

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

Sonia Jacob Alex, D.D.S.
(License No. 11284)

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CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners [the "Board"] as authorized by N.C. Gen. Stat. § 90-41.1(b) for consideration of a Consent Order in lieu of a formal administrative hearing. Respondent Sonia Jacob Alex, D.D.S. ["Respondent"] acknowledges that the Board has sufficient evidence to prove and establish the findings of fact and conclusions of law and to warrant the order of discipline. Respondent was represented by Mark E. Anderson, C. Colon Willoughby, and Kenneth L. Jones. The Investigative Panel [the "IP"] was represented by Douglas J. Brocker and Crystal Carlisle. The parties freely and voluntarily consent to the following:

FINDINGS OF FACT

1. The 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 Board.

2. Respondent was licensed to practice dentistry in North Carolina on February 15, 2019 by credentials and holds license number 11284. Her address of record with the Board is in Indiana.

3. At all times relevant hereto, Respondent was subject to the Dental Practice Act and the Board's rules and regulations.

4. Alex & Associates, P.C. ["Alex & Associates"] is a professional entity incorporated in North Carolina and 100% owned by Respondent. Alex & Associates operates two general dentistry practices in North Carolina in Raleigh and Charlotte ["North Carolina Dental Practices"].

5. L2 Management LLC ["L2"] is a dental services organization registered in Delaware that provides non-clinical, business services to Respondent's North Carolina Dental Practices and dental practices she owns in other states.

6. Alex & Associates and L2 have executed and operated under a management services agreement ["MSA"] dated June 1, 2019.

7. The Board reviewed and determined that the MSA submitted appeared to comply with the Dental Practice Act and the Board's regulations.

8. In determining the apparent compliance of the MSA in June 2019, the Board specifically noted that it was relying on an affidavit submitted by Respondent signed and notarized on May 15, 2019.

9. In the May 15, 2019 affidavit, among other items, Respondent acknowledged that she:

- a. was responsible for the North Carolina Dental Practices and their operation consistent with all legal requirements;
- b. must provide adequate supervision of the Practices;

- c. must ensure the Practices and those employed or working in them remain in full compliance with the North Carolina Dental Practice Act and all applicable Board regulations; and
- d. was not insulated or absolved from her obligations by contracting with L2 and residing outside of North Carolina.

10. After submitting the affidavit, Respondent subsequently failed to provide adequate supervision of the North Carolina Dental Practices to ensure compliance with the Dental Practice Act and the Board's regulations.

11. During an interview with the IP in September 2021 and a conference before the Board the following month, Dr. Alex acknowledged the following about her involvement in and supervision of the North Carolina Dental Practices from October 2020 through August 2021, when the Board investigation began:

- a. She did not interview nor was she personally involved in hiring the dentists or other clinical staff, although she electronically signed their employment agreements for Alex & Associates;
- b. She had not personally spoken with the dentists or other clinical staff employed in the North Carolina Dental Practices, which had been open for 10 months, nor did she participate in any video conferences with the offices and its employees; and
- c. She had not visited either of the North Carolina Practices once they opened for business, which occurred in 2020 during the COVID pandemic, but she visited potential North Carolina Dental Practice locations in 2019 prior to their opening.

12. Prior to the Board's investigation beginning in August 2021, the office manager for the North Carolina Dental Practices since they opened in October 2020 had to contact L2 to ask for Respondent's contact information, and he had only spoken with Respondent on one occasion.

13. The Charlotte office failed to conduct any spore testing from approximately the end of February 2021 until June 2021. An employee dentist filed a complaint with the Board on August 4, 2021, related to the lack of spore testing.

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 Board has jurisdiction over the subject matter of this action and over Respondent.

2. The Board is an administrative agency that the Legislature has authorized to regulate the practice of dentistry pursuant to the North Carolina Dental Practice Act for the protection of the public and to make regulations to enforce that objective. *Affordable Care v. Dental Board*, 153 N.C. App. 527, 530 (2002).

3. The Board enacted 21 N.C.A.C. 16 X .0101, known as the Management Arrangement Rule ["MAR"], to protect the public health and welfare with respect to the practice of dentistry and this purpose is a legitimate government interest. *Affordable Care*, 153 N.C. App. at 537.

4. The Board enacted the MAR to effectuate the Legislature's mandate in the Dental Practice Act that the ownership, management, supervision, control or operation

of dental practices by unlicensed entities or individuals is prohibited to prevent patient care from becoming secondary to profits and thereby creating an endangerment to the public. *Affordable Care, 153 N.C. App. at 538.*

5. Respondent was properly notified of this matter and has consented to the entry of this Consent Order.

6. A dentist who owns the shares in a professional entity that operates a dental office in North Carolina, regardless of where s/he resides or practices, must:

- a. exercise adequate supervision and control of the practice, including over those employed or working in the office;
- b. take reasonable measures to ensure compliance with the Dental Practice Act and the Board's regulations; and
- c. not permit an unlicensed person or entity to control or operate the practice. N.C. Gen. Stat. § 90-29(b)(11); 21 NCAC 16X .0101(c).

