

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

IN THE MATTER OF)	
DAVID L. BERNING, D.D.S.)	NOTICE OF HEARING AND STATEMENT OF CHARGES
RESPONDENT.)	

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 6790 on July 1, 1982. Respondent's license is current and will next expire on August 31, 2010. Respondent's address as reported to the Board is 409 W. 7th Street, Carroll, Iowa 51401.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on January 13, 2010, before the Iowa Dental Board. The hearing shall begin at 11:00 a.m. and shall be located in the conference room at the office of the Iowa Dental Board, 400 SW 8th 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 8th 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, 2nd 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) (2009) with repeated violations of the rules of the Board by failing to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services (CDC) in violation of 650 Iowa Administrative Code Section 30.4(35).

COUNT II

Respondent is charged under Iowa Code Section 153.34(4) (2009) with repeated violations of the rules of the Board by failing to maintain adequate safety and

sanitary conditions for a dental office in violation of 650 Iowa Administrative Code Section 30.4(17).

COUNT III

Respondent is charged with knowingly providing false information to an agent of the Board during the course of an inspection in violation of 650 Iowa Administrative Code Section 30.4 (26).

FACTUAL CIRCUMSTANCES

1. Board rule 650-30.4(35) requires dentists to comply with universal precautions for preventing transmission of infectious diseases as issued by the CDC.
2. Board rule 650-30.4(17) requires dentists to maintain adequate safety and sanitary conditions for a dental office.
3. An infection control inspection was conducted at the Respondent's office in September of 2009 and numerous deficiencies were noted, the most serious being:
 - a. Failure to biologically monitor his heat sterilizers.
 - b. Failure to comply with OSHA's Bloodborne Pathogen Standard by permitting employees to take contaminated laundry home to clean.
4. Following the inspection Respondent advised an investigator of the Board that all deficiencies had been addressed. Additional investigation found that Respondent had not addressed all concerns as he previously stated.

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 Constance L. Price, Executive Director, at 515.281.5157.

F. PROBABLE CAUSE FINDING

On this 28th day of October, 2009, 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

Copies to: Theresa O'Connell Weeg
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover Bldg.
Des Moines, IA 50319