

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

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

**DAVID L. BERNING, D.D.S., RESPONDENT**

**CARROLL, IOWA**

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**STATEMENT OF CHARGES, SETTLEMENT AGREEMENT AND FINAL ORDER**

**(combined)**

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**COMES NOW** the Iowa Dental Board (the Board), and David L. Berning, D.D.S., (Respondent), on May 18<sup>th</sup>, 2017, 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.

**NOTICE OF HEARING**

1. A hearing on this matter will not be held as the Board and Respondent have entered into the following combined Statement of Charges, Settlement Agreement and Final Order.
2. Respondent was issued license number 06790 to practice dentistry in the state of Iowa on July 1, 1982.
3. Respondent's Iowa dental license is current and will expire on August 31, 2018.

## **LEGAL AUTHORITY AND JURISDICTION**

4. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 153 and 272C.

## **STATEMENT OF CHARGES**

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

#### **COUNT I**

5. Respondent is charged under Iowa Code section 153.34(8) with failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry, in violation of 650 Iowa Administrative Code rule 30.4(16).

#### **COUNT II**

6. Respondent is charged under Iowa Code Section 153.34(4) with willful or repeated violation of the rules of the board by failing to protect the health of patients by assigning unlicensed auxiliary staff duties which cannot be legally delegated to them, in violation of 650 Iowa Administrative Code rules 27.5 and 30.4(44).

## **STATEMENT OF MATTERS ASSERTED**

7. Respondent is a general dentist practicing in Carroll, Iowa.
8. The Board has received multiple complaints from a third-party payer expressing concern with the level of care Respondent is providing to patients.
9. The Board subpoenaed and reviewed thirty patient records from Respondent's practice. These records were later forwarded to a board consultant for review.
10. Following review, the consultant identified concerns in multiple areas of practice and stated that Respondent is not practicing to an acceptable standard of care.

11. During the course of the investigation it was discovered that Respondent was allowing his dental assistants to perform procedures which legally cannot be delegated to them.
12. Respondent also allowed his dental assistants to perform procedures while he was out of the office which require a dentist to be in the office to provide direct supervision.

### **SETTLEMENT AGREEMENT**

13. Upon the Board's approval of this combined Statement of Charges, Settlement Agreement and Final Order, Respondent agrees to voluntarily surrender his license to practice dentistry in the state of Iowa effective ninety (90) days from the date of this Order.
14. Respondent understands that pursuant to 650 Iowa Administrative Code rule 51.34(2), a voluntary surrender, when accepted by the Board, shall have the same force and effect as an Order of Revocation.
15. This Agreement shall constitute Respondent's written statement of intention to surrender his Iowa dental license pursuant to rule 51.34(2) effective ninety (90) days from the date of this Order.
16. Respondent shall make proper arrangements for the discontinuance of his practice pursuant to 650 Iowa Administrative Code rule 27.10.

### **FINAL ORDER**

17. This combined Statement of Charges, Settlement Agreement and Final Order constitutes the resolution of a contested case proceeding.

18. 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 Matters Asserted, and waives any objections to the terms of this Settlement Agreement.
19. Respondent understands that by entering into this combined Statement of Charges, Settlement Agreement and Final Order, he cannot obtain a copy of the investigative file. Under Iowa Code section 272C.6(4), a copy of the investigative file may only be provided to a licensee after a Statement of Charges is filed but before the final resolution of those charges.
20. This combined Statement of Charges, Settlement Agreement and Final Order, is voluntarily submitted by Respondent to the Board for consideration.
21. Respondent acknowledges that he has the right to be represented by counsel in this matter.
22. Respondent agrees that the State's counsel may present this Order to the Board and may have *ex parte* communications with the Board while presenting it.
23. This combined Notice of Hearing, Settlement Agreement and Final Order becomes a public record available for inspection and copying upon execution of this agreement in accordance with the requirements of Iowa Code chapters 17A, 22 and 272C.
24. Respondent understands that the Board is required by federal law to report this Order to the National Practitioner Data Bank.

25. 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.
26. 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.
27. The Board's approval of this Statement of Charges, Settlement Agreement and Final Order shall constitute a **Final Order** of the Board.

  
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David L. Berning, D.D.S.  
Respondent

This combined Statement of Charges, Settlement Agreement and Final Order is approved by the Board on May 18<sup>th</sup>, 2017.

  
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STEVEN P. BRADLEY, D.D.S.  
Chairperson  
Iowa Dental Board  
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Des Moines, IA 50309

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