

**BEFORE THE BOARD OF DENTAL EXAMINERS OF THE STATE OF IOWA**

\*\*\*\*\*

**IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST**

**ROBERT A. DUBAY, D.D.S., RESPONDENT**

\*\*\*\*\*

**STATEMENT OF CHARGES,**

**SETTLEMENT AGREEMENT and FINAL ORDER  
(combined)**

\*\*\*\*\*

**COMES NOW** the Iowa Board of Dental Examiners (the Board), and Robert A. DuBay, D.D.S. (Respondent), on August 27<sup>th</sup>, 2004, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into the following combined Statement of Charges, Settlement Agreement and Final Order.

**STATEMENT OF CHARGES**

1. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 153 and 272C (2003).
2. Respondent was issued license number 4975 by the Board to engage in the practice of dentistry, subject to the laws of the State of Iowa and the rules of the Board.
3. License number 4975 is pending renewal.

## **COUNT I**

The Respondent is charged under Iowa Code Section 153.34(14) (2003) and 650 Iowa Administrative Code section 30.4(27) with willfully or repeatedly violating a Board rule by violating the terms of a recovery contract that he entered into with the Iowa Practitioner Review Committee (IPRC).

### **THE CIRCUMSTANCES**

1. Respondent self reported to the IPRC on July 17, 2001.
2. Respondent subsequently underwent an in-patient evaluation and participated in a treatment program after being diagnosed as chemically dependant.
3. Respondent signed a recovery contract with the IPRC on January 7, 2003. Respondent agreed in this contract to comply with numerous terms and conditions, which included his abstinence from the use of alcohol and all mood altering drugs unless prescribed or dispensed by a licensed and duly treating health care provider.
4. On or about March 4, 2004, the IPRC received information that Respondent had relapsed with alcohol. A urinalysis report later confirmed this. This same urinalysis report also tested positive for another controlled substance that Respondent was not authorized to use.
5. Respondent at that time was advised to cease and desist from the practice of dentistry until further notice.

6. Respondent was later discharged from his outpatient treatment facility with a recommendation that it would not be appropriate for him to continue treatment there.
7. On April 15, 2004, the members of the IPRC determined to refer Respondent to the Iowa Board of Dental Examiners for these issues of non-compliance.
8. Respondent re-admitted himself into a Board approved in-patient treatment program and participated in treatment.
9. Respondent has remained out of practice until he was discharged from this in-patient treatment program in June, 2004, with a recommendation that he be allowed to return to the practice of dentistry subject to certain terms and conditions.

#### **SETTLEMENT AGREEMENT**

10. Respondent's dental license shall immediately be placed on indefinite probation subject to the terms and conditions of this Order. Respondent may not petition the Board for termination of his probation for five (5) years from the date of this Order. During his probationary period, Respondent shall fully comply with the terms set forth in this settlement agreement.
11. The Respondent shall document to the Board continued compliance with all recommendations set forth by the in-patient treatment program.
12. Respondent shall completely abstain from the personal use and possession of alcohol and from possession or use of all controlled substances or drugs in

any form, unless prescribed by a duly licensed and treating health care provider. Respondent shall inform any treating health care provider of his chemical dependency prior to accepting any prescription drug. Respondent shall report to the Board within fourteen (14) days any use of prescription drugs prescribed by any health care provider. The report shall include the name of the prescription, the prescribing health care provider, the reason for the prescription, and the name of the pharmacy where the prescription was filled.

13. Respondent shall attend meetings of Alcoholics Anonymous or Narcotics Anonymous at least three (3) times each week and shall submit written verification of his attendance in monthly reports to the Board during his initial year of probation, and thereafter in quarterly reports until further Order of the Board.
14. Respondent shall follow-up with the discharging in-patient program for psychiatrist follow-up as recommended by the program.
15. Respondent shall participate in counseling with a substance abuse counselor. The counselor shall be prior-approved by the Board. The Respondent shall submit to the Board names and qualifications of counselors for consideration within thirty (30) days of the execution of this Order.
16. Respondent's counselor shall evaluate and assess Respondent and submit a proposed counseling plan for Respondent to the Board for approval.

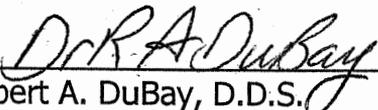
Respondent shall sign releases to allow the Board and counselor to fully communicate. The counseling shall be at Respondent's expense.

17. Respondent shall document compliance with any and all of his counselor's recommendations. Respondent shall sign releases to allow the Board to fully communicate with any prior, current or future aftercare provider and any treatment facility utilized by Respondent. Respondent shall be responsible for ensuring that the counselor submit quarterly written reports to the Board concerning Respondent's treatment and progress. Quarterly reports shall include, but not be limited to, Respondent's progress, participation in counseling and compliance with the counselor's recommendations.
18. The Board's approval of the counselor may be rescinded by the Board for good cause.
19. If Respondent or counselor feel it is necessary to terminate their relationship, a written explanation by each must be submitted to the Board at least thirty (30) days before termination of the relationship.
20. In the event Respondent's counselor changes, Respondent shall submit the names of other counselors for the Board's approval within fifteen (15) days from the date of the termination of the counseling relationship.
21. Any relapse of Respondent shall be immediately reported to the Board by the Respondent.

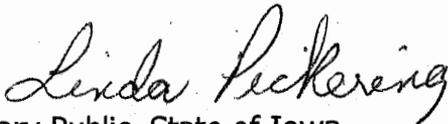
22. Respondent shall submit to unannounced, random witnessed blood, hair or urine samples on demand by any agent or designee of the Board. The samples shall be used for drug and alcohol screening, with all costs associated with the drug and alcohol screening to be paid by Respondent.
23. Respondent shall provide notice of this action against his license to all current and future employees and employers. Respondent shall provide to the Board signed statements from current employees and employers within ten (10) days of the date of this Order and thereafter within ten (10) days of any new employment relationship, indicating that the employers and employees have read this Final Order.
24. Respondent shall upon reasonable notice, and subject to the provisions of 650 Iowa Administrative Code 31.6, appear before the Board at the time and place designated by the Board.
25. Respondent shall be responsible for all costs associated with compliance with this Order, and shall also be responsible for all costs incurred in the monitoring of this Order to determine compliance. Respondent shall promptly remit for costs.
26. Periods of residence outside of the State of Iowa may be applied toward period of probation if approved by the Board prior to the commencement of the out of state residency. Notice of any change of residence must be provided to the Board within fourteen (14) days of the change.

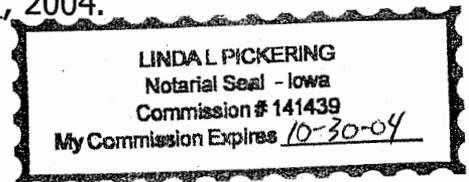
27. Respondent shall fully and promptly comply with all Orders of the Board and statutes and rules regulating the practice of dentistry in Iowa.
28. This combined Statement of Charges, Settlement Agreement and Final Order constitutes the resolution of a contested case proceeding.
29. By entering into this combined Statement of Charges, Settlement Agreement and Final Order, Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to the terms of this Settlement Agreement.
30. This combined Statement of Charges, Settlement Agreement and Final Order, is voluntarily submitted by Respondent to the Board for consideration.
31. Respondent acknowledges that he has the right to be represented by counsel in this matter.
32. Respondent understands that this Order is a public record and is therefore subject to inspection and copying by members of the public.
33. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank.
34. Respondent acknowledges that no member of the Board, nor any employee, nor attorney for the Board, has coerced, intimidated, or pressured him, in any way whatsoever, to execute this Order.

35. This combined Statement of Charges, Settlement Agreement and Final Order, is subject to approval of the Board. If the Board fails to approve this combined Statement of Charges, Settlement Agreement and Final Order, it shall be of no force or effect to either party.
36. The Board's approval of this Settlement Agreement and Final Order shall constitute a **Final Order** of the Board.
37. Should Respondent violate or fail to comply with any of the terms or conditions of this Settlement Agreement and Final Order, the Board may initiate action to revoke or further suspend the Respondent's license, or to impose other licensee discipline as authorized by Iowa Code chapter 153 (2003).

  
Robert A. DuBay, D.D.S.  
Respondent

Subscribed and sworn to before me on July 30, 2004.

  
Notary Public, State of Iowa



This combined Statement of Charges, Settlement Agreement and Final Order is approved by the Board on August 27, 2004.

  
Deena R. Kuempel, D.D.S., Chairperson  
Iowa Board of Dental Examiners  
400 SW 8<sup>th</sup> Street, Suite D  
Des Moines, IA 50309-4687

cc: Theresa O'Connell Weeg  
Assistant Attorney General  
Office of the Attorney General  
Hoover State Office Building  
Des Moines, IA 50319