BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:  

)  

)  

)  

)  

)  

)  

)  

)  

)  

FINAL AGENCY DECISION

Spurgeon W. Webber, III, D.D.S.  
(license No. 5647)

This matter was heard before the North Carolina State Board of Dental Examiners ["Board"] on April 9, 2021, pursuant to N.C. General Statute §§ 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. Edward J. Clemons, presiding, Dr. Karen E. Lanier, Dr. William M. Litaker, Jr., and Dr. Mark W. Johnson. Board member Dr. Millard W. Wester, III, served as the Investigative Panel’s Case Officer. Dr. Wester and Board members Ms. Nancy A. St. Onge and Mr. Dominic Totman were present for the hearing but did not participate in the deliberation or decision of this matter. Geraldine Sumter represented Respondent, Dr. Spurgeon W. Webber, III, D.D.S. ["Respondent"]. Douglas J. Brocker and Crystal S. Carlisle represented the Investigative Panel, and Fred Morelock represented the Hearing Panel.

Based upon the stipulations of the parties and the evidence introduced at the hearing, the Board Hearing Panel makes 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 in Article 2, and the Rules and Regulations of the Board, set forth in 21 North Carolina Administrative Code Chapter 16.
2. Respondent was licensed to practice dentistry on July 28, 1997 and held license number 5647 at all times relevant hereto.

3. Respondent is subject to the Dental Practice Act and the rules promulgated thereunder.

4. At all times relevant hereto, Respondent worked as a general dentist in Charlotte, North Carolina.

2017 Consent Order

5. On or about August 1, 2016, the Board’s Investigative Panel ["IP"] issued a Notice of Hearing against Respondent, and on July 14, 2017, the IP issued an Amended Notice of Hearing. The IP asserted several allegations against Respondent arising out of Respondent’s billings to Medicaid and several allegations regarding violations of the standard of care for dentists practicing in North Carolina.

6. On September 5, 2017, Respondent agreed to resolve the allegations in the Amended Notice of Hearing through a Consent Order, which the Board entered on September 9, 2017 ("2017 Consent Order").

7. In the 2017 Consent Order, Respondent agreed that there was a factual basis for the findings of fact that supported the following conclusions of law:

a. Respondent engaged in acts or practices in violation of N.C. Gen. Stat. § 90-41(a)(6) and (12) from 2009 to 2012 by incorrectly billing Medicaid using numerous CDT codes that did not accurately describe the services he provided to patients and obtained corresponding unwarranted payment and reimbursement from DMA;

b. Respondent violated N.C. Gen. Stat. § 90-41(a)(6) and (21) by permitting dental assistants or dental hygienists under his supervision to perform acts prohibited by Board statutes or rules;

c. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina in his clinical treatment of multiple patients in several respects and thereby engaged in acts or practices in violation of N.C. Gen. Stat. § 90-41(a)(6) and (a)(12); and
d. Respondent violated 21 NCAC 16T .0101 and the applicable standard of care in violation of N.C. Gen. Stat. § 90-41(a)(6) and (12) by failing to maintain proper records for patients.

8. Pursuant to the 2017 Consent Order, the Board suspended Respondent’s license for a period of three (3) years but allowed immediate provisional reinstatement provided that, for five (5) years from the date of the 2017 Consent Order, Respondent adhered to certain probationary terms and conditions set forth in Paragraph 2 of the Consent Order of Discipline.

9. Respondent admitted in his testimony at the hearing that he failed to comply with certain terms of the 2017 Consent Order.

Practice Monitor Requirement
Consent Order of Discipline Paragraph 2(f)


11. During his sworn testimony at the hearing, Respondent admitted that he did not do the following acts concerning the practice and billing monitor, which were required by Paragraph 2(f) of the 2017 Consent Order of Discipline:

a. timely submit a proposed Monitor for review and potential approval by the Board’s IP;

b. timely submit most quarterly Monitor reports or ensure that they were submitted timely;

c. ensure that the Monitor reports that were submitted to the Board contained the required information, including appropriate treatment of specific patients, proper billing to Medicaid and private insurance companies, and appropriate patient and billing record-keeping;

d. ensure patient charts and billing records were reviewed by an approved Monitor for the period from February 1, 2018 through May 1, 2018;

e. ensure patient charts or records were reviewed by an approved Monitor after October 2019 through the date of the hearing; and
f. submit or ensure quarterly reports were submitted by an approved Monitor after February 18, 2020 up through the date of the hearing.

12. Once a proposed Monitor was submitted by Respondent and approved by the IP, Respondent did not meet with the Monitor at least quarterly, as required by Paragraph 2(f) of the 2017 Consent Order of Discipline. On some occasions, Respondent spoke with the Monitor by phone and exchanged text messages with the Monitor.

13. Respondent admitted that at least three (3) of the Monitor reports that were submitted identified concerns with clinical treatment notes and billing.

14. Respondent admitted that he never had a conversation with the approved Monitor regarding the importance of submitting the reports timely, even though he understood that failing to comply with the 2017 Consent Order could result in suspension of his license.

15. After the approved Monitor went on medical leave in early 2020, the IP permitted Respondent time to secure another Monitor, but he never submitted another Monitor for approval up through the date of the hearing.

16. In April 2020, Respondent submitted a petition to remove the practice and billing monitor requirement but had not fully complied with the requirement for two years and was not eligible to have the requirement removed pursuant to the 2017 Consent Order.

17. The Board denied Respondent’s petition to remove the Monitor requirement on May 13, 2020, but Respondent never submitted a proposed Monitor after the denial up through the date of the hearing.

18. Respondent repeatedly failed to comply with the probationary terms and conditions required by Paragraph 2(f) of the 2017 Consent Order of Discipline concerning the practice and billing monitor requirement.

Community Service Requirement
Consent Order of Discipline Paragraph 2(g)
19. The requirement set forth in Paragraph 2(g) of the 2017 Consent Order of Discipline provided as follows: "Respondent shall perform at least fifteen (15) hours of community service each calendar month. The community service shall consist of the Respondent providing, free of charge, dental services to the public. Respondent shall submit written proof of such community service to the Board on or before the tenth (10th) day of the following month. This requirement will become effective for the 5-year term upon Respondent being cleared to return to the full practice of dentistry by his physician. Respondent will provide documentation of this medical clearance within 30 days of being cleared to return to full duties. This Order and the corresponding conditions of provisional restoration shall remain in effect until Respondent completes the five-year period of community service, once medically cleared." [Hereafter "community service requirement"]

20. Respondent failed to inform the IP or provide documentation within thirty (30) days of being released to return to the full practice of dentistry, as required by Paragraph 2(g) of the 2017 Consent Order of Discipline.

21. Respondent admitted that he resumed practicing dentistry but failed to provide documentation of his community service for over a year after the 2017 Consent Order was entered, as required by Paragraph 2(g) of the 2017 Consent Order of Discipline. In response to an IP request, Respondent later submitted evidence of providing free services to C.W. Williams for over one year, beginning in 2018 and ending in early 2019. His services included providing patient care, establishing protocol, setting up the dental practice, and assisting the center in obtaining its accreditation as a practice.

22. Respondent claimed that he performed community service hours at his own practice beginning in January 2019.

23. Respondent failed to contact the IP to inquire whether performing community service hours at his own practice was permissible under the 2017 Consent Order.

24. Once the IP discovered that Respondent purportedly was doing community service at his own dental practice, the IP indicated Respondent needed to find another location.
25. The IP also requested that, until he found another location, Respondent get an independent dentist to verify that he was performing the required community service hours free of charge at his own dental practice.

26. Respondent asked other dental providers to verify that he was performing the required community service hours free of charge at his own practice. Two dental providers verified several community services reports.

27. Respondent admitted that he does not know if the other dental providers, who purportedly verified several community services reports, looked at his financial records.

28. An employee of Respondent’s dental practice, Ms. Doretha Stephens-Cochran, testified that she only provided payroll documentation to one of the dental providers verifying that Respondent was not included in the practice’s payroll at that time and did not recall providing any information to the other dental provider verifying Respondent’s community service reports.

29. The other dental providers eventually stopped verifying Respondent’s community service reports, and he began submitting reports with only his signature and no one independently verifying the reports.

30. The IP subsequently requested that Board investigators perform an audit of Respondent’s files to ensure the patients listed on his community service reports were not being charged for treatment.

31. As a result of the audit by the Board’s investigators, the IP determined that Respondent repeatedly had charged patients, Medicaid, and other third-party insurance providers and received reimbursement for the treatment provided to patients he listed on his community service reports submitted to the Board.

32. In October 2020, the IP subpoenaed records of patients that Respondent included on four of the community service reports that he submitted to the Board in 2020.

33. The patient records Respondent sent to the IP in response to the subpoena confirmed that his practice charged and either collected or was reimbursed for treating most of the patients he submitted to the IP as having been performed free of charge.
34. Respondent never contacted the IP to determine if his practice was permitted to be paid or reimbursed for services he was required to render free of charge pursuant to the 2017 Consent Order.

35. The IP presented numerous examples of patients listed on his submitted community services reports who were charged or whose insurance companies were charged for the treatment Respondent represented were provided free of charge by including them on the community services reports.

36. Respondent’s patient ledgers demonstrated his practice received payment or reimbursement from the insurance companies for these patients.

37. Ms. Stephens-Cochran, who submitted claims and handled the billing for Respondent’s dental office, testified that she was not instructed by Respondent to handle the billing any differently for patients listed on the community service reports than for other patients who were treated at the practice.

38. Respondent and his practice billed and sought reimbursement for the patients listed on the community service reports in the same manner as any other patient in his practice.

39. Respondent is the sole owner of his dental practice.

40. Medicaid, other third-party insurance companies, and patients reimbursed or paid his dental practice for the treatment Respondent provided to many of the patients he listed on his community service reports submitted to the Board as having been provided free of charge.

41. Respondent admitted that payments collected and reimbursements received for treatment of the patients listed on his community service reports were used to support his dental practice, including paying his employees, which directly benefits him.

42. Payments for patients listed on the community service reports would go into the general payments received for Respondent’s dental practice just as any other patient and would be used to pay the expenses of the practice, including rent, supplies, employee salaries, and utilities.
43. Respondent testified that he made a loan to the practice which is used to pay himself, and the practice then pays him back for that loan, including with the money received from treatment of patients he listed on community service reports.

44. Regardless of whether he received a salary from his practice, Respondent received financial benefit from revenue his practice received from the treatment of patients listed on his community service reports because it was used to both pay expenses of the dental practice he owned and also used to reimburse Respondent for a loan he claims to have made to the practice.

45. Respondent repeatedly violated the probationary terms and conditions required by Paragraph 2(g) of the 2017 Consent Order of Discipline concerning the community service requirement.

46. Respondent also routinely submitted false and misleading monthly community service reports to the Board misrepresenting that he had satisfied the condition in his 2017 Consent Order to provide dental services free of charge to the public when his dental office had charged and been reimbursed for treatment of many of those patients.

CONCLUSIONS OF LAW

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

2. By violating the 2017 Consent Order, as set forth in Findings of Fact 5-46 above, Respondent violated a lawful order of the Board entered in a disciplinary proceeding and thereby engaged in unprofessional conduct violating 21 NCAC 16V .0101(4) and N.C. Gen. Stat. § 90-41(a)(6) and (a)(26).

3. By presenting false or misleading testimony, statements, or records to the Board or the Board’s investigator or employees during the scope of an investigation and by making false statements or omissions in any communication with the Board or its agents regarding the subject of a disciplinary matter under investigation by the Board, in connection with Findings of Fact 19-46 above, Respondent engaged in unprofessional conduct violating 21 NCAC 16V .0101(2) and (24) and N.C. Gen. Stat. § 90-41(a)(6) and (a)(26).
In addition to the foregoing Findings of Fact and Conclusions of Law and based on the evidence presented in the record, the Hearing Panel makes the following findings and conclusions regarding factors relevant to the appropriate discipline to impose for the violations found and to protect the public:

ADDITIONAL FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE

1. The Board’s disciplinary factors regulation, 21 NCAC 16N .0607, applies to this contested case hearing, which was commenced after the effective date of the rule, October 1, 2019.

2. Respondent engaged in dishonesty, misrepresentation, deceit, or fabrication related to the practice of dentistry by making a material, false misrepresentation to the Board in repeatedly submitting signed community service reports to the Board where he purported to have performed services free of charge when his practice charged and was paid or reimbursed by patients, Medicaid, and other third-party payors for the services, which requires consideration of license revocation. 21 NCAC 16N .0607(1)(c).

3. Respondent failed to comply with the 2017 Consent Order, which requires consideration of license revocation or suspension. 21 NCAC 16N .0607(2)(e).

4. Respondent’s violations demonstrate a lack of honesty, trustworthiness, and integrity, which requires consideration of license revocation or suspension. 21 NCAC 16N .0607(2)(f).

5. Respondent elevated his interests above that of the public and his patients by charging and collecting payment for numerous patients he purported to provide services to free of charge. 21 NCAC 16N .0607(3)(b).

6. Respondent has a long and significant disciplinary history with the Board concerning his professional actions. 21 NCAC 16N .0607(3)(c).
   a. In 2007, the Board entered a Final Agency Decision (FAD) in its first disciplinary action concerning Respondent. In the 2007 FAD, the Board concluded that Respondent obtained fees through fraud, misrepresentation, or deceit and committed fraudulent or misleading acts in the practice of
dentistry. The Board suspended Respondent’s license for six (6) months but allowed him to be reinstated after thirty (30) days if he complied with various probationary conditions for five (5) years.

b. In 2014, the Board entered a Consent Order in its second disciplinary action against Respondent. The Board concluded, and Respondent admitted, that he violated the standard of care and committed negligence in various respects. Respondent’s license was suspended for sixty (60) days but immediately reinstated with a three-year probationary period on various conditions.

c. In 2016, the Board entered a FAD in its third disciplinary action against Respondent. In the 2016 FAD, the Board concluded that Respondent engaged in unprofessional conduct by violating the Board’s 2014 Consent Order. The Board activated Respondent’s prior sixty (60) day suspension and provided that he could apply for reinstatement after he satisfied the conditions of his 2014 Consent Order.

d. In 2017, the Board entered a Consent Order in its fourth disciplinary action against Respondent. The Board concluded, and Respondent admitted, to several types of improper billing, numerous standard of care violations, and inadequate and improper recordkeeping. The 2017 Consent Order imposed a three-year suspension but provisionally restored his license for up to five years on various conditions.

7. Respondent had a dishonest or selfish motive for performing community service at his own practice, because his practice was collecting payments for treatment that was required to be provided free of charge. 21 NCAC 16N .0607(3)(d).

8. Respondent demonstrated a pattern of violations by repeatedly violating both the monitor and community service requirements in the 2017 Consent Order and submitting false or misleading community service reports, in addition to the pattern of violations throughout his prior disciplinary history with the Board noted above. 21 NCAC 16N .0607(3)(e).

9. Respondent submitted false evidence and false statements during the Board’s investigation or disciplinary process by submitting false or misleading community
service reports for services for which his practice was being paid or reimbursed. 21 NCAC 16N .0607(3)(j).

10. Respondent refused to acknowledge his wrongful conduct and maintained that performing services for which his dental practice charged and received payment met the requirement for performing services free of charge. 21 NCAC 16N .0607(3)(k).

11. Respondent has considerable experience in the practice of dentistry and knew or should have known that violation of the 2017 Consent Order would result in disciplinary action. 21 NCAC 16N .0607(3)(t).

12. The Hearing Panel considered all remaining factors set forth in 21 NCAC 16N .0607 and determined that the following factors are not applicable or relevant to the discipline in this case: 1(a) and (b); 2(a) - (d), and (g) - (k); and (3)(a), (f)-(l), (l)-(s), and (u).

13. The conditions imposed to provisionally restore Respondent’s license in the 2017 Consent Order, including the practice and billing monitor and community service requirements, were essential to protect the public in light of the serious and extensive violations and to make amends for the money improperly obtained by Respondent and his dental practice from those prior violations.

14. Respondent repeatedly violated the essential conditions imposed to provisionally restore Respondent’s license in the 2017 Consent Order, despite numerous chances to comply provided by the Board, and he continued to violate those conditions up through the date of the hearing.

15. Ensuring compliance with its orders and other legal requirements is essential to the Board’s obligation to protect the public.

16. License revocation was considered but deemed not necessary to protect the public.

17. Discipline less than activating the three-year suspension of Respondent’s license in the 2017 Consent Order was considered but deemed insufficient to protect the public.

18. Protection of the public requires that the three-year suspension of Respondent’s license in the 2017 Consent Order be activated.
19. Respondent’s (i) repeated violations of the practice and billing monitor requirement, (ii) repeated violations of the community service requirement, and (iii) repeated submissions of false statements to the Board, each independently and separately warrant activation of Respondent’s three-year suspension, even if none of the other violations had occurred.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Conclusions Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. The suspension of Respondent’s license to practice dentistry in North Carolina set forth in the 2017 Consent Order is activated and license number 5647 issued to Respondent, Spurgeon W. Webber, III, is hereby suspended for three (3) years.

2. The suspension of Respondent’s license shall be effective 30 days from service of this Final Agency Decision to permit him to complete any treatment of patients that has already been commenced and to make arrangements necessary for the continuity of care for patients in his practice.

3. Respondent shall surrender to the Board his license and current renewal certificate no later than the effective date of the suspension of his license in this Final Agency Decision and Order of Discipline.

4. After no less than three (3) years from the effective date of this Order activating his suspension, Respondent may petition for reinstatement of his dental license consistent with the Board’s requirements for reinstatement of a dental license applicable at time the petition is filed. If the Hearing Panel grants his petition for reinstatement, it may impose any conditions on his reinstatement that it deems necessary at the time to protect the public.

This the ____ day of ______________________ 2021.

[Signature]

Dr. Edward J. Clemons, Presiding Officer
on behalf of the Hearing Panel
The N.C. State Board of Dental Examiners