

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

Amber Nicole Devine, RDH
(License Number 9520)

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FINAL AGENCY DECISION

THIS MATTER was heard before the North Carolina State Board of Dental Examiners (Dental Board) on July 15, 2017, pursuant to N.C. Gen. Stat. §§ 90-231 and 150B-38 and 21 NCAC 16N .0504 of the Board's Rules. The Dental Board's Hearing Panel consisted of Board members Dr. Merlin W. Young, presiding; Dr. W. Stanley Allen, Dr. Millard W. Wester, III and Dr. Kenneth M. Sadler, Dr. Clifford O. Feingold, and Ms. Carla Stack. Board members Dr. William M. Litaker, Jr., and Mr. Dominic Totman did not participate in the hearing, deliberation or decision of this matter. Douglas Brocker represented the Investigative Panel and Fred Morelock represented the Hearing Panel. Amber Nicole Devine, R.D.H. ("Respondent") was properly served with notice but did not attend the hearing.

Based upon the evidence produced at the hearing, the Board enters the following:

FINDINGS OF FACT

1. The Dental Board 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 Hygiene Act in Article 16, and the Rules and Regulations of the North Carolina State Board of Dental Examiners, set forth in 21 North Carolina Administrative Code Chapter 16.

2. Respondent was licensed to practice dental hygiene on July 9, 2010 and holds license number 9520.

3. At all times relevant hereto, Respondent was subject to the Dental Hygiene Act and the Dental Board's Rules and Regulations.

4. At all relevant times herein, Respondent provided the Board with the following address of record at which all documents were served upon her: 26 Douglas Fir Avenue, Arden, NC 28704

5. On April 6, 2016, Respondent had a working interview for a dental hygiene position in a private dental office of Dr. George L. Richards, Jr (Dental Practice). Two members of the staff reported to the office manager that Respondent smelled of alcohol. When confronted by a staff member about the smell of alcohol, Respondent initially denied having alcohol with her. However, a bottle of clear liquid was found in Respondent's purse, and Respondent later admitted it was alcohol at that time.

6. Respondent was impaired with alcohol and unfit to practice dental hygiene at the April 6, 2016 working interview at the Dental Practice.

7. A background check revealed that Respondent was found guilty of Driving While Impaired and Open Container after Consuming Alcohol in Buncombe County on February 20, 2012, for offenses occurring on June 10, 2011.

8. On July 14, 2016, Respondent met with the IP regarding the results of its investigation in a pre-hearing conference.

9. After reviewing the information presented at the pre-hearing conference, the IP sent a letter to Respondent dated July 22, 2016. In the letter, the IP requested that Respondent immediately obtain a substance abuse assessment through the North Carolina Caring Dental Professionals Program ("CDP"). The letter requested Respondent

to notify the Board of her intent to comply with the request no later than July 29, 2016. Respondent received the July 22 letter.

10. Respondent contacted Nancy Davis, Executive Director of the CDP on July 29, 2016 regarding a potential substance abuse assessment. Respondent maintained the position that she had not been drinking alcohol at the April 6 working interview, but rather than she had rubbed hand sanitizer all over her body, which made her smell of alcohol.

11. The Board did not find Respondent's explanation to Ms. Davis to be credible.

12. Respondent refused to participate in a substance abuse assessment, citing financial issues as the reason for her refusal.

13. Respondent did not reply to the July 22 letter or obtain an assessment.

14. On August 24, 2016, the IP sent another letter to Respondent informing her that it would recommend a summary suspension of her license if she failed to obtain the substance abuse assessment by September 2, 2016. Respondent received the August 24 letter.

15. On August 29, 2016, Nancy Davis contacted Respondent and recommended a less-expensive, one-day assessment program that could offer a flexible payment arrangement to Respondent. Respondent still did not participate in the assessment, again citing financial issues.

16. Respondent did not reply to the August 24 letter and failed to undergo a substance abuse assessment through CDP by the September 2 deadline.

17. On September 15, 2016, the Dental Board found that the public health, safety, and welfare required emergency action related to Respondent's conduct and summarily suspended Respondent's license.

18. On February 17, 2017, the Investigative Panel issued a Notice of the Hearing set for July 15, 2017, a Prehearing Management and Scheduling Order, a Motion for Substance Abuse Evaluation pursuant to Rule 35 with exhibits A-F, and a Notice of Motion Hearing set for March 10, 2017.

