

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In the Matter Of:)
)
) **CONSENT ORDER**
 SPURGEON W. WEBBER, III, D.D.S.)
 (License No. 5647))
)

This matter is before the North Carolina State Board of Dental Examiners (the "Board") as authorized by G.S. §90-41.1(b) for consideration of a Consent Order in lieu of a formal administrative hearing. Respondent, Spurgeon W. Webber, was represented by Ryan Bolick and Ginger Hunsucker. The Investigative Panel ("IP") was represented by Douglas J. Brocker and Crystal S. Carlisle. The parties hereby consent to the Findings of Fact and Conclusions of Law set forth herein, and to the entry of the Order of Discipline.

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 pursuant to the authority granted to it in Chapter 90 of the North Carolina General Statutes, including the Dental Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.

2. Respondent was licensed to practice dentistry in North Carolina on July 28, 1987 and holds License No. 5647.

3. Respondent's license has remained active at all times since July 28, 1987, except for two periods of suspension. Respondent's license was suspended on March 2, 2007 for 180 days and on September 1, 2016 for 60 days. Except for these two periods of active suspension,

Respondent has been subject to the Dental Practice Act and the Board's rules and regulations since becoming licensed to practice.

4. When used in this Consent Order, the term "Respondent" when referring to any action, inaction, or failure to act also includes Respondent's P.A., employees, staff, or other agents acting at his direction or under his supervision.

5. On or about August 1, 2016, the IP issued a Notice of Hearing against Respondent and on July 14, 2017 the IP issued an Amended Notice of Hearing (ANOH). The IP asserted several allegations against Respondent arising out of Respondent's billings to Medicaid and several allegations regarding violation of the Standard of Care for dentists in North Carolina.

Respondent's Improper Billing to Medicaid

6. At all times relevant hereto, Respondent was an approved dental provider for the North Carolina Division of Medical Services ["DMA" or "Medicaid"] and was required to abide by Medicaid's billing policies and guidelines.

7. At all times relevant hereto, Medicaid required its providers to submit bills for their services using the codes set out in the American Dental Association's Code of Dental Terminology ["CDT"].

8. From 2009 to 2012, Respondent incorrectly billed Medicaid using numerous CDT codes that did not accurately describe the services he provided to patients and obtained corresponding unwarranted payment and reimbursement from DMA.

9. On numerous occasions between 2009 and 2012, which instances were set forth in paragraphs 7-11 of the ANOH, Respondent incorrectly billed and obtained reimbursement from DMA using CDT codes D2330 through D2335 and D2391 through D2394 for placing separate

fillings on multiple surfaces rather than a single surface, which instances were set forth in paragraph 10 of the ANOH.

10. During this period, billing for separate fillings resulted in a higher reimbursement amount from DMA than billing for a single filling with multiple surfaces.

11. On several occasions between 2009 and 2012, which instances were set forth in paragraph 14 of the ANOH, Respondent incorrectly billed and obtained reimbursement from DMA for placing fillings in teeth he had treatment planned for extraction or that were extracted shortly after the fillings were placed.

12. Respondent obtained reimbursement from DMA for placing fillings in teeth he had treatment planned for extraction or should have known needed to be extracted.

13. Between 2009 and 2012, in the instances set forth in paragraphs 18-20 of the ANOH, Respondent incorrectly billed and obtained reimbursement from DMA under his personal National Provider Identifier ("NPI") number for more dental services than a single dentist reasonably could perform in one day.

14. Respondent admits that he incorrectly billed and obtained unwarranted reimbursement from DMA for the dental services set forth in findings 6-13 above but denies that he acted fraudulently or with the intent to defraud or intentionally bill DMA for dental services not performed. This consent order does not include any finding or agreement that Respondent acted fraudulently or with the intent to defraud or intentionally billed DMA for dental services not performed.

Respondent's Improper Delegation to Dental Auxiliaries

15. Between 2007 and 2012, Respondent permitted dental assistants or dental hygienists to perform acts prohibited by Dental Board statutes or rules based upon the treatment records, including in the following instances that were set forth in paragraphs 25-29 of the ANOH:

- a. On April 18, 2007, a dental hygienist repaired a broken amalgam filling;
- b. On December 6, 2010, a dental hygienist attempted to repair a tooth for patient Tracey R; and
- c. On May 11, 2010, November 19, 2010, and April 26, 2012, a DAII took impressions from which permanent partial dentures were made.

16. N.C. Gen. Stat. G.S. §§ 90-41(a)(21) specifically permits the Dental Board to discipline a dentist who permits "a dental hygienist or a dental assistant in his employ or under his supervision to do or perform any act or acts violative of this Article, or of Article 16 of this Chapter, or of the rules and regulations promulgated by the Board.

17. Repairing teeth and taking impressions constitute the practice of dentistry under N.C. Gen. Stat. §90-29(b). Therefore, a person not licensed as a dentist is prohibited from performing these services.

18. The standard of care applicable to North Carolina dentists requires that dentists not permit dental assistants or dental hygienists to perform acts prohibited by Dental Board statutes or rules.

19. Based upon his dental records, Respondent violated the standard of care applicable to him as a dentist in North Carolina by permitting dental assistants or dental hygienists to perform the specific acts identified herein and prohibited by Dental Board statutes or rules.

Respondent's Failure to Maintain Proper Patient Records

20. Between 2009 and 2012, Respondent failed to keep and maintain proper treatment records for his dental patients, which instances were set forth in paragraph 37 and in paragraphs 71-89 of the ANOH.

21. The standard of care for dentists licensed to practice dentistry in North Carolina, during the relevant time period, required that dentists maintain proper records for each patient.

22. The Dental Board's Record Content Rule, 21 NCAC 16T .0101, states that a dentist shall maintain complete treatment records on all patients for a period of at least 10 years. The treatment records shall include: (e) "[s]pecific treatment rendered and by whom" and (f) "[n]ame and strength of any medications prescribed, dispensed or administered along with the quantity and date provided."

23. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina and violated 21 NCAC 16T .0101 by failing to include in numerous patient treatment records: (a) specific treatment, such as the excavation of decay or type of palliative care administered; and (b) the type and amount of anesthetic administered and materials used.

Respondent's Failure to Document and Use

an Accepted Isolation Method for Root Canals/Pulpotomies

24. On at least four occasions between 2009 and 2015, Respondent did not use a rubber dam when performing a root canal or pulpotomy in the following four specific instances set forth in paragraphs 41-43 of the ANOH:

- a. On November 19, 2009, Respondent performed a root canal on tooth #27 for Patient Rachel W. and did not use a rubber dam to isolate the tooth during the root canal procedure;
- b. On August 8, 2012, Respondent performed a pulpotomy on tooth #31 for Patient Jessica S. and did not use a rubber dam to isolate the tooth during the root canal procedure;
- c. In August 2011, Respondent performed a root canal on tooth #7 for Patient Hugh T. and did not use a rubber dam to isolate the tooth during the root canal procedure; and
- d. In August 2015, Respondent performed a root canal on tooth #19 for Patient Wendolin D. and did not use a rubber dam to isolate the tooth during the root canal procedure.

25. Respondent contends that he used the Isolyte (Isolite) isolation system instead of a rubber dam in his offices and on these patients and that such isolation system meets the standard of care. The treatment records for these patients do not indicate use of Isolyte or a rubber dam.

26. The standard of care applicable to North Carolina dentists at the time Respondent performed root canals on Rachel W., Jessica S., Hugh T., and Wendolin D. required dentists to use an acceptable method of isolation when performing root canals and to document such use in the treatment records.

27. Respondent violated the standard of care applicable to North Carolina dentists by failing to document the use of an accepted method of isolation and therefore is presumed by the Board not to have used one during the root canals of patients Rachel W., Jessica S., Hugh T., and Wendolin D.

Respondent's Failure to Treat Decay

28. On at least seven occasions, Respondent diagnosed but failed to treat interproximal or other caries discovered on the teeth of his patients or in proper sequence, including in the instances that were set forth in paragraphs 48-55 of the ANOH concerning Patients Abel A., Lonnie A., Althelia B., Nichole B., Ashley D., Javonta H., and Chasity W.

29. The standard of care applicable to North Carolina dentists at the time Respondent treated Patients Abel A., Lonnie A., Althelia B., Nichole B., Ashley D., Javonta H., and Chasity W. required dentists to timely treat the presence of caries evident on radiographs and to treat caries in the proper sequence by addressing the most serious areas of decay first.

30. Respondent violated the standard of care applicable to North Carolina dentists by failing to treat carious lesions evident on the radiographs of Abel A., Lonnie A., Althelia B., Nichole B., Ashley D., Javonta H., and Chasity W. or by failing to address carious lesions in the proper sequence.

Respondent's Improper Diagnosis of and Treatment for Periodontal Disease

31. On April 16, 2009, patient Shannon M., presented to Respondent's office for a new patient examination.

32. A dental hygienist at Respondent's office performed a full mouth debridement on Shannon M. at her first visit.

33. Respondent examined Shannon M. after the full mouth debridement and diagnosed her with Type II periodontal disease with posterior pocket depths of 4mm+, plaque buildup, bleeding on probing, and inflammation.

34. Respondent recommended scaling and root planing to address the periodontal diagnosis and restorations on teeth 18 and 30 for decay around existing restorations.

35. On June 2, 2009, Shannon M. received four quadrants of scaling and root planing at Respondent's office and on June 30, 2009, she received restorations on teeth 18 and 30.

36. No re-evaluation visit was scheduled for Shannon M. after scaling and root planing.

37. Shannon M. returned to Respondent's office on September 2, 2009 for periodontal maintenance because Respondent had placed her on a three-month recall.

38. Respondent took a 3D cone beam radiograph image for use in the treatment of Shannon M.

39. The standard of care for dentists licensed to practice dentistry in North Carolina at the time Respondent treated Shannon M. required that dentists perform a full mouth radiographic survey to make a proper diagnosis of periodontal disease and required that the dentist properly document a diagnosis of periodontal disease in the patient's chart, which Respondent failed to do.

40. The standard of care for dentists licensed to practice dentistry in North Carolina at the time Respondent treated Shannon M. required that dentists re-evaluate the periodontium after initial scaling and root planing, which Respondent failed to do.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Board hereby makes the following:

CONCLUSIONS OF LAW

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

2. Respondent engaged in acts or practices in violation of G.S. § 90-41(a)(6) and (12) from 2009 to 2012, as set forth in findings 6-14, by incorrectly billing Medicaid using numerous CDT codes that did not accurately describe the services he provided to patients and obtained corresponding unwarranted payment and reimbursement from DMA, including by:

- a. using CDT codes D2330 through D2335 and D2391 through D2394 for placing separate fillings on multiple surfaces rather than a single surface;
- b. placing fillings in teeth he had treatment planned for extraction or that were extracted shortly after the fillings were placed; and
- c. billing under his personal National Provider Identifier (NPI) number for more dental services than a single dentist reasonably could perform in one day.

3. Respondent violated N.C. Gen. Stat. § 90-41(a)(6) and (21) by permitting dental assistants or dental hygienists under his supervision to perform acts prohibited by Dental Board statutes or rules, as set forth in findings 15-19.

4. By failing to maintain proper records for each patient, as set forth in findings 20-23, Respondent:

- a. violated the standard of care for dentists licensed to practice dentistry in North Carolina and thereby engaged in negligence in the practice for dentistry in violation of G.S. 90-41(a)(12), and

- b. Respondent violated 21 NCAC 16T .0101 and thereby engaged in acts violative of the rules and regulations promulgated and adopted by the Board in violation of G.S. 90-41(a)(6).

5. Respondent violated the standard of care for dentist licensed to practice dentistry in North Carolina and thereby engaged in acts or practices in violation of G.S. 90-41(a)(12) and (a)(6) by failing to:

- a. use rubber dams during the root canals of patients Rachel W., Jessica S., Hugh T., and Wendolin D. as set forth in findings 24-27;
- b. treat carious lesions evident on the radiographs of Abel A., Lonnie A., Althelia B., Nichole B., Ashley D., Javonta H., and Chasity W. or by failing to treat the carious lesions in the proper sequence, as set forth in findings 28-30; and
- c. properly document the diagnosis of periodontal disease in Shannon M.'s records set forth in findings 31-40.

6. The public can be adequately protected by placing Respondent on a stayed suspension or provisional restoration assuming he complies with various terms and conditions as set forth herein, including monitoring his practice of dentistry for full future compliance with the Dental Practice Act or the Board's rules and regulations

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

CONSENT ORDER OF DISCIPLINE

1. License No. 5647 issued to Respondent for the practice of dentistry in North Carolina is hereby suspended for a period of three (3) years.

2. Respondent's dental license is provisionally restored, with no active period of suspension, provided that for a period of five (5) years from the date of this Order, Respondent complies with the following terms and conditions:

- a. Respondent shall violate no provision of the Dental Practice Act or the Board's rules and regulations;
- b. Respondent shall neither direct nor permit any of his employees to violate any provision of the Dental Practice Act or the Board's rules;
- c. Respondent shall permit the Board or its agents to inspect and observe his office, conduct a random review of patient chart records, and interview employers, employees, and co-workers at any time during normal office hours;
- d. Respondent shall, within two (2) years from the date of this Order, complete a continuing education course specifically designed for him by the University of North Carolina School of Dentistry in conjunction with, and approved in advance by, the North Carolina State Board of Dental Examiners. This shall be comprehensive, remedial course in root canal therapy. This requirement shall be in addition to the continuing education required by the Board for the renewal of Respondent's dental license. Respondent shall submit to the Board's Deputy Operations Officer written proof of satisfactory completion of this course

before it will be accepted in satisfaction of this requirement. It is the Respondent's responsibility to make all arrangements for and bear the costs of this course within the specified time;

- e. Within ninety (90) days of the date of this Order, Respondent shall issue a full reimbursement of all fees paid by Wendolin D. Respondent shall provide the Board with written proof that reimbursement has been made;
- f. Respondent shall engage a licensed North Carolina dentist approved by the Board's IP to serve as a practice and billing monitor related to any practice Respondent owns or in which he engages in the practice of dentistry. Within thirty (30) days of the entry of this Order, Respondent shall submit a proposed practice monitor for review and potential approval by the Board's IP, at its discretion. The practice monitor shall meet with Respondent regularly and no less than quarterly and review example patient chart and billing records selected by the monitor, not Respondent or his employees. During these meetings, the monitor shall examine example patient records to determine Respondent's compliance concerning appropriate treatment of patients, proper billing to Medicaid and private insurance companies, and appropriate patient and billing record-keeping. Respondent shall ensure that the monitor prepares and submits to the Board quarterly reports with the findings concerning those issues for the quarter, including identifying the specific patient treatment and billing records reviewed. The IP reserves the right to review the charts that the monitor selects for his/her report, which records Respondent shall provide to the IP upon its request. The reports shall be due no later than February 1, May 1, August 1,

and November 1 for the previous quarter in each year. Respondent is responsible for all payment of costs associated with this monitoring. If the monitor reports information to the Board indicating that Respondent may be engaging in a violation of the Board's statutes or regulations, Respondent understands that such findings may result in further disciplinary action by the Board, including potential activation of his suspension, following notice to Respondent and an opportunity to be heard. If the monitor timely submits quarterly reports indicating that Respondent has been engaged in the practice of dentistry and has been in full compliance with the Board's statutes and regulations for two (2) consecutive years, Respondent may petition the Board Hearing Panel to reduce or eliminate this practice monitor requirement; and

- g. Respondent shall perform at least fifteen (15) hours of community service each calendar month. The community service shall consist of the Respondent providing, free of charge, dental services to the public. Respondent shall submit written proof of such community service to the Board on or before the tenth (10th) day of the following month. This requirement will become effective for the 5-year term upon Respondent being cleared to return to the full practice of dentistry by his physician. Respondent will provide documentation of this medical clearance within 30 days of being cleared to return to full duties. This Order and the corresponding conditions of provisional restoration shall remain in effect until Respondent completes the five-year period of community service, once medically cleared.

2. The Parties and the Board recognize that the conditions, limitations, or requirements set forth in this Consent Order may present Respondent with certain practical difficulties. The Board concludes that each one is necessary to ensure public protection and it does not intend to modify or eliminate any of the conditions, limitations, or requirements set forth herein, except as noted in paragraph 2(f).

3. If Respondent fails to comply with any provision of this Order or breaches any term or condition thereof, the Board shall promptly schedule a public show cause hearing to permit 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 failed to comply with or breached any term or condition of this Order, the Board shall activate the three-year suspension of Respondent's license. The sanctions shall be in addition to and not in lieu of any sanctions the Board may impose because of future violations of the Dental Practice Act or the Board's rules.

4. This Consent Order concludes all pending complaints, investigations and disciplinary proceedings regarding Dr. Webber and resolves all violations or potential violations related to, identified, and arising from those pending matters, including resolving any potential violation of his existing disciplinary orders and current probationary status.

This the 9th day of SEPTEMBER 2017.

THE NORTH CAROLINA STATE BOARD OF EXAMINERS

Marlin W. Young DDS

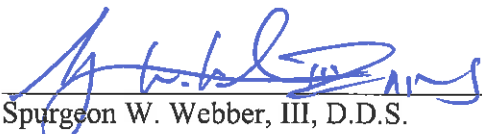
BY:

Presiding Officer

STATEMENT OF CONSENT


I, Spurgeon W. Webber, III, 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 that there is a factual basis for the findings of fact herein, that the findings of fact support the conclusions of law, that I will not contest the findings of fact, the conclusions of law, or the order of Board in any future proceedings before or involving the Dental Board, including if future disciplinary proceedings or action is warranted in this matter. I knowingly waive any right to appeal or otherwise later challenge this Consent Order once entered. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and this Consent Order will become part of the Board's permanent public record. I further acknowledge that this required reporting may have adverse consequences in other contexts and any potential effects will not be the basis for a reconsideration of this Consent Order. I have consulted with my attorney prior to signing this Consent Order.

This the 5th day of Sept 2017.



Spurgeon W. Webber, III, D.D.S.

Reviewed and Consented to by:



Ryan Bolick, Esq.
Ginger Hunsucker, Esq.
Counsel for Respondent



Douglas J. Brocker, Esq.
Crystal S. Carlisle, Esq.
Counsel for Investigative Panel