

BEFORE THE DENTAL BOARD OF THE STATE OF IOWA

IN THE MATTER OF THE NOTICE OF HEARING FOR

GARY L. JACOBSEN, D.D.S., RESPONDENT

INDIANOLA, IOWA

NOTICE OF HEARING, SETTLEMENT AGREEMENT AND FINAL ORDER

(combined)

COMES NOW the Iowa Dental Board (the Board), and Gary L. Jacobsen, D.D.S., (Respondent), on June 15, 2009, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into the following combined Notice of Hearing, Settlement Agreement and Final Order.

NOTICE OF HEARING

1. A hearing on this matter will not be held as the Board and Respondent have entered into the following combined Notice of Hearing, Settlement Agreement and Final Order.
2. Respondent was issued license number 7648 on June 17, 1993 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 7648 is currently under an Emergency Adjudicative Order dated June 4, 2009, suspending Respondent's license to practice dentistry in the state of Iowa.

LEGAL AUTHORITY AND JURISDICTION

4. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 153 and 272C (2009).

SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

Administering conscious sedation without a conscious sedation permit, in violation of Iowa Code Section 153.34(4)(2009) and 650 Iowa Administrative Code Sections 29.2(2) and 29.5(1).

COUNT II

Engaging in practice harmful or detrimental to the public by administering conscious sedation to patients without a permit, in violation of Iowa Code Section 153.34(4) and 650 Iowa Administrative Code Section 30.4(39);

COUNT III

Engaging in practice harmful or detrimental to the public by administering conscious sedation in a facility not properly equipped, in violation of Iowa Code Section 153.34(4) and 650 Iowa Administrative Code Section 29.4(2).

COUNT IV

Has engaged in unethical and unprofessional conduct by not abiding by his 2008 written agreement to refrain from initiating any conscious sedation cases, and by knowingly providing false information to agents of the Board during the course of an investigation in violation of 650 Iowa Administrative Code Section 27.9(4).

STATEMENT OF MATTERS ASSERTED

Statement of Matters Asserted are found in the Board's Emergency Adjudicative Order dated June 4, 2009, which is attached to this Notice of Hearing, Settlement Agreement and Final Order.

SETTLEMENT AGREEMENT

THEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice dentistry in the state of Iowa, which was suspended pursuant to an Emergency Adjudicative Order issued June 4, 2009, shall remain suspended until July 6, 2009. Following this one (1) month suspension, Respondent's dental license shall be placed on probation for a period of five years (5) years. Respondent may request early termination of probation after two (2) years of documented compliance of the following terms:

1. Respondent agrees not to engage in any type of sedation until such time as he meets all requirements for the issuance of a conscious sedation permit, and has been issued a permit by the Board allowing him to do so. Respondent may make

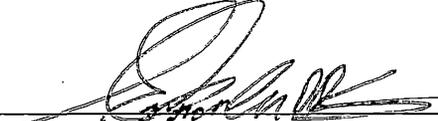
- application for a conscious sedation permit following his one (1) month suspension.
2. Respondent shall obtain no less than two (2) continuing education hours in the areas of pharmacology by September 1, 2010. The continuing education shall be prior approved by the Board.
 3. Respondent shall successfully pass the Dental Jurisprudence examination within sixty (60) days of the date of this Order.
 4. Respondent shall successfully complete the Professional/Problem-Based Ethics Program (PROBE), a Board approved course on ethics, no later than the end of this calendar year December 31, 2009.
 5. During the probationary period Respondent shall disclose to all licensees, employees, and employers who work in his place of practice this Order and the Emergency Adjudicative Order. The Respondent shall report back to the Board with signed statements from all licensees, employees, and employers with whom he currently practices and any future licensees, employees, and employers within fourteen (14) days of the date of this Order, and thereafter within fourteen (14) days of any new employment relationship, indicating that they have read these documents, and that they understand the current terms and conditions placed on Respondent's dental license.
 6. Respondent shall fully cooperate with random unannounced visits by agents of the Board.

7. Respondent agrees to submit a civil penalty in the amount of five thousand dollars (\$5,000.00) to the Iowa Dental Board pursuant to a payment plan prior approved by the Board. Respondent shall submit a proposed payment plan to the Board by July 13, 2009, for Board consideration.
8. Respondent shall be responsible for all costs associated with compliance with this Order, and shall also be responsible for all costs incurred by the Board in the monitoring of this Order to determine compliance. Respondent shall promptly remit one hundred (\$100.00) dollars on or before the first day of January, April, July, and October, of each calendar year for such costs while on probation.
9. Respondent shall submit quarterly reports to the Board detailing his compliance with the terms and conditions of this Order. Respondent shall ensure that the reports are submitted prior to the first day of January, April, July, and October, of each calendar year.
10. 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.
11. Periods of residency 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.

