

BEFORE THE IOWA DENTAL BOARD

IN THE MATTER OF :

MARC A. HAGEN, D.D.S.

RESPONDENT

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On December 16, 2011, the Iowa Dental Board (Board) filed a Notice of Hearing and Statement of Charges against Marc A. Hagen, D.D.S. (Respondent) alleging that he had engaged in the practice of dentistry in Iowa after failing to renew a license to practice within sixty (60) days of its expiration. The hearing was held before the Board on February 1, 2012 at 1:00 p.m. in the Board's Conference Room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board presided at the hearing: Gary Roth, D.D.S., Chairperson; Lynn Curry, D.D.S.; Steven Fuller, D.D.S.; Michael Rovner, D.D.S.; Steve Bradley, D.D.S.; Marijo Beasler, R.D.H.; Mary Kelly, R.D.H.; Diane Meier and Kimberlee Spillers, Public Members. Respondent appeared and was represented by attorney John Holmes. Assistant Attorney General Sara Scott represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was recorded by a certified court reporter and was open to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1) and 650 IAC 51.20(13). Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate their decision. The Board directed the administrative law judge to draft their Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of Brian Sedars and Respondent, and State Exhibits 1-10 (See Exhibit Index for description).

FINDINGS OF FACT

1. Respondent was issued Iowa dental license number 07811 on January 8, 1996. His license is now current and will expire on August 31, 2012. Respondent practices as

a general dentist in Waverly, Iowa. His staff includes a receptionist, dental assistant, and a dental hygienist. (Testimony of Respondent; State Exhibits 2, 4, 9)

2. Iowa dental licenses expire on August 31 in even-numbered years. In July 2010, the Board sent a reminder notice to Iowa dental licensees whose licenses were due to expire on August 31, 2010. The reminder notice included the licensee's renewal application and the information concerning the renewal process. Licensees were warned that complete renewal applications must be received on or prior to August 31, 2010 to avoid a late fee. Licensees were further warned that failure to renew prior to November 1 would cause the license to lapse and become invalid for practice. (Testimony of Brian Sedars; State Exhibit 7)

3. Respondent admits receiving a license renewal notice from the Board in July 2010 along with his renewal application. (Testimony of Respondent)

4. In 2010, the Board also sent a second notice to licensees who had not yet submitted their renewal applications. The second notices were sent approximately two weeks prior to August 31, 2010. Respondent does not recall receiving a second renewal notice for his 2010 renewal. (Testimony of Brian Sedars; Respondent; State Exhibit 8)

5. On August 30, 2010, Respondent went to the Veridian Credit Union and purchased a counter check (check no. 101100524) in the amount of \$315.00 that was payable to the Iowa Board of Dental Examiners. The counter check is similar to a cashier's check. The money was immediately taken out of Respondent's account. Respondent kept a copy of the counter check receipt for his records.

Respondent submitted a signed affidavit and also testified about mailing the completed renewal application and the renewal fee. Respondent recalls placing the counter check and his completed renewal application form into a USPS Priority Mail cardboard letter mailer that was addressed to the Iowa Dental Board in Des Moines. He further remembers driving to the post office in Cedar Falls, Iowa during his lunch hour on August 30, 2010 and placing the mailer containing his renewal application and fee into the outgoing mail slot. (Testimony of Respondent; State Exhibit 5)

6. The Board never received the renewal application or the \$315 renewal fee that Respondent recalls mailing on August 30, 2010. Respondent's license lapsed on November 1, 2010. (Testimony of Brian Sedars; Respondent; State Exhibit 4)

7. When the Board receives a complete renewal application, the Board's electronic records are updated to show that the license has been renewed, and a renewal card is sent to the licensee. Licensees are required to prominently post the renewal card in their practice location with their original license. If a licensee fails to renew, no renewal card is sent. The Board does not contact licensees to ask why they failed to renew. Several hundred licensees choose not to renew their license for various reasons each renewal period, and it would require a significant expenditure of staff time to contact all of them to verify that they did not intend to renew. (Testimony of Brian Sedars)

8. Respondent did not receive his renewal card from the Board in 2010. Respondent knew that he was required to post the renewal card. In prior renewal years, Respondent had always posted the renewal card with his license. Respondent testified that the fact he did not receive a renewal card in 2010 was "not on his radar." His big concern at that time was having sufficient money to pay his employees and keep his practice open. Since Respondent paid for the counter check at the time it was issued, his credit union statements did not alert him to the fact that the counter check had never been presented for payment. The counter check expired twelve months after it was issued. Respondent believes that the credit union would have eventually notified him if it had not been presented for payment by August 30, 2011. (Testimony of Respondent)

9. On March 10, 2011, the Board received a complaint alleging that Respondent was practicing dentistry without a current license. On March 14, 2011, Board investigator Brian Sedars met with Respondent at his dental office. Respondent confirmed that he had been practicing dentistry continuously from his Waverly office since 2007. Respondent was very surprised when Mr. Sedars informed him that his license had lapsed.

Respondent told Mr. Sedars that he sent his renewal application to the Board before his license expired. Respondent produced the receipt for the counter check from Veridian Credit Union as documentation of his renewal. At Mr. Sedars' request, Respondent called Veridian Credit Union and discovered that the counter check had never cleared. Mr. Sedars called the Board office and verified that September 16, 2008 was the last time that the Board received a renewal fee from Respondent. Mr. Sedars informed Respondent that he needed to stop practicing dentistry immediately and not resume

practicing until his dental license was reinstated. Respondent fully complied. (Testimony of Brian Sedars; Respondent; State Exhibit 4)

10. Respondent renewed his dental license on March 17, 2011 and then returned to work. (Testimony of Respondent; Brian Sedars; State Exhibits 4, 6, 9)

CONCLUSIONS OF LAW

The Board is authorized to impose one or more of the disciplinary sanctions set forth in 650 IAC 30.2, including the imposition of civil penalties not to exceed \$10,000, when a licensee engages in the practice of dentistry in Iowa after failing to renew a license to practice within 60 days of the expiration of the license.¹

A license to practice dentistry must be renewed prior to the expiration date of the license. Beginning on July 1, 2008, dental licenses expire on August 31 of each even numbered year. The board notifies each licensee by mail of the expiration of the license.² Application for renewal must be made in writing on forms provided by the board at least 30 days before the current license expires.³ Applicants for license renewal must submit the appropriate fee, complete the continuing education required by 650-Chapter 15, and provide evidence of current certification in a nationally recognized course in cardiopulmonary resuscitation.⁴

The Board's rules allow licensees to file late renewal applications and pay a late fee. Failure to renew the license prior to September 1 following expiration results in an additional \$100 late fee. Failure to renew by October 1 following expiration results in an additional \$150 late fee.⁵ Failure to renew prior to November 1 causes the license to lapse and become invalid. A licensee whose license has lapsed and has become invalid is prohibited from practicing dentistry until the license is reinstated in accordance with rule 14.5.⁶

No renewal application shall be considered timely and sufficient until received by the board and accompanied by the material required for renewal and all applicable renewal

¹ 650 IAC 30.4(15).

² 650 IAC 14.1.

³ 650 IAC 14.1(1).

⁴ 650 IAC 14.1(2),(3),(4).

⁵ 650 IAC 14.4.

⁶ 650 IAC 14.4(2).

and late fees.⁷ The license to practice dentistry or dental hygiene as a dental assistant and the current renewal must be prominently displayed by the licensee or registrant at each permanent practice location.⁸

The preponderance of the evidence established that the Board did not receive Respondent's renewal application and renewal fee in 2010. Respondent's license lapsed on November 1, 2010, and Respondent practiced dentistry for more than four months with a lapsed dental license. The Board is sympathetic to the fact that Respondent believed he had properly submitted his renewal application. Nevertheless, it is the licensee's responsibility to ensure that the renewal application is received by the Board in a timely manner.

Respondent claims that he never received the second renewal notice sent to licensees in August 2010. Even if this is true, it is a moot point. By Respondent's account, he did not send his renewal application to the Board until August 30, 2010, which was approximately two weeks after the second notices were sent. Receipt of a second notice would have made no difference in Respondent's outcome.

Respondent selected the manner used to send his application and the payment method. Since he chose to send a counter check, Respondent could not verify the Board's receipt of the renewal fee by monitoring his bank statement. Respondent should have followed up with the Board and verified that the renewal application was in fact received, particularly when he did not receive his renewal card as expected. This should have been a red flag for Respondent that his renewal application was not in fact received. The circumstances of Respondent's violation justify imposition of a Citation and Warning with a civil penalty, consistent with past cases before the Board.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Marc A. Hagen, D.D.S is hereby CITED for violating 650 IAC 30.4(15) by practicing dentistry when his license was expired. Respondent is WARNED that further violations may result in more severe sanctions against his license.

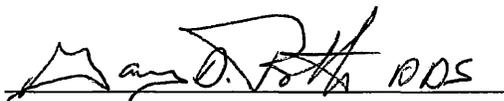
⁷ 650 IAC 14.4(1).

⁸ 650 IAC 10.2.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of five hundred dollars (\$500) within 60 days of the date of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 650 IAC 51.35(2) that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and any costs calculated by the executive director within thirty (30) days of receipt of the notice of costs.

Dated this ~~7th~~ day of *March*, 2012.

A handwritten signature in black ink, appearing to read "Gary Roth, D.D.S.", is written over a horizontal line.

Gary Roth, D.D.S.

Chairperson

Iowa Dental Board

cc: Sara Scott, Assistant Attorney General, Hoover Building (LOCAL)
John W. Holmes, Holmes & Holmes, 531 Commercial Street, Ste. 612, Waterloo,
IA, 50701 (CERTIFIED)

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A and Iowa Code section 153.33(5)(g) and (h).