BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

PATRICK A. McMILLAN, D.D.S.  )
(License No. 5166)  ) 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. The parties hereby consent to the Findings of Fact and Conclusions of Law set out herein and to the entry of the Order of Discipline.

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 Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.

2. Dr. Patrick A. McMillan (Dr. McMillan or Respondent), was licensed to practice dentistry in North Carolina on July 1, 1983 and holds license number 5166.

3. Respondent has remained licensed to practice dentistry in North Carolina since July 1, 1983 and was subject to the Dental Practice Act and the Board’s Rules and Regulations at all times relevant hereto.
4. At all times relevant hereto, Dr. McMillan was engaged in the practice of dentistry in Pilot Mountain, North Carolina.

5. At all times relevant hereto, Dr. McMillan treated a number of patients who received Medicaid benefits from the North Carolina Division of Medical Assistance (DMA or Medicaid).

6. For the period before August 2010, the Respondent failed to ensure that his staff used the proper billing codes when preparing invoices for Medicaid.

7. On a number of occasions before August 2010, the Respondent’s staff selected the incorrect billing code for work performed by the Respondent and therefore overbilled DMA.

8. The Respondent financially benefited from his staff’s billing errors.

9. The standard of care applicable to North Carolina dentists requires dentists to supervise their staff to ensure that all claims submitted to DMA are accurate and complete.

10. There is no evidence that the Respondent intentionally engaged in dishonest conduct.

11. Prior to August 2010, the Respondent failed to maintain complete patient records. Before August 2010, his records were kept on 3 x 5 inch index cards and did not typically include diagnoses, treatment plans, description of materials used in restorative cases, notations of the kind and
amount of anesthetic administered, lists of patient symptoms, notations of discussions with parents of minor patients or consent forms for extractions.

12. The standard of care applicable to North Carolina dentists requires dentists to maintain complete patient records, including diagnoses, symptoms, treatment plans, descriptions of restorative materials used, notations of the kind and amount of anesthetic administered, notations of discussions with the parents of minor patients and proof of consent for extractions.

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 had proper notice of this matter and is properly before the Hearing Panel of the North Carolina State Board of Dental Examiners.

3. By failing to supervise his staff to ensure that all claims submitted to DMA on his behalf were accurate, Dr. McMillan violated the standard of care and thereby engaged in negligence in the practice of dentistry, in violation of N.C. Gen. Stat. §§ 90-41(a)(6) and (12).
4. By failing to maintain adequate patient records, Dr. McMillan violated the applicable standard of care and thereby engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. §§ 90-41(a)(6) and (12).

Based upon the consent of the parties and the record herein the Dental Board also hereby enters the following

FINDINGS OF FACT RELEVANT TO THE CHOICE OF DISCIPLINE

1. The Respondent’s misconduct is mitigated by the following factors:
   a. The Respondent has no prior discipline.
   b. The Respondent’s misconduct occurred approximately four years ago and is therefore somewhat remote in time.
   c. No patient has complained and there is no evidence that any patient was harmed by the Respondent’s failure to supervise his billing staff or his failure to maintain complete patient records.
   d. Dr. McMillan has taken steps to improve his billing process and ensure appropriate supervision of his staff.
   e. Dr. McMillan has taken steps to improve his record keeping.
   f. Dr. McMillan has made restitution to Medicaid in the amount of $26,700.00.
2. The Respondent's misconduct is aggravated by the following factors:
   a. The Respondent has substantial experience in the practice of dentistry.

   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 5166 issued to the Respondent for the practice of dentistry in North Carolina is hereby suspended for one (1) year.

2. With the Respondent's consent, his dental license to practice dentistry shall be immediately provisionally reinstated, with no period of active suspension, provided that, for the five (5) years from the date of this Order, he adheres to the following probationary terms and conditions:
   (a) Respondent shall violate no provision of the Dental Practice Act or the Board's Rules and Regulations;
   (b) Respondent shall neither direct nor permit 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, conduct random review of patient records and interview employers, employees and co-workers at any time during normal office hours;

(d) Respondent shall, within one (1) year of the date of this Order, successfully complete continuing education courses especially designed for him by the University of North Carolina School of Dentistry in conjunction with, and approved by, the North Carolina State Board of Dental Examiners. These will be comprehensive, remedial courses in record keeping, ethics, jurisprudence, procedure coding and submitting Medicaid reimbursement claims. 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 these courses before they will be accepted in satisfaction of this requirement. It is the Respondent’s responsibility to make all arrangements for and bear the cost of the courses within the specified time;
(e) Respondent shall maintain copies of all current Medicaid policy manuals and the ADA Current Dental Terminology manual at his dental office.

(f) Respondent shall reimburse the Board for the costs associated with its investigation of this matter in the amount of $430.00

This the 17 day of November, 2014.

THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

By: __________________________

Terry W. Friddle
Deputy Operations Officer
STATEMENT OF CONSENT

I, Patrick McMillan, D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety and that I do freely and voluntarily admit to the Findings of Fact set forth therein, that the Findings of Fact support the Conclusions of Law, that I will not contest the Findings of Fact should further disciplinary action be warranted in this matter and that I assent to the terms and conditions set forth therein. By signing this Statement of Consent I hereby express my understanding that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order shall become a part of the permanent public record of the Board.

This the ______ day of ______, 2014.

PATRICK MCMILLAN, D.D.S.