FINAL ORDER

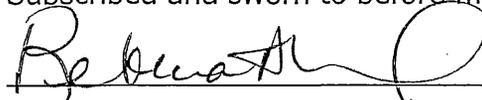
1. This combined Notice of Hearing, Settlement Agreement and Final Order constitutes the resolution of a contested case proceeding.
2. By entering into this combined Notice of Hearing, Settlement Agreement and Final Order, Respondent voluntarily waives any rights to a contested case hearing and related Board file, and waives any objections to the terms of this Settlement Agreement.
3. This combined Notice of Hearing, Settlement Agreement and Final Order, is voluntarily submitted by Respondent to the Board for consideration.
4. Respondent acknowledges that he has the right to be represented by counsel in this matter.
5. This combined Notice of Hearing, Settlement Agreement and Final Order become public records available for inspection and copying upon execution of this agreement in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.
6. 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.
7. 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.

- 8. This combined Notice of Hearing, Settlement Agreement and Final Order, is subject to approval of the Board. If the Board fails to approve this combined Notice of Hearing, Settlement Agreement and Final Order, it shall be of no force or effect to either party.
- 9. The Board's approval of this combined Notice of Hearing, Settlement Agreement and Final Order shall constitute a **Final Order** of the Board.

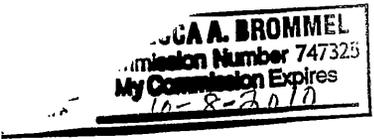


Gary L. Jacobsen, D.D.S.
Respondent

Subscribed and sworn to before me on June 11, 2009.



Notary Public, state of Iowa



This combined Notice of Hearing, Settlement Agreement and Final Order is approved by the Board on June 15, 2009.



DEENA R. KUEMPEL, D.D.S., Chairperson
Iowa Dental Board
400 SW 8th 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

Rebecca A. Brommel
Brown, Winick, Graves, Gross,
Baskerville, & Schoenebaum, P.L.C.
666 Grand Avenue, Ste. 200
Des Moines, IA 50309

BEFORE THE DENTAL BOARD OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

GARY L. JACOBSEN, D.D.S, RESPONDENT

FILE NO. 08-120

EMERGENCY ADJUDICATIVE ORDER

COMES NOW the Iowa Dental Board, and finds that on June 4th, 2009, it was presented with evidence which establishes that Respondent's continued practice of dentistry constitutes an immediate danger to the public health, safety, and welfare. The Board has conducted a full investigation of this matter. A summary of the evidence obtained in that investigation is as follows:

FINDINGS OF FACT

1. Respondent is a general dentist engaged in the practice of dentistry in Indianola, 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 educational and safety equipment 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 maintain and 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. The Board office received a telephone call from Respondent requesting information regarding a conscious sedation permit. Respondent reported that he has engaged in the practice of conscious sedation of patients in his office for fifteen years, but has never held a conscious sedation permit, as required by 650 Iowa Administrative Code 29.2(2) and 29.5(1).
5. In August 2008 an investigation was conducted. Respondent was interviewed to determine his protocols with regard to the sedation of his patients. Respondent's office was inspected and it was determined that he did not maintain the required life saving equipment and drugs pursuant to Board rules.
6. Respondent agreed at that time to cease and desist from continuing to administer conscious sedation and was asked to submit documentation to the Board verifying his intention to discontinue the practice of conscious sedation.
7. A Board consultant with expertise in sedation, who is an oral and maxillofacial surgeon, reviewed the matter and reported to the Board that the Respondent administered a combination of medications and nitrous oxide that would achieve a state of conscious sedation in most patients. Depending on a patient's response and the synergistic actions of the combined drugs, levels of deep sedation (general anesthesia) could be reached in some patients.