7. Respondent violated the Dental Practice Act, N.C. Gen. Stat. § 90-41(a)(6) and the Board's regulation, 21 NCAC 16X .0101, in connection with her ownership, supervision, and management of the North Carolina Dental Practices during the period in question as set forth in Findings of Fact 1 through 13 above by:

- a. not exercising adequate supervision and control of the North Carolina Dental Practices operated under the professional entity she owns, by failing to:
 - i. have direct and personal involvement in the hiring decisions of dentists and other clinical personnel;

- ii. communicate regularly and directly with the dentists, office manager, and ancillary personnel in the North Carolina Dental Practices during the period in question; and
 - iii. communicate as to clinical matters directly with the licensed providers who were providing dental care in the North Carolina Dental Practices.
- b. failing to provide adequate supervision over the North Carolina Dental Practices and ensure their compliance with the Dental Practice Act and Board regulations, after submitting an affidavit to the Board attesting that she would do so, upon which the Board relied in determining apparent compliance of the MSA.

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. During its investigation, the IP did not discover any evidence of the following factors:
 - a. patient injury or harm in the North Carolina Dental Practices;
 - b. billing improprieties in the North Carolina Dental Practices; and
 - c. Respondent having a dishonest or selfish motive.
2. L2 has not received any management services fees provided for under the MSA or compensation of any other kind from the North Carolina Dental Practices during this time period.
3. Respondent has a Consulting Agreement with L2 that pays her significant yearly compensation in connection with the practices she operates in other states.

4. Respondent and L2 modified the Consulting Agreement to clarify that Respondent would not receive any compensation under the Agreement related to the North Carolina Dental Practices, as part of the compliance review process for the MSA in 2019 prior to this proceeding.

5. Respondent has not received any compensation from the operation of the North Carolina Dental Practices or pursuant to the Consulting Agreement with L2 for those Practices.

6. Respondent has fully cooperated with the investigation by the Board and timely provided requested information.

7. Respondent approved a Dentist Employment Agreement form, set guidelines for certain terms of those agreements, including her approval and signature, for the Practices she owned in other states, which she intended to apply at the North Carolina Dental Practices.

8. Respondent has acknowledged deficits in her supervision of the North Carolina Dental Practices and promptly taken steps to address and rectify management, supervision, and control concerns identified by the Board.

9. Since August 2021, when the Board began its investigation, Respondent has taken the following corrective actions regarding her personal supervision, management, and control of the North Carolina Dental Practices including that Respondent has and will continue to:

- a. communicate on a weekly basis with the dentist(s) employed in her North Carolina Dental Practices, as well as personally visiting with them periodically;

- b. personally interview or communicate with any dentist or other ancillary personnel before making any final hiring or termination decision concerning all such clinical staff; and
 - c. personally review example patient treatment records on at least a monthly basis without utilizing an employee of L2 or other individuals not licensed in North Carolina to pre-screen the records for her review.
10. Respondent is of good character and reputation in her community.
11. Disciplinary action and probationary conditions are necessary to ensure that Respondent and any dental practices she owns in North Carolina comply with the Dental Practice Act and the Board's regulations in the future.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and with the consent of the parties hereto, it is ORDERED as follows:

ORDER OF DISCIPLINE

1. License number 11284 issued to Respondent for the practice of dentistry in North Carolina is suspended for a period of two years but conditionally restored with no active suspension, provided that for a period of five years Respondent complies with the probationary terms, conditions, and requirements in paragraphs 2-6 of this Consent Order.
2. During each of the five years of probation, Respondent shall provide an independent compilation full disclosure report ["Annual Compilation Report"] from a

North Carolina licensed CPA firm or individual of the statements of financial positions for any professional entity she owns that operates a dental practice in North Carolina. Respondent shall submit the name of the proposed North Carolina licensed CPA firm or individual and obtain prior approval from the Investigative Panel, who shall provide the independent CPA with a copy of the Consent Order. The CPA shall be independent of and not be employed by Respondent, her professional entities, and L2 or any related entities. The independent CPA shall send directly to the Board's Director of Investigations the Annual Compilation Report, which summary shall include an analysis of the findings concerning aggregate payments made to L2 or any related entities, any profit distributions to professional entities or Respondent, and copies of the filed tax returns for the professional entities. The Annual Compilation Report and summary shall be submitted no later than June 1 of the following year, beginning in 2022, unless the Investigative Panel consents to a later submission date for a particular year. Respondent is solely responsible to pay all fees associated with the independent compilation reports and summaries and for ensuring that the Annual Compilation Reports are submitted timely to the Board.

3. Respondent shall make all hiring and termination decisions for all dentists and ancillary personnel, as defined in N.C. Gen. Stat. § 90-40.2(a)(1), who are employed at any dental practice in North Carolina operated through a professional entity that she owns. L2 or a related entity may assist Respondent in recruiting dentists and ancillary personnel for the North Carolina Dental Practices, provided that Respondent makes all hiring and termination decisions. Upon request, Respondent must provide the Board or its staff written agreements concerning any employee or other personnel

working in the North Carolina Dental Practices and produce written documentation of her involvement in all such hiring and termination decisions.

4. Respondent shall be physically present, or communicate via video conference with dentists, practice managers, and ancillary employees, in the North Carolina Dental Practices for a minimum of eight cumulative hours each quarter for each Practice. Respondent shall submit to the Director of Investigations on a quarterly basis, no later than the fifteenth day of January, April, July, and October for each year of the probation, a report documenting compliance with this requirement, including the dates and physical presence or the qualifying communications for each North Carolina Dental Practice during that quarter. In this quarterly report, Respondent also shall provide a notarized certification concerning whether or not the North Carolina Dental Practices have been operated in compliance with the Dental Practice Act and the Board's regulations, including the Management Arrangement Rule, to the best of her knowledge after conducting due diligence. If not, Respondent shall report any noncompliance. A form quarterly report and certification to be used by Respondent to satisfy this requirement is attached to the Consent Order.

5. Respondent shall adhere to the following additional probationary terms and conditions:

- a. Respondent shall violate no provision of the Dental Practice Act or the Board's rules;
- b. Respondent shall neither direct or permit any of the employees or others working in the North Carolina Dental Practices to violate any provision of the Dental Practice Act or the Board's rules;

- c. Respondent shall permit the Board or its agents to inspect and observe the North Carolina Dental Practices, conduct a random review of patient chart records, and interview employers, employees, and coworkers at any time during normal office hours; and
- d. Respondent shall not transfer or sell an interest in any professional entity she owns that operates any North Carolina Dental Practice without previously providing the potential purchaser a copy of this Consent Order while it remains in effect and securing the agreement set forth in Paragraph 6 involving L2 and a subsequent purchaser.

6. If Respondent desires to transfer or sell her interest in any professional entity operating a North Carolina Dental Practice and the MA remains in effect with L2, prior to any potential sale or transfer, Respondent shall ensure that any subsequent practice owner executes an agreement with the Board agreeing that they will comply with the conditions in paragraph 2-5 above for the remaining term of this Consent Order. Failure to secure such a prior agreement prior to a sale or transfer shall constitute a violation of this Consent Order.

7. Respondent recognizes that the conditions, limitations, or requirements set forth in this Consent Order may present her and any potential subsequent practice owner(s) with certain practical difficulties. The Board concludes that each one is necessary to ensure public protection and it does not intend to modify or eliminate any of the conditions, limitations, or requirements set forth herein based on such potential difficulties.

8. If Respondent fails to comply with any provision of this Consent Order or breaches any term or condition thereof, the Board shall promptly schedule a public Show Cause Hearing to allow Respondent an opportunity to show cause as to why the suspension of Respondent's license shall not be activated for violating a valid order of the Board. If after the Show Cause Hearing, the Board is satisfied that Respondent failed to comply or breached any term or condition of this Consent Order, the Board shall activate the suspension and may enter such other discipline or conditions as the evidence warrants for proven violations of the Dental Practice Act or of the Board's rules occurring after entry of this Decision.

9. This Consent Order and the provisions contained herein shall be effective upon entry.

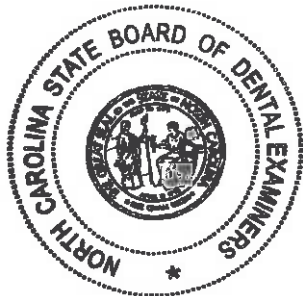
10. The Board shall retain jurisdiction of this matter, Respondent, and any subsequent practice owner to enforce the provisions herein or enter orders as necessary in the future, regardless of whether Respondent maintains an active license in North Carolina.

This the 8th day of MARCH 2022.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS



Casie S. Goode
Director of Investigations



STATEMENT OF CONSENT

I, Sonia Jacob Alex, D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety. I assent to its terms and conditions set out herein. I freely and voluntarily acknowledge that there is sufficient evidence to form a factual basis for the findings of fact herein, that the findings of fact support the conclusions of law, that I will not contest the findings of fact, the conclusions of law, additional findings regarding discipline, or the order in any future proceedings before or involving the Board, including if future disciplinary proceedings or action is warranted in this matter. I knowingly waive any right to seek judicial review, appeal, or otherwise later challenge this Consent Order once entered. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order will become part of the Board's permanent public record. I further acknowledge that this required reporting may have adverse consequences in other contexts and any potential effects will not be the basis for a reconsideration of this Consent Order. I have consulted with my counsel before signing this Consent Order.

This the 3rd day of March 2022.

A handwritten signature in black ink, appearing to read 'Sonia Jacob Alex', written over a horizontal line.

Sonia Jacob Alex, D.D.S.