

BEFORE THE BOARD OF DENTAL EXAMINERS
STATE OF IOWA

IN THE MATTER OF :)	
)	
GARY L. WEBER, D.D.S.)	
734 Kitterman Circle)	FINDINGS OF FACT,
Norwalk, IA 50211)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
License #6077)	
)	
Respondent)	

TO: GARY L. WEBER, D.D.S.

Pursuant to the Iowa Board of Dental Examiners' Notice of Reinstatement Hearing dated October 10, 2002, this matter came on for hearing before the Board on October 18, 2002 at 1:30 p.m. in the Board Conference Room, 400 S.W. 8th Street, Suite D, Des Moines, Iowa. The following members of the Board presided at the hearing: LeRoy Strohman, Board Chairperson, D.D.S.; George F. North, D.D.S.; Richard M. Reay, D.D.S.; Debra Yossi, R.D.H.; Eileen Cacioppo, R.D.H.; and Suzan Stewart, Public Member.

The Respondent, Gary L. Weber, D.D.S., appeared in person and was not represented by counsel. The State was represented by Theresa O'Connell Weeg, Assistant Attorney General. Margaret LaMarche, Administrative Law Judge, assisted the Board in conducting the hearing. The hearing was recorded by a certified court reporter. The hearing was closed to the public at the request of the Respondent, pursuant to Iowa Code section 272C.6(1).

The Board, having heard the testimony and having examined the exhibits, and after convening in closed executive session pursuant to Iowa Code section 21.5(1)(f)(2001) to deliberate, approved a motion to reinstate the Respondent's dental license, subject to terms and conditions of probation. The Board directed the administrative law judge to prepare their Findings of Fact, Conclusions of Law, Decision and Order, in accordance with their deliberations.

THE RECORD

The record includes the Notice of Reinstatement Hearing; the testimony of the witness; and the following exhibits:

Respondent Exhibit A: Letter dated 10/14/02 (Tegeler, CADC to Board); Statement dated 10/14/02 from Respondent's Psychiatrist to Board; Letter dated 10/14/02 (PRN to Respondent); Verification of Meeting Attendance; Letter dated 10/14/02 from Respondent's NA Sponsor; Monthly Report of Compliance; Statement (10/14/02) from Respondent's Dental Assistant

State Exhibit 1: [First] Statement of Charges, 2/1/02

State Exhibit 2: [First] Stipulation and Consent Order, 4/2/02

State Exhibit 3: [Second] Statement of Charges, 7/9/02

State Exhibit 4: [Second] Stipulation and Consent Order, 8/23/02

State Exhibit 5: Letter, PRN to P. McCollum, 8/28/02

State Exhibit 6: Application for Reinstatement, 9/20/02

State Exhibit 7: Notice of Reinstatement Hearing, 10/10/02

FINDINGS OF FACT

1. On July 1, 1975, the Respondent was issued license number 6077 by the Board to engage in the practice of dentistry, subject to the laws of the state of Iowa and the rules of the Board. (State Exhibit 1)

2. On February 1, 2002, the Respondent was charged with six counts by the Board, including failure to maintain a reasonably satisfactory standard of competency, failure to abide by rules governing controlled substances, unprofessional conduct, and inability to practice dentistry with reasonable skill and safety due to chemical dependence. (State Exhibit 1)

3. On April 2, 2002, the Board and the Respondent entered into a Stipulation and Consent Order in resolution of the Statement of Charges. The Respondent's license was placed on indefinite probation, subject to numerous terms and conditions. (State Exhibit 2)

The Respondent failed to comply with all of the conditions of his probation. On July 9, 2002, a second Statement of Charges was issued which charged the Respondent with accepting multiple controlled substance medications from a health care provider without informing the provider of his chemical dependency and having the provider consult with his addictionologist. The Statement of Charges further alleged that two of the Respondent's urine drug screens had been positive for controlled substances, that the Respondent accepted additional controlled substance medication from a friend, who was not a treating health care provider, that the Respondent failed to document his attendance at Alcoholics, Narcotics, and Gamblers Anonymous and failed to file monthly reports, and that the Respondent failed to call into the Board's drug testing program on five separate dates. (State Exhibit 3)

4. On August 23, 2002, the Respondent entered into a second Stipulation and Consent Order with the Board. The Respondent agreed to an indefinite suspension of his dental license. The Respondent further agreed that before a reinstatement hearing would be scheduled, he must:

- Successfully complete a Board approved in-patient evaluation/treatment program;
- Obtain a recommendation from a Board approved evaluation/treatment program that he can safely return to the practice of dentistry;
- Successfully document compliance with continued care recommendations made by the evaluating/treatment facility;
- Successfully document compliance with all terms and conditions set forth in the April 2, 2002 Stipulation and Consent Order for a minimum of thirty (30) days.

(State Exhibit 4)

5. The Respondent has complied with all of the conditions set forth in the April 23, 2002 Stipulation and Consent Order.

a. On July 1, 2002, the Respondent was readmitted to the Herrington Recovery Center at Rogers Memorial Hospital in Waukesha, Wisconsin and successfully completed a second treatment program. The Respondent was discharged with recommendations for his continued recovery. (State Exhibit 5)

b. Michael S. Goldstone, M.D., one of the directors of the treatment program, provided a written opinion that the Respondent was able to return to the practice of dentistry at the time of his discharge. He concluded that the Respondent was motivated for continuing outpatient follow-up and ongoing sobriety. (State Exhibit 5)

c. The treatment program recommended that the Respondent maintain abstinence from mood-altering chemicals, including alcohol; refrain from any gambling; use no new prescriptions unless approved by Dr. Goldstone; follow up with Dr. Rios at ASAP for individual therapy and weekly support group meetings; follow up with his psychiatrist, Dr. Greenfield for his anxiety disorder; follow up with Dr. Goldstone in four-six weeks and thereafter quarterly for ongoing monitoring of his recovery; cooperate with weekly urine drug screening; attend at least one 12-step meeting daily until return to practice and then 2-3 times per week; and maintain regular contact with a 12-step sponsor. (State Exhibit 5)

Through his testimony and exhibits, the Respondent has established his compliance with all of the recommendations of the treatment program. He has maintained sobriety and has refrained from gambling. He is not taking any prescriptions that have not been approved by Dr. Greenfield and Dr. Goldstone. He has been attending aftercare at Area Substance Abuse Program of Iowa City and Ames (ASAP) since his discharge from Herrington on August 28, 2002. He participates in individual and group therapy and has had perfect attendance. He is under the regular care of Dr. Greenfield for anxiety and depression. He has scheduled a follow-up appointment with Dr. Goldstone for November 25, 2002. He has cooperated with weekly drug screening and has attended daily NA/GA meetings. The Respondent has regular contact with his NA sponsor. (Testimony of Respondent; Respondent Exhibit A)

d. The Respondent submitted verification of his NA/GA attendance, his monthly report of compliance, and a statement from his dental assistant that she has read and understands the stipulations and conditions imposed on the Respondent in the Board's orders dated August 23, 2002 and March 26, 2002. (Testimony of Respondent; Respondent Exhibit A)

6. The Respondent expressed remorse and shame for his past actions. The Respondent testified that he had no other disciplinary issues in his 27 years as a dentist but made bad decisions while he was going through a difficult divorce. He explained that his relapse occurred when he was taken to the hospital following a motorcycle accident. He allowed hospital staff to give him a Demerol injection and a prescription for Vicodin, without informing them of his chemical addiction or consulting Dr. Goldstone. He denies that he filled the Vicodin prescription, but admitted that he took one Vicodin tablet that was given to him by a friend. He states that the positive urine drug screens were due to the shot of Demerol and the single Vicodin tablet that he injected.

After the second chemical dependency treatment, the Respondent feels that he has better coping skills and a better understanding of what is expected of him in terms of verification of his aftercare and submission of reports. He feels that he has benefited from the aftercare program at ASAP and from his daily attendance at 12-step meetings.

If he is reinstated, the Respondent hopes to return to his private practice in Des Moines. He would initially employ only his dental assistant, but would add a receptionist after he has sufficient patients. The Respondent feels qualified to return to practice, but is willing to have his skills assessed if the Board determines that it is necessary. (Testimony of Respondent)

CONCLUSIONS OF LAW

650 IAC 51.34 provides the procedure for the reinstatement of a dental license that has been revoked or suspended by the Board. It provides, in relevant part:

51.34(1) Any person whose license has been revoked or suspended by the board may apply to the board for

reinstatement in accordance with the terms of the order of revocation or suspension.

51.34(2) If the order of revocation or suspension did not establish terms upon which reinstatement might occur,...an initial application for reinstatement may not be made until one year has elapsed from the date of the final order.

51.34(3) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other disciplinary matters before the board.

51.34(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish these facts shall be on the respondent.

...

51.34(6) The order to grant or deny reinstatement shall include findings of facts and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 51.33(153)

The preponderance of the evidence established that the Respondent has undertaken the necessary steps to address his ongoing chemical dependency and has satisfied the requirements imposed by the August 23, 2002 Stipulation and Consent Order. The Respondent's license will be reinstated on probation, subject to restrictions and conditions, which are necessary to protect the public interest. The majority of the conditions concern monitoring of the Respondent's ongoing chemical dependency recovery. In addition, given the numerous competency issues raised in the Board's initial Statement of Charges and the Respondent's intention to be in a solo private practice, the Board believes that the protection of the public requires

monitoring of the Respondent's dental practice to ensure that he maintains a reasonably satisfactory standard of competency.

ORDER

IT IS THEREFORE ORDERED, that dental license number 6077, issued to Gary L. Weber, D.D.S., is hereby REINSTATED and placed on PROBATION for an indefinite period, subject to the terms and conditions outlined below. The Respondent may request to be removed from probation five (5) years from the date of this Order, if he has fully complied with all of the conditions of probation.

1. Prior to the return to practice, the Respondent must enter into an agreement with another licensed dentist to serve as a practice monitor. The name and credentials of the proposed practice monitor and the terms of the proposed monitoring agreement shall be submitted to the Board for prior approval. The Respondent shall ensure that the practice monitor submits monthly reports to the Board for the first six (6) months, and quarterly reports thereafter. All costs associated with such monitoring shall be the sole responsibility of the Respondent.

The Board specifically reserves the right to refer the Respondent to a facility for a hands on comprehensive competency evaluation if the information received from the practice monitor indicates that the Respondent is having problems maintaining a satisfactory standard of competence.

2. The Respondent shall not apply for reinstatement of his DEA or CSA drug registrations without prior approval of the Board.

3. The Respondent shall completely abstain from the personal use and possession of alcohol and all controlled substances or drugs in any form unless prescribed by a duly licensed and treating health care provider in consultation with his treating addictionologist. The Respondent shall inform any treating health care provider of his chemical dependency prior to accepting any prescription drug and ensure that the treating health care provider consults with his treating addictionologist.

The Respondent shall report to the Board within fourteen (14) days any use of prescription drugs. The report shall include the name and quantity of the prescription, the name and phone number of the prescribing health care provider, the reason for the prescription, and the name and telephone number of the pharmacy where the prescription was filled.

4. The Respondent shall obtain and work with a local 12-step sponsor and attend meetings of Alcoholics Anonymous or Narcotics Anonymous at least two (2) times each week and Gamblers Anonymous at least two (2) times each week. The Respondent shall document and submit written verification of his attendance in monthly reports to the Board for the first six (6) months, and thereafter provide verification of attendance in quarterly reports to the Board.

5. The Respondent shall be under the care of a physician counselor who is a certified addictionologist, prior approved by the Board. The Respondent shall sign releases to allow the Board to fully communicate with his physician counselor. The Respondent shall promptly document his compliance with any and all recommendations made by his physician counselor.

