

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:)
) FINAL AGENCY
CYNTHIA WALKER, D.D.S.) DECISION
)

THIS MATTER was heard before the North Carolina State Board of Dental Examiners (Board) on November 1 and 2, 2012, pursuant to N.C. Gen. Stat. §§ 90-41.1 and 150B-38 and 21 NCAC 16N .0504 of the Board's Rules. The Board's Hearing Panel consisted of Board members Dr. Millard W. Wester III, presiding; Dr. Brad C. Morgan, Dr. Stanley L. Allen, and Dr. Clifford O. Feingold. Board members Dr. David A. Howdy, Dr. Kenneth M. Sadler, Ms. Carla J. Stack and Dr. James B. Hemby, Jr., did not participate in the hearing, deliberation or decision of this matter. The Respondent, Dr. Cynthia Walker, was represented by Kenneth Jones and Robert Zaytoun. Carolin Bakewell represented the Investigative Panel and Thomas F. Moffitt represented the Hearing Panel.

Based upon the stipulations of the parties, the testimony of witnesses and evidence introduced during the hearing, the Board makes 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. Walker was licensed to practice dentistry in North Carolina on June 23, 1993 and holds license number 6280.

3. At all times relevant hereto, Dr. Walker was subject to the Dental Practice Act and the Board's Rules and Regulations promulgated thereunder.

4. At all times relevant hereto, Dr. Walker was engaged in the practice of general dentistry in Garner, North Carolina.

5. The Amended Notice of Hearing alleged that Dr. Walker violated N.C. Gen. Stat. §§ 90-41 (a)(6) by engaging in acts or practices that violated the Dental Practice Act and/or the Board's Rules and Regulations implementing the Dental Practice Act. The Amended Notice of Hearing also alleged that Dr. Walker violated N.C. Gen. Stat. §§ 90-41 (a)(12) by having been negligent in the practice of dentistry. These allegations focused, inter alia, on dental care provided by Dr. Walker to six of her patients (Chris Brown, Margaret Dillon, Jeanette Layman, Vicki Earp, Krystal Guthridge and James Thompson) concerning maintenance of complete dental records, including details about Dr. Walker's prescription of narcotic pain medications for these patients including the reason(s) why the pain medications were prescribed.

6. There was substantial evidence introduced during the hearing that as to those six patients Dr. Walker violated the Board's rules and the standard of care for recordkeeping for narcotic pain medications prescribed for patients.

7. On November 4, 2009, November 23, 2009, December 21, 2009, December 28, 2009 and January 7, 2010 Dr. Walker prescribed twenty (20) tabs of Percocet, a narcotic pain medication, for Margaret Dillon. Dr. Walker did not document or otherwise record in Dillon's patient treatment records the reason for any of these prescriptions. [Testimony of Dr. Walker, Transcript, Vol. 2, pp. 327-329]

8. On December 21, 2009 and March 1, 2010, Dr. Walker prescribed 20 tablets of Vicodin ES, a narcotic pain medication, for Vicki Earp, and on June 3, 2009, Dr. Walker gave Earp a prescription for 30 tablets of Vicodin ES. [IP Ex. 4, p. 4] Dr. Walker did not document or otherwise record in Earp's patient treatment records the reason why any of these prescriptions were prescribed. [IP Ex. 4, pp. 2, 3; Testimony of Dr. Walker, Transcript, Vol. 2, pp. 333-337]

9. On October 14, 2009, December 10, 2009, June 8, 2010, July 26, 2010, September 8, 2010 and September 13, 2010, Dr. Walker gave Krystal Guthridge prescriptions for 20 tablets of the narcotic pain medications Percocet or Vicodin ES. [IP Ex. 6, p. 8]. Dr. Walker failed to document or otherwise record in Guthridge's patient treatment records the reason why these prescriptions were prescribed. [IP Ex. 6, pp. 2-4; Testimony of Dr. Walker, Transcript, Vol. 2, pp. 337-339]

10. On October 30, 2008, December 21, 2009, and November 16, 2010, Dr. Walker prescribed 20 tablets of Vicodin ES to Chris Brown but failed to document or otherwise record in his patient treatment records the reason why these prescriptions were prescribed. [IP Ex. 2 pp. 1, pp. 5-6]

11. On September 9, 2008, October 2, 2008 and August 19, 2010, Dr. Walker gave prescriptions for 30 tablets of Lortab, a narcotic pain medication, to Jeanette Layman but failed to document or otherwise record in this patient's treatment record the reason why the prescriptions were prescribed. [IP Ex. 7, pp. 7, 12-13; Testimony of Dr. Walker, Transcript, Vol. 2, pp. 329-331]

12. On September 25, 2009 and September 27, 2009, Dr. Walker gave prescriptions for 20 tablets of Vicodin ES to James Thompson but failed to document or otherwise record in this patient's treatment records the reason why these prescriptions were prescribed. [IP Ex. 34, pp. 1, 14; Testimony of Dr. Walker, Transcript, Vol. 2, pp. 339-340]

Based on the foregoing findings of fact, the Board makes the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the person of Dr. Walker and over the subject matter of this contested case.
2. Dr. Walker had proper notice of the time, date and place of the hearing herein.
3. Under 21 NCAC 16T .0101 (a)(6), a dentist must maintain complete patient treatment records, including the specific details concerning any pain medications prescribed, dispensed or administered.
4. In addition to meeting the specific information requirements of 21 NCAC 16T .0101 (6), the standard of care applicable to North Carolina dentists requires dentists to document in their patients' treatment records the reason and rationale for each prescription for pain medications issued to patients. [Testimony of Dr. Yount, Transcript, Vol. 1, p. 71; Testimony of Dr. Orlowski, Transcript, Vol. 2, pp. 253, 271].
5. Dr. Walker violated 21 NCAC 16T .0101 (a)(6) and the standard of care applicable to her as a dentist in North Carolina by failing to document or otherwise record the prescription of and reason for prescribing narcotic pain medications for Margaret Dillon, Vicki Earp, Krystal Guthridge, Chris Brown, Jeanette Layman and James Thompson.

6. By failing to meet the requirements of 21 NCAC 16T .0101 (a) (6), Dr. Walker engaged in acts or practices that violated the Dental Practice Act, as set forth in N.C. Gen. Stat. § 90-41 (a)(6).

7. By failing to meet the requirements of 21 NCAC 16T .0101 (a) (6) and the standard of care applicable to her as a dentist in North Carolina in the care of her patients as set forth in the preceding findings of fact and conclusions of law, Dr. Walker engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. § 90-41 (a)(12).

FINDINGS OF FACT RELEVANT TO THE CHOICE OF DISCIPLINE

1. In 2006, Dr. Walker signed a Consent Order of Discipline which, among other things, required her to take a course in recordkeeping at the University of North Carolina School of Dentistry, and she completed such a course. Dr. Walker testified during the hearing that after completing this course she understood that she needed to record on patient treatment records the pain medications she prescribed for her patients and the reason why she was writing the prescriptions. [Testimony of Dr. Walker, Transcript, Vol. 2, p. 364]

2. In 2007, the Board cautioned Dr. Walker to improve her recordkeeping in her patient treatment records regarding pertinent conversations with patients. However, violations of the Board's rules and the standard of care regarding recordkeeping have continued after Dr. Walker completed the UNC course and after she was cautioned by the Board to record pertinent conversations with her patients in her treatment records.

3. Although Dr. Walker violated recordkeeping requirements relating to patient treatment records, the Board did not find evidence that Dr. Walker's recordkeeping violations were serious, flagrant or intentional or that any of Dr. Walker's patients suffered physical damage or harm as a result of these violations.

4. Dr. Walker admitted in her testimony during the hearing that her recordkeeping practices had been deficient as to some of her patient records and that she has and will continue to take steps to remedy the deficiencies. [Testimony of Dr. Walker, Transcript, Vol. 2, p. 648, ll. 10-24 through p. 650, l. 8]

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

ORDER OF DISCIPLINE

1. Dr. Walker is hereby REPRIMANDED for violating the recordkeeping requirements of 21 NCAC 16T .0101 (a)(6) and N.C. Gen. Stat. §§ 90-41 (a) (6) and (12) and admonishes her to correct her recordkeeping deficiencies forthwith.

2. The Board concludes that further remedial action also must be taken to protect the public and hereby ORDERS that within one year of the date of this Final Agency Decision Dr. Walker shall successfully complete a Board-approved course designed by the UNC Dental School covering the topic of recordkeeping relating to prescription and management of narcotic pain medications. She must obtain the Board's consent in writing before beginning the course, which shall be completed at the Respondent's sole expense. If Dr. Walker fails to successfully complete such a course, the Board shall re-open this matter and will schedule a hearing to require Dr. Walker to show cause why her dental license should not be suspended for ninety

(90) days. This sanction shall be in addition to and not in lieu of any sanction that the Board may impose as a result of future violations of the Dental Practice Act or the Board's rules.

This the 21 day of February, 2013.

A handwritten signature in black ink, appearing to read "Millard W. Wester III", written over a horizontal line.

Millard W. Wester III, Presiding Officer
The N.C. State Board of Dental Examiners