

SUMMARY

To: Mr. Dominic Totman, Case Officer
Mr. Bobby White, Chief Executive Officer
Ms. Casie Goode, Deputy Operations Officer
Mr. Doug Brocker, Board Counsel

From: Amanda Carver, Investigator

Date: May 24, 2019

Re: 2019 Board Election Protest

OFFICIAL CHALLENGE CONCERNING NOMINEES ON 2019 BALLOT

During the nomination process of the North Carolina State Board of Dental Examiners (the “Board”) 2019 Board election, the Board office received a written protest regarding the eligibility status of two dentists: Dr. Kenneth M. Sadler, DDS and Dr. Clifford O. Feingold, DDS. This official protest dated May 14, 2019, from Dr. Raleigh Wright, DDS was received by the Board on May 15, 2019. Dr. Wright is a licensed North Carolina dentist practicing at the Lane & Associates office in Garner, North Carolina, who also is a candidate for the same election.

The details of Dr. Wright’s official challenge against Dr. Sadler and Dr. Feingold are as follows.

- Dr. Kenneth Sadler has recently sold his practice and is therefore no longer an owner/operator of a dental practice in North Carolina.
- Dr. Wright was informed by a receptionist at Dr. Sadler’s previous office that Dr. Sadler *“hasn’t seen or treated patients in over two years.”*
- Dr. Clifford O. Feingold does not own or operate a dental practice in North Carolina.
- Dr. Wright was informed by a receptionist at the most recent business address of Dr. Feingold’s that *“he has retired and no longer treats patients.”*

Dr. Wright alleges in an official challenge to the Board that neither Dr. Kenneth Sadler nor Dr. Clifford Feingold are actively engaged in the practice of dentistry and, therefore, they do not qualify to run for election to the Board. Dr. Wright requests that both dentists’ names be removed from consideration for this year’s 2019 election.

STATUTORY/REGULATORY LANGUAGE INVOLVING THE PRACTICE OF DENTISTRY

In support of his challenge, Dr. Raleigh Wright asserts his interpretation of the Dental Practice Act, § 90-22. Article 2. Dentistry-Section (b), which states “*No dentist shall be nominated for or elected to membership on said Board, unless, at the time of such nomination and election such person is licensed to practice dentistry in North Carolina and actually engaged in the practice of dentistry.*” (See Exhibit A – Dr. Raleigh Wright’s official protest).

Due to this challenge, an inquiry was conducted into Dr. Kenneth Sadler’s and Dr. Clifford Feingold’s eligibility to participate in the 2019 Board election. This inquiry was undertaken by investigative staff and supervised by Mr. Dominic Totman, the consumer member on the Board, who also is a licensed attorney.

Under § 90-29. Necessity for license; dentistry defined; exemptions. Section (b), “*A person shall be deemed to be practicing dentistry in this State who does, undertakes or attempts to do, or claims the ability to do any one or more of the following acts or things which, for the purposes of this Article, constitute the practice of dentistry:*”

- (1) *Diagnoses, treats, operates, or prescribes for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity;*
- (2) *Removes stains, accretions or deposits from the human teeth;*
- (3) *Extracts a human tooth or teeth;*
- (4) *Performs any phase of any operation relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with any artificial substance, material or device;*
- (5) *Corrects the malposition or malformation of the human teeth;*
- (6) *Administers an anesthetic of any kind in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; provided, however, that this subsection shall not apply to a lawfully qualified nurse anesthetist who administers such anesthetic under the supervision and direction of a licensed dentist or physician;*
(6a) *Expired pursuant to Session Laws 1991, c. 678, s. 2.*
- (7) *Takes or makes an impression of the human teeth, gums or jaws;*
- (8) *Makes, builds, constructs, furnishes, processes, reproduces, repairs, adjusts, supplies or professionally places in the human mouth any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, except to the extent the same may lawfully be performed in accordance with the provisions of G.S. 90-29.1 and 90-29.2;*
- (9) *Uses a Roentgen or X-ray machine or device for dental treatment or diagnostic purposes, or gives interpretations or readings of dental Roentgenograms or X rays;*

- (10) *Performs or engages in any of the clinical practices included in the curricula of recognized dental schools or colleges;*
- (11) *Owens, manages, supervises, controls or conducts, either himself or by and through another person or other persons, any enterprise wherein any one or more of the acts or practices set forth in subdivisions (1) through (10) above are done, attempted to be done, or represented to be done;*
- (12) *Uses, in connection with his name, any title or designation, such as "dentist," "dental surgeon," "doctor of dental surgery," "D.D.S.," "D.M.D.," or any other letters, words or descriptive matter which, in any manner, represents him as being a dentist able or qualified to do or perform any one or more of the acts or practices set forth in subdivisions (1) through (10) above;*
- (13) *Represents to the public, by any advertisement or announcement, by or through any media, the ability or qualification to do or perform any of the acts or practices set forth in subdivisions (1) through (10) above*

NOTICE OF INVESTIGATION

On May 21, 2019, a letter was sent to both Dr. Kenneth Sadler, DDS and Dr. Clifford Feingold, DDS, notifying them of the Board's investigation into this matter. Both dentists were asked to provide a sworn statement, detailing facts about whether during the time of nomination and election they were and will be actively engaged in the practice of dentistry according to § 90-29(b). This statement was to be received within 48 hours.

RESPONSES PROVIDED BY DR. KENNETH SADLER AND DR. CLIFFORD FEINGOLD

Dr. Kenneth M. Sadler produced an Affidavit on May 21, 2019. His response to the challenge regarding his eligibility to run for the upcoming election is as follows:

- "I represent myself as a DDS, qualified to do or perform any one or more of the acts or practices set forth in subdivisions (1) through (10) of § 90-29(b)."
- "I review radiographs/roentgenograms on a regular basis and make decisions relative to the referral of patients for oral surgical procedures."
- "I consult with dentists within the practice regarding treatment matters."
- "I oversee by delegation the referral process to external providers of dentistry and medicine."
- "I participate on a regular basis in the administration of dental licensure examinations which involves the review of x-rays, inspection of teeth and the review of medical records."
- "I participate in a consultative role in the management of the dental practice and supervise by delegation both clinical and administrative staffs."

- “I routinely offer advice regarding patient complaints in my current role as a member of the Dental Board. This involves the review of diagnostic information/material as well as the review of dental records.”

(See Exhibit B – Dr. Kenneth Sadler’s Sworn Affidavit)

Dr. Clifford O. Feingold produced an Affidavit on May 21, 2019. His response to the challenge regarding his eligibility to run for the upcoming election is as follows:

- “I have participated as a grader and/or clinic floor examiner in (10) CDCA and CITA licensure examinations from January 2019 until present.”
- During these licensure examinations “diagnosis of dental disease and reading of x-rays are regularly performed by me.”
- “I have provided *locum tenens* services on multiple occasions in as recently as 2019” which includes diagnosing patients, taking impressions for dental prostheses, administering local anesthetic and adjusting teeth and dental prostheses.

Dr. Feingold provided with his Affidavit a written statement signed by Dr. K. Casey Keating, DDS. This statement verifies that Dr. Clifford Feingold worked in his dental office multiple times in years 2017, 2018 and 2019. Dr. Keating includes that in addition to performing routine dental exams, Dr. Feingold performed patient evaluations, took initial and final impressions, administered dental anesthetic prior to scaling and root planning, and performed clinical tooth adjustments.

(See Exhibit C – Dr. Clifford O. Feingold’s Sworn Affidavit)

(See Exhibit D – Dr. K. Casey Keating’s Signed Statement)

SUMMARY

The Board must determine whether Dr. Kenneth M. Sadler, DDS and Dr. Clifford O. Feingold, DDS each qualify for nomination and election under one or more of the qualifications in § 90-29(b) that fulfil the statutory requirements to be actively engaged in the practice of dentistry.

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