The Respondent is responsible for ensuring that his physician counselor submits written quarterly reports to the Board concerning his treatment and progress. The report shall include, but is not limited to, the Respondent's progress, participation in treatment, and compliance with physician counselor's recommendations. The counseling shall be at the Respondent's expense.

a. The Board's approval of the physician counselor may be rescinded by the Board for good cause.

b. If the Respondent or his physician counselor feel it is necessary to terminate their doctor/patient relationship, a written explanation by both parties must be submitted to the Board at least thirty (30) days before termination of the relationship.

c. In either case, the Respondent shall submit other names of physician counselors for the Board's approval within fifteen (15) days from the date of the Board's

rescission Order or date of doctor/patient relationship termination.

6. The Respondent shall continue to participate in individual and group counseling at ASAP or at another facility approved by the Board. The Respondent shall attend individual and group counseling sessions at the frequency recommended by ASAP or the approved facility, but the frequency shall not be less than monthly without prior Board approval. The counseling shall be at the Respondent's expense.

7. The Respondent shall follow up with the evaluating/treatment facility's addictionologist for addiction medication monitoring on a quarterly basis. The first follow up will be as scheduled on November 25, 2002. The Respondent shall be responsible for ensuring that the evaluating/treatment facility submits written reports to the Board concerning his recovery progress and recommendations.

8. The Respondent and all of his treating health care providers shall promptly report any relapse to the Board.

9. The Respondent shall provide witnessed blood or urine samples on demand by any agent or designee of the Board. The requests for blood or urine samples will be random and unannounced. The samples shall be used for drug and alcohol screening and all costs associated with the drug and alcohol screening shall be promptly paid by the Respondent.

10. The Respondent shall provide notice of this action against his license to all current and future licensees in his practice, all employers, and all staff. Within ten (10) days of the date of this Order and thereafter within ten (10) days of any new employment relationship, the Respondent shall provide the Board with signed statements from all licensees in his practice, all employers, and all employees that they have read and understood the Statements of Charges and this final Order.

11. The Respondent shall sign releases to allow for the free flow of information between the Board and all of the

Respondent's current evaluators, counselors, and aftercare providers.

12. The Respondent shall fully cooperate with random unannounced visits by agents of the Board to determine compliance with this Order.

13. The Respondent shall be responsible for all costs associated with compliance with this Order. Respondent shall promptly remit for such costs.

14. The Respondent shall submit monthly reports detailing his compliance with this Order for a period of six(6) months. After six (6) months the Respondent shall submit quarterly reports. These reports shall include, but not be limited to, verification of Alcoholics Anonymous/Narcotics Anonymous attendance, Gamblers Anonymous attendance and participation with his physician counselor/aftercare provider(s).

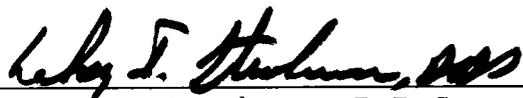
15. The Respondent shall upon reasonable notice, and subject to the waiver provisions of Board rule 650 Iowa Administrative Code 31.6, appear before the Board at the time and place designated by the Board.

16. Periods of residency outside the State of Iowa may be applied toward periods of probation if prior approved by the Board. Any changes in residency must be provided to the Board in writing within fourteen (14) days of departure.

17. The Respondent shall fully and promptly comply with all Orders of the Board and statutes and rules regulating the practice of dentistry in Iowa.

18. Any violation of the terms of this Order is grounds for further disciplinary action upon notice and opportunity for hearing for failure to comply with an Order of the Board, in accordance with Iowa Code section 272C.3(2)(a).

Dated this *24th* day of *October*, 2002.



LeRoy I. Strohman, D.D.S.

Chairperson

Iowa Board of Dental Examiners

cc: Theresa O'Connell Weeg
Office of the Attorney General
Hoover Building
Des Moines, Iowa 50319

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A and Iowa Code section 153.33(5)(g) and (h).