

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:)
)
GARY L. CAMERON, D.D.S.) CONSENT ORDER
(License No. 4327))

THIS MATTER is before the North Carolina State Board of Dental Examiners (Board) as authorized by G.S. 90-41(b), with the consent of Gary L. Cameron, D.D.S. (Respondent) for consideration of a Consent Order in lieu of a formal administrative hearing. Respondent was represented in this matter by Mary Beth Johnston, Mike Gordon and Susan Hackney. Petitioner was represented by Douglas Brocker. To avoid additional proceedings, Respondent agrees not to contest the Board's findings of fact and conclusions of law set forth within this Consent Order and does furthermore agree to the provisions and sanctions contained herein.

FINDINGS OF FACT

1. The North Carolina State Board of Dental Examiners is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 90 of the North Carolina General Statutes (the Dental Practice Act).

2. Gary L. Cameron, D.D.S., (Respondent), was licensed to practice dentistry in North Carolina on August 1, 1977 and holds license number 4327.

3. Respondent has remained licensed to practice dentistry in North Carolina and was subject to the Dental Practice Act and the Board's Rules and Regulations at all times relevant hereto.

4. At all relevant times, Respondent was engaged in the practice of general dentistry in Asheboro, North Carolina.

5. Respondent operated a general dentistry practice where dental care was provided to the public as Dr. Gary L. Cameron, DDS d/b/a Asheboro Dental Care.

6. Respondent subsequently incorporated Gary Cameron and Associates, P.C. on or about January 26, 2010. Respondent is registered with the Dental Board as the sole owner of Gary Cameron and Associates, P.C. (P.C.). Respondent formed the P.C. as part of the anticipated transaction with Heartland set forth below.

7. Heartland Dental Care, Inc. (Heartland) is a Delaware corporation with its headquarters in Effingham, Illinois. Heartland is not a dental professional corporation authorized to practice dentistry in North Carolina.

8. In 2009, Respondent engaged Roger K. Hill & Company ("the Hill Company") to perform an assessment and provide a valuation of his dental practice, Gary L. Cameron, D.D.S d/b/a Asheboro Dental Care. In the report it produced as part of that engagement, the Hill Company determined that as of August 31, 2009, the Overall Fair Market Value of Gary L.

Cameron, D.D.S. on a Net Basis was \$2,350,800.00. This Overall Fair Market Value figure represented the Hill Company's assessment of the value of all of the assets of the Gary L, Cameron D.D.S dental practice.

9. In 2009, Respondent initiated communications with Heartland about his dental practice and had communications with various Heartland personnel about purchasing his practice. In approximately November 2009, Respondent also communicated with the associate dentist in his practice, Dr. Peter Son, about Heartland's potential purchase his dental practice.

10. On or about December 1, 2009, Respondent entered into a document with Heartland entitled "Letter of Intent to Acquire Certain Assets of Dr. Gary L. Cameron DDS (d/b/a-Asheboro Dental Care)." Pursuant to the Letter of Intent, Heartland agreed to pay Respondent a "Total Purchase Consideration" of \$2,450,000, plus the value of his accounts receivable to be determined at the time of sale. The Letter of Intent listed the assets to be acquired by Heartland as "all operating assets of the Seller, including leasehold improvements, office equipment, dental equipment, supplies, inventory, trade receivables, licenses, contracts, trademarks and other tangible and intangible property, necessary to the operations of the Seller . . ." The Letter of Intent listed the Seller as Dr. Gary L. Cameron DDS located at 350 N. Cox St., Suite 18, Asheboro, NC 27203, which was solely owned by Respondent at that time. The Total Purchase Consideration in the Letter of Intent with Heartland exceeded the Overall Fair Market Value figure that

represented the Hill Company's assessment of the value of all of the assets of Respondent's dental practice.

11. On or about March 31, 2010, Respondent executed numerous documents with Heartland. These documents included, among others, an Asset Purchase Agreement with numerous exhibits, including a Bill of Sale, Employment Agreement between Heartland and Respondent, a Promissory Note, and an Assignment of Lease. The Asset Purchase Agreement also included, various schedules listing acquired assets such as fixtures, furnishings, equipment, personal property leases, real property lease agreements, proprietary rights to assumed name, computer software, insurance policies, financial statements, wire instructions, excluded assets, and an allocation of purchase price, among others.

12. On or about March 31, 2010, as part of and contemporaneous with the Asset Purchase Agreement with Heartland, Respondent executed other related documents with Heartland, including a Management Agreement, Addendum to Management Services Agreement, Employee Lease, Power of Attorney, an Assumption Agreement, Subscription Agreement and Investment Representation, and a Non-Competition Agreement.

13. All the agreements and related documents entered into by Respondent and Heartland, including those noted above executed or about

March 31, 2010 (closing date), are referred to collectively hereinafter as "Purchase Agreements."

14. As consideration for the execution of the Purchase Agreements, Heartland agreed to pay Respondent a purchase price consisting of \$2,200,016, issue Respondent Heartland common stock valued at \$249,984 and pay \$138,396 for the accounts receivable of the dental practice. Thus, the aggregate amount Heartland paid Respondent in connection with the Purchase Agreements was \$2,588,396, consisting of the \$2,450,000 Purchase Price plus \$138,396 for the accounts receivable.

15. On or about the closing date, Heartland wire transferred to an account designated by Respondent the sum of \$1,800,016, executed a promissory note for \$400,000 payable to Respondent upon certain conditions and issued Respondent 5,208 shares of Heartland common stock valued at \$48 per share with a total stock value of \$249,984.

16. Schedule 2.1 to the Purchase Agreement entitled "Allocation of Purchase Price" attributed the \$2,450,000 Purchase Price as follows:

Equipment/Furnishings	\$265,000
Leaseholds	\$0
Covenant Not to Compete	\$10,000
Goodwill	<u>\$2,175,000</u>
Total Purchase Price	\$2,450,000

Through the Purchase Agreements, Heartland purchased all or substantially all of both the fixed assets, such as equipment and furnishings, and the intangible assets, such as the goodwill, necessary to the operations of Respondent's former dental practice, consistent with the December 1, 2009 Letter of Intent.

17. As part of the Purchase Agreements, Respondent signed a Noncompetition Agreement with Heartland individually and on behalf of his P.C. According to its terms, Respondent's execution of the Noncompetition Agreement was a condition precedent to consummation of the transactions set forth in the Asset Purchase Agreement and was a material inducement to Heartland to enter into the Asset Purchase Agreement with Respondent. The Noncompetition Agreement, among other provisions, prohibited Respondent through his P.C. for a period of 5 years from operating a "competing business," engaging or participating in the professional practice of dentistry, or providing dental professional services pursuant to any contract or other arrangement under which Respondent had a contract to provide dental services in North Carolina within a 15 mile radius of his practice location, and from soliciting or attempting to solicit any of his own patients of record.

18. Section 6.3 of the Asset Purchase Agreement between Respondent and Heartland contained a noncompetition provision with substantially similar restrictions as the noncompetition agreement between

Respondent's P.C. and Heartland. It also contained a corresponding non-solicitation covenant, which prohibited Respondent for a period of 5 years from hiring or attempting to hire any employees of the P.C. or Heartland, which provision applied to most or all of the employees of his former dental practice at the closing date.

19. Additionally, Section 6.8 of the Asset Purchase Agreement required Respondent to terminate the employment of all his employees, including but not limited to all employees who were hired by Heartland as of the closing date. In this section, Heartland indicated that it intended to offer employment to Respondent's employees who met its screening and other policies effective on the closing date. Thus, as part of the Purchase Agreements, Respondent was required to terminate all his employees and Heartland hired most or all of those employees as its own and then leased those employees back to the P.C. to work in Respondent's former dental practice.

20. Sections 7.2 and 7.3 of the Asset Purchase Agreement also required Respondent to execute an employment agreement with Heartland and an employment agreement with his own P.C.

21. Under his employment agreement with Heartland, Respondent was paid a salary as an employee, which was the greater of 15% of the amount collected by Heartland on behalf of Gary Cameron and Associates, P.C. resulting from Respondent's dental treatment or a minimum of \$72,000

annually. Respondent also was eligible as an employee of Heartland for a profitability bonus of his former dental practice.

22. Under his employment agreement with Gary Cameron and Associates P.C., Respondent also was paid a salary as an employee, which was the greater of 10% of the amount collected resulting from Respondent's dental treatment or a minimum of \$48,000 annually. Respondent also was paid 10% of the pro rata share of net hygiene services collections at Asheboro Dental Practice.

23. The two employment agreements divided the total salary compensation paid to Respondent, with 60% paid under Respondent's agreement with Heartland and 40% paid under Respondent's agreement with the P.C. This division was the same whether Respondent's salary was paid as a minimum amount or as a percentage of the amount collected by Heartland for Respondent's dental treatment.

24. The employment agreement between Respondent and the P.C. also contained a non-solicitation and noncompetition provision. This provision prohibited Respondent, for a period of 2 years from the last date of his employment with the P.C., from providing competing services (meaning professional dental treatment or services), and owning any businesses providing competing services within a 15 mile radius of the dental practice. It also prohibited Respondent from soliciting employees and soliciting or attempting to solicit any past or current patients. Thus, Respondent agreed

that if he left employment with the P.C. he would not set up a competing practice or solicit patients or employees of the P.C., which he certified to the Board that he solely owns.

25. Respondent permitted Heartland employees to negotiate and draft the employment agreements, including material terms therein, between the P.C. and himself and between the P.C. and Dr. Peter Son. Respondent did not negotiate any of the terms of the employment agreement between Dr. Son and the P.C.

26. As part of the Purchase Agreements, Respondent also executed on behalf of the P.C. a Management Agreement and related Employee Lease with Heartland. Pursuant to the Management Agreement and Employee Lease, Respondent through the P.C. agreed to:

a. lease clinical employees, excluding dentists, from Heartland, including employees who formerly worked for Respondent prior to the closing date;

b. give Heartland direct or indirect control or authority to approve or give input into the material terms of the relationship between the P.C. and the dentist and other clinical personnel who worked in the practice;

c. give Heartland the right to continue to collect accounts receivable for all dental services performed by the dental practice

prior to termination of the Management Agreement and to retain a copy of all patient dental records for that purpose;

d. surrender to Heartland the practice sites and all the equipment for the dental practice upon termination or expiration of the Management Agreement;

e. comply with a non-competition and non-solicitation provision similar to the one contained in Respondent's employment agreement with the P.C. as noted above; and

f. make monthly payments to Heartland that, at least in part, were not related to the provision of management services but instead were to effectively provide a preferred investment return from Respondent to Heartland through the Asset Purchase Agreement.

27. As part of the Purchase Agreements and consistent with Section 4.1 of the Management Agreement with Heartland, Respondent also executed a Power of Attorney on behalf of the P.C., which designated Heartland as the attorney-in-fact for the P.C. and granted Heartland the unconditional authority to take and perform the following actions, among others:

a. bill in the name of the Respondent's P.C. for all billable dental services provided;

b. collect, receive and administer in Heartland's name and for Heartland's account, all fees funds and revenues generated from any non-Medicare and non-Medicaid accounts receivable for dental services performed by licensed employees of the dental practice, including Respondent, and providing Heartland the sole right and discretion to administer and make withdrawals and disbursements from such bank accounts for the payment of the P.C.'s expenses, including Heartland's management fees;

c. collect, receive and administer all Medicare and Medicaid fees for dental services performed in the name of the Respondent's P.C.; and

d. take possession of and endorse in the name of the P.C. or any individual dentist, including Respondent, any drafts, notes, money orders, checks and other instruments received in payment of accounts receivable and to deposit those into one or more accounts in the name of Heartland for non-Medicare and non-Medicaid funds and to access and sweep any accounts on a daily basis in which Medicare or Medicaid funds from the P.C. are deposited in the name of the P.C.

28. The execution and consummation of the Purchase Agreements collectively, including but not limited to the specific documents and

provisions noted above, constituted a sale and gave effective ownership and control of Respondent's former dental practice to Heartland.

29. Respondent understood that at least part of the proposed transaction between himself and Heartland had been submitted to the North Carolina Board of Dental Examiners for review. Respondent was never informed prior to March 31, 2010 that the Board had approved or reviewed the proposed transaction between Heartland and himself before executing the Purchase Agreements.

