

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

WILLIAM K. NABORS, D.D.S.
(License No. 4932)

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FINAL AGENCY DECISION

THIS MATTER was heard on November 5 – 6, 2009 and January 7 – 8, 2010 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 Rules. The Hearing Panel consisted of Board members Dr. C. Wayne Holland, presiding; Dr. Ronald K. Owens, Dr. W. Stan Hardesty, Dr. Millard W. Wester, III and Dr. Kenneth M. Sadler. Board members Dr. Brad C. Morgan, Dr. James B. Hemby, Jr., and Ms. Jennifer Sheppard, R.D.H., did not participate in the hearing, deliberations or decision of this matter. Kenneth Jones represented the Respondent, Dr. William K. Nabors. Thomas F. Moffitt represented the Hearing Panel and Carolin Bakewell represented the Investigative Panel.

Based upon the stipulations of the parties and 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 Rules of the North Carolina State Board of Dental Examiners.

2. William K. Nabors, D.D.S., (the Respondent) was licensed to practice dentistry in North Carolina on June 29, 1981.

3. At all times relevant hereto, the Respondent was subject to the Dental Practice Act and the Board's rules promulgated thereunder.

4. The Respondent was properly served with the Amended Notice of Hearing and had notice of the hearing dates.

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

6. Deborah Stapf (Ms. Stapf) became the Respondent's patient no later than June 1997. Most of her treatment before June 2004 consisted of routine dental work.

7. On June 3, 2004, Ms. Stapf presented to the Respondent's office with complaints of discomfort in the area of tooth number 14. Ms. Stapf later reported that the discomfort began after she bit down on an olive pit during a meal.

8. The Respondent took a radiograph of tooth number 14, which disclosed nothing remarkable. He scaled between teeth numbers 14 and 15 but provided no further treatment during the June 3 appointment.

9. Beginning on June 7, 2004 and continuing through November 28, 2006, Ms. Stapf returned to the Respondent's practice 33 times, usually with complaints of recurrent pain. The pain was sometimes so severe that Ms. Stapf was nauseated and could neither sleep nor work.

10. Between June and December 2004, the Respondent performed some traditional dental treatments and tests in an attempt to diagnose the cause of and alleviate Ms. Stapf's pain. For instance, the Respondent performed diagnostic anesthetic injections, referred Ms. Stapf for a CT scan, fabricated and delivered a soft appliance or orthotic and had his partner, Dr. A.G., perform a TMJ evaluation for Ms.

Stapf. The Respondent also referred Ms. Stapf to a local endodontist, who reported that tooth number 14 was vital.

NICO

11. In December 2004, when Ms. Stapf's symptoms seemed to be worsening, the Respondent referred her to Dr. Wesley Shankland, a general dentist who practices in Ohio.

12. The Respondent told Dr. Shankland that he suspected that Ms. Stapf had either osteomyelitis, which is an infective disorder, or NICO (neuralgia inducing cavitational osteonecrosis), which some practitioners believe may be the result of a clotting disorder that restricts blood flow and creates areas of dead bone in the jaw.

13. The term NICO was coined in 1992 by Dr. Jerry E. Bouquot, (Dr. Bouquot), an oral pathologist then working in West Virginia. (Ex. 35 at p. 1). Dr. Bouquot, who testified on the Respondent's behalf, is generally acknowledged to be the main proponent of the NICO concept in the United States.

14. NICO is a controversial diagnosis that is accepted as a legitimate entity by a small but vocal minority of dentists and physicians (Tr. pp. 285-6, 301 405, 541).

15. Proponents of NICO disagree over what causes the disorder, how to treat it and even what to call it. (Tr. pp. 238-40, 333, 411; Ex. 34 at p. 7, Ex. 35 at p. 3).

16. Respondent believes that NICO is a legitimate diagnosis, has performed surgery for NICO on at least two patients, studied under Dr. Bouquot in dental school and considers Dr. Bouquot to be his mentor. He has also referred other patients to Dr. Shankland.

17. At the time he referred Ms. Stapf to Dr. Shankland, the Respondent knew that NICO was a controversial diagnosis and that Dr. Shankland was also a leading proponent of the NICO concept.

18. The Respondent suggested that Ms. Stapf review information about NICO on Dr. Shankland's website, but did not refer her to articles written by health care professionals who do not believe that the disorder exists. The Respondent never told Ms. Stapf that NICO is a controversial concept. (Tr. pp. 144, 432-3).

19. Prior to referring Ms. Stapf to Dr. Shankland, the Respondent had not exhausted all scientifically established diagnostic and treatment methods for Ms. Stapf. For instance, the Respondent never referred Ms. Stapf to an oral surgeon, a neurologist or a periodontist. (Tr. pp. 80, 97, 388, 432) And, when a radiograph that the Respondent took on January 14, 2005 indicated that tooth number 14 might be chronically abscessed, the Respondent never referred Ms. Stapf for an additional endodontic evaluation.

20. On January 19, 2005, upon Ms. Stapf's arrival in Ohio, Dr. Shankland diagnosed the area of teeth number 13 – 16 with osteomyelitis and diagnosed NICO in the lower jaw, in the area of teeth number 17 – 19, an area that was completely asymptomatic. (Tr. p. 84).

21. Dr. Shankland's diagnosis was made based on an intraoral examination, an MRI and a Cavitat scan. (Tr. pp. 436-7). Even proponents of NICO concede that neither an intraoral examination nor an MRI are effective tests for diagnosing NICO. (Tr. p. 437).

22. The Cavitat scan has not been approved by the FDA as a diagnostic device and there are no articles in any peer reviewed journals published in this country supporting the use of the Cavitat to diagnose NICO.

23. Although Dr. Shankland presented Ms. Stapf with various treatment options, including doing nothing or seeking a second opinion, she was in excruciating pain and was desperate for relief. (Tr. p. 223) She opted for the extraction of teeth numbers 14 and 15, which Dr. Shankland performed on January 20, 2005.

24. After removing Ms. Stapf's teeth, Dr. Shankland curetted the bone in the extraction site up to the sinus floor. (Tr. pp. 439-40). Consequently, Ms. Stapf was not a candidate for implants and the Respondent ultimately fabricated a partial denture for her at an additional cost of \$1525. (Ex. 14 at pp. 204-205).

25. Fragments of bone collected during Ms. Stapf's surgery were sent to Dr. Bouquot's laboratory in West Virginia for analysis.

26. At the Respondent's suggestion, Ms. Stapf and her husband also made a second trip to Ohio to consult a physician named Dr. Charles Gleuch, another NICO proponent, to determine if Ms. Stapf had a clotting disorder.

27. Neither Dr. Bouquot's biopsy report nor the results of Dr. Gleuch's blood tests conclusively established that Ms. Stapf suffered from NICO. (Tr. pp. 251-2, 254-57).

28. Nevertheless, the Hearing Panel need not and does not reach the question of whether Ms. Stapf in fact had NICO.

29. The NICO concept is not generally taught in dental schools in this country as an accepted diagnosis and has not been proven to exist by sound, objective scientific principles. (Tr. pp. 356-58, Ex. 34 at pp. 7-8; Ex. 35 at pp. 3-4, Ex. 38 at p. 3).

30. North Carolina dentists must exhaust all scientifically established treatments and tests before referring patients to proponents of treatment modalities and diagnoses that have not been proven by sound, objective scientific principles and that are not generally taught in dental schools in this country. They must also clearly advise the patient that the practitioner to whom the referral is made is a proponent of a controversial treatment method or diagnosis.

Antibiotic Treatment

31. Both before and after the referral to Dr. Shankland, the Respondent regularly prescribed antibiotics to Ms. Stapf. By November 28, 2006, the date of her last appointment, the Respondent had prescribed 23 courses of antibiotics for a total of at least 565 tablets. (Tr. p. 475)

32. The Respondent continued to prescribe antibiotics to Ms. Stapf despite the fact that he never did a culture and never determined the nature of the infection, if any, afflicting Ms. Stapf. (Tr. pp. 275-6, 478) He never warned her of the potential adverse side effects of prolonged use of antibiotics and his patient records did not accurately reflect all of the antibiotics he prescribed. (Tr. pp. 475-78, Ex. 10, Ex. 3A at p. 9)

33. By 2006, Ms. Stapf was suffering gastrointestinal problems as a result of the extended use of antibiotics. (Tr. pp. 150, 174, 228, Ex. 16 at p. 10). The Respondent continued to prescribe antibiotics to her, even after she reported the problems to him. (Tr. p. 111)

34. The standard of care applicable to North Carolina dentists prohibited the Respondent from prescribing antibiotics to Ms. Stapf for a 2 ½ year period without ever performing a culture and without warning her of the potential adverse effects of long term use of the drugs.

Applied Kinesiology

35. Applied kinesiology, or AK, is a term used to describe a method of muscle testing. It is based on the premise that each organ dysfunction is accompanied by a specific muscle weakness. (Tr. pp. 381, 497, IP Ex. 29).

36. On six occasions after July 2004 the Respondent performed AK on Ms. Stapf for the alleged purpose of diagnosing possible dental disorders and testing the compatibility of various materials. (IP Exs. 3A, pp. 5, 8, 9, 11, 13, 14, 19, 22)

37. On one occasion in 1999, the Respondent used AK to diagnose Ms. Stapf with liver and gallbladder problems. (Tr. pp. 385-86).

38. Applied kinesiology has not been proven to be an effective means of diagnosing dental disorders or testing material compatibility by sound, objective scientific principles and is not generally taught in dental schools in this country. (Tr. pp. 264-65, 339-40, 392)

39. The standard of care applicable to North Carolina dentists prohibited the Respondent from performing tests on a patient that were not proven to be effective by sound, objective scientific principles and that are not generally taught in dental schools in this country.

Cavitat and EAV Testing

40. In April 2005, about four months after Dr. Shankland extracted teeth numbers 14 and 15, the Respondent referred Ms. Stapf to a South Carolina dentist for additional Cavitat testing. Ms. Stapf and her husband traveled to South Carolina for the test and incurred a charge of \$475 for the test. (Tr. p. 93). The Respondent proposed a third round of Cavitat testing on November 28, 2006, but Ms. Stapf did not comply with this recommendation.

41. On two occasions, the Respondent suggested that Ms. Stapf undergo a test known as EAV (electro-acupuncture according to Voll). EAV is also referred to as electrodermal screening. (Tr. pp. 104, 140, 470; IP Ex. 19).

42. EAV testing is conducted by passing a weak electric current through the patient's body, purportedly to determine if the patient has an imbalance of energy. (Tr. pp. 261, 470) Proponents use the test results for diagnostic purposes and to determine if certain dental materials are compatible with the patient. (Ex. 14, pp. 11, 13, 14).

43. Neither EAV nor Cavitat testing has been proven to be effective means of diagnosing dental disorders or testing material compatibility by sound, objective scientific principles and neither methodology is generally taught in dental schools in this country. (Tr. pp. 261-62, 336-38, 353, 471).

44. The standard of care applicable to North Carolina dentists prohibited the Respondent from recommending that patients undergo tests that were not proven to be effective by sound, objective scientific principles.

Sanums and Ozone Therapy

45. After her surgery in January 2005, Ms. Stapf continued to experience pain. The Respondent injected her with homeopathic remedies known as sanums on at least six occasions between March 2, 2005 and April 11, 2006. (Tr. p. 454)

46. Sanums are primarily composed of dilutions of bacteria or fungi. The U.S. Food and Drug Administration does not approve any homeopathic remedies, including sanums, for marketing in this country.

47. The Respondent presented the Hearing Panel with no credible evidence that the sanum injections benefited Ms. Stapf in any way.

48. On two occasions in 2006, the Respondent suggested that Ms. Stapf consider obtaining ozone injections from Dr. Robert E. Harris, Jr., a dentist licensed in Kentucky. (Ex. 3A p. 11)

49. Respondent did not know what was in the injections, how they worked and to what extent, if any, they are effective in treating dental disorders.

50. Neither sanums nor ozone therapy have been proven to be effective means of treating dental disorders by sound, objective scientific principles and neither modality is generally taught in dental schools in this country. (Tr. pp. 262-653, 338, 457).

51. The standard of care applicable to North Carolina dentists prohibited the Respondent from administering or recommending treatment that has not been proven to be effective by sound, objective scientific principles.

52. On December 6, 2006, Ms. Stapf presented to the office of Dr. Matthew Parker (Dr. Parker) with complaints of discomfort with tooth number 3. Dr. Parker extracted the tooth on December 12, 2006.

53. When Ms. Stapf later presented with pain in the area of tooth number 13, Dr. Parker referred her to a local endodontist, who re-treated a root canal previously performed by the Respondent.

54. Ms. Stapf's dental symptoms and pain were resolved within a few months after she transferred to Dr. Parker's care.

55. The Respondent failed to promptly and accurately diagnose the cause of Ms. Stapf's dental problems.

56. The standard of care applicable to North Carolina dentists required the Respondent to promptly and accurately diagnose the cause of Ms. Stapf's dental problems.

Jack Haden, D.D.S.

57. The Respondent called as an expert witness Dr. Jack Haden, D.D.S., who retired from the active practice of dentistry in 2002 and was licensed in the states of Kansas, Missouri and Arizona.

58. Dr. Haden has never held a North Carolina dental license and has never practiced in this state. He is not aware of the standard of care applicable to North Carolina dentists.

59. Because Dr. Haden is unfamiliar with the relevant standard of care, his testimony is irrelevant. The Investigative Panel's motion to exclude Dr. Haden's deposition testimony and curriculum vitae is therefore granted.

60. Even if Dr. Haden was aware of the standard of care applicable to North Carolina dentists, his testimony concerning applied kinesiology, EAV testing and sanums is inadmissible because these therapies do not meet the minimum standard of reliability set forth by the North Carolina Supreme Court in Howerton v. Arai Helmet, Ltd., 358 N.C. 440, 597 S.E.2d 674 (2004). Similarly, Dr. Haden lacks sufficient scientific expertise about applied kinesiology, NICO lesions, ozone therapy or sanums to satisfy the Howerton test.

Raymond Fonseca, DDS

61. The Respondent also called Raymond Fonseca, DDS, an oral surgeon who practices in Asheville, North Carolina, to testify on his behalf.

62. Dr. Fonseca testified that he has never used ozone injections, applied kinesiology, EAV testing or Cavitat testing, has never read any peer reviewed articles supporting the use of these tests and modalities in dentistry and was not aware of any scientific studies supporting their use in dentistry.

63. Dr. Fonseca opined that even if these modalities are unsupported by any scientific evidence, it would not violate the applicable standard of care for a North Carolina dentist to use them, because in his opinion, general dentists frequently use methodologies that have no scientific base from controlled, randomized double-blind studies.

64. Dr. Fonseca also testified that he did not believe that the Respondent had violated the applicable standard of care in his treatment of Ms. Stapf, based upon his review of the Respondent's treatment records. Dr. Fonseca did not evaluate Ms. Stapf or provide any treatment to her.

65. The standard of care applicable to North Carolina dentists is not determined by the lowest common denominator of conduct among practitioners. The proposition that, because some practitioners use some unscientific methods, it is appropriate for all practitioners to do so is unacceptable and is not an accurate statement of the standard of care in our State.

66. Because Dr. Fonseca's testimony was based upon a fundamental misunderstanding of the standard of care applicable to North Carolina dentists, the Hearing Panel does not find his testimony regarding whether Dr. Nabors complied with the standard of care to be credible.

67. However, the Panel did find that Dr. Fonseca credibly testified that Respondent's failure to note the contents of sanum injections, the amounts administered and the location of administration failed to comport with the standard of care for dentists licensed to practice dentistry in North Carolina.

"Alternative" Dentistry

68. The Hearing Panel notes that there were numerous references throughout the trial to "alternative" and "conventional" dentistry. Whether a practice is eastern or western or unconventional or mainstream is largely irrelevant. The only accepted dentistry is that which has been adequately tested. The Dental Board must and will focus on the patient and the need for convincing data on safety and efficacy.

Based upon the foregoing Findings of Fact, the Hearing Panel thereby enters the following:

CONCLUSIONS OF LAW

1. The Respondent violated the standard of care applicable to North Carolina dentists by failing to exhaust all traditional, scientifically established treatments and tests before referring Ms. Stapf to Dr. Shankland and by failing to advise Ms. Stapf that Dr. Shankland was a proponent of NICO, which is a controversial diagnosis. His conduct therefore constituted negligence in the practice of dentistry in violation of N.C. Gen. Stat. 90-41(a)(12).

2. The Respondent violated the standard of care applicable to North Carolina dentists by recommending that Ms. Stapf undergo Cavitat testing, ozone therapy and EAV testing before exhausting all traditional, scientifically established treatments and tests and thereby Respondent engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. 90-41(a)(12).

3. The Respondent violated the standard of care applicable to North Carolina dentists by injecting Ms. Stapf with sanums and by failing to document the composition, type and location of the injection, and by using applied kinesiology to attempt to diagnose her dental disorders and to test her for materials compatibility and thereby engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. 90-41(a)(12).

4. The Respondent failed to promptly and accurately diagnose the cause of Ms. Stapf's dental problems and thereby engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. 90-41(a)(12).

5. By prescribing at least 565 tablets of antibiotics to Ms. Stapf over a 2 ½ year period, without performing a culture, by continuing to prescribe antibiotics after she complained of gastrointestinal problems and by failing to warn her of the potential adverse consequences of long term use of antibiotics, the Respondent engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. 90-41(a)(12).

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters the following:

ORDER OF DISCIPLINE

1. License number 4932 issued to the Respondent for the practice of dentistry in North Carolina is hereby suspended for twelve (12) months. Respondent shall surrender his license and current renewal certificate to the Board by mail addressed to its offices on or before midnight on May 28, 2010.

2. The Respondent's dental license shall be provisionally restored on the sixty-first (61st) calendar day after the surrender of his license, provided that for ten (10) years after the effective date of this Final Agency Decision he complies with the probationary terms and conditions set out below. During the active suspension period, Respondent's office shall be closed to the public. Clerical personnel may be present to attend to bookkeeping, scheduling and to refer patients needing treatment.

(a) Respondent shall violate no provisions of the Dental Practice Act or the Board's Rules;

- (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;
- (c) Respondent shall permit the Board and its agents to inspect and observe his office and patient records and to interview employers, employees and co-workers at any time during normal office hours;
- (d) Within one (1) year of the date of this Final Agency Decision, Respondent shall complete continuing education courses especially designed for him by the University of North Carolina School of Dentistry in conjunction with, and approved by, the North Carolina State Board of Dental Examiners. The courses shall be comprehensive, remedial courses in (1) treatment planning, (2) pharmacology, (3) record keeping, (4) diagnosing and (5) oral medicine. This requirement shall be in addition to the continuing education required by the Board for the renewal of the Respondent's dental license. The Respondent shall submit written proof of satisfactory completion of these courses to the Board's Deputy Operations Officer before they will be accepted in satisfaction of this requirement. It is the Respondent's responsibility to make all arrangements for and bear the costs of the courses within the specified time;

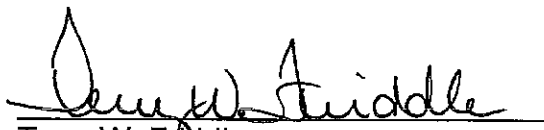
- (e) Within one (1) year of the date of this Final Agency Decision, the Respondent shall successfully complete a Board approved eight (8) hour course in ethics. *No course shall be accepted in satisfaction of this requirement unless the course has been approved by the Board in writing before the Respondent takes it.* ("Ethics in Dentistry," by Michael D. L. Weisenfeld, D.D.S. and Wayne S. Silverman, D.D.S. is a course previously approved by the Board). Respondent shall submit written proof of satisfactory completion of any approved course to the Board's Deputy Operations Officer before it will be accepted in satisfaction of this requirement. It is the Respondent's responsibility to find and complete all course work within the specified time.

3. If the Respondent fails to comply with any provision of this Final Agency Decision or breaches any term or condition thereof, the Board shall promptly schedule a public Show Cause Hearing to permit the Respondent to show cause why his dental license should not be suspended. If, as a result of the Show Cause hearing, the Board is satisfied that the Respondent's license should be suspended, the Respondent shall surrender his license and current renewal certificate to the Board for a period of ten months. 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. If any portion of the stayed suspension of the Respondent's dental license is activated, before Respondent may seek reinstatement of his dental license he

must file a petition with the Board demonstrating that he has complied with the provisions of paragraph 2(d) and (e) of the decretal part of this Final Agency Decision.

This the 23 day of April, 2010.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By: 
Terry W. Fiddle
Deputy Operations Officer