

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

BYRON L. MCNEILL, D.D.S.
(License Number 4276)

)
) FINAL AGENCY DECISION
)

THIS MATTER came on to be heard and was heard on December 12, 2009 before the North Carolina State Board of Dental Examiners (the Board) pursuant to G.S. §§ 90-41.1 and 150B-38 and 21 N.C.A.C. 16N .0504 of the Board's Regulations. The hearing panel of the Board consisted of Board members Dr. Brad C. Morgan, presiding; Dr. Ronald K. Owens, Dr. Millard Wester III and Dr. W. Stan Hardesty. Board members Dr. Kenneth Sadler, Dr. C. Wayne Holland, Dr. James B. Hemby, Jr., and Ms. Jennifer Sheppard, R.D.H., did not participate in the hearing, deliberations or decision of this matter. The Respondent, Dr. Byron L. McNeill, was represented by James H. Locus, Jr. Carolin Bakewell represented the Investigative Panel.

Based upon the evidence produced at the hearing, the Board enters 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 under the authority granted it in Chapter 90 of the North Carolina General Statutes (the Dental

Practice Act) and the Regulations of the North Carolina State Board of Dental Examiners.

2. Dr. Byron L. McNeill (Respondent), was licensed to practice dentistry in North Carolina on July 12, 1976.

3. At all times relevant hereto, the Respondent was licensed to practice dentistry in North Carolina and was subject to the Dental Practice Act and the Board's rules and regulations promulgated thereunder.

4. On August 8, 2008, the Dental Board and the Respondent entered into a Consent Order (August 8, 2008 Consent Order), whereby the Respondent's license to practice dentistry was suspended for five years. The Respondent's license was conditionally restored following a 90 day active suspension, on the condition among other things, that Respondent completed Board approved courses in diagnosis and treatment planning, record keeping, radiology, crown and bridge fabrication and endodontic therapy by August 8, 2009.

5. The Respondent was aware of the terms of the August 8, 2008 Consent Order.

6. The Respondent did not request additional time in which to comply with the August 8, 2008 Consent Order, nor has any order been entered allowing the Respondent additional time to comply with the terms of the August 8, 2008 Consent Order.

7. The August 8, 2008 Consent Order has not been overturned or vacated.

8. In May 2009, W. Line Dempsey, the Board's investigator, visited the Respondent's dental office and reminded him of the August 8, 2009 deadline to complete the continuing education courses.

9. The Respondent never submitted any courses for Board approval before or after the August 8, 2009 deadline.

10. In September 2008, after he was served with the Notice of Hearing in this matter, the Respondent took a six hour course in endodontics. The course was never approved by the Board.

11. The Respondent also took other continuing education courses after the August 8, 2008 Consent Order was entered, but none of the courses were approved by the Board. The Respondent failed to present convincing evidence that these courses adequately addressed diagnosis and treatment planning, record keeping, radiology, or crown and bridge fabrication.

12. The Respondent testified that he suffered from allergies and flu during part of 2008 and that he was obliged to travel to Georgia on a number of weekends to assist family members. The Respondent failed to present convincing evidence that his illnesses and family obligations prevented him from complying with the August 8, 2008 Consent Order.

13. By failing to complete the continuing education courses in endodontic therapy, diagnosis and treatment planning, record keeping, radiology, crown and bridge fabrication by August 8, 2009, the Respondent violated lawful order of the Board entered in a disciplinary proceeding, and thereby violated 21 NCAC 16V .0101(4) and G.S. 90-41(a)(6) and (26).

14. On November 27, 1990, the Dental Board and the Respondent entered into a Consent Order which found that he had engaged in negligence in the practice of dentistry respecting a patient. The Consent Order suspended the Respondent's dental license for five years, with all but 21 days of the suspension period stayed on various conditions.

15. On January 16, 2004, the Dental Board suspended the Respondent's dental license for 90 days, with all but 15 days of the suspension stayed for three years, upon finding that the Respondent had failed to release records to a patient upon request. The January 16, 2004 order required the Respondent to take continuing education courses at the UNC School of Dentistry by January 16, 2005.

16. The Respondent failed to complete the required continuing education courses and the Dental Board invoked the active suspension of his dental license on February 2, 2005.

17. The Dental Board concluded that suspending the Respondent's dental license for the remaining probationary term of his current disciplinary order was necessary to protect the public in light of the seriousness of the violation and his disciplinary record.

CONCLUSIONS OF LAW

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

2. By failing to complete the continuing education courses required by the August 8, 2008 Consent Order, the Respondent violated a lawful order of the

Board entered in a disciplinary proceeding, and thereby violated 21 NCAC 16V .0101(4) and G.S. §§ 90-41(a)(6) and (26).

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

ORDER OF DISCIPLINE

1. License Number 4276 issued to Respondent for the practice of dentistry in North Carolina is hereby suspended for four years and nine months, effective beginning on March 19, 2010.

2. Respondent may petition for the reinstatement of his dental license, and reduce the term of suspension, at any time following his completion of all probationary terms and conditions as outlined in the August 8, 2008 Consent Order.

3. Respondent may not derive any financial benefit from the practice of dentistry during the active term of the suspension of his license.

This the 16th day of February, 2010.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By: Terry W. Fiddle
Terry W. Fiddle
Deputy Operations Officer