

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

Mark C. Austin, D.D.S.
(License Number 7348)

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**CONSENT ORDER OF
PERMANENT SURRENDER**

THIS MATTER is before the North Carolina State Board of Dental Examiners ["Board"] as authorized by G.S. § 90-41.1(b) for consideration of a Consent Order of Permanent Surrender at the request of Mark C. Austin, D.D.S. ["Dr. Austin" or "Respondent"] in lieu of a formal administrative hearing. 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. Charles George and Alan M. Schneider represented Respondent. Douglas J. Brocker and Dauna L. Bartley represented the Investigative Panel of the North Carolina State Board of Dental Examiners. Based upon the consent of the parties hereto, 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. Mark C. Austin, D.D.S. was licensed to practice dentistry in North Carolina on July 17, 2001 and holds license number 7348.

3. On April 7, 2014, Respondent was issued a permit to administer general anesthesia by the Board.

4. Respondent is subject to the Dental Practice Act and the Board's rules and regulations.

5. At all times relevant hereto, Respondent Mark C. Austin, D.D.S. worked as an oral surgeon in his practice, Austin Oral and Maxillofacial Surgery, in Leland, North Carolina.

6. When referred to herein concerning any action or failure to act, the term "Respondent" also refers to Dr. Mark C. Austin's dental practice and includes employees, agents, or others under his control or acting at his direction.

Treatment and Care of Patient H.P.

7. On July 30, 2020, patient H.P. visited Respondent's office for placement of an implant.

8. Respondent administered anesthetic and sedative agents to patient H.P. prior to and during the procedure.

9. Towards the end of the procedure, patient H.P.'s oxygen saturation levels and then his heart rate dropped to life threatening levels.

10. Respondent took certain initial measures to address patient H.P.'s desaturation, such as attempting ventilation, an unsuccessful effort to place an endotracheal tube, and contacting 911.

11. Despite these initial efforts, according to Respondent's patient record, H.P.'s oxygen saturation levels remained in the 60-70% range for at least 20 minutes before EMS arrived and his heartrate decreased to 39 BPM and then no longer registered or was not recorded before EMS arrived.

12. Even though patient H.P.'s oxygenation and heart rate did not improve, Respondent did not successfully place an advanced airway adjunct, create a surgical airway via cricothyroidotomy, take specific intervention to treat bradycardia, nor initiate CPR prior to EMS' arrival.

13. When EMS arrived at Respondent's office, patient H.P. was pulseless, apneic, and his heart was in asystole.

14. Upon arrival, EMS placed an advanced airway on patient H.P., began CPR, and eventually got a return of spontaneous circulation before transporting him to the Emergency Department at New Hanover Regional Medical Center (NHRMC).

15. At NHRMC, patient H.P. was placed in hypothermal protocol, transferred to the intensive care unit, diagnosed with irreversible anoxic brain injury, and died on August 3, 2020.

16. On January 4, 2021, based on its investigation up to that time, the Board entered a Consent Order Summarily Restricting Respondent's General Anesthesia Permit.

17. Based on the information received during its investigation including the summary facts set out above, the IP contends that Dr. Austin violated the standard of care, the Dental Practice Act, and the Board's rules and regulations in his treatment of

patient H.P. and during patient H.P.'s medical emergency and contends that the asserted violations resulted in the death of patient H.P.

18. Dr. Austin denies that he violated the standard of care, the Dental Practice Act, or the Board's rules and regulations, or that his actions resulted in the death of his patient H.P.

Violations Concerning Use and Distribution of Controlled Substances

19. During its investigation of the death of patient H.P., the IP discovered other violations of the Dental Practice Act and the Board's rules and regulations.

20. For example, Respondent prescribed controlled substances to his staff members, including prescribing controlled substances outside the scope of practicing dentistry, such as narcotic cough suppressants and sedative-hypnotic medications.

21. Additionally, during an audit by the Drug Enforcement Agency (DEA) conducted in 2020-21, Respondent was unable to account for numerous controlled substances that were supposed to be maintained at his office, including the schedule II-controlled substance Fentanyl.

22. On March 26, 2021, Respondent and the DEA entered into a Memorandum of Agreement which included the following findings by the DEA:

- a. Respondent failed to maintain on a current basis a complete and accurate record of each substance received, sold, or otherwise disposed of by him as required by 21 C.F.R. § 1304.21(a) and 21 U.S.C. § 827(a)(3), in violation of 21 U.S.C. § 842(a)(5);
- b. Respondent failed to maintain controlled substance records in a readily retrievable manner as required by 21 C.F.R. § 1304.04(g) and 21 U.S.C. § 827(b)(2), in violation of 21 U.S.C. § 842(a)(5);
- c. Respondent failed to conduct a biennial inventory as required by 21 C.F.R. § 1304.11(c) and 21 U.S.C. § 827(a)(1), in violation of 21 U.S.C. § 842(a)(5);

- d. Respondent failed to record the number of packages of Schedule 2 controlled substances received and the date received on each DEA-222 as required by 21 C.F.R. § 1305.17(e) and 21 U.S.C. § 827(b)(1), in violation of 21 U.S.C. § 842(a)(5);
 - e. Respondent failed to maintain DEA-222 Forms for a period of two years as required by 21 C.F.R. § 1305.17(c) and 21 U.S.C. § 828(c)(1), in violation of 21 U.S.C. § 842(a)(5);
 - f. Respondent failed to record the number of packages of Schedule 3 through 5 controlled substances received and the date received as required by 21 C.F.R. § 1304.21(d) and 21 U.S.C. § 827(b)(1), in violation of 21 U.S.C. § 842(a)(5); and
 - g. Respondent failed to maintain Schedule 3 through 5 controlled substance inventory records for at least two years as required by 21 C.F.R. § 1304.4(a) and 21 U.S.C. § 827(a)(1), in violation of 21 U.S.C. § 842(a)(5).
23. On or about May 5, 2021, Respondent surrendered his DEA registrations.
24. Furthermore, on numerous occasions, Respondent diverted controlled substances, including Fentanyl, from his dental practice for personal use and used them with at least one other employee of his dental practice during 2019 and 2020.
25. On May 6, 2021, after obtaining the additional evidence and information including the facts set out above, the Board entered a Consent Order Summarily Suspending License of Respondent.
26. Dr. Austin subsequently contacted and signed a Participant Agreement with the North Carolina Caring Dental Professionals Program (NCCDP).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter of this proceeding.

2. Respondent was properly notified of this matter and has agreed to the entry of this Consent Order.

3. Respondent is a chronic or persistent user of intoxicants, drugs, or narcotics to the extent that the same impairs his ability to practice dentistry in violation of N.C. Gen. Stat. § 90-41(a)(2).

4. Respondent distributed or caused to be distributed an intoxicant, drug, or narcotic for improper purposes in violation of N.C. Gen. Stat. § 90-41(a)(25).

5. Respondent engaged in unprofessional conduct by prescribing, procuring, dispensing, or administering any controlled substance for personal use for which Respondent was not authorized to prescribe them in violation of N.C. Gen. Stat. § 90-41(a)(6) and (26).

6. This consent to permanent surrender shall have the same effect as a permanent revocation pursuant to N.C. Gen. Stat. § 90-41.

7. No provision of this consent order or any other pleadings or orders entered in this matter shall constitute an admission for any purpose other than for this and any other proceeding before or involving the North Carolina State Board of Dental Examiners.

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

ORDER OF DISCIPLINE

Respondent Mark C. Austin permanently surrenders his license to practice dentistry, #7348, which becomes effective upon entry of this Consent Order, and acknowledges and agrees that he cannot reapply for or regain a license to practice dentistry in North Carolina at any time in the future. Respondent has submitted to the Dental Board his original license and all 2021 renewals in connection with his permanent surrender.

This the 16th day of August 2021.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

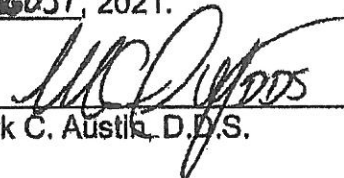


Casie S. Goode
Director of Investigations

STATEMENT OF CONSENT

I, Mark C. Austin, D.D.S., do hereby certify that I voluntarily and knowingly elect to permanently surrender my dental license and acknowledge and agree that I cannot reapply for a dental license in North Carolina at any time in the future. I understand that I can never regain my dental license in this State, and that the Board will not consider nor hold any hearing on any possible future attempt to reapply, reinstate, or regain my license. I recognize that there are other serious allegations against me that the IP has agreed not to pursue in exchange for my decision to surrender my license permanently. 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 the Board has sufficient evidence to prove and establish the findings of fact and conclusions of law and to warrant the order of discipline. I voluntarily waive any rights to seek judicial review or appeal this order, and I will not contest the findings of fact, the conclusions of law, or the order of discipline in any potential further proceedings before this Board. 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 also understand that the reporting of this Consent Order may have adverse consequences to me in other contexts and that such other consequences will not be a basis to reconsider this Consent Order or to reapply or regain my dental license in North Carolina. I consulted with my counsel before signing this Consent Order.

This the 11TH day of AUGUST, 2021.



Mark C. Austin, D.D.S.