30. From March 31, 2010 through August 2011, Respondent has implemented and continued to operate under the Purchase Agreements and allowed his former dental practice to continue operating as Asheboro Dental Care.

31. From March 31, 2010 through August 2011, Respondent allowed Heartland to use his name, diploma or license to operate his former dental practice and to bill and collect for professional services provided by him at Asheboro Dental Care.

32. Respondent represented that he has rescinded all the contracts, agreements and other documents with Heartland referenced in the above findings of fact contemporaneous with the execution of this consent order as required by a settlement agreement with the Board.

33. Respondent, through his Professional Corporation, is entering into a revised management agreement and promissory note with Heartland

that will be presented to the Board contemporaneously with this Consent Order for approval.

34. During its investigation of this matter, the Board did not receive any evidence of negligent patient care by Respondent or any evidence that non-licensed individuals conducted any patient care at Asheboro Dental Care.

35. Dr. Cameron has had no prior disciplinary actions by the Board in 34 years of practice.

CONCLUSIONS OF LAW

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

2. The Board is an administrative agency that the Legislature has authorized to regulate the practice of dentistry pursuant to the Dental Practice Act for the protection of the public health, and to make regulations to enforce that objective. N.C.G.S. 90-22, et seq.; Affordable Care v. Dental Board, 153 N.C. App. 527, 530 (2002).

3. The Board enacted 21 N.C.A.C. 16X .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 governmental 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 of dental practices by

unlicensed corporations and entities is prohibited because of the concern that when corporations which are unlicensed to practice dentistry gain improper control over dental practices, patient care may become secondary to profits thereby creating an endangerment to the public. Affordable Care, 153 N.C. App. at 538.

5. As set forth in the Findings of Fact above, Respondent violated N.C. Gen. Stat. §§ 90-41(a)(6), (9), (13) and (26), 90-29(a) and (b)(11) and 21 N.C.A.C. 16V.0101 and 16X.0101, by:

a. aiding, abetting, and assisting Heartland in its ownership, management, supervision, control, or conduct of an enterprise, where the practice of dentistry is conducted, under the name Gary Cameron and Associates, P.C. d/b/a Asheboro Dental Care;

b. providing Heartland effective ownership and control of the business activities, clinical services or professional services of his former dental practice d/b/a Asheboro Dental Care and the professional entity, Gary Cameron and Associates, P.C.;

c. permitting the use of his name, diploma or license by Heartland in the illegal practice of dentistry in North Carolina through his former dental practice d/b/a Asheboro Dental Care and the professional entity, Gary Cameron and Associates, P.C.; and

d. engaging in unprofessional conduct by having a professional connection with or lending his name to the unlawful practice of dentistry by

Heartland in North Carolina through his former dental practice d/b/a Asheboro Dental Care and the professional entity, Gary Cameron and Associates, P.C.

WHEREFORE, pursuant to the authority set forth in G.S. 90-41(a) and the foregoing Findings of Fact and Conclusions of Law, the parties consent to the following:

ORDER OF DISCIPLINE

1. License Number 4327 issued to the Respondent for the practice of dentistry is hereby suspended for a period of twenty-four (24) months. The suspension shall be stayed for sixty (60) months with Respondent's consent as long as Respondent complies with all of the following terms and conditions:

- (a) Neither the Respondent nor any entity owned or controlled by him shall enter into any new contracts or agreements with Heartland or any of its subsidiaries or affiliates, other than the revised management arrangement and promissory note referenced in paragraph 33 above; Neither Respondent nor any entity owned or controlled by him shall enter into any modification to the management arrangement and promissory

note referenced in paragraph 33 above without first obtaining the approval by the Board of such modification.

- (b) Respondent shall perform all obligations required to rescind all the contracts, agreements and other documents with Heartland (other than the revised management arrangement and promissory note referenced in paragraph 39 above) and necessary to unwind the previous transactions concerning the sale of the assets of the practice of Gary L. Cameron to Heartland, including, but not limited to, the payment of the promissory notes executed by Respondent to repay the purchase price to Heartland.
- (c) Respondent shall violate no provision of the Dental Practice Act or the Board's Rules and Regulations, and any other State and Federal laws related to dentists and the practice of dentistry;
- (d) Respondent shall take reasonable measures to ensure that all the employees of the Dental Practice he owns or operates, either individually or through a professional entity in which he is an owner, will not violate any provision of the Dental Practice Act or the Board's Rules and shall not direct any such employees to violate such Act or Rules;
- (e) During each year of the stayed suspension, Respondent shall provide a written Independent Auditor's Report of the

statements of financial position for the Professional entity in which he is an owner, from a North Carolina licensed CPA firm or individual approved by the Board. The Report shall be prepared as a "Reviewed" financial statement with agreed-upon procedures established by the Board for the approved CPA. These procedures may include selective confirmation with outside parties and of certain reported transactions. This independent auditor shall send the Report along with a summary of its findings directly to the Board's Deputy Operations Officer. The summary shall include, among other items, an analysis of its findings concerning the aggregate payments made to Heartland Dental Care, Inc., the profit distributions to the professional entity owned by Respondent and a general description of the Dental Practices' billing and collections for professional services and deposits and distributions of such revenues. The Report and summary shall contain copies of all checks, bank statements, or other evidence sufficiently documenting all payments to Heartland Dental Care, Inc. and all distributions to the Gary Cameron and Associates P.C. or other professional entity owned in whole or in part by Respondent and copies of the tax returns for Gary Cameron and Associates P.C. or other professional entity owned in whole or in part by

the Respondent. The audit report and summary shall be submitted no later than June 1 for each of the five years under which the Respondent remains in probationary status, for each preceding year of operation. Respondent shall submit the name of a proposed North Carolina licensed CPA firm or individual and obtain Board approval prior to engaging these services. Once approved, Respondent shall provide the independent auditor with a copy of this Consent Order. In addition to the Report, summary and corresponding records, the Board may require additional financial documents in its sole discretion as may be needed to determine compliance with this Order. Respondent shall be solely responsible to pay all fees associated with the independent audits;

- (f) Respondent (or another licensed North Carolina dentist employed by the professional entity, under Respondent's direction, and primarily responsible for providing dental services at that Dental Practice) must make all hiring and termination decisions concerning all other dentists, dental hygienists or other ancillary personnel involved in providing clinical services at the Dental Practices, as those terms are defined in 21 NCAC 16X .0101(f). Heartland, another company or person may assist in recruiting employees to the Dental Practice, provided

that there is no direct or indirect control over the hiring and firing of such clinical personnel or the material terms of their relationship with Respondent or his professional entity. Upon request, Respondent must provide the Board or its staff employment agreements of any employee of Respondent's practice and any written documentation of his or the other responsible dentist's involvement in all such hiring and termination decisions at the Dental Practices;

- (g) The Dental Practices shall be subject to random audits and inspections by the Board, its staff, or others designated by the Board. Respondent shall ensure that all personnel at the Dental Practices fully comply with such audits or inspections and promptly provide all requested documentation and information; and
 - (h) It is Respondent's responsibility to ensure that all reports, including from the independent auditor, are submitted to the Board in a timely manner.
2. Respondent voluntarily agrees to relinquish the right to appeal the entry of this Order.
 3. If Respondent fails to comply with any provision of this 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 should be not be activated. 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 of the Board's Rules. If Respondent fully complies with all the conditions in this Order for the entire 60 month stay period, the stay and conditions shall no longer be in effect and the potential 24 month suspension shall terminate at that time.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By:


Bobby D. White
Chief Operations Officer

STATEMENT OF CONSENT

I, GARY L. CAMERON, DDS, 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 admit, exclusively for the purposes of this disciplinary proceeding and any other disciplinary or licensure proceedings before the Dental Board, that there is a factual basis for the findings of fact herein, that the Findings of Fact support the Conclusions of Law and that I will not contest the Findings of Fact, the Conclusions of Law, or the Order of Discipline on appeal or if further disciplinary action is warranted in this matter. 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.

This the 30th day of August, 2011.



GARY L. CAMERON, D.D.S.