

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

MADELINE ABUDU, D.M.D.
(License No. 8700)

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FINAL AGENCY DECISION

THIS MATTER was heard before the North Carolina State Board of Dental Examiners (Dental Board) on February 16, 2018, pursuant to N.C. Gen. Stat. §§ 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. Millard W. Wester, III, presiding, Dr. William M. Litaker, Jr.; Dr. Kenneth M. Sadler; and Dr. Clifford O. Feingold. Board members Dr. Merlin W. Young, Ms. Nancy A. St. Onge, and Mr. Dominic Totman did not participate in the hearing, deliberation, or decision of this matter. Douglas J. Brocker and Whitney S. Waldenberg represented the Investigative Panel of the Dental Board. Fred Morelock represented the Dental Board's Hearing Panel. Dr. Madeline Abudu, D.M.D. (Respondent) was properly served with notice but did not attend the hearing.

Based upon the evidence admitted at the hearing, 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 (the Dental Practice Act) and the Rules and Regulations of the Dental Board.

1. Madeline Abudu, D.M.D. was licensed to practice dentistry in North Carolina on October 6, 2008 and holds license number 8700.

2. Respondent is subject to the Dental Practice Act and the Rules promulgated thereunder.

Abandonment of Charles Ukwu as a Patient

3. On or about October 11, 2016, Respondent undertook to provide dental care to Mr. Charles Ukwu (Mr. Ukwu) to have a permanent crown made for his tooth.

4. At that appointment, Respondent placed a temporary crown on Mr. Ukwu's tooth, and the permanent crown was to be placed at Mr. Ukwu's next appointment in December of 2016.

5. On October 11, 2016, Respondent charged Mr. Ukwu \$288.80 as partial pre-payment for the permanent crown.

6. Mr. Ukwu paid Respondent \$288.80 as partial pre-payment for the permanent crown.

7. Following the October 11, 2016 appointment, Mr. Ukwu's temporary crown broke and he attempted to contact Respondent's office to have it fixed.

8. Mr. Ukwu was unable to reach Respondent's office by phone.

9. Mr. Ukwu went to the physical location of Respondent's office, only to find that the practice had closed and appeared deserted.

10. By that point, Mr. Ukwu's temporary crown was broken and he was left with a crownless tooth.

11. After Mr. Ukwu's October 2016 appointment, Respondent failed to:

- a. have any contact with Mr. Ukwu;
- b. give Mr. Ukwu any notice that she would be closing her practice and ceasing his treatment;

- c. provide Mr. Ukwu a permanent crown or complete his treatment; and
- d. refund the advanced payment made by Mr. Ukwu for the permanent crown that she did not provide.

12. Respondent failed to properly wind down her dental practice before closing her office and abandoned her patient, Mr. Ukwu.

Failure to Respond

13. Mr. Ukwu filed a Complaint with the Board on March 3, 2017.

14. On March 16, 2017, the Investigative Panel sent Respondent a copy of the complaint and asked Respondent to provide a response to the complaint within fifteen (15) days of receipt of the letter.

15. The complaint was sent to her address of record that Respondent has provided to the Board.

16. The Board did not receive any response to the March 16, 2017 letter from Respondent.

17. On April 12, 2017, the Investigative Panel sent a second letter to Respondent by certified mail, providing Respondent a second opportunity to respond to the complaint.

18. The April 12, 2017 letter was received by certified mail, but Respondent failed to provide a response to the Board.

19. On May 15, 2017, the Board issued a subpoena for Respondent's treatment records for Mr. Ukwu.

20. The subpoena was properly served on Respondent at her address of record.

21. Respondent has not responded to the Board's subpoena for the treatment records.

22. On August 23, 2017, the Investigative Panel sent a final letter to Respondent at her address of record, allowing her a final opportunity to respond to Mr. Ukwu's complaint and provide his treatment records.

23. Respondent failed to respond to the August 23, 2017 letter.

24. The Investigative Panel issued a Notice of Hearing in this matter on October 11, 2017 and a Corrected Notice of Hearing on October 12, 2017.

25. The Notice of Hearing, along with a Pre-Hearing Management Scheduling Order and the Investigative Panel's First Requests for Admission and the Investigative Panel's First Combined Interrogatories and Request for Production of Documents were served by hand delivery on Respondent's father by a process server on October 12, 2017 at Respondent's home.

26. The Investigative Panel received has received no communication to date from Respondent in response to the service of the Notice of Hearing and accompanying documents, including to the Requests for Admission.

27. The Investigative Panel sent Respondent the Investigative Panel's Exhibit List, Witness List, Contested Issues List, along with Exhibits by both email and regular mail. The Investigative Panel used the email address and physical address provided by Respondent to the Board. The Investigative Panel did not receive any response from Respondent.

28. Respondent failed to appear at the Board's office at the scheduled hearing time on February 16, 2018 despite receiving proper notice of the hearing.

Based upon the foregoing Findings of Fact and evidence admitted at the hearing, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. The North Carolina State Board of Dental Examiners has jurisdiction over the subject matter of this action and over the person of the Respondent.

Violations concerning Charles Ukwu

2. Based on the testimony and other evidence admitted and on the Hearing Panel members' collective experience, technical competence, and specialized knowledge, the Hearing Panel concludes that the standard of care for dentists licensed to practice dentistry in North Carolina, at the time Respondent treated Charles Ukwu, required a dentist who was no longer willing or able provide treatment to:

- a. notify a patient that the dentist would be unable to complete treatment;
- b. timely refer the patient who was in mid-treatment to another dentist for continued care; and
- c. refund any unearned payments made for treatment not provided.

3. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina, and thereby engaged in negligence in violation of G.S. § 90-41(a) (6) and (12) in her treatment of Charles Ukwu by failing to notify him that respondent was ceasing to provide him treatment, timely refer him to another dentist for continuation of treatment, and refund payments he made to Respondent for treatment that she did not provide.

Violations concerning Failure to Respond

4. Respondent received proper notice of Mr. Ukwu's complaint and was provided several opportunities to respond to his complaint but failed to provide any response.

5. The Board's May 15, 2017 subpoena for patient records was properly served upon Respondent, but Respondent failed to comply with the subpoena.

6. Respondent failed to produce the requested diagnostic radiographs and other treatment records requested by the Board and its investigators.

7. Respondent's repeated failures to provide a written response to the complaint, her failure to respond to the Board's May 15, 2017 subpoena, and her failure to produce diagnostic radiographs or other treatment records on request of the Board or its investigator constitutes unprofessional conduct pursuant to G.S. § 90-41(a)(26) and 21 NCAC 16V.0101(4), (14) and (17).

Respondent's Admissions are an Independent Basis

8. The Notice of Hearing, along with a Pre-Hearing Management Scheduling Order and the Investigative Panel's First Requests for Admission and the Investigative Panel's First Combined Interrogatories and Request for Production of Documents were properly served upon Respondent, but Respondent failed to provide any response and has made no attempt to contact the Board.

9. Specifically, Respondent was properly served the Investigative Panel's First Requests for Admissions, and failed to respond.

10. Pursuant to Rule 36(a) of the North Carolina Rules of Civil Procedure, "[e]ach matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within [the prescribed time period] . . . the party to whom the request

is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney”

11. Pursuant to North Carolina Rules of Civil Procedure Rule 36(b), “Any matter admitted under this rule is conclusively established unless the court on motion permits withdraw or amendment of the admission.”

12. By operation of law, all the material facts in this matter have been conclusively established by Respondent’s admissions and by her failure to request and receive permission to withdraw or amend her admissions.

13. The conclusive admissions of all the material facts in this matter establish the findings, conclusions, and violations set forth herein and warrant the discipline imposed, independent of the testimony, exhibits and other evidence admitted at the hearing.

14. Respondent’s deviations from the standard of care and her repeated failure to respond or participate in the formal hearing process warrant an indefinite suspension of Respondent’s dental license.

15. Only if Respondent complies fully with various terms and conditions as set forth herein, including full future compliance with the Dental Practice Act and the Board’s Rules and Regulations, can the public be adequately protected by potentially provisionally restoring her license.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. License number 6700 issued to Respondent for the practice of dentistry in North Carolina is suspended indefinitely.

2. Respondent's dental license potentially may be provisionally restored, if Respondent, upon filing a Petition and making a personal appearance before the Board, Respondent's provides the Board evidence demonstrating that she has fully and timely complied with the following terms and conditions:

- a. Respondent shall reimburse Mr. Ukwu two hundred eighty-eight dollars and eighty cents (\$288.80) and provide the Board with documentation of such reimbursement.
- b. Respondent shall provide the Board documentation demonstrating that Respondent properly wound down her practice, including:
 - i. transferring all patient records to her former patients or another provider at the patient's direction, or making reasonable attempts to do so and to preserve any records that could not reasonably be transferred; and
 - ii. reimbursing all fees paid by patients for services not rendered by Respondent.
- c. Respondent has not engaged in the practice of dentistry while her license was indefinitely suspended and has not violated any other provisions of the Dental Practice Act or the Board's Rules and Regulations.

3. If Respondent, through her Petition and personal appearance before the Board, provides satisfactory evidence that she has fully complied with all the terms and

conditions in paragraph two above, Respondent's license shall be provisionally restored provided Respondent complies with all the following probationary terms and conditions for a period of five (5) years from the date her license is provisionally restored:

- a. Respondent shall violate no provisions of the Dental Practice Act or the Board's Rules and Regulations;
- b. Respondent shall neither permit nor direct any employees to violate any provision of the Dental Practice Act or the Board's Rules and Regulations;
- c. Respondent shall permit the Board and its agents to inspect and observe her office and patient records and interview employers, employees, and co-workers at any time during normal office hours;
- d. Respondent shall complete the following continuing education course, specially designed for her by the University of North Carolina School of Dentistry in conjunction with the North Carolina State Board of Dental Examiners directives and approved by it in advance, including a comprehensive, remedial course covering: ethics and jurisprudence, including duties to patients during the course of treatment and responsibilities regarding treatment records. This requirement shall be in addition to the continuing education required by the Board for the renewal of Respondent's dental license. Respondent shall submit to the Board's Director of Investigators written proof of satisfactory completion of this course before it will be accepted in satisfaction of this requirement. It is Respondent's responsibility to make all arrangements for and bear the cost of this course within the specified time.

4. The Board recognizes that the conditions, limitations, or requirements set forth in this Decision may present Respondent 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.

5. If Respondent fails to comply with any provision of this Decision 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 Respondent's suspension 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 Decision, the Board shall activate the indefinite suspension and also 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.

This the 14 day of February 2018.



Dr. Millard W. Wester, III
Hearing Panel Chair

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS