

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

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<b>IN THE MATTER OF</b>	)	
<b>GARY S. LUNA, D.D.S.</b>	)	<b>NOTICE OF HEARING AND STATEMENT OF CHARGES</b>
<b>RESPONDENT.</b>	)	

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**COMES NOW** the Iowa Dental Board (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 650 Iowa Administrative Code (IAC) 51.6. Respondent was issued Iowa dental license number 6620 on October 10, 1980. Respondent's license is current and will next expire on August 31, 2008. Respondent's address as reported to the Board is 1515 S. Marshall, Boone, Iowa 50036.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing. A disciplinary contested case hearing shall be held on June 3, 2008, before the Iowa Dental Board. The hearing shall begin at 8:00 a.m. and shall be located in the conference room at the office of the Iowa Dental Board, 400 SW 8<sup>th</sup> Street, Ste. D, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 650 IAC 51.12(2) to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Iowa Dental Board, 400 SW 8<sup>th</sup> Street, Ste. D, Des Moines, Iowa 50309.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the Board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 650 IAC chapter 51. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 650 IAC 51.18. The hearing may be open to the public or closed to the public at your discretion.

5. Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 650 IAC chapter 51.17.

6. Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact Board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties

have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Constance L. Price, Executive Director at 515-281-5157.

## **B. LEGAL AUTHORITY AND JURISDICTION**

1. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 153, and 272C.

2. Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 153, and 272C and 650 IAC chapters 30 and 51.

3. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 650 IAC 51.22.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **COUNT I**

Respondent is charged under Iowa Code section 153.34(4) (2007) with willfully or repeatedly violating a Board rule by administering conscious sedation in a dental facility without a conscious sedation permit, in violation of 650 Iowa Administrative Code Sections 29.2(2) and 29.5 (1).

### **COUNT II**

Respondent is charged under Iowa Code section 153.34(4) (2007) with willfully or repeatedly violating a Board rule by regularly administering conscious sedation to

patients in a dental facility that is not in compliance with the requirements of 650 Iowa Administrative Code 29.4(2).

### **COUNT III**

Respondent is charged under Iowa Code section 272C.10(3) (2007) and 650 Iowa Administrative Code 30.4 (39) with practice harmful or detrimental to the public by administering conscious sedation to patients without a conscious sedation permit, and for administering conscious sedation in a dental facility not properly equipped, as required by 650 Iowa Administrative Code Section 29.4 (2).

### **COUNT IV**

Respondent is charged under Iowa Code section 153.34(4) (2007) with willfully or repeatedly violating a Board rule by failing to report a mortality or other incident related to an injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation, conscious sedation or deep sedation/general anesthesia as required by 650 Iowa Administrative Code Section 29.9(1).

### **COUNT V**

Respondent is charged under Iowa Code section 153.34(4) (2007) with willfully or repeatedly violating a Board rule by failing to prescribe, administer, and/or dispense prescription drugs in accordance with federal laws, in violation of 650 Iowa Administrative Code 16.2(5).

### **COUNT VI**

Respondent is charged under Iowa Code section 153.34(4) (2007) with willfully or repeatedly violating a Board rule by failing to maintain patient records in a manner

consistent with the protection of the welfare of the patient, in violation of 650 Iowa Administrative Code 27.11(1).

#### **COUNT VII**

Respondent is charged under Iowa Code section 153.34(4) (2007) with willfully or repeatedly violating a Board rule by practicing beyond the scope of his training, in violation of 650 Iowa Administrative Code 29.4 and 30.4(43).

#### **COUNT VIII**

Respondent is charged under Iowa Code section 153.34(8) and 650 Iowa Administrative Code 30.4(16) when he failed to maintain a satisfactory standard of competency.

#### **D. FACTUAL CIRCUMSTANCES**

1. Respondent is a general dentist engaged in the practice of dentistry in Des Moines, Iowa and Boone, Iowa.
2. Dentists licensed in Iowa shall not administer conscious sedation until they have obtained a conscious sedation permit from the Board. 650 IAC 29.2(2). Numerous requirements must be met before a conscious sedation permit may be issued. 650 IAC 29.4.
3. A dentist utilizing conscious sedation is required by Board rules to maintain a properly equipped facility to safeguard the public. The dentist shall be trained on the following equipment: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral

airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs and defibrillator. 650 IAC 29.4(2).

4. All licensed dentists must submit a report within a period of 30 days to the Board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, conscious sedation or deep sedation/general anesthesia related thereto, pursuant to 650 IAC 29.9(1).
5. Respondent has regularly engaged in the conscious sedation of patients using oral medications since approximately 1985, and has never held a conscious sedation permit, as required by 650 Iowa Administrative Code 29.2(2) and 29.5(1).
6. The Board received information that Patient A was hospitalized shortly after being orally sedated by Respondent and later died.
7. Following its investigation and review, the Board alleges Respondent:
  - A. Administered conscious sedation to numerous patients without the required permit, and therefore without evidence of appropriate education, training, current certification in ACLS, appropriately trained staff, and a properly equipped facility.
  - B. Administered inappropriate medications and inappropriate doses of conscious sedation medications to patients, including Patient A.
  - C. Did not maintain a properly equipped facility to address a sedation emergency.
  - D. Did not maintain required certification in ACLS.
  - E. Did not properly monitor Patient A while the patient was under sedation.
  - F. Did not appropriately respond to Patient A's respiratory distress.

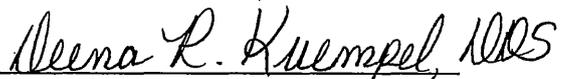
- G. Did not timely call for emergency assistance for Patient A.
- H. Did not report to the Board the death of Patient A which occurred after he provided conscious sedation to that patient.
- I. Did not maintain appropriate patient records for Patient A.
- J. Did not maintain appropriate patient records for other patients.
- K. Failed to prescribe, administer, and/or dispense prescription drugs in accordance with federal laws.

#### **E. SETTLEMENT**

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 650 IAC chapter 51.19. If you are interested in pursuing settlement of this matter, please contact Theresa O'Connell Weeg, Assistant Attorney General, at 515.281.6858.

#### **F. PROBABLE CAUSE FINDING**

On this 25th day of April, 2008, the Iowa Dental Board found probable cause to file this Notice of Hearing and Statement of Charges.

  
DEENA R. KUEMPEL, D.D.S.  
Chairperson  
Iowa Dental Board

cc: Theresa O'Connell Weeg  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor Hoover Bldg.  
Des Moines, IA 50319

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Attorney for Respondent  
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