

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

LINDSEY DONALD BURBANK, JR., D.D.S.
(License No. 10201)

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CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners (Board) as authorized by G.S. §90-41.1 (b) for consideration of a Consent Order in lieu of a formal administrative hearing. A settlement conference was held in this matter on October 7, 2016. Jacob R. Stump represented the Respondent, and Crystal S. Carlisle represented the Investigative Panel.

Based upon the consent of the parties hereto, the Board enters the following:

FINDINGS OF FACT

1. The North Carolina State Board of Dental Examiners is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding pursuant to the authority granted to it in Chapter 90 of the North Carolina General Statutes, including the Dental Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.
2. Respondent was licensed by credentialing to practice dentistry in North Carolina on September 18, 2015 and holds license number 10201.
3. Respondent has remained licensed to practice dentistry in North Carolina at all times since September 18, 2015 and was subject to the Dental Practice Act and the Board's Rules and Regulations at all times relevant hereto.

Patient Sharon K.

4. On November 18, 2015 patient, Sharon K. was treatment planned for a crown on tooth number 30.

5. On February 24, 2016 at the crown delivery appointment, Respondent was unable to get the crown to seat, so tooth number 30 was prepared for a new impression.

6. The dental assistant reported that when she was placing the retraction cord, the instrument fell into more decay.

7. Respondent informed the dental assistant that he was able to remove all of the decay, and he took another impression for a permanent crown.

8. Respondent failed to remove all of the decay from tooth 30 necessitating a root canal approximately nineteen (19) days later.

9. Respondent admits that he missed the decay during the crown preparation of tooth number 30 for patient Sharon K.

10. The standard of care for dentists licensed to practice dentistry in North Carolina required dentists to properly diagnose, treat, and remove caries.

11. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing to properly diagnose, treat, and remove the caries on tooth number 30 for patient Sharon K.

Patient Andrew J.

12. On February 22, 2016, patient Andrew J. was diagnosed by another dentist with caries in following teeth and surfaces: 2(MO), 3(DO), 4(MOD) and 5(DO).

13. On March 9, 2016, Respondent restored the teeth listed in paragraph 12 above using an occlusal tunnel preparation method.

14. Respondent asked the dental assistant to take radiographs during the procedure to verify caries removal and subsequently informed the dental assistant that all caries had been removed.

15. On March 11, 2016, post-operative radiographs were obtained by another dentist and caries remained in the teeth and surfaces treated by Respondent which required all of the fillings to be redone.

16. The standard of care for dentists licensed to practice dentistry in North Carolina required dentists to properly diagnose, treat, and remove caries.

17. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing to properly diagnose, treat, and remove the caries on teeth 2, 3, 4 and 5 for patient Andrew J.

Patient Deborah S.

18. On August 13, 2015, patient Deborah S. was treatment planned to have the amalgam fillings in the following teeth and surfaces replaced with resin restorations: 12(DO), 13(MOD) and 14(MO).

19. On October 14, 2015, Respondent removed only the occlusal portion of the amalgam fillings, leaving the interproximal portions without informing Patient Deborah S.

20. Patient Deborah S. was billed for multiple surface fillings on all three teeth despite the fact that only the occlusal portion was restored.

21. On March 1, 2016, another dentist noted that the amalgam material remained in the interproximal areas of the teeth, and the restorations were redone.

22. The standard of care for dentists licensed to practice dentistry in North Carolina required dentists not to deviate from a patient's treatment plan without obtaining informed consent.

23. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing to obtain patient Deborah S.'s consent to leave amalgam material in the interproximal areas of her teeth.

24. The standard of care for dentists licensed to practice dentistry in North Carolina required dentists to only bill patients or insurance companies for the teeth and surfaces restored.

25. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by billing for more surfaces that he restored.

Additional Patients

26. Over twenty (20) additional records were reviewed regarding Dr. Burbank's treatment of patients.

27. Review of the additional records revealed issues similar to those listed for patients Sharon K., Andrew J. and Deborah S. including Respondent's failure to: adequately diagnose, treat and remove decay; remove all amalgam material before placing resin restorations; and bill correctly for the procedures performed.

Based upon the foregoing Findings of Fact and with the consent of the parties hereto, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. The North Carolina State Board of Dental Examiners has jurisdiction over the subject matter of this action and over the person of the Respondent.

2. Respondent has stipulated that such allegations are legally sufficient to support Findings and Conclusions that she has violated G.S. 90-41 as specified in the Findings of Fact. Furthermore, Respondent has stipulated that he will not contest the allegations set forth in this Order, which allegations are previously incorporated in this Order, as if fully set forth herein, as Findings of Fact.

3. Respondent's failure to comply with the applicable standard of care in his treatment of patients Sharon K., Andrew J., Deborah S. and numerous other patients as set forth in the Findings of Fact was a dereliction from professional duty and constituted negligence in the practice of dentistry within the meaning of G.S. §90-41(a)(12).

4. Respondent's negligent acts constituted a violation of Article 2, Chapter 90, of the North Carolina General Statutes within the meaning of G.S. §90-41(a)(6).

Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties hereto, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. License number 10201 issued to Respondent for the practice of dentistry in North

Carolina is suspended for a period of three (3) years.

2. With Respondent's consent, his license to practice dentistry shall be immediately restored, with no period of active suspension, provided that for three (3) years he complies with the following probationary terms and conditions:

- (a) Respondent shall violate no provisions of the Dental Practice Act or the Board's Rules and Regulations;
- (b) Respondent shall neither permit nor direct any of his employees to violate any provision of the Dental Practice Act or the Board's Rules and regulations;
- (c) Respondent shall permit the Board and its agents to inspect and observe his office and patient records and interview employers, employees and co-workers at any time during normal office hours;
- (d) Respondent shall, within one (1) year from the date of this Order, complete continuing education courses especially designed for him by the University of North Carolina School of Dentistry or the East Carolina University School of Dental Medicine in conjunction with, and approved by, the North Carolina State Board of Dental Examiners. These will be comprehensive, remedial courses in operative dentistry (including the diagnosis, treatment and removal of caries) and proper billing. This requirement shall be in addition to the continuing education required by the Board for the renewal of Respondent's dental license. Respondent shall submit to the Board's Deputy Operations Officer written proof of satisfactory completion of this course before it will be accepted in

satisfaction of this requirement. It is the Respondent's responsibility to make all arrangements for and bear the cost of this course within the specified time;

- (e) Within thirty (30) days of the date of this Order, Respondent shall reimburse the Board for the costs associated with its investigation of this matter in the amount of \$3,380.00.

3. If Respondent fails to comply with any provision of this Order or breaches any term or condition thereof, the Board shall promptly schedule a public Show Cause Hearing to permit Respondent to show cause why his dental license should not be suspended. If, as a result of the Show Cause hearing, the Board is satisfied that Respondent failed to comply with or breached any term or condition of this Order, Respondent's license shall be rescinded and, upon written demand, Respondent shall immediately surrender his license and current renewal certificate to the Board for a period of three (3) years. This sanction shall be in addition to and not in lieu of any sanction the Board may impose as a result of future violations of the Dental Practice Act or the Board's Rules.

This the 9th day of November 2016.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By


Terry W. Friddle

Deputy Operations Officer

STATEMENT OF CONSENT

I, LINDSEY DONALD BURBANK, JR., D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety I assent to its terms and conditions set out herein. I freely and voluntarily admit that there is a factual basis for the findings of fact herein, that the findings of fact support the conclusions of law and that I will not contest the findings of fact, the conclusions of law, or the order of discipline if further disciplinary action is warranted in this matter. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order will become part of the Board's permanent public record.

This the 3rd day of November, 2016.


LINDSEY DONALD BURBANK, JR., D.D.S.