

3. Prior to August 4, 2009, Dr. Nguyen worked as a general dentist in Greensboro, North Carolina.

4. On October 14, 2004, Dr. Nguyen entered 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 a private insurer for the sealants.

5. Beginning no later than 2005, and while he was still under the conditions of and the period of deferment in the 2004 Consent Order, Dr. Nguyen embarked on a 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 performed.

6. On February 19, 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 July 24, 2009, the Dental Board filed an amended notice of hearing, adding additional allegations of Medicaid billing fraud against Petitioner.

8. 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 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.

9. On June 27, 2013, Dr. Nguyen first petitioned the Dental Board for reinstatement of his dental license ("2013 Petition").

10. On December 12, 2014, the Dental Board Hearing Panel held a formal hearing to consider Dr. Nguyen's 2013 Petition for reinstatement of his dental license.

11. On February 4, 2015, the Board Hearing Panel issued a Final Agency Decision denying Dr. Nguyen's 2013 Petition for reinstatement and made the following findings:

- a. 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."
- b. 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.
- c. 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.

- d. On March 14, 2012, Dr. Nguyen was convicted in federal court of three felony charges to which he had entered guilty pleas. The remaining charges against him were dismissed.
- e. Dr. Nguyen was sentenced to two months in prison, followed by one year of supervised release. He was ordered to pay a \$20,000.00 fine and make \$73,369.48 in restitution to the DMA.
- f. 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).
- g. Dr. Nguyen timely paid the fine and restitution required pursuant to the judgment in his criminal case.
- h. 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.
- i. In September 2012, Dr. Nguyen entered into a settlement of the federal civil lawsuit, whereby he agreed to pay \$400,000 in restitution.
- j. Dr. Nguyen has made the restitution required by the settlement of the federal civil case.
- k. 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:
 - i. Routine prophylaxes were billed as full mouth debridements;

- ii. 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;
 - iii. DMA was billed for sealants placed on teeth that were about to exfoliate;
 - iv. DMA was billed for sedative fillings allegedly placed on the same day as permanent restorations;
 - v. DMA was billed for fillings placed in teeth that Dr. Nguyen had planned to extract;
 - vi. DMA was billed for a four-surface filling that Dr. Nguyen claimed he had placed on a tooth fragment.
- l. Dr. Nguyen had not made restitution for any of the overbilling described in paragraph k;
 - m. 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;
 - n. 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;
 - o. Dr. Nguyen produced four character letters in support of his petition for reinstatement, but presented no live testimony other than his own.

- p. 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;
- q. 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;
- r. 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;
- s. Dr. Nguyen presented evidence that he had 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 very few minutes;
- t. Some of the continuing education courses that Dr. Nguyen took dealt with non-clinical topics. None of the courses dealt with dental insurance coding or billing; and
- u. In September 2014, Dr. Nguyen took the CITA licensing examination but failed to pass the prosthodontic section.

12. Based on the foregoing findings, the Board Hearing Panel made the following conclusions in its February 4, 2015 Final Agency Decision:

- a. Dr. Nguyen failed to show that he had good moral character, had reformed, or that he could safely resume the practice of dentistry in North Carolina; and
- b. Dr. Nguyen failed to show that he is competent to practice dentistry by failing the prosthodontic section of the CITA examination.

13. In its February 3, 2015 Final Agency Decision, the Hearing Panel denied Dr. Nguyen's June 6, 2013 petition for reinstatement and directed that Dr. Nguyen must wait at least one year before seeking reinstatement of his dental license.

14. On January 26, 2017, Dr. Nguyen submitted to the Board a new petition to restore his license to practice dentistry.

15. While he was practicing dentistry up through 2009, Petitioner intentionally directed his staff to submit numerous claims to DMA that he knew were false and fraudulent at the time they were submitted, despite his employees telling Dr. Nguyen that he was submitting the wrong CDT codes to DMA.

16. For example, despite warnings from his staff, Respondent repeatedly billed DMA for placing metal-based partial dentures when he only placed acrylic-based partial dentures. At the time, DMA's reimbursement rate for metal-based partial dentures was approximately \$100 more for each patient than for the acrylic-based partial denture that he placed.

17. Respondent also repeatedly knowingly and improperly billed DMA for placing a sedative or temporary filling at the same visit in which he billed DMA for

performing a pulpotomy and permanent restoration. The reimbursement for the pulpotomy already included the service of the sedative or temporary filling so that Respondent regularly intentionally billed DMA twice for the same service. For the sedative or temporary filling code, CDT 2940, Respondent billed DMA over \$100,000, which amount he has not repaid to DMA.

18. Respondent also created fictitious treatment records that he knew would be used by his staff to submit false claims to DMA asserting that he had done multiple fillings when in fact he had placed a single, multiple surface filling. During this time, the reimbursement rate from DMA for separate fillings was more than for a single, multiple surface filling on the same tooth surfaces. Respondent knowingly and intentionally wrote numerous fictitious treatment records to submit false claims to improperly obtain higher reimbursement from DMA.

