

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS
IN THE MATTER OF:

JOHN RAY POWELL, D.D.S.)
(License No. 5325)) FINAL AGENCY DECISION
)

THIS MATTER came on to be heard and was heard on May 3, 2008 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. W. Stan Hardesty, Jr., presiding; Dr. Ronald K. Owens, Dr. C. Wayne Holland, Dr. Brad C. Morgan, and Dr. Joseph Burnham. Board members Dr. Clifford Feingold, Ms. Neplus Hall and Ms. Zannie Efird did not participate in the hearing, deliberations or decision of this matter. The Respondent, John Ray Powell, D.D.S., was neither present nor represented by counsel. 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. John Ray Powell, D.D.S. (Respondent), was licensed to practice dentistry in North Carolina on July 2, 1984.

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

4. The Respondent was properly served with the Notice of Hearing and the Amended Notice of Hearing and had proper notice of the time, place and date of the hearing.

INCAPACITY

5. In May or June 2007 Respondent was hospitalized for treatment of diabetic neuropathy. He was unable to walk or practice dentistry for at least six weeks.

6. Respondent is a chronic, persistent user of intoxicants, drugs or narcotics, such that his ability to practice dentistry is impaired.

7. In approximately August 2007 Respondent was hospitalized for treatment of a cocaine overdose. Thereafter, Respondent underwent in-patient treatment for addiction and substance abuse.

8. In a letter dated December 20, 2007, Respondent tendered his dental license to the Board and indicated that he was retiring.

9. The December 20 cover letter that Respondent enclosed with his dental license was written on letterhead of the McShin Foundation, an alcohol and drug recovery facility in Richmond, Virginia.

10. As of the date of this Notice of Hearing, the Respondent remains incapable of practicing dentistry owing to his addiction and physical condition.

VIOLATION OF CONSENT ORDER

11. On February 16, 2007, Respondent signed a consent order (2007 Consent Order) in an unrelated disciplinary matter with the Board. The 2007 Consent Order required Respondent to comply with the Dental Practice Act and complete continuing education in diagnosis and treatment planning within one year of the date of the Consent Order.

12. Respondent failed to complete the required continuing education by February 16, 2008 and thereby violated the 2007 Consent Order.

RUTH G. HAMILTON

13. On November 4, 2006, Ruth G. Hamilton (Ms. Hamilton) presented to Respondent's office for a new patient examination.

14. Respondent devised a treatment plan for Ms. Hamilton that called for extraction of teeth #s 20, 21 and 28, bone grafts, delivery of a temporary partial followed by fabrication of an eight unit bridge, and crowns on teeth #s 17, 22, 27 and 29, at a total cost of \$9,000.

15. Ms. Hamilton agreed to the treatment plan and paid Respondent approximately \$5,000. The extractions were performed on November 4, 2006.

16. On May 18, 2007, Respondent prepared teeth #17, 22, 27 and 29 for crowns and placed temporary crowns. He also delivered the temporary partial.

17. Although Respondent received the eight unit bridge from the dental laboratory, he never seated it.

18. Ms. Hamilton called Respondent's office on a number of occasions in 2007, requesting an appointment so that Respondent could finish the work. On each occasion, Respondent's staff advised her that Respondent was ill.

19. Neither Respondent nor his staff took appropriate steps to refer Ms. Hamilton to another dentist. Neither Respondent nor his staff warned Ms. Hamilton that the bridge needed to be seated promptly, to ensure that it would fit properly.

20. In August 2007 Respondent's staff mailed the bridge to Ms. Hamilton, who promptly asked another dentist to seat the bridge.

21. By the time Ms. Hamilton received the bridge and got an appointment with another dentist, however, the bridge no longer fit and she was forced to pay for the fabrication of a second bridge.

22. Respondent has failed to refund any portion of the fee that he received from Ms. Hamilton.

23. By failing to notify Ms. Hamilton that he would not be able to complete her treatment, failing to seat the bridge promptly, failing to warn

Ms. Hamilton that the bridge might not fit if it was not seated promptly, and by failing to refer her to another dentist, Respondent violated the standard of care applicable to North Carolina dentists, in violation of G.S. § 90-41(a)(12).

GENERAL ABANDONMENT CLAIMS

24. After he became ill in 2007, Respondent, who was a solo practitioner, failed to take reasonable steps to ensure that all of his current patients were promptly notified that Respondent would not be able to complete their treatment, failed to refer patients whose cases were in mid-treatment to other dentists and failed to respond in a timely fashion to requests for patient records.

Based upon the foregoing Findings of Fact, the Board hereby enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent's person and over the subject matter of this proceeding.
2. Respondent's ability to practice dentistry is impaired by his physical condition and by the fact that Respondent is a chronic, persistent user of intoxicants, drugs or narcotics. Respondent has thus violated G.S. §§ 90-41(a)(2), and 90-41(a)(7).

3. By violating the 2007 Consent Order, Respondent engaged in unprofessional conduct as defined by 21 NCAC 16V .0101(4) and thereby violated G.S. § 90-41(a)(26).

4. By failing to notify all of his current patients that he would not be able to complete their treatment and by failing to refer patients who were in mid-treatment to other dentists, Respondent violated the standard of care applicable to North Carolina Dentists, in violation of G.S. § 90-41(a)(12).

5. By failing to respond in a timely fashion to requests for patient records, Respondent violated 21 N.C. Admin. Code 16T .0101 and 16T .0102 and thereby violated G.S. § 90-41(a) (6).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board hereby enters the following

ORDER OF DISCIPLINE

In determining the appropriate discipline, the Board concluded that imposition of discipline short of revocation would not sufficiently protect the public for the following reasons:

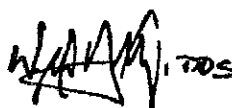
- a) Respondent has been disciplined on two former occasions. His dental license was suspended for 30 days, and all but 15 days of the suspension was stayed for two years pursuant to an order entered on January 19, 2001. On February 16, 2007, Respondent's license was suspended for 15 days, but

the order stayed the entire suspension for two years, on various conditions.

- b) Two previous disciplinary orders imposing a probationary term and a short suspension of license have proven insufficient to deter Respondent from committing additional violations of the Dental Practice Act.
- c) Respondent has failed to make restitution to any patients damaged by his misconduct.
- d) Respondent failed to produce any evidence that he has reformed and that he is unlikely to violate the Dental Practice Act in the future.

WHEREFORE, Respondent's license to practice dentistry in North Carolina is hereby REVOKED.

This the 10th day of JUNE, 2008.



W. Stan Hardesty, Jr., D.D.S, President
The N.C. State Board of Dental Examiners