

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:)
)
STEVEN B. AIREY, D.D.S.) CONSENT ORDER
(License No. 7912))

THIS MATTER is before the North Carolina State Board of Dental Examiners (the Board) pursuant to N.C. Gen. Stat. § 90-41.1(b) for consideration of a Consent Order in lieu of a Formal Hearing. Steven B. Airey, D.D.S. was represented by Hardy Lewis and Frank Recker. Carolin Bakewell represented the Investigative Panel. After extensive discovery and discussions, the parties desire to resolve this dispute by means of this Consent Order. With the consent of the parties, the Board makes the following:

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. Steven B. Airey, D.D.S. (Respondent), was licensed to practice dentistry in North Carolina on January 5, 2005 and holds license number 7912.

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 Boone, North Carolina.

5. Respondent received proper notice of the allegations upon which this Consent Order is based and was provided an opportunity to respond.

6. Jessi L. Combs (Ms. Combs) became the Respondent's dental patient in 2005.

7. On April 10, 2007, Respondent took dental records to begin orthodontic treatment of Ms. Combs. He estimated that her treatment would take 14 months and would cost \$3,857.40.

8. At the time that Ms. Combs began treatment, she had a 2.5 mm overjet, a 4 mm overbite, no cross bite, slightly flared incisors, 1 mm maxillary and mandibular crowding and coincident dental midlines.

9. The Investigative Panel has alleged that Respondent was negligent in his treatment of Ms. Combs and that, as a result of the Respondent's negligence, Ms. Combs' orthodontic problems worsened.

10. The Respondent denies the allegations against him regarding Ms. Combs. Through their counsel, the parties have engaged in substantial discovery, including the exchange of patient records and documents, and the depositions of Dr. Airey, Ms. Combs and several expert witnesses. The parties agree that a genuine dispute exists as to the merit of the complaints of Ms. Combs.

Based upon the consent of the parties and the record herein, the Board makes the following:

CONCLUSIONS OF LAW

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

2. If the factual allegations made by the Investigative Panel were proven, grounds for imposition of discipline would exist.

3. Genuine factual disputes exist between the parties.

4. While denying any wrongdoing, the Respondent desires to resolve these disputes and maintain a professional relationship with the Board.

Based upon the Findings of Fact, Conclusions of Law and the consent of the parties hereto, the Board enters the following:

ORDER OF DISCIPLINE

1. License Number 7912 issued to Respondent for the practice of dentistry in North Carolina is hereby suspended for a period of one (1) year.

2. With the Respondent's consent, his license to practice dentistry shall be immediately reinstated, with no period of active suspension, provided that for seven (7) years from the date of this Order, he adheres to the following probationary terms and conditions:

(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 of his 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 his office and patient records and interview employers, employees and co-workers at any time during normal office hours;
- (d) Within 30 days of signing this Order, the Respondent shall provide written proof to the Dental Board that he has refunded all monies paid by or on the behalf of Jessi Combs for orthodontic treatment provided by Respondent to Ms. Combs and that he has refunded all monies paid by or on behalf of Joseph Calhoun related to the eight unit fixed appliance planned for Mr. Calhoun, including funds earmarked for laboratory fees;
- (e) As of the date of entry of this Order, the Respondent shall refer all active orthodontic cases to a North Carolina licensed orthodontist whose license is in good standing with the Board. The Respondent shall not engage in orthodontics or undertake to treat the orthodontic condition of any patient at any time. "Orthodontics" and "treating an orthodontic condition" shall mean undertaking to prevent or straighten malposed teeth, malocclusions and related facial disharmony through the use of extractions, appliances or any other method. Respondent shall consult with the Board's Deputy Operations Officers regarding the interpretation of the subsection. The Board's interpretation shall be final;
- (f) Within one year from the date of this Order, Respondent shall perform eighty (80) hours of community service dental work. The

work shall be approved in writing by the Board before it is performed. During each month of the term of this order, until the work is completed, Respondent shall provide monthly written reports to the Board including a daily tabulation of all services performed by him in the preceding month. Work performed without prior approval of the Board will not be accepted in satisfaction of this requirement;

- (g) Within thirty (30) days of the date of this Order the Respondent shall reimburse the Board for the costs associated with this investigation in the amount of \$ 3200.00.

3. Respondent may not seek to terminate the probation period imposed by this Consent Order.

4. The Respondent may not resume the practice of orthodontics at any time without prior written Board approval.

5. If Respondent violates any term of this Order breaches any term or condition of the conditional restoration of his license, the Board will immediately schedule a hearing to require Respondent to show cause why his dental license should not be suspended for one (1) year. 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 the Board's rules.

This the 19 day of July, 2010.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By

A handwritten signature in black ink, appearing to read "Terry W. Friddle", written over a horizontal line.

Terry W. Friddle

Deputy Operations Officer

STATEMENT OF CONSENT

I, STEVEN B. AIREY, 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, 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 25 day of June, 2010.


STEVEN B. AIREY, D.D.S.