19. On March 2, 2017, Respondent was served and personally signed for receipt of the Notice of Hearing, the Motion and Notice of Hearing for Substance Abuse Evaluation pursuant to Rule 35, and a Prehearing Management and Scheduling Order.

20. Respondent did not appear at the hearing on the Motion for Substance Abuse Evaluation pursuant to Rule 35 which was held on March 10, 2017.

21. On March 10, 2017, the Dental Board entered an order requiring Respondent to meet with CDP to set up an examination consisting of drug testing, assessment of potential substance abuse, and any related physical or mental health conditions.

22. The Investigative Panel served Respondent with the March 10, 2017 Order by US mail at the same address on record with the Board and at which she signed for the certified mail on March 2. The Order was not returned to the Investigative Panel as undeliverable.

23. Respondent has not obtained a substance abuse assessment or otherwise complied with the Dental Board's March 10, 2017 order compelling an examination.

24. After Respondent failed to comply with the Order to Compel, the Investigative Panel served her with its First Request for Admissions on May 15, 2017.

25. The Requests for Admissions were served on Respondent by US mail at her same address of record and were not returned to the Investigative Panel as undeliverable.

26. Respondent was required to respond to the Request for Admission no later than June 19, 2017 but failed to do so.

27. Respondent's 2012 conviction for driving while impaired, her intoxication at an April 6, 2016 working interview, her failure to comply with the Investigative Panel's repeated requests to obtain an assessment, her failure to comply with this Board's March 10, 2017 Order compelling an examination, and her failure to appear at the motion and contested case hearing, of which she received proper and legally sufficient notice, are consistent with behavior of an active addict.

Based upon the Findings of Fact and the consent of the parties, the Board hereby enters the following:

CONCLUSIONS OF LAW

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

2. Respondent was properly served with notice of this hearing no later than March 2 but failed to appear at the contested case hearing held on July 15 at the Dental Board offices.

3. Respondent was properly served with the IP's Requests for Admission on May 15 and failed to respond to the Requests for Admission by June 19.

4. All the IP's Requests for Admission are deemed admitted and conclusively established for the purposes of this proceeding, pursuant to Rule 36 of the North Carolina Rules of Civil Procedure.

5. Respondent is a chronic user of intoxicants, drugs, or narcotics to the extent that the same impairs her ability to practice dental hygiene in violation of N.C. Gen. Stat. § 90-229(a)(4).

6. Respondent was properly served with the Motion, Notice of Hearing, and March 10 Order Granting IP's Motion for Substance Abuse Examination.

7. Respondent failed to comply with the Board's March 10 Order in violation of N.C. Gen. Stat. § 90-229(a)(6) and 21 NCAC 16V .0102(4).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board enters:

ORDER OF DISCIPLINE

1. Respondent's dental hygiene license in North Carolina is hereby **REVOKED**.

2. If Respondent petitions the Board for reinstatement of her dental hygiene license, in addition to the other requirements for licensure set forth in the Dental Hygiene Practice Act, she will have the burden of demonstrating, by clear and convincing evidence that:

- a) Respondent obtained a substance abuse assessment at a facility approved by CDP. Respondent followed all recommendations provided by the approved treatment facility and participated in any in-patient, out-patient or after-care treatment plan recommended by the

approved treatment facility.

- b) If recommended by the assessment, Respondent shall enter into a contract with the North Carolina Caring Dental Professionals (CDP). The terms of the contract are at the sole discretion of the CDP after consideration of the assessment and Respondent's treatment providers. Respondent must comply with all provisions of that contract. Respondent shall sign a release with the Caring Dental Professionals permitting them to submit monthly reports to the Board regarding her progress in the program;
- c) Respondent has maintained continuous abstinence from alcohol and all drugs, other than those prescribed to her by a treating physician who is aware of her addiction, for a period deemed sufficient to CDP and confirmed through compliance with a CDP Participation Agreement; and
- d) Respondent has obtained the support and advocacy of the CDP, including that Respondent is not impaired and can practice dental hygiene safely in the state of North Carolina.

3. If the Dental Board reinstates Respondent's license in the future, it may impose probationary terms and conditions of reinstatement as deemed necessary for the protection of the public.

4. The Board shall retain jurisdiction of this matter and Respondent to enforce the provisions herein or enter orders as necessary in the future.

This the 15th day of July, 2017.

Merlin W. Young DDS
Dr. Merlin W. Young
Hearing Panel Chair

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS