

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

Amber Lineberry Spach, R.D.H.
(License Number 6330)

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FINAL AGENCY DECISION

THIS MATTER was heard before the North Carolina State Board of Dental Examiners (Dental Board) on July 15, 2017, pursuant to N.C. Gen. Stat. §§ 90-231 and 150B-38 and 21 NCAC 16N .0504 of the Board's Rules. The Dental Board's Hearing Panel consisted of Board members Dr. William M. Litaker, Jr., presiding; Dr. Merlin W. Young, Dr. W. Stanley Allen, Dr. Millard W. Wester, III and Dr. Kenneth M. Sadler, and Ms. Carla Stack. Board members Dr. Clifford O. Feingold and Mr. Dominic Totman did not participate in the hearing, deliberation or decision of this matter. Crystal Carlisle represented the Investigative Panel and Fred Morelock represented the Hearing Panel. Amber Lineberry Spach, R.D.H. (Respondent) was properly served with notice but did not attend the hearing.

Based upon the evidence produced 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, including the Dental Hygiene Act in Article 16, and the Rules and Regulations of the North Carolina State Board of Dental Examiners, set forth in 21 North Carolina Administrative Code Chapter 16.

2. Respondent was licensed to practice dental hygiene on January 1, 2000 and holds license number 6330.

3. At all times relevant hereto, Respondent was subject to the Dental Hygiene Act and the Dental Board's Rules and Regulations.

4. At all times relevant herein, Respondent provided the Board with the following address of record at which all documents were served upon her: Post Office Box 4373, Asheboro, North Carolina, 27204.

5. On or about June 27, 2016, the Regional Manager of Royal Oak Dental group both called and emailed the Board with concerns regarding Respondent's behavior.

6. Respondent's employer, a licensed North Carolina dentist and Respondent's supervising dentist, submitted a sworn affidavit to the Dental Board on July 22, 2016 and reporting the behavior as follows:

- a. Respondent consistently showed up for work late and had been absent without warning.
- b. On June 2, 2016, Respondent reported to work in what appeared to be an impaired state. Respondent expressed irrational fears about animals being in and surrounding her home. She abruptly left the dental office stating she needed to go home and take care of the hogs and alligators around the house, and she failed to treat her remaining patients after expressing these objectively irrational fears.
- c. Based on Respondent's odd behavior and the belief that she was or had been impaired, Respondent's employing dentist required her to submit to a

drug test and complete a psychiatric evaluation prior to resuming her clinical duties.

d. Respondent failed to submit to the drug test and psychiatric evaluation and left the employment.

7. Respondent admitted that she was impaired at work on June 2, 2016 and was unfit to practice dental hygiene on June 2, 2016.

8. Given the information provided by Respondent's employing dentist, the Board's Investigative Panel ["IP"] scheduled a pre-hearing conference for Respondent.

9. After confirming she would attend the pre-hearing conference, Respondent contacted the Dental Board and stated she would be unable to make the meeting.

10. On August 18, 2016, in a meeting with a Board Investigator, Respondent admitted to illicit drug use but stated she could not recall her last date of use.

11. During the August 18, 2016 meeting with the Board Investigator, Respondent agreed to contact the North Carolina Caring Dental Professionals Program ["CDP"] for drug testing and psychiatric and substance abuse assessments.

12. Nancy Davis, Executive Director of the CDP, testified by sworn affidavit that Respondent contacted her on August 25, 2016 regarding a potential substance abuse assessment.

13. Respondent initially agreed to meet with Ms. Davis on September 6, 2016 and agreed to submit to a drug and alcohol test that same day

14. Respondent emailed Ms. Davis on September 6, 2016 to cancel the appointment, stating that her car would not start. Respondent did not seek to reschedule the meeting.

15. On September 8, 2016, the Dental Board found that the public health, safety, and welfare required emergency action related to Respondent's conduct and summarily suspended Respondent's dental hygiene license.

16. On February 17, 2017, the Investigative Panel issued a Notice of the Hearing set for July 15, 2017, a Motion for Substance Abuse Evaluation pursuant to Rule 35 with a Notice of Hearing set for March 10, 2017, and a Prehearing Management and Scheduling Order for service on Respondent by certified mail. Respondent did not sign for receipt of these documents.

17. The hearing on the Motion for Substance Abuse Evaluation pursuant to Rule 35 was rescheduled for April 7, 2017, and on March 6, 2017, the Investigative Panel again sent the Notice of the Hearing set for July 15, 2017, a Motion for Substance Abuse Evaluation pursuant to Rule 35 with a Notice of Hearing set for April 7, 2017, and a Prehearing Management and Scheduling Order for service on Respondent. Respondent signed a Certificate of Acceptance of Service of these documents on March 9, 2017.

18. Respondent did not appear at the hearing on the Motion for Substance Abuse Evaluation pursuant to Rule 35 which was held on April 7, 2017.

19. On April 17, 2017, the Dental Board entered an order requiring Respondent to meet with CDP to set up an examination consisting of drug testing, assessment of potential substance abuse, and any related psychiatric conditions.

20. The Investigative Panel served Respondent with the April 7, 2017 Order by US mail at the same address on record with the Board and at which she signed for the certified mail on March 9. The Order was not returned to the Investigative Panel as undeliverable.

21. On April 19, 2017, Respondent contacted Ms. Davis at CDP regarding a potential assessment following issuance of the April 17, 2017 Order and has since admitted she received a copy of the Order. Ms. Davis testified by sworn affidavit that Respondent refused to complete the assessment at that time because her car was "in the shop," she was pregnant with a due date of May 15, and could not find childcare for her twelve-year-old daughter.

22. Respondent later contacted the CDP and stated that she would complete the assessment after her baby was born, and indicated that the due date was June 21, despite previously advising Ms. Davis that the due date was May 15.

23. Respondent signed an evaluation agreement and scheduled an assessment for July 26, 2017, but has failed to confirm that she will attend. She has not completed substance abuse assessment through the CDP and has not asked this Board to extend the deadline for doing so.

24. On May 15, 2017, the Investigative Panel served Respondent with its First Request for Admissions.

25. The Request for Admissions were served on Respondent by US mail at her same address of record and were not returned to the Investigative Panel as undeliverable.

26. Respondent was required to respond to the Request for Admissions no later than June 19, 2017 but failed to do so.

27. Respondent's impairment at work on June 2, 2016, her failure to comply with the Investigative Panel's repeated requests to obtain an assessment, her failure to comply with this Board's April 17, 2017 Order compelling an examination, and her failure

to appear at the motion and contested case hearing, of which she received proper and legally sufficient notice, are consistent with behavior of an active addict.

Based upon the Findings of Fact and the consent of the parties, the Board hereby enters the following:

CONCLUSIONS OF LAW

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

2. Respondent was properly served with notice of this hearing no later than March 9 but failed to appear at the contested case hearing held on July 15 at the Dental Board offices.

3. Respondent was properly served with the IP's Requests for Admission on May 15 and failed to respond to the Requests for Admission by June 19.

4. All the IP's Requests for Admission are deemed admitted and conclusively established for the purposes of this proceeding, pursuant to Rule 36 of the North Carolina Rules of Civil Procedure.

5. Respondent is a chronic user of intoxicants, drugs, or narcotics to the extent that the same impairs her ability to practice dental hygiene in violation of N.C. Gen. Stat. § 90-229(a)(4).

6. Respondent was properly served with the Motion, Notice of Hearing, and April 17, 2017 Order Granting IP's Motion for Substance Abuse Examination.

7. Respondent failed to comply with the Board's April 17, 2017 Order in violation of N.C. Gen. Stat. § 90-229(a)(6) and 21 NCAC.16V .0102(4).

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

ORDER OF DISCIPLINE

1. Respondent's dental hygiene license in North Carolina is hereby **REVOKED.**

2. If Respondent petitions the Board for reinstatement of her dental hygiene license, in addition to the other requirements for licensure set forth in the Dental Hygiene Practice Act, she will have the burden of demonstrating, by clear and convincing evidence that:

- a) Respondent obtained a substance abuse assessment at a facility approved by CDP. Respondent followed all recommendations provided by the approved treatment facility and participated in any in-patient, out-patient or after-care treatment plan recommended by the approved treatment facility.
- b) If recommended by the assessment, Respondent shall enter into a contract with the North Carolina Caring Dental Professionals (CDP). The terms of the contract are at the sole discretion of the CDP after consideration of the assessment and Respondent's treatment providers. Respondent must comply with all provisions of that contract. Respondent shall sign a release with the Caring Dental Professionals permitting them to submit monthly reports to the Board regarding her progress in the program;
- c) Respondent has maintained continuous abstinence from alcohol and

all drugs, other than those prescribed to her by a treating physician who is aware of her addiction, for a period deemed sufficient to CDP and confirmed through compliance with a CDP Participation Agreement; and

d) Respondent has obtained the support and advocacy of the CDP, including that Respondent is not impaired and can practice dental hygiene safely in the state of North Carolina.

3. If the Dental Board reinstates Respondent's license in the future, it may impose probationary terms and conditions of reinstatement as deemed necessary for the protection of the public.

4. The Board shall retain jurisdiction of this matter and Respondent to enforce the provisions herein or enter orders as necessary in the future.

This the 15 day of July, 2017.



Dr. William M. Litaker, Jr.
Hearing Panel Chair

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS