

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

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<b>IN THE MATTER OF</b>	)	
<b>ERNA McSWAIN, D.A.</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 assistant registration number R03310 on August 1, 1988. Respondent's registration lapsed in November of 2007. Respondent's address as reported to the Board is 1407 5<sup>th</sup> Avenue SW, Altoona, Iowa 50009.

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

1. Hearing. A disciplinary contested case hearing shall be held on October 26th, 2012, before the Iowa Dental Board. The hearing shall begin at 9:00 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 Melanie Johnson, J.D., 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(7)(2011) with dishonorable or unprofessional conduct in the practice of dental assisting, in violation of 650 Iowa Administrative Code Section 30.4(13).

### **COUNT II**

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

### **COUNT III**

Respondent is charged under Iowa Code Section 153.34(4) (2011) with engaging in dental radiography without an active radiography qualification issued by the Board, in violation of 650 Iowa Administrative Code 22.1.

### **COUNT IV**

Respondent is charged under Iowa Code Section 153.34(4) (2011) with engaging in the practice of dental assisting with a lapsed registration, in violation of 650 Iowa Administrative Code 30.34.

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

1. Respondent, without the knowledge or consent of her employing dentist, removed multiple insurance payment checks from her employing dentist's office, endorsed the checks with her employing dentist's name, and deposited the checks into her personal bank account.
2. During the course of a Board investigation, Respondent provided false information to an agent of the Board. Respondent stated to a Board investigator that the money had been returned to the insurance company, when in fact it had not.
3. Board rules require dental assistants who participate in dental radiography to hold an active radiography qualification issued by the Board pursuant to 650 Iowa Administrative Code Section 22.
4. Respondent repeatedly engaged in dental radiography without an active radiography qualification.

5. Iowa law requires that a person engaged in the practice of dental assisting possess a valid registration. Failure to renew a registration prior to expiration shall cause the registration to lapse and become invalid pursuant to 650 Iowa Administrative Code Section 20.11(4).
6. Failure of an assistant to renew a registration within sixty (60) days of its expiration causes the registration to lapse and become invalid. An assistant whose registration has lapsed and becomes invalid is prohibited from practice.
7. Respondent's dental assistant registration lapsed on November 1<sup>st</sup>, 2007.
8. Respondent practiced dental assisting without a valid registration from November 2007 until January 2012.

#### **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 Melanie Johnson, J.D., Executive Director, at 515-281-5157.

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

On this 24<sup>th</sup> day of April, 2012, the Iowa Dental Board found probable cause to file this Notice of Hearing and Statement of Charges.

  
LYNN D. CURRY, D.D.S.  
Vice Chairperson  
Iowa Dental Board  
400 SW 8<sup>th</sup> Street, Suite D  
Des Moines, IA 50309

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