

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

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

**GARY S. LUNA, D.D.S, RESPONDENT**

**FILE NO. 08-050**

**EMERGENCY ADJUDICATIVE ORDER**

**COMES NOW** the Iowa Dental Board, and finds that on April 25th, 2008, it was presented with evidence which establishes that Respondent's continued practice of sedation 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 Des Moines, Iowa and Boone, 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 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 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. All licensed dentists must submit a report within a period of 30 days to the Board of any mortality or other incident which results in temporary or permanent physical or

mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, conscious sedation or deep sedation/general anesthesia related thereto, pursuant to 650 IAC 29.9(1).

5. Respondent has regularly engaged in the conscious sedation of patients using oral medications since approximately 1985, and has never held a conscious sedation permit, as required by 650 Iowa Administrative Code 29.2(2) and 29.5(1).
6. The Board received information that Patient A was hospitalized shortly after being orally sedated by Respondent and later died.
7. Following its investigation and review, the Board alleges Respondent:
  - A. Administered conscious sedation to numerous patients without the required permit, and therefore without evidence of appropriate education, training, current certification in ACLS, appropriately trained staff, and a properly equipped facility.
  - B. Administered inappropriate medications and inappropriate doses of conscious sedation medications to patients, including Patient A.
  - C. Did not maintain a properly equipped facility to address a sedation emergency.
  - D. Did not maintain required certification in ACLS.
  - E. Did not properly monitor Patient A while the patient was under sedation.
  - F. Did not appropriately respond to Patient A's respiratory distress.
  - G. Did not timely call for emergency assistance for Patient A.
  - H. Did not report to the Board the death of Patient A which occurred after he provided conscious sedation to that patient.
  - I. Did not maintain appropriate patient records for Patient A.
  - J. Did not maintain appropriate patient records for other patients.
  - K. Failed to prescribe, administer, and/or dispense prescription drugs in accordance with federal laws.

## **CONCLUSIONS OF LAW**

8. The facts set forth above establish that Respondent appears to have willfully and repeatedly violated Board rules by:
  - A. Administering conscious sedation without a conscious sedation permit, in violation of Iowa Code Section 153.34(4) (2007) 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. 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. Failing to report within a period of 30 days to the Board a mortality, in violation of section 153.34(4) and 650 Iowa Administrative Code Section 29.9(1);
  - E. Prescribing, administering, and/or dispensing prescription drugs contrary to applicable federal laws, in violation of section 153.34(4) and 650 Iowa Administrative Code Section 16.2(5);
  - F. Failing to maintain patient records in a manner consistent with the protection of the welfare of the patient ,in violation of section 153.34(4) and 650 Iowa Administrative Code Section 650 IAC 27.11;
  - G. Practicing beyond the scope of his training, in violation of section 153.34(4) and 650 Iowa Administrative Code Section 30.4(43).
9. The facts set forth above establish that Respondent appears to have failed to maintain a reasonably satisfactory standard of competency, in violation of Iowa Code section 153.34(8) and 650 Iowa Administrative Code 30.4(16).

10. 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. Patient records that are the subject of the Statement of Charges and this Emergency Adjudicative Order have been reviewed by the entire Board as well as by a consultant with expertise in the area of conscious sedation. Respondent has been interviewed and allowed an opportunity to respond to the allegations against him. Other persons have been interviewed.
11. The facts set forth above establish that Respondent's continued practice of conscious sedation would pose an immediate danger to the public health, safety, or welfare, and are continuing.
12. The immediate restriction of Respondent's ability to administer, prescribe, or dispense controlled substances to patients for conscious sedation is necessary to avoid immediate danger to the public.
13. Respondent may continue to practice all other aspects of dentistry, as the Board has no evidence indicating Respondent's practice of general dentistry poses an immediate danger to the public health, safety, or welfare.
14. The imposition of monitoring requirements or other interim safeguards would not be sufficient to protect the public health, safety, or welfare because Respondent is not qualified to perform these sedation procedures.
15. The immediate suspension of Respondent's practice of administering, prescribing, or dispensing controlled substances to patients for conscious sedation is necessary to avoid immediate danger to the public.

### **ORDER**

**IT IS HEREBY ORDERED**, in accordance with Iowa Code Section 17A.18A (2007) and 650 IAC 51.30, that the dental license of Respondent, Gary S. Luna, D.D.S., is suspended from practicing conscious sedation. Respondent shall immediately cease and desist from administering, prescribing, or dispensing all controlled substance medications

and any other substance or medication used for the purposes of anti-anxiety or sedation. Respondent may continue to practice all other aspects of 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 and the Statement of Charges, which have been filed concurrently with this Order, shall be held on June 3, 2008, at 8:00 a.m. The hearing will be held at the Board office, located at 400 S.W. 8<sup>th</sup> Street, Suite D, Des Moines, Iowa.



Deena R. Kuempel, D.D.S., Chairperson  
Iowa Board of Dental Examiners  
400 S.W. 8<sup>th</sup> Street, Suite D  
Des Moines, Iowa 50309-4687

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

Kevin J. Driscoll  
Attorney for Respondent  
FINLEY, ALT, SMITH, SCHARNBERG,  
CRAIG, HILMES & GAFFNEY, P.C.  
699 Walnut Street, Ste. 1900  
Des Moines, IA 50309