19. Dr. Nguyen eventually passed all six licensing examinations required by the Council for Interstate Agency (CITA) within 18 months, between September 20, 2014 and March 16, 2016, although he failed the diagnostic skills, endodontic, and prosthodontic examinations on his initial attempts.

20. Dr. Nguyen testified that if the Board restores his license, he wants to volunteer his services in dental clinics and to those in need.

21. However, Dr. Nguyen has not volunteered his time as a dental assistant, or any other service in a dental setting that does not require a dental license, in the approximately eight (8) years since his license was revoked.

22. Beginning in 2015, Dr. Nguyen travelled to Peru on three occasions to perform volunteer dentistry without notifying the Peruvian authorities that his license to

practice dentistry had been revoked and that he did not hold a valid dental license anywhere, before performing dentistry in that country.

23. Dr. Nguyen holds at least \$2 million dollars of investments in non-retirement investment accounts and purchased nine or ten rental properties. These assets were funded by money received from his dental practice before his license was revoked, including his improper billing to DMA.

24. Dr. Nguyen has still not paid restitution for the overbilling described in paragraph 11(k) above, and did not calculate the actual amount he overbilled because, as he testified, "nobody asked [him] to do that."

25. Dr. Nguyen still does not know the total amount of money he improperly received due to his overbilling Medicaid.

26. Part of the effect of Dr. Nguyen's improperly taking money from DMA to which he wasn't entitled is that Medicaid did not have those funds to provide services to economically disadvantaged North Carolina residents who desperately needed dental care.

27. After the February 3, 2015 Final Agency Decision denying Dr. Nguyen's petition for reinstatement, Dr. Nguyen contacted the North Carolina Caring Dental Professionals to see if the program would accept him as a participant.

28. North Carolina Caring Dental Professionals did not accept Dr. Nguyen into its program.

29. Dr. Nguyen also sought a forensic psychological assessment from psychiatrist Dr. Lance Reger.

30. The purpose of Dr. Reger's assessment was to determine whether Dr. Nguyen has a diagnosable psychological condition that causes or contributes to him not having good moral character.

31. In connection with the psychological assessment, Dr. Reger referred Dr. Nguyen to Dr. Nicole Cantley to perform psychological testing.

32. Dr. Cantley reported in part that: "There is reason to think that he may have a poor prognosis for staying out of trouble." Dr. Reger concluded that, in his opinion, Dr. Nguyen does not suffer from a diagnosable psychological condition that would prevent him from achieving reformation, and noted that there is evidence that Dr. Nguyen has taken some steps toward reformation.

33. Dr. Reger, however, declined to offer an opinion that Dr. Nguyen had reformed at the time of his examination.

34. Dr. Nguyen also sought psychological counseling from Dr. Chris Spaulding, a licensed psychologist, to work toward reinstatement of his dental license.

35. Dr. Nguyen began seeing Dr. Spaulding for counseling in September 2015.

36. In response to an interrogatory from the Investigative Panel, Dr. Nguyen provided a list of the dates he participated in counseling with Dr. Spaulding. Dr. Nguyen verified the interrogatory answer providing this information.

37. The counseling dates provided by Dr. Nguyen represented a picture of fairly regular treatment sessions with Dr. Spaulding from September 2015 through at least April 2017.

38. In his deposition, Dr. Nguyen confirmed, under oath, that he participated in counseling on the dates listed in his verified interrogatory response.

39. However, contrary to Dr. Nguyen's statements, Dr. Spaulding's records demonstrate that there was a seven (7) month gap in sessions, where Dr. Nguyen did not participate in counseling, from July 2016 to March 2017.

40. Dr. Nguyen provided the Investigative Panel with untrue verified information about his counseling sessions with Dr. Spaulding and confirmed this false or inaccurate information in sworn testimony at his deposition on August 22, 2017.

41. Upon cross examination and after being presented with the actual treatment records from Dr. Spaulding, Dr. Nguyen subsequently admitted in sworn testimony at the hearing on September 8, 2017 that his verified response and deposition testimony were not accurate and that there was a seven (7) month period where he did not participate in counseling.

42. Dr. Spaulding's treatment records indicate that several of the sessions were focused on "writ[ing] out and practic[ing] conversation for taking responsibility to the Board," as opposed to actual work on reformation of character.

43. For five (5) of the sessions listed in Dr. Spaulding's treatment records, there is no indication who saw Dr. Nguyen for the session, there are no notes about what was discussed in the session, and there is no assignment for the next session.

44. Dr. Spaulding testified that he worked with Dr. Nguyen on the concepts of accepting personal responsibility for his prior actions and integrity.

