tip recovery and abscess removal on teeth nos. 19 and 30 done on patient H.T. on June 27, 1980. An X-ray that had been done on June 7, 1980, revealed that teeth nos. 19 and 30 were not present."

9. Dr. Schultz provided dental treatment for patient H.T., a Vietnamese refugee, from June 7, 1980 through June 25, 1981. Because of the extremely poor condition of H.T.'s teeth, oral surgery was necessary and performed at Eitel Hospital on June 27, 1980. Extensive dental work was done at this time. On September 22, 1980, and June 30, 1981, at the request of the Community of the Cross Lutheran Church, H.T.'s sponsor, Dr. Schultz billed the Minnesota Department of Public Welfare (Medical Assistance) for these dental services. Part of this billing included a root tip removal and abscess removal for teeth nos. 19 and 30. A June 7, 1980 X-ray shows that there are no root tips present for either tooth no. 19 or tooth 30 in H.T.'s mouth. There were, however, two root tips present for tooth no. 18.

Charge 1.c.(2)

"In June, 1980, you charged \$1,829.00 for the extraction of 14 teeth from a patient, H.T., for which work the usual and customary charge would have been \$350.00 to \$400.00."

10. The oral surgery performed on H.T. by Dr. Schultz in June of 1980 was extensive and included the removal of 14 teeth, an alveoloectomy and gingioplasty on all four quadrants of H.T.'s mouth, and an antrum repair with bone graft on the two upper quadrants of the mouth. These services and charges for each are set forth in the invoices submitted to the Department of Public Welfare on September 22, 1980 and June 30, 1981. H.T. was admitted to Eitel Hospital on June 26, 1980 for the purpose of having the oral surgery done and discharged on June 29, 1980 . The 1980 invoice shows charges totalling \$1,829.00. The 1981 invoice lists services and charges in the amount of \$1,733.00. There is no evidence in the record to show that the usual and customary charge for the services provided by Dr. Schultz should have been \$350.00 to \$400.00. Additionally, there is nothing in the record regarding the normal charges for each of the dental services specified on the invoices.

Charge 1.a.(6)

"You discontinued your enrollment in the Dental School at the University of Minnesota after you were found to be in possession of numerous dental supplies belonging to the Dental School."

5.A. Dr. Schultz discontinued his enrollment at the University of Minnesota Dental School after it was found that Dr. Schultz had removed equipment from the Dental School valued at approximately \$1,000.00. this incident occurred in 1964, when Dr. Schultz was 32 years old and in his fourth year of dental school.

B. Dr. Schultz subsequently enrolled in Creighton University Dental School where he completed his dental training and education. Dr. Schultz was licensed to practice dentistry in the State of Minnesota in 1967. At the time of the licensure, the Board of Dentistry was aware of the Dental School "misconduct".

Charge 1.b.(1)

"In 1979, on two separate occasions, you performed a breast examination on a patient, R.J. You also touched that patient's groin and upper thigh area on one occasion."

6.A. R. J. was a patient of Dr. Schultz in 1978 and 1979. After having some dental work done by Dr. Schultz, R.J. returned to see him because of pain in the side of her head and down her neck. Dr. Schultz diagnosed this problem as a "lymph node enlargement axillary" and had his assistant note this on R.J. Is chart. Dr. Schultz explained to R.J. that there was some drainage occurring which went down her neck, side of her chest, and evacuated through the groin. tile making this explanation, Dr. Schultz ran his hand down the side of R.J.'s breast, and onto her leg and groin area. On other visits, Dr. Schultz would occasionally pick up dropped "tools" off of R.J.'s chest. R.J. continued to treat with Dr. Schultz and never filed a complaint with the Board concerning these events.

B. It was Dr. Schultz's practice to drape all patients with plastic napkins which cover the upper body.

Charge 1.b.(2)

"In 1975 you performed a breast examination on a patient, K.M., After performing a wisdom tooth extraction on the patient."

7. In August of 1975, K. M. was hospitalized at Eitel Hospital for the purpose of having her wisdom teeth taken out by Dr. Schultz. Subsequent to the extraction, Dr. Schultz visited K.M. in the hospital on three occasions to check for swelling and prescribe follow-up treatment. On one of these visits,

Dr. Schultz placed his hand on K.M.'s face to check for swelling and moved his hand down her neck and onto her breasts. Dr. Schultz explained to K.M. that he was checking for swollen glands.

Charge I.a.(1)

"In 1978 you began adding a service charge to the account of two patients, R.J. and J.J., without prior notice to these patients. You made the addition of this service charge despite the existence of a previously arranged payment plan between you and these patients. Appropriate payments had been maintained by these patients."

3.A. R.J. and J.J. had extensive dental work performed by Dr. Schultz from 1976 through 1980. During that period of time, Mr. and Mrs. J. maintained an unpaid balance of approximately \$2,000.00 with Dr. Schultz. When Mr. and Mrs. J. selected Dr. Schultz to do their dental work, they were aware that the cost would be prohibitive unless a monthly payment plan could be established. Consequently, it was agreed, prior to treatment, that payments of \$25.00 to \$50.00 per month would be acceptable and that no interest on the unpaid balance would be charged. Mr. and Mrs. J. made monthly payments in accordance with this arrangement.

B. In 1979, after consulting with his attorney, Dr. Schultz began charging a service fee on the unpaid balances of all his patients, including Mr. and Mrs. J. This was reflected on statements sent to Mr. and Mrs. J. by Dr. Schultz. Shortly after the service charges were added on the billing, Mr. and Mrs. J.'s account was turned over to a collection agency by Dr. Schultz. In August of 1980, Mrs. J. wrote to Dr. Schultz to complain about the interest fee being charged and the dunning, which included a demand that the account be paid in full. Mr. and Mrs. J. had begun seeing another dentist within the previous year. This matter was resolved when Mr. and Mrs. J. took money out of their savings to pay off the bill in full.

Charge I.a.(4)

"During the time that you had an office in the Rub Shopping Center, on more than one occasion you attempted to steal items from the Richfield Pharmacy and pharmacy employees stopped you as you left the store with such items and requested payment from you".

4. The Richfield Pharmacy was located in the same building in which Dr. Schultz had his office and Dr. Schultz frequented the store to shop. Robert Moe, a registered pharmacist, worked in the store and knew who Dr. Schultz was. On one occasion when Dr. Schultz was in the pharmacy, he removed a tube of Tinactin (anti-fungal cream) from the shelf, put it in his pocket, left the store and walked to the parking lot. Mr. Moe had observed this activity and followed Dr. Schultz into the parking lot where he (Moe) accused Schultz of taking the merchandise. Dr. Schultz denied that he had taken anything and stomped off. This incident was never reported to the police or Board of Dentistry by Mr. Moe or anyone else.

Charge I.c.(3)

"On June 9, 1980, you removed tooth no. 30 from patient P.T. and attempted to inflate the bill with unnecessary work and extra charges."

11. On June 9, 1980, Dr. Schultz removed tooth no. 30 and tooth T (a "baby" tooth) from the mouth of patient P.T. The charge for these removals was \$25.00 and \$45.00, respectively. On the same day, Dr. Schultz performed additional dental services in the same area of P.T.'s mouth, the lower right quadrant. These services were: (a) repair of maxiofacial bone and tissue at a charge of \$120.00; (b) complication fistula closure at a charge of \$110.00; and (c) excision of 1.5 centimeter tumor at a charge of \$140.00. These additional services involved the treatment of a large infection, bone reshaping, removal of a large abscess, removal of infected tissue, a flap entry and fistula closure, and suturing. These procedures were necessary considering P.T.'s very poor dental condition.

Charge l.c.(4)

"on November 13, 1980, you billed a patient, P.T., a charge of \$96.00 for a procedure for which the usual and customary charge would have been \$5.00."

12. On November 3, 1980 (the correct date is November 3, not November 13 as the charge states) Dr. Schultz charged \$96.00 each for acid etching to teeth nos. 7 and 10. There is nothing in the record to establish what the usual and customary fee is for acid etching.

Charge l.c.(5)

"On November 18 and 19, 1980, you charged a patient, D.D., for fillings done on teeth nos. 1, 2, 13, 14 and 15. On November 28, 1980, an X-ray done by another dentist revealed that the work charged for had not been performed by you."

13. Patient D.D. saw Dr. Schultz in late November of 1980. At this time, she was in the process of getting a divorce and wanted all of the necessary dental work to be done because it was covered under her husband's dental insurance policy. Dr. Schultz recommended that certain work be done and actually performed some dental work on D.D. at this time. Because of the extensive amount of work recommended, D.D. went to another dentist and never returned to Dr. Schultz to have the recommended work completed. Dr. Schultz

billed D.D. for work which he had not done but had intended to complete, and for dental work which was "done" but had not been performed.

Charge 1.c.(6)

"In 1980 you performed services for one patient, G.S., and charged him approximately three times the usual and customary fee for such services."

14. A. In December of 1979, G.S. developed a toothache and went to Dr. Schultz for treatment. During this first "emergency" appointment with Dr. Schultz, it was recommended that additional dental work should be performed.

G.S. continued to treat with Dr. Schultz through late January of 1980. on January 21, 1980, the accumulated bill for dental services was \$528.00. G.S. submitted this bill to his insurance company. However, the insurance company paid only \$239.00 to Dr. Schultz. G.S. subsequently paid the balance of the bill by check.

B. After the final payment, G.S. saw another dentist, Dr. David Milbrath, because he (G.S.) had developed a lump in his jaw in an area where dental work had been performed. G.S. also asked Dr. Milbrath to review the work done by Dr Schultz and itemize what he (Milbrath) would charge for the same work. For some of the services rendered by Dr. Schultz, Dr. Milbrath would have charged approximately one-third to one-half less.

Charge l.c.(7)

"You repeatedly charged an additional fee for abscess removal when that procedure is usually and customarily included in the amount charged for an extraction."

15. Dr. Schultz charges separately for the removal of an abscess when that procedure is required during the extraction of a tooth. Dr. Dana Isaacson does not charge separately for this procedure and is not familiar with any dentist who does.

Charge I.c.(8)

"On or about September 9, 1982, R.W. was examined by you. You informed R.W. that she had sever or eight cavities. Six months earlier, her prior dentist told her she had no cavities. R.W. was able to obtain the X-rays you had taken of her. On or about September 15, 1982, R.W. obtained a second opinion from a dentist, D.S., who examined the X-rays and also examined her clinically and found no cavities."

16.A. R.W. was seen by Dr. Schultz on September 9, 1982. At that time, Dr. Schultz performed a prophylaxis, exan and X-rays. Dr. Schultz informed R.W. that she had a number of cavities in her mouth. Because of R.W.'s good previous dental history, she was surprised at Dr. Schultz's diagnosis. R.W. made

appointments to get the work done but before returning to Dr. Schultz, R.W. saw Dr. Daniel Smoleroff to confirm Dr. Schultz's diagnosis. After an examination of R.W. and looking at her X-rays, Dr. Smoleroff determined that she had no cavities and required no treatment. However, the X-rays and physical examination did reveal that there were several areas in R.W.'s mouth which required monitoring for possible future treatment.

B. Subsequent to the Smoleroff visit, R.W. discontinued paying Dr. Schultz for services previously rendered to herself and her two sons. This payment dispute resulted in a conciliation court judgement for Dr. Schultz in the amount of \$35.00.

C. Dr. Schultz's dental records for R.W. do not show what, if any, specific treatment was necessary.

Charge 1.c.(10)

"In February, 1981, you charged your patient, Norman Olsen, \$99.00 for an MOD BuLi and pulp cap purportedly placed on tooth no. 21; however, subsequent X-rays only revealed an MOD."

17. On February 7, 1981, Norman Olsen was treated by Dr. Schultz. At that time, Dr. Schultz placed an MOD buccal lingual filling and pulp cap on tooth no. 20 and at the same time put an MOD filling in tooth no. 21. When Mr. Olsen was charged for this work, the tooth numbers and work done were mistakenly switched.

Charge 1.c. (11)

"In February, 1981, you charged your patient, Norman Olsen, \$90.00 for a MLi composite on tooth no. 22; however, no such filling appears on later X-rays."

18. In February, 1981, Dr. Schultz treated Norman Olsen and billed him for a mesial lingual filling in tooth no. 22. Dr. Dana Isaacson saw Mr. Olson in March of 1984 at which time he examined Mr. Olsen's teeth and took X-rays. At this time, the mesial lingual filling on tooth no. 22 was not present.

Charge 1.c.(12)

"in February of 1980 you charged your patient, Norman Olsen, an unconscionable fee for a root tip removal on teeth nos. 29 and 30."

19. On February 2, 1980, Dr. Schultz removed teeth nos. 29 and 30 from Norman Olsen's mouth. Mr. Olsen was charged \$55.00 for a root tip extraction and \$15.00 for an abscess removal for each of the teeth. In addition, the same charges were made for the removal of tooth no. 31, totalling \$210.00. Dr. Dana Isaacson's charges for the same work would total approximately \$35.00 to \$40.00.

Charge 1.c. (13)

"In February of 1980, you charged your patient, Norman Olsen, an unconscionable fee for the extractions of teeth nos. 25 and 26, by charging the patient for each step of the process."

20. On February 2, 1980, Dr. Schultz removed teeth nos. 25 and 26 from Norman Olsen's mouth. Mr. Olsen was charged \$25.00 for a forcep extraction and \$15.00 for an abscess removal for each tooth, totalling \$80.00. Dr. Isaacson would charge approximately \$25.00 for this work and not bill separately for an abscess removal.

Charge 1.d.(1)

"on November 17, 1980, you recommended to a patient, D.D., that she have a crown placed on tooth no. 2. On November 19, 1980, you performed three fillings on that tooth. These fillings were unnecessary to perform prior to preparation for a crown."

21.A. When Dr. Schultz first saw patient D.D. in November of 1980, the possibility of placing crowns on one or more of D.D's teeth was discussed. No decision was made at that time regarding the placement of crowns. Several teeth were filled at that time. Approximately one and one-half weeks later, D.D. saw Dr. Dana Isaacson who did a dental examination and took X-rays. Dr. Isaacson found no need for any crowns.

B. Dr. Schultz has never been paid for any of the dental work he performed on D.D.

Charge 1.d. (2)

"From February, 1981 through November, 1981, you provided services for a patient, N.T. During that time, you performed and charged for repeated preparation and recementing of a temporary crown and for palliative care rather than placing a permanent crown on the tooth."

22.A. N.T., a young girl, was a member of a Vietnamese family whom Dr. Schultz was providing dental care for at the request of the Community of the Cross Lutheran Church. Susan Trainis, a dental hygienist, was employed by Dr. Schultz from February through December of 1980 and for a short period of time in the spring of 1981. No. Trainis had communicated the church request to Dr. Schultz and he indicated that he would be willing to perhaps give a discount and would be more than happy to help. The Church had instructed Dr. Schultz that they wanted only the work done that was absolutely necessary to be performed and that the patients involved had no money and would be applying for medical assistance through the Department of Public Welfare.

B. on February 12, 1981, Dr. Schultz did a crown prep on N.T. and a temporary crown was placed on tooth no. 7. On July 14, 1981, the temporary

crown fell off and another charge of \$18.00 to re-cement the temporary crown plus \$40.00 for palliative care was charged. On November 19, 1981, the temporary crown was again re-cemented for a charge of \$18.00 and palliative care for \$40.00. On November 24, 1981, Dr. Schultz took an X-ray of tooth no. 7 for a charge of \$6.00, he charged \$10.00 for an exam, \$40.00 for palliative care, and re-prepared tooth no. 7 for re-cementing another temporary crown for a charge of \$50.00. These charges totalled \$240.00 and no permanent crown was placed in N.T.'s mouth.

C. At the time the above-procedures were occurring, medical assistance had informed Dr. Schultz that it would not pay for a permanent crown. N.T.'s sponsor, the Church, also did not want to pay for a permanent crown because they thought that medical assistance would be the eventual payor. the temporary crown kept coming off because N.T.'s gums would swell up, dislodging the crown. N.T. was in pain due to the swollen gum tissue around tooth no. 7.

Charge 1.e.(1)

"On more than one occasion you have billed insurance companies for services that you have not provided, such as billing for a pulp cap when, in fact, you have used only a light varnish."

23. Dr. Schultz billed patient D.D. for pulp caps on teeth nos. 1 and 2 which were not done. ibis billing was supposed to have been submitted to D.D.'s husband's insurance company for payment. (See Finding 12). there is nothing in the record concerning the use of light varnish.

Charge 1.e.(2)

"on more than one occasion, you have billed for osteopathic, sic (should be osteoplastic) services such as chiseling bone after an extraction has been done when you have not performed that service."

24. the only basis for this charge is contained in the discussion of charge 1.e.(7) and will be discussed, infra, at Finding 28.

Charge 1.e.(3)

"On July 14, 1977, you told a patient, M.G., that she needed to have two gold crowns placed at a cost of \$370.00. She did not have the work performed. Shortly after that, another dentist examined the patient and did not find that the gold crowns were necessary."

25. M.G. saw Dr. Schultz in July of 1977 at which time a prophylaxis and dental examination were done. M.G. does not remember what treatment was recommended by Dr. Schultz at that time. M.G. did go to another dentist 13 months after the July visit to Dr. Schultz.

Charge 1.e.(5)

"on June 7, 1980, you examined a patient, J.G., and told her that she had

eight cavities that required filling. She did not have the work performed and was examined by another dentist on June 17, 1980, who found only one cavity during his examination."

26. On June 7, 1980, Dr. Schultz saw J.G. , a 12-year-old girl for a regular checkup. At this time, Dr. Schultz told J.G. that she had eight areas that required watching and that may need filling in the future. TO further appointments were scheduled for J.G. On June 17, 1980, J.G. visited her previous treating dentist, Dr. John Dahlquist. At that time, Dr. Dahlquist found and filled one cavity. Since that time, Dr. Dahlquist has placed additional fillings in J.G.'s teeth.

Charge l.e.(6)

"During 1979, you billed and received payment from Equitable Life Insurance Company and from the Department of Public Welfare for the same services. These billings were for services provided for two patients, K.M. and E.M."

27.A. In early 1979, Dr. Schultz provided dental treatment for K.M. and her daughter, E.M. Both K.M. and E.M. were eligible for medical assistance and also were covered by dental insurance with Equitable Life Insurance Company through K.M.'s employer. Dr. Schultz was paid twice by Equitable for services provided to E.M. on February 2, March 16, and March 24, 1979. Dr. Schultz was paid once by Equitable and a second time by the Department of Public Welfare for services rendered to K.M. on January 18 and January 27, 1979. Dr. Schultz was paid once by Equitable and a second time by the Department of Public Welfare for dental services rendered to E.M. on January 18 and January 27, 1979. Dr. Schultz was paid twice by Equitable and a third time by the Department of Public Welfare for dental services rendered to E.M. on February 2 and March 16, 1979.

B. The double payments by Equitable Life Insurance Company were the result of a request by the company to Dr. Schultz that certain bills be resubmitted to them to coordinate payment with DPW. When these bills were resubmitted, Dr. Schultz's office advised Equitable that the Department of Public Welfare had already paid part of the claim. Because the claims were not verified by Equitable's dental examiner, they were paid a second time. Additionally, Dr. Schultz was informed by K.M. that her insurance claims should be submitted to the Department of Public Welfare who would in turn bill Equitable. Because of the mistake made by Equitable and the failure to coordinate the claim payments between Public Welfare and the insurance company, the double and triple payments

resulted. There is no evidence to suggest that Dr. Schultz knowingly applied for and received duplicate payments for the same services.

Charge 1.e.(7)

"In 1980, while providing dental services for a patient, H.T., you submitted a claim for payment from the Department of Public Welfare which included charges for an antrum repair with bone graft and alveoloectomy and gingioplasty. These procedures are not professional practice and were fabricated by you in an attempt to receive maximum payment from the Department of Public Welfare."

28. Dr. Schultz performed extensive oral surgery on H.T. at Eitel Hospital in June of 1980. Included in this oral surgery was an antrum repair with a bone graft in the area of the upper left bicuspid; an antrum repair with bone graft in the area of the upper right cuspid; and an alveolectomy and gingioplasty on all four quadrants. These services were billed to the Department of Public welfare at the request of the Community of the Cross Lutheran Church. However, H.T. was not eligible for medical assistance at this time and no monies were paid by the Department of Public Welfare.

Charge l.e.(8)

"In 1980 and 1981, while providing dental services for N.T., S.T., and C.T., you billed the Department of Public Welfare and were paid by them for the services. in addition, you billed the patient directly for the unpaid balance, in violation of Chapter 1, 101 of the Medical Assistance Manual."

29.A. Dr. Schultz has been a provider under the medical assistance program with the Minnesota Department of Public Welfare since June of 1976. The Department furnishes all providers a copy of the Dental Services Manual and all necessary forms to submit claims. sec. 101 of the Dental Services Manual provides in pertinent part:

B. Federal regulations governing the administration of the Medical Assistance Program specify the following participation requirements for providers who have been determined to be eligible:

- (4) Providers must consider the fee paid by the Medical Assistance Program in accordance with State maximum allowable limits as payment in full and are prohibited by law from requesting or receiving additional payment from the recipient or his/her responsible relatives except when required to meet a recipient spend-down.

C. In 1978, Dr. Schultz was contacted by the Community of the Cross Lutheran Church through his employee, Susan Trainis, regarding providing dental services for a Vietnamese family, the Tangs. It was Dr. Schultz's understanding that the Church would pay for the work if he agreed to provide the services. Dr. Schultz did a substantial amount of dental work on various members of the Tang family over a period of several months. Initially, these patients were not eligible for medical assistance. However, the family did apply for assistance and became eligible. The record is not clear when the family members did become eligible or if the eligibility was maintained.

D. Dr. Schultz has expected that the Church would pay for all costs of the dental services he provided except for those portions paid by medical assistance. Dr. Schultz has received token payments from the Tangs

themselves. Cost schedules have been prepared for the Church which show the

services rendered to each member of the Tang family and the balance owing. Those schedules show an offset for the amount of medical assistance payments and any amounts paid by the Tangs. Dr. Schultz has begun a civil lawsuit against the Church to recover the balance due for the work he performed on the Tang family.

Charge 1.e. (9)

"In June, 1980, a dental hygienist, Susan Trainis, performed dental prophylaxis on a volunteer basis for six patients, H.T., P.T., C.T., N.T., S.T., and M.T. You billed the Department of Public Welfare and were paid by them for these services donated by your employee to Nga and Si. "

30. In June of 1980, Susan Trainis, a dental hygienist in Dr. Schultz's office and a member of the Community of the Cross Lutheran Church, offered to donate her own services to the Tang family. On two occasions, Ms. Trainis provided prophylactic treatment for the Tangs during evening hours and other services were performed by her during regular office hours. Dr. Schultz submitted the bills for the services performed by Ms. Trainis to Medical Assistance along with the charges for all of the other dental work performed. Medical Assistance paid for the prophylaxis performed by Susan Trainis on patients Lang Tang, Si Tong and Nga Tang. (Lang Tong, L.T., was not named in the above-charge but this allegation is directed at the Tang family generally.)

Charge 1.h.

"Your dental work on your patient Jeffrey Jensen involved:

- i. Work that had to be redone by VW. Jensen's current dentist, Douglas Peterson, DDS;
- ii. Placement of gold fillings of doubtful value and where not required;
- iii. Pain and suffering on the part of the patient due to a golf-ball sized infection, which you failed to correct;
- iv. Excessive use of X-rays;
- v. work which remained unduly sensitive to heat and cold;
- vi. Work which did not result in a satisfactory meeting of the surfaces of the patient's teeth.

- vii. Failure to practice or instruct Mr. Jensen regarding prevention of dental problems as Mrs. Jensen's current dentist does."

DISCUSSION

With respect to allegation i., some of the dental work done by Dr. Schultz required additional work by Mr. Jensen's current dentist, Dr. Peterson. However, Dr. Peterson did not testify concerning this work. Additionally, Mr. Jensen did not have the sufficient expertise to testify concerning the "inappropriate" placement of gold fillings.

31.A. On October 5, 1978, Dr. Schultz removed a soft tissue abscess by blunt end dissection from NW. Jensen's mouth. Subsequent to this procedure, a swollen lump appeared in the area where the work was done. This swelling did not subside until approximately two years later when VW. Jensen had a root canal performed on the same tooth which Dr. Schultz had worked on previously.

B. The "service rendered" column in Mr. Jensen's dental chart shows that Dr. Schultz took the following X-rays:

| | |
|----------|----------------------------|
| 11/10/75 | panorex, bw's |
| 3/12/77 | bw's, panorex |
| 1/7/78 | 2 periapical X-rays: 2 BWS |
| 10/2/78 | 5 X-ray |
| 10/4/78 | UR 5 X-ray |
| 10/5/78 | UR panorex |
| 10/9/78 | UR 2 X-rays |
| 10/17/78 | UR X-rays |
| 3/2/79 | Prophy, Exam (no X-rays)4 |

In addition to these listed X-rays, VW. Jensen's chart contains a panorex and bitewings dated November 26, 1977.

C. Di the areas where Dr. Schultz performed dental work in NY. Jensen's mouth, Mr. Jensen still experiences a sentitivity to hot and cold and pressure.

D. Dr. Peterson, NW. Jensen's current dentist, did an equilibration on NW. Jensen's teeth. This procedure was done to correct a problem of malocclusion.

E. Dr. Schultz's approach to Mr. Jensen was treatment-oriented rather than prevention-oriented as is the case with Mr. Jensen's current dentist, Dr. Peterson.

Charge l.i.

"Suggestion to your patient, NW. Jensen, of your ability to procure a sexual partner for him if he cared to join you on a fishing trip."

32. During the discussion of a possible fishing trip between Dr. Schultz and Mr. Jensen, the subject of sexual activities on the trip was raised by Dr. Schultz.

4 A panorex is a single, full-mouth X-ray. A bitewing (bw) shows upper and lower teeth on one side. A periapical is a single X-ray which shows only an upper tooth (teeth) or lower tooth (teeth).

Charge 1.j.

"Failure to maintain adequate safety and sanitary standards for your dental office in that you have dropped materials on the floor, picked them up and put them in VW. Jensen's mouth."

33. No findings are made with respect to this charge.

Charge 5.a.

"On more than one occasion you have exhibited violent and irrational behavior, threatening two dentists M.B. and D.M., with physical harm."

34.A. During the time when Dr. Schultz had his office located at 6519 Nicollet Avenue, the office was immediately below the dental office occupied by Dr. Maurice Burckhardt. While performing surgery in his (Dr. Schultz's) office, workmen began using a jackhammer as part of their work in reconstructing the offices of Dr. Burckhardt. Because the jackhammering was disruptive to Dr. Schultz's surgical procedure, he stopped the surgery, and went up to Dr. Burckhardt's office. Dr. Schultz strongly expressed his displeasure at the reconstruction work; verbally with the use of "four-letter words" and with "physical body language". Dr. Schultz's objections were so vehement that Dr. Burckhardt and his office staff felt frightened and intimidated. On another occasion, Dr. Schultz telephoned Dr. Burckhardt regarding a referral of one of Dr. Schultz's patients to another oral surgeon. Dr. Schultz made a threatening call at 10:30 p.m. to Dr. Burckhardt concerning this referral.

B. D.M., Doctor David Milbrath, did not testify concerning this charge when called as a witness by the Board.

C. When Dr. Schultz was stopped by Robert Moe after he had been observed taking a tube of Tinactin from the Richfield Pharmacy, Dr. Schultz doubled up his fists in a threatening manner and stomped off.

Charge 6.b.

"You permitted a hygienist to make a diagnosis and treatment plan for the patient, B.K."

35. B.K. came to Dr. Schultz's office in March of 1980 to have her teeth cleaned. The dental hygienist working for Dr. Schultz cleaned her teeth and also took X-rays. Dr. Schultz was not present in the dental office at this time. After taking the X-rays, the hygienist informed B.K. that she had a number of cavities, one of which needed treatment right away, and that her wisdom teeth should be taken out. The hygienist made an appointment for B.K. the following week to get the one bad cavity treated. The March, 1980

worksheet from Dr. Schultz's office contains markings on 14 teeth, a notation of impaction on teeth nos. 17 and 32, and a notation of urgent on tooth no. 14.

Charge

The charge added by motion on May 4, 1984, reads: "You have engaged in conduct unbecoming a person licensed to practice dentistry in that you have failed to keep accurate and detailed patient records with respect to both diagnosis and treatment and have thereby been unable to retain for yourself and provide to other practitioners vital information necessary to the best interests of your patients."

36. Dr. Schultz's patient records were kept in an inconsistent manner. Often times, markings on patient charts were only for Dr. Schultz's private use and did not have uniform meanings. There is no evidence in the record, however, that any other dentists or Dr. Schultz were unable to treat patients or that their treatment was in any way affected by Dr. Schultz's record-keeping. The basis for this allegation is that during this proceeding, Dr. Schultz had a difficult time reconstructing the details of his treatment or proposed treatment for some of his patients based upon those patient's records.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge, the Office of Administrative Hearings and The Minnesota Board of Dentistry have jurisdiction over this matter pursuant to Minn. Stat. 150A.08 and 14.50. The Notice of Hearing issued by the Board in this matter was in all respects proper as to form and content.

2. The statutory grounds to revoke or suspend a dentist's license are set forth in Minn. Stat. 150A.08 (1983 Supp.) and read as follows:

150A.08 SUSPENSION, REVOCATION, LIMITATION, MODIFICATION OR DENTAL OF LICENSE.

Subdivision 1. Grounds. The board may refuse or by order suspend or revoke, limit or modify by imposing conditions it deems necessary, any license to practice dentistry or dental hygiene or the registration of any dental assistant upon any of the following grounds:

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

- (2) Conviction, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court of a felony or gross misdemeanor reasonably related to the practice of dentistry as evidenced by a certified copy of the conviction;
- (3) Conviction, including a finding or verdict of guilt, an admission of guilt, or a no contest plea in any court of an offense involving moral turpitude as evidenced by a certified copy of the conviction;
- (4) Habitual overindulgence in the use of intoxicating liquors;
- (5) Improper or unauthorized prescription, dispensing, administering, or personal or other use of any legend drug as defined in chapter 151, or of any controlled substance as defined in chapter 152;
- (6) Conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant, or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board;
- (7) Gross immorality;
- (8) Any physical, mental, emotional or other disability which adversely affects a dentist's, dental hygienist's, or registered dental assistant's ability to perform the service for which the person is licensed or registered;
- (9) Revocation or suspension of a license, registration, or equivalent authority to practice, or other disciplinary action or denial of a license or registration application taken by a licensing, registering, or credentialing authority of another state, territory, or country as evidenced by a certified copy of the licensing authority's order, if the disciplinary action or application denial was based on facts that would provide a basis for disciplinary action under this chapter and if the action was taken only after affording the credentialed person or applicant notice and opportunity to refute the allegations or pursuant to stipulation or other agreement;
- (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;

(11) Employing, assisting, or enabling in any manner an unlicensed person to practice dentistry;

(12) Failure or refusal to attend, testify, and produce records as directed by the board under subdivision 7; or

(13) violation of, or failure to comply with, any other provisions of sections 150A.01 to 150A.12, the rules of the board of dentistry, or any disciplinary order issued by the board or for any other just cause related to the practice of dentistry. Suspension, revocation, modification or limitation of any license shall not be based upon any judgment as to therapeutic or monetary value of any individual drug prescribed or any individual treatment rendered, but only upon a repeated pattern of conduct.

In addition to these statutory grounds for disciplinary action, the dental board has promulgated rules to define "conduct unbecoming a person licensed to practice dentistry" as follows:

Minn. Rule 3100.6200 CONDUCT UNBECOMING A LICENSEE OR REGISTRANT.

"Conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant or conduct contrary to the best interests of the public," as used in Minnesota Statutes, section 150A.08, subdivision 1, clause (5) of the act, shall include the indiscriminate and repeated prescribing or dispensing of any drug which under the circumstances has no therapeutic value; the failure to maintain adequate safety and sanitary conditions for a dental office; and the act of a dentist, hygienist, or registered dental assistant in:

- A. engaging in personal conduct which brings discredit to the profession of dentistry;
- B. gross ignorance or incompetence in the practice of dentistry and/or repeated performance of dental treatment which fall below acceptable standards;
- C. Making suggestive, lewd, lascivious, or improper advances to a patient;
- D. charging a patient an unconscionable fee or charging for services not rendered (applicable to dentists only);

E. performing unnecessary services;

F. performing services not authorized by the dentist, the act, or these rules (applicable to hygienist or registered dental assistants only);

G. accepting rebates, split fees, or, applicable to dentists only, commissions from any source associated with the service rendered to a patient; provided, however, that the sharing of profits in a dental partnership or association, or dental professional corporation approved by and registered with the board, shall not be construed as splitting fees nor shall compensating dental auxiliaries on the basis of a percentage of the fee received for the overall service be deemed accepting a commission;

H. falsifying records relating to payment for services rendered, participating in a CDE course; or other records with respect to licensure, registration, CDE, and the practice of dentistry; and

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

3. Dr. Schultz has violated Minn. Stat. 150A.08, Subd. 1 (6) and Minn Rule 3100.6200A. by the conduct set forth in Findings 3, 4, 5, 32 and 34.

Dr.

Schultz has violated Minn. Stat. 150A.08, subd. 1 (6) and Minn. Rule 3100.6200C. by the conduct set forth in Findings 6, 7 and 8. Dr. Schultz has violated Minn. Stat. sec. 150A.08, subd. 1 (6) and Minn. Rule 3100.6200D. by the

conduct set forth in Findings 9, 13, 18 and 19. Dr. Schultz has violated Minn. Stat. 150A.08, subd. 1 (1) by the conduct set forth in Finding 13.

Dr. Schultz has violated Minn. Stat. 150A. Subd. 1 (6) and Minn. Rule 3100.6200H. by the conduct set forth in Finding 23. Dr. Schultz has violated Minn. Stat. 150A.08, subd. 1 (6) and Minn. Rule 3100.6200I. by the conduct

set forth in Finding 16. Dr. Schultz has violated Minn. Stat. 150A.08, subd. 1 (11) by the conduct set forth in Finding 35.

4. No violations have been proved for the charges set forth in Findings 10, 11, 12, 14, 15, 17, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 33 and 36.

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

RECOMMENDATION

It is hereby recommended that the Minnesota Board of Dentistry take disciplinary action against the dentist license of Roger W. Schultz.

Dated this 9th day of October, 1984.

PETER C. ERICKSON
Administrative Law Judge

Hearing: Court Reported
Janet R. Shaddix & Associates
Transcript was prepared

MEMO

It is not the intent of this memorandum to discuss every charge and all of the evidence that was considered in arriving at each finding herein. Rather, more general considerations will be addressed which were critical in making the factual and legal determinations resulting in the recommendation that the Board take disciplinary action.

First, several of the Findings are based solely on the element of credibility, i.e. was Dr. Schultz or the "complaining witness" to be believed? The Judge did not believe Dr. Schultz in most instances where the testimony was in conflict. Rather, the "complaining" witness' testimony was found to be believable except where uncertainty was apparent. Dr. Schultz had the most at stake in this proceeding and, consequently, a reason to deny any alleged misconduct. The Board's witnesses, with the exception of representatives from the Community of the Cross Lutheran Church, had no stake in this matter and several were very uncomfortable having to testify. Although some of the witnesses had had fee disputes with Dr. Schultz, those had been resolved in some manner. Additionally, much of Dr. Schultz's testimony was equivocal, and was given in an obviously controlled, hostile manner. The Judge also gave some weight to the fact that many of the individual acts were not isolated incidents, but rather were part of a course of conduct.

Second, many of the allegations centered on over-charging or alleged unconscionable fees. Several times, Board witnesses made references to dentist fee surveys but none was ever offered into the record. Certain dentist witnesses testified that they would have charged less than Dr. Schultz for certain dental procedures, but no "acceptable" range for fees was ever established by the Board. Dr. Roberts, who had experience with dental fees in the medical assistance program, testified concerning the "fairness" or

apropriateness of Dr. Schultz's fees. However, that was only in the context of medical assistance providers whose reimbursement is predetermined by DPW at a maximum rate. Consequently, although the record shows that Dr. Schultz charged high fees for some of his services, there is not enough evidence of comparable fees to support the charge that his fees were unconscionable. 5

There were a number of charges regarding the dental work done on patient H.T., most of which was oral surgery performed at Eitel Hospital. The Board has alleged that some of the services performed were either non-professional, unnecessary or simply not actually done. The Board's witness, Dr. Roberts, is not an oral surgeon and he admitted that his opinion was based upon consultation with another dentist, who was not called to testify. The Board specifically alleged that a bone graft in the upper right quadrant of H.T.'s mouth which Dr. Schultz charged for could not have been done because no bicuspid was removed from that area. However, Dr. Schultz testified that the graft was done in the area of the upper right cuspid where bone was removed when that tooth was extracted. (Volume XII, pp. 30-31, 43-44).

Regarding the Jeffrey Jensen "charges", I.h.i-vii, there was insufficient expert testimony to prove any of the allegations. Additionally, Pt. Jensen's recollection of what was dropped on the floor and subsequently placed in his mouth was too unclear to permit findings on charge 1.j.

The Dental Services Manual for the medical assistance program specifically prohibits a provider from collecting monies from the "recipient or his/her responsible relatives" in addition to the payment received from DPW. In the case of the Tangs, Dr. Schultz was seeking additional payment from the Community of the Cross Lutheran Church pursuant to his understanding of their agreement. He was not seeking payment from the Tangs personally or from any "responsible relatives" This situation is analogous to a third party payor-insurance company payment which is not violative of the Services Manual. Additionally, the payments for Sue Trainis' donated time also fall within this civil controversy between Dr. Schultz and the Church.

P.C.E.

The Judge did find in one instance, however, that unconscionable fees had been charged. (Finding 19 and Conclusion 3). That Conclusion was based on testimony that the work required for the procedure was minimal and the gross disparity between what Dr. Schultz charged and what would have been charged by

another dentist.

