

**BEFORE THE STATE OF NEW MEXICO
BOARD OF DENTAL HEALTH CARE**

IN THE MATTER OF:

STEWART P. AHN, D.D.S.
License No. DD-2025

Case No. 10-06-COM

Respondent.

DECISION AND ORDER

This matter was heard on October 21, 2011 before Hearing Officer Jessica Brewster, D.D.S., chair of the New Mexico Board of Dental Health Care. The hearing was conducted at the Regulation and Licensing Department, Construction Industries Division Conference Room, 5200 Oakland Avenue NE, Albuquerque, New Mexico. Gloria I. Lucero, Assistant Attorney General, appeared as administrative prosecutor. Respondent Stewart P. Ahn, D.D.S. appeared *pro se*.

A copy of the Hearing Officer's Report, filed on November 3, 2011, is attached hereto as "*Attachment A*" and incorporated by reference.

On November 5, 2011, a quorum of the Board met to consider and deliberate upon the administrative record established at the hearing, including the audio recording of the hearing and exhibits, and the Hearing Officer's Report. After considering and evaluating all of the testimony, exhibits and argument, and by unanimous approval of those Board members voting, the Board hereby renders this Decision and Order pursuant to the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 through 61-1-31.

Findings of Fact

The Board adopts the eighteen (18) Findings of Fact as set forth in the Hearing Officer's Report and incorporates them herein. [*Attachment A*]

Conclusions of Law

The Board determines that the administrative record and Findings of Fact in this matter support its adoption of the following Conclusions of Law.

1. The Board has jurisdiction over the parties and subject matter in this proceeding pursuant to the Dental Health Care Act. NMSA 1978, §§ 61-5A-10(F) (2003), 61-5A-21(A) (2003).

2. The Board investigates complaints and determines whether a licensed dentist has violated the Dental Health Care Act or the Board's rules, and has exclusive

power to discipline a licensed dentist who, following an administrative hearing, is found in violation. NMSA 1978, §§ 61-5A-10, 61-5A-21.

3. All notices in this matter, including the Notice of Contemplated Action, were served on Respondent in accordance with the Uniform Licensing Act, NMSA 1978, §§ 61-1-4 and 61-1-5.

4. Venue for this matter is appropriate in Albuquerque, New Mexico. NMSA 1978, § 61-1-6 (1957).

5. The Board has the power to discipline Respondent for any cause stated in the Dental Health Care Act. NMSA 1978, § 61-5A-10(F); 16.5.16.9(A) NMAC.

6. The Board applied its technical knowledge, experience and expertise in the practice of dentistry in making a judgment as to Respondent's adherence to professional standards of conduct for dentists licensed in New Mexico, and in evaluating the testimony and documentary evidence in the record and making its findings of fact, reaching its conclusions of law, and rendering a decision based on those findings and conclusions. NMSA 1978, § 61-1-11(C); Weiss v. N.M. Bd. of Dentistry, 110 N.M. 574 (1990).

7. The Board found relevant and persuasive the documentary evidence, and relied on both this evidence and the testimony in evaluating the entire administrative record and reaching its conclusions as to Respondent's failure to respond to the Board's two requests for his response to a patient complaint filed against him.

8. Generally, the standard of proof in administrative hearings is by a preponderance of the evidence. Foster v. Board of Dentistry, 103 N.M. 776, 777-778 (1986); NMSA 1978, § 61-1-13 (1993).

9. The Board's January 27, 2010 request for a response to a patient complaint filed against Respondent was received in his office and signed for by his receptionist on February 1, 2010. The Board's April 6, 2010 second request for a response to this complaint was received in Respondent's office and signed for by his receptionist on April 8, 2010.

10. Respondent has violated the Dental Health Care Act, NMSA 1978, § **61-5A-21(A)(14)** by his failure, two separate times, "to furnish the board ... or its representatives with information requested by the board ... in the course of an official investigation."

11. Respondent has violated the Dental Health Care Act, NMSA 1978, § **61-5A-21(A)(7)** by his specific violation, on two separate occasions, of the Dental Health Care Act, NMSA 1978, § **61-5A-21(A)(14)**.

12. The Board may impose a fine not to exceed one thousand dollars (\$1,000.00) for each violation of the Dental Health Care Act or the Board's rules. NMSA 1978, § 61-1-3(L) (1993).

13. A professional licensee who, following an administrative hearing, is found by the Board to have violated the Dental Health Care Act or the Board's rules, shall pay all costs of the Board's disciplinary proceedings. NMSA 1978, §§ 61-1-4(G) (2003); 61-5A-21(C).

ORDER

The New Mexico Board of Dental Care determines that Respondent **Stewart P. Ahn, D.D.S.** violated the Dental Health Care Act as specifically described above in the Findings of Fact (*Attachment A*) and Conclusions of Law.

IT IS THEREFORE ORDERED that:

A. Respondent **Stewart P. Ahn, D.D.S.** shall pay to the Board a fine in the amount of one thousand dollars (\$1,000.00) for his violations of the Dental Health Care Act. Respondent shall pay this fine within thirty (30) days after his receipt of the Board's Decision and Order.

B. Respondent **Stewart P. Ahn, D.D.S.** shall successfully complete, with a score of 75% or better, and return to the Board Administrator the New Mexico Dental Jurisprudence Examination within thirty (30) days after his receipt of the Board's Decision and Order.

Respondent shall return this jurisprudence examination to *Kathy Ortiz, Board Administrator, New Mexico Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504-5101.*

C. Respondent **Stewart P. Ahn, D.D.S.** shall successfully complete a minimum of six (6) hours of continuing education in ethics. A dentist Board member designated by the Board Chair shall approve this continuing education before Respondent enrolls. This continuing education may be completed online; however, the course must have a post examination that the respondent successfully completes. Respondent shall successfully complete this continuing education within thirty (30) days after his receipt of the Board's Decision and Order.

These six (6) hours of continuing education shall not count towards the triennial renewal requirement of sixty hours of continuing education prescribed by 16.5.10.8 NMAC. Respondent shall provide the Board Administrator written documentation that he has successfully and timely completed this continuing education.