45. Dr. Spaulding testified that he had not determined the underlying reason Dr. Nguyen engaged in a pattern of fraudulent behavior in his billing to Medicaid.

46. Dr. Spaulding further testified, in his opinion, that the root cause or underlying reason that Dr. Nguyen engaged in a pattern of fraudulent behavior in his

billing to Medicaid “doesn’t matter,” “make[s] zero difference,” and “is not relevant for my treatment of him [Dr. Nguyen].”

47. Dr. Spaulding further testified Dr. Nguyen identified greed as the reason for his prior misconduct but stated: “I was not treating greed. Greed is not something that, you know, one can treat.”

48. Dr. Nguyen expressed fear of being tempted to commit fraud again during his treatment sessions with Dr. Spaulding. Dr. Spaulding testified that: “There is no making temptation go away”

49. Despite not understanding the underlying reason for the extended pattern of Dr. Nguyen’s fraudulent behavior, Dr. Spaulding testified that, in his opinion, Dr. Nguyen was safe to return to practice.

50. Dr. Spaulding testified that he did not diagnose Dr. Nguyen with bipolar disorder, and Dr. Nguyen does not suffer from this condition.

51. Dr. Spaulding’s treatment records for Dr. Nguyen consistently include the diagnosis for bipolar disorder.

52. Dr. Spaulding also provided billing documentation and records from his office, at the request of the Investigative Panel, which indicated that the code for bipolar disorder diagnosis was submitted to the insurance company for payment for most or all his sessions with Dr. Nguyen.

53. Dr. Spaulding further admitted that the insurance company would not pay for the sessions with Dr. Nguyen without submission of a recognized diagnosis of a psychological condition.

54. In prior proceedings, Dr. Nguyen refused to accept personal responsibility for improper billing of services and attempted to place responsibility or blame for his misconduct on his office staff.

55. Dr. Spaulding testified that a focus of his treatment was for Dr. Nguyen to accept personal responsibility for his fraudulent behavior, lying, and other misconduct.

56. During his testimony, Dr. Spaulding did not accept personal responsibility for his office submitting claims to Dr. Nguyen's insurer using an improper or erroneous diagnosis code, which was needed to obtain payment for the sessions.

57. Dr. Spaulding indicated that he had nothing to do with the billing submissions for his treatment sessions with Dr. Nguyen, and he attempted to put the responsibility or blame on his office billing staff for these apparently improper or erroneous billing submissions.

58. Based on all the evidence presented, including the evidence summarized in the findings of fact, the Hearing Panel does not find credible Dr. Spaulding's testimony that Dr. Nguyen was safe to return to practice.

59. Based on all the evidence presented, including the evidence summarized in the findings of fact, the Hearing Panel does not find credible Dr. Nguyen's testimony that he is a "different person" or indicating that he has reformed and now possess good moral character.

60. The Hearing Panel noted Respondent's apparent acceptance of responsibility for some of his prior actions but finds this apparent acceptance does not demonstrate proper reformation or good moral character, considering all the other substantial contrary evidence, including the evidence summarized in the findings of fact.

61. Two examples of this substantial contrary evidence are: (i) Petitioner's submission of false or inaccurate testimony and verified information in this reinstatement proceeding regarding his counseling dates with Dr. Spaulding, and (ii) his continuing failure to make full restitution to DMA for all payments he received improperly.

Based upon the Findings of Fact, the Hearing Panel makes 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. Under the Dental Practice Act, the Dental Board is invested, as a matter of public interest and concern, with the responsibility to ensure that "only qualified persons be permitted to practice dentistry in the State of North Carolina." N.C. Gen. Stat. §90-22.

3. To be qualified to practice dentistry in North Carolina, an applicant "shall be of good moral character," among other qualifications. N.C. Gen. Stat. §90-30.

4. Once a dental license has been revoked, "the North Carolina State Board of Dental Examiners, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licentiate, before restoration." N.C. Gen. Stat. §90-42.

5. Pursuant to N.C. Gen. Stat. §90-42, Petitioner has failed to produce satisfactory evidence of his proper reformation.

6. The evidence presented and the whole record does not demonstrate satisfactory evidence of proper reformation of Petitioner or of his good moral character to

warrant his licensure reinstatement, nor prove that Dr. Nguyen is qualified and can safely resume practicing dentistry.

WHEREFORE, the Hearing Panel enters the following:

ORDER

1. Petitioner's Petition for Reinstatement of his North Carolina dental license is hereby DENIED.
2. Petitioner must wait at least one (1) year before seeking reinstatement of his dental license.
3. In any potential future reinstatement petition and related proceedings, and as a condition of potential future reinstatement, Petitioner must demonstrate that he has adequately analyzed all his previously submitted claims to DMA and has fully repaid all amounts he improperly received from DMA.

Entered this the 8 day of DECEMBER, 2017.



Dr. Millard Wester
Hearing Panel Chair

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS