

BEFORE THE IOWA DENTAL BOARD

IN THE MATTER OF :)	
)	FINDINGS OF FACT,
ROBIN SPENCER, R.D.H.)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
RESPONDENT)	
)	

On July 14, 2010, the Iowa Dental Board (Board) filed a Notice of Hearing and Statement of Charges against Robin Spencer, R.D.H. (Respondent) charging her with two counts:

Count I: Performing services which exceed the scope of practice granted to a dental hygienist, in violation of 650 Iowa Administrative Code 10.4(2).

Count II: Unprofessional conduct in the practice of dental hygiene, in violation of Iowa Code section 153.34(7)(2009) and 650 Iowa Administrative Code 30.4(13).

The hearing was held before the Board on January 25, 2011 at 1:00 p.m. in the Board's Conference Room, 400 SW 8th Street, Des Moines, Iowa. The following members of the Board presided at the hearing: Gary Roth, D.D.S., Chairperson; Lynn Curry, D.D.S.; Perry Grimes, D.D.S.; Michael Rovner, D.D.S.; Steve Bradley, D.D.S.; Marijo Beasler, R.D.H.; VaLinda Parsons, R.D.H.; Diane Meier and Kimberlee Spillers, Public Members. Respondent appeared and was self-represented. Assistant Attorney General Theresa O'Connell Weeg represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was recorded by a certified court reporter and was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1) and 650 IAC 51.20(13). Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate their decision. The Board directed the administrative law judge to prepare their Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of the witnesses, State Exhibits 1-8 (See Exhibit Index for description), and Respondent Exhibit A (pp.1-66).

FINDINGS OF FACT

1. Respondent has been a licensed dental hygienist for 35 years, primarily practicing in the state of Texas. On May 17, 2004, Respondent was issued license number 3179 by the Board to engage in the practice of dental hygiene, subject to the laws of the state of Iowa and the rules of the Board. Respondent's license is current and will next expire on August 31, 2011. Respondent is also licensed in the state of Texas, where she is currently working as a dental hygienist. (Testimony of Respondent; State Exhibit 1; Respondent Exhibit A)

Performing Services Outside the Permissible Scope of Practice

2. On October 16, 2006, the Iowa Veterans Home (IVH) in Marshalltown, Iowa hired Respondent as a dental hygienist. IVH had one part-time contract dentist (Dr. Christopher McDonald) who provided dental care to the residents one day a week. Respondent's responsibilities included cleaning residents' teeth, scheduling appointments, taking radiographs, and entering resident information in the computer. Many residents had chronic problems with sore spots from their dentures. Dr. McDonald taught Respondent how to make some minor denture adjustments to relieve sore spots when he was not available. Respondent always documented the adjustments she provided in the residents' dental records.

Respondent was not taught how to perform denture adjustments in her dental hygiene program, and she had never provided denture adjustments in any of the private dental practices where she had worked. However, she believed that it was permissible for her to provide minor denture adjustments for residents at IVH so long as Dr. McDonald approved and she documented the adjustments in the patient record. (Testimony of Respondent; Respondent Exhibit A)

3. In Spring 2008, IVH hired a second contract dentist (Dr. Nancy Urbanowski) who worked in the dental clinic three days a week from March-April 2008 and then again from August 2008 through July 2009. In September 2008, Dr. Urbanowski saw Respondent making a denture adjustment for a resident. Dr. Urbanowski became

concerned because she believed that denture adjustments were outside the scope of Respondent's license as a dental hygienist. Dr. Urbanowski was also concerned that her dental license could be at risk if Respondent was providing denture adjustments. Dr. Urbanowski did not raise her concerns with Respondent but instead reported them to the IVH Medical Director. (Testimony of Nancy Urbanowski, D.D.S; State Exhibit 2)

4. The IVH Administration told Respondent to stop adjusting dentures. Respondent spoke to Dr. McDonald about this issue, and he agreed that she should just stop adjusting dentures. Respondent agreed to stop, although she felt badly for the residents who would have to wait for an appointment with a dentist in order to get relief for sore spots. Respondent called a Board employee, who was an acquaintance of hers, and asked his opinion. The employee told Respondent that she would have to take the issue to the Board. (Testimony of Shelly Tilton; Respondent)

On October 1, 2008, Respondent wrote a letter to the Board's Dental Hygiene Committee. In her letter, Respondent advised the committee that over half of the IVH's 720 residents wear full dentures or are edentulous. Respondent further advised the committee that when residents have sore spots she tries to relieve the area on the denture that could be causing the discomfort. Respondent wrote that her purpose in doing so was to try to get the resident comfortable until they could see a dentist and she was checking with the committee to "make sure I am in compliance with the Iowa Board." (Testimony of Respondent; State Exhibit 6)

5. On October 8, 2008, the IVH Nurse Manager of Medical Services wrote to the Board's Dental Hygiene Committee. The Nurse Manager advised the Committee that the IVH was aware of Respondent's letter but that after consulting with the dentists, IVH had decided not to pursue any variance of the practice permitted under the licensure of a dental hygienist. Board staff subsequently contacted Respondent and confirmed with her that the issue did not need to be put on the Committee's agenda. (State Exhibit 7; Testimony of Brian Sedars)

6. In November 2008, Dr. Urbanowski filed a complaint against Respondent with the Board. Dr. Urbanowski reported the denture adjustment that she observed Respondent making earlier in the fall of 2008, as well as the following two incidents that occurred in November 2008:

- An IVH resident asked Dr. Urbanowski to adjust his dentures and told her that "the last reline didn't work so good." The resident reported that he was unable

to wear the denture because it was so bulky. Dr. Urbanowski reviewed the resident's chart and saw an entry made by Respondent that stated "Denture relined done by Robin." Dr. Urbanowