

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

Randal C. Smith, D.D.S.
(License No. 4811)

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CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners (the Dental Board) pursuant to N.C. Gen. Stat. § 90-41 and with the consent of Randal C. Smith, D.D.S., (Respondent), for the consideration of a Consent Order in lieu of a Formal Hearing. The Respondent consents to the entry of the Findings of Fact, Conclusions of Law and Order of Discipline solely for the purpose of this proceeding and any other proceedings involving the Dental Board or other dental licensing bodies.

Based upon the information supplied by the Investigative Panel and the Respondent and with the consent of all parties, the Board makes 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. Respondent was licensed to practice dentistry in North Carolina on July 14, 1980 and holds license number 4811. He 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.

3. At all times relevant hereto, Respondent was engaged in the practice of general dentistry in Concord or Kannapolis, North Carolina.

2009 YELLOW PAGES ADVERTISEMENT

4. In 2009, the Respondent arranged for the dissemination of an advertisement in the local telephone directory “yellow pages” (hereafter, “2009 yellow pages ad”).

5. The Respondent’s 2009 yellow pages ad described the Respondent’s practice as, among other things, “anti-aging,” “biological,” and “anti-toxic.” The yellow pages ad did not define these terms or indicate where appropriate definitions could be found.

6. The Respondent’s 2009 yellow pages ad also represented that the Respondent provides “beautiful dentistry with healing effects on body, mind and spirit.”

7. The Respondent was aware of and approved the content of the 2009 yellow pages ad before it was disseminated to the public.

8. The terms “anti-aging,” “biological,” and “anti-toxic” as used in the Respondent’s 2009 yellow pages ad are intended or likely to create false or unjustified expectations of favorable results and are likely to mislead or deceive because they make only a partial disclosure of relevant facts.

9. The representation that the Respondent provides “beautiful dentistry with healing effects on body, mind and spirit” is intended or likely to create false or unjustified expectations of favorable results.

STATEMENTS ON THE RESPONDENT’S WEBSITE

10. Between the years 2008 - 2010, the Respondent maintained a website which he used to disseminate various statements to the public about his dental practice.

11. The Respondent selected the information that appeared on the website and was aware of the contents of the website at all times.

12. The Respondent’s website asserted that he:

- a) can create “the smile you’ve dreamed about in as little as one appointment” through the use of “relaxation dentistry.”
- b) will satisfy patients “beyond [their] expectations.”
- c) offers “a number of specialized treatment options each designed for a specific component of [the patient’s] overall oral health.”

13. The statements set out in Finding of Fact No. 12 were likely to create false or unjustified expectations of favorable results.

14. The Respondent’s website falsely claimed that he provides oral sedation, in multiple doses, if necessary.

15. The Respondent has never held a sedation permit issued by the North Carolina State Board of Dental Examiners and has never administered oral sedation of any kind.

SEPTEMBER 2009 NEWSPAPER AD

16. In September 2009 the Respondent placed an advertisement about his dental practice in the Charlotte Observer Newspaper (hereafter, “September 2009 ad”)

17. The September 2009 ad contains the question: “Did you know that infections of the mouth can lead to Heart Disease, Alzheimer’s & Arthritis?”

18. The September 2009 ad did not disclose that the causal link between oral infections and other diseases, such as heart disease, Alzheimer’s and arthritis, is subject to debate in the medical and dental professions and that other factors such as genetics, environment, diet and age also may contribute to the occurrence of these diseases. Because of these omissions, the September 2009 ad was misleading.

19. The Respondent was aware of and approved the text of the September 2009 newspaper advertisement.

SHERYN GOODMAN

20. On May 4, 2010, Ms. Sheryn Goodman (Ms. Goodman), presented to the Respondent's office for a new patient exam.

21. The Respondent diagnosed Ms. Goodman with rampant decay and failing restorations.

22. The Respondent devised a treatment plan that called for the extraction of most of Ms. Goodman's teeth, including teeth numbers 19 and 20.

23. As of May 2010, Ms. Goodman's teeth number 19 and 20 had large amalgam restorations, but there was no clinical or radiographic pulpal involvement and no valid clinical reason to extract the teeth.

24. The Respondent told Ms. Goodman that she needed to have her teeth extracted because they contained amalgam fillings that were poisoning her system and causing various physical problems, including Ms. Goodman's existing allergies and hypertension.

25. The Respondent did not tell Ms. Goodman that there was no valid clinical reason to extract teeth number 19 and 20.

26. The Respondent did not tell Ms. Goodman that his statements regarding the relation between dental amalgam and the occurrence of physical ailments such as allergies and hypertension are inconsistent with positions taken by the American Dental Association and the World Health Organization. Nor did the Respondent disclose that his views about dental amalgam are controversial and disputed by many North Carolina dentists. The Respondent's failure to make these disclosures made his statements to Ms. Goodman misleading.

27. On June 10, 2010, the Respondent extracted a number of Ms. Goodman's teeth, including numbers 1, 5, 12, 13, 18, and 29 - 31. During the procedure, each of these teeth fractured and the Respondent left roots or root tips at each extraction site.

28. The Respondent failed to tell Ms. Goodman that he had left roots or root tips at the sites of teeth numbers 1, 5, 12, 13, 18, and 29 - 31 and merely referred her to an oral surgeon.

29. The standard of care applicable to dentists licensed in North Carolina as of 2010 required dentists to advise patients when roots or root tips are left behind after extractions.

CONCLUSIONS OF LAW

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

2. The Respondent's use of the terms "anti-aging," "biological," and "anti-toxic" in his 2009 yellow pages ad created false and unjustified expectations of favorable results and therefore violated 21 NCAC 16P .0101(3) and 21 NCAC 16P .0103(2). The terms were also misleading and therefore violated G.S. §§ 90-41(a)(6) and (18).

3. The Respondent's statement that he provides "beautiful dentistry with healing effects on body, mind and spirit" was intended or likely to create unjustified expectations of favorable results and therefore violated 21 NCAC 16P .0101(3) and G.S. § 90-41(a)(6).

4. The Respondent's statements set out in Findings of Fact No. 12 were intended or likely to create unjustified expectations of favorable results and therefore violated 21 NCAC 16P .0101(3) and G.S. § 90-41(a)(6).

5. The Respondent's claim that he provides oral sedation was false and misleading and therefore violated 21 NCAC 16P .0101(1) and G.S. §§ 90-41(a)(6) and (18).

6. The Respondent's representation regarding an alleged causal link between oral infection and various ailments was likely to mislead because it contained only a partial disclosure of relevant facts, in violation of 21 NCAC 16P .0101(2) and G.S. § 90-41(a)(6) and (18).

7. By advising Ms. Goodman to have her teeth numbers 19 and 20 extracted without telling her that there was no valid clinical reason to extract the teeth and without disclosing that his views about the amalgam fillings are inconsistent with positions taken by the ADA and WHO, are controversial and are disputed by many North Carolina dentists, the Respondent violated G.S. §§ 90-41(a)(6), (12) and (19).

9. By failing to disclose to Ms. Goodman that he had failed to remove a number of roots and root tips after the extractions on June 10, 2010, the Respondent violated G.S. 90-41(a)(6), (12) and (19).

ORDER OF DISCIPLINE

1. Respondent's license to practice dentistry in North Carolina is hereby suspended, effective as of the date of this Order.

2. At any time after one (1) year from the date of this Order, the Respondent may petition for reinstatement of his dental license.

3. The Respondent must surrender his North Carolina dental license and current renewal certificate to the Board no later than the date of this Order.

This the 28th day of August, 2012.


THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

BY: Terry W. Friddle / csg
Terry W. Friddle
Deputy Operations Officer

STATEMENT OF CONSENT

I, RANDAL C. SMITH, 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 admit, exclusively for the purposes of this disciplinary proceeding and any other disciplinary or licensure proceedings before the Dental Board or any other dental licensing agency matter, 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 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 23rd day of August, 2012.


Randal C. Smith, D.D.S.