8. In August 2008, Respondent submitted documentation indicating that he would refrain from initiating any conscious sedation cases until such time that he obtained a conscious sedation permit from the Board.
9. Respondent's attorney contacted the Board asking that the Board not address this matter at this time due to Respondent's family issues.
10. The Board agreed to allow Respondent time to resolve his family's issues since he agreed to refrain from sedating patients.
11. Conscious sedation is defined as a depressed level of consciousness produced by the administration of pharmacological substances, that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
12. Deep sedation (general anesthesia) is defined as a controlled state of unconsciousness, produced by a pharmacologic agent, accompanied by a partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command.
13. The consultant reported to the Board that Respondent failed to have the proper life saving equipment and is not prepared to manage emergency airway problems.
14. The consultant also reported to the Board that Respondent failed to have necessary reversal drugs available in the event of a life threatening emergency or adverse reaction.

15. In June 2009, the Board office obtained information that Respondent was continuing to submit billings for conscious sedation in violation of his 2008 written agreement.
16. The billings for conscious sedation were made in the name of Respondent and also in the names of other dentists in Respondent's practice.
17. An investigation was conducted which revealed that Respondent had failed to abide by his August 2008 written agreement by continuing to engage in the administration of conscious sedation to patients.
18. During the course of this investigation, Respondent engaged in unethical and unprofessional conduct by knowingly providing false information to agents of the Board.

CONCLUSIONS OF LAW

19. The facts set forth above establish that Respondent appears to have repeatedly violated Board rules by:
 - A. Administering conscious sedation without a conscious sedation permit, in violation of Iowa Code Section 153.34(4)(2009) and 650 Iowa Administrative Code Sections 29.2(2) and 29.5(1);
 - B. Engaging in practice harmful or detrimental to the public by administering conscious sedation to patients without a permit, in violation of Iowa Code Section 153.34(4) and 650 Iowa Administrative Code Section 30.4(39);

- C. Engaging in practice harmful or detrimental to the public by administering conscious sedation in a facility not properly equipped, in violation of section 153.34(4) and 650 Iowa Administrative Code Section 29.4(2);
- D. Has engaged in unethical and unprofessional conduct by not abiding by his 2008 written agreement to refrain from initiating any conscious sedation cases, and by knowingly providing false information to agents of the Board during the course of an investigation in violation of 650 Iowa Administrative Code Section 27.9(4).

- 20. The Board concludes on the basis of the facts set forth above that this investigation has been sufficient to ensure that the Board is proceeding on the basis of reliable information. This matter has been reviewed by a consultant with expertise in the area of conscious sedation. Respondent has been allowed an opportunity to respond to the allegations against him.
- 21. The facts set forth above establish that Respondent's continued practice of dentistry would pose an immediate danger to the public health, safety or welfare.
- 22. To restrict Respondent's ability to administer, prescribe, or dispense controlled substances to patients for conscious sedation is insufficient due to Respondent's failure to abide by his own previous 2008 written agreement with the Board not to engage in conscious sedation.
- 23. The imposition of monitoring requirements or other interim safeguards would not be sufficient to protect the public health, safety, or welfare. Respondent has

billed for reimbursement for non-IV conscious sedation not only in his name but also in the names of other dentists in the same practice. The Board has evidence that Respondent has continued to administer conscious sedation after his August 2008 written agreement with the Board in which he stated he would refrain from sedation. Respondent has been untruthful about his administration of conscious sedation in his office and therefore the Board is unable to determine the full extent of his non compliance with the laws concerning sedation. Respondent's actions demonstrate a wanton disregard for the authority of the Board and the safety of his patients. Respondent's behavior also demonstrates that the Board is unable to trust that he will not continue to sedate unless his license to practice dentistry is suspended.

24. The immediate suspension of Respondent's license to practice dentistry in the state of Iowa is necessary to avoid immediate danger to the public discussed above.

ORDER

IT IS HEREBY ORDERED, in accordance with Iowa Code Section 17A.18A (2009) and 650 IAC 51.30, that the dental license of Respondent, Gary L. Jacobsen, D.D.S., shall be immediately suspended. Respondent shall immediately cease and desist from the practice of dentistry. Respondent shall be notified immediately of this Order pursuant to 650 IAC 51.30(3). A hearing on this Emergency Adjudicative Order shall be held on June 24, 2009, at 10:00 a.m. The hearing will be held at the Board office, located at 400 S.W. 8th Street, Suite D, Des Moines, Iowa.



Deena R. Kuempel, D.D.S., Chairperson
Iowa Dental Board
400 S.W. 8th Street, Suite D
Des Moines, Iowa 50309-4687

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

Rebecca A. Brommel
Brown, Winick, Graves, Gross,
Baskerville, & Schoenebaum, P.L.C.
666 Grand Avenue, Ste. 2000
Des Moines, IA 50309