

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

TUNG THAI NGUYEN, D.D.S.)
(License No. 7227)) FINAL AGENCY DECISION)

THIS MATTER was heard before the North Carolina State Board of Dental Examiners (Dental Board) on December 12, 2014 pursuant to N.C. Gen. Stat. §§ 90-41.1 and 150B-38 and 21 NCAC 16N .0504 of the Board’s Rules. The Dental Board’s Hearing Panel consisted of Board members [Dr. Clifford O. Feingold, presiding; Dr. William Litaker, Dr. Kenneth M. Sadler, Dr. Merlin W. Young and Dr. David Howdy. Board members Dr. W. Stanley Allen, Ms. Carla Stack and Dr. James B. Hemby, Jr., did not participate in the hearing, deliberation or decision of this matter. The Petitioner, Dr. Tung Thai Nguyen, was represented by David Freedman. Carolin Bakewell represented the Investigative Panel and Thomas F. Moffitt represented the Hearing Panel.

Based upon the stipulations of the parties and 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 Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.

2. Dr. Nguyen was licensed to practice dentistry in North Carolina on September 26, 2000.

3. Prior to August 4, 2009, Dr. Nguyen was engaged in the practice of general dentistry in Greensboro, North Carolina.

4. On October 15, 2004, Dr. Nguyen entered into a Consent Order whereby he was Reprimanded for permitting a dental assistant to perform a prophylaxis on a minor patient and for failing to determine whether the dental assistant placed sealants on the patient's teeth before billing HealthChoice for the sealants.

5. Beginning no later than 2005, Dr. Nguyen embarked on a wide-ranging scheme to defraud the North Carolina Department of Medical Assistance (DMA or Medicaid) by falsifying his patient records and permitting his staff to bill DMA for services that he had not actually provided.

6. On February 18, 2009, the Dental Board filed a Notice of Hearing against Dr. Nguyen, charging him with fraudulently billing for fillings when only sealants had been placed and for exaggerating the number of sealants and fillings delivered. The Investigative Panel also charged Dr. Nguyen with making false and misleading statements to the Dental Board in two letters in 2008 concerning services provided to two of his patients.

7. On August 4, 2009, the Dental Board and Dr. Nguyen entered a Consent Order revoking Dr. Nguyen's dental license based on findings that he had fraudulently billed DMA, received payments based on his fraudulent bills

and made false statements to the Dental Board in violation of the Dental Practice Act.

8. Meanwhile, on July 7, 2009, Dr. Nguyen applied for a dental license with the West Virginia Dental Board. In his application, Dr. Nguyen falsely stated that he had never been a "party to a violation of the dental laws of [West Virginia] or any other jurisdiction."

9. On September 26, 2011, the United States Attorney for the Middle District of North Carolina charged Dr. Nguyen with 17 counts of felony health care fraud and eight counts of falsifying records for payment of health care benefits. The indictment charged Dr. Nguyen with exaggerating the number of fillings he performed and billing DMA for providing metal-based partial dentures when in fact he had delivered lower cost resin-based partial dentures.

10. On November 3, 2011, Dr. Nguyen pled guilty to two counts of felony health care fraud and one felony count of falsifying records for payment of health care benefits as part of a plea bargain with the federal government.

11. On March 14, 2012, Dr. Nguyen was convicted in federal court of the three felony charges to which he had entered guilty pleas. The remaining charges against him were dismissed.

12. Dr. Nguyen was sentenced to two months in prison, followed by one year of supervised release. He was ordered to pay a \$20,000 fine and make \$73,369.48 in restitution to the DMA.

13. By pleading guilty to and being convicted of felony health care fraud and felony falsification of records, Dr. Nguyen violated G.S. § 90-41(a)(4).

14. Dr. Nguyen timely paid the fine and restitution required pursuant to the judgment in his criminal case.

15. Following the criminal prosecution, the United States Attorney's Office filed a civil action against Dr. Nguyen, seeking reimbursement for overpayments made to him by Medicaid.

16. In September 2012, Dr. Nguyen entered into a settlement of the federal civil lawsuit, whereby he agreed to pay \$400,000 in restitution.

17. Dr. Nguyen has made the restitution required by the settlement of the federal civil case.

18. In addition to the overbilling that was the subject of the 2009 Dental Board case and the federal litigation, Dr. Nguyen also permitted his staff to incorrectly bill DMA as follows:

- a) Routine prophylaxes were billed as full mouth debridements;
- b) DMA was billed for alveoloplasties using the American Dental Association Code of Dental Terminology Code D7310, when the lower-paying Code D7311 should have been used.
- c) DMA was billed for sealants placed on teeth that were about to exfoliate.
- d) DMA was billed for sedative fillings allegedly placed on the same day as permanent restorations.

e) DMA was billed for fillings placed in teeth that Dr. Nguyen had planned to extract.

f) DMA was billed for a four-surface filling that Dr. Nguyen claimed he had placed on a tooth fragment.

19. Dr. Nguyen has not made restitution for any of the overbilling described in paragraph 18.

20. In a deposition in July 2014, Dr. Nguyen denied that he had intentionally directed his staff to bill Medicaid for metal based partials when resin-based partials had been supplied. Instead, he falsely testified that Medicaid was overbilled as the result of unintentional errors by his office staff.

21. Dr. Nguyen's 2014 deposition testimony directly contradicted his admission in federal court that he was guilty of intentionally billing Medicaid for providing metal based partial dentures when he in fact had delivered lower cost resin based partials.

22. Dr. Nguyen produced four character letters in support of his petition for reinstatement, but presented no live testimony other than this own.

23. Three of the four character letters Dr. Nguyen presented were from fellow dentists to whom he referred patients while he was in practice. The character letters did not make it clear how much the authors knew about Dr. Nguyen's misconduct.

24. Dr. Nguyen presented evidence that he was active in his religious communities both before and after the misconduct that led to the revocation of his dental license.

25. Although Dr. Nguyen testified that he would not repeat his dishonest conduct if allowed to resume the practice of dentistry, the Dental Board did not find these assurances sufficient, in light of his disciplinary record, the lengthy period during which he committed repeated acts of dishonesty and greed, his willingness to lie under oath as recently as July 2014, and the scanty evidence he presented of reformation of character.

26. Dr. Nguyen presented evidence that he has taken numerous continuing education courses in 2012 and 2013. It was unclear how much time he actually spent taking the courses, all of which were computer based and at least some of which apparently could be taken in a very few minutes.

27. Some of the CE courses that Dr. Nguyen took dealt with non-clinical topics. None of the courses dealt with dental insurance coding or billing.

28. In September 2014, Dr. Nguyen took the CITA licensing examination but failed to pass the prosthodontic section.

Based upon the foregoing Findings of Fact, the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW

1. The Hearing Panel of the North Carolina State Board of Dental Examiners has jurisdiction over the subject of this proceeding and over the person of the Petitioner, Dr. Tung Thai Nguyen.

2. The Petitioner has failed to show that he has good moral character, that he has reformed and that he can safely resume the practice of dentistry in North Carolina.

3. The Petitioner failed to show that he is competent to practice dentistry by failing the prosthodontic section of the CITA examination.

WHEREFORE, the Hearing Panel enters the following order:

The Petitioner's petition for reinstatement of his North Carolina dental is hereby DENIED. The Petitioner must wait at least (1) one year before seeking reinstatement of his dental license.

This the 4th day of February, 2015.



Dr. Clifford O. Feingold, Chair
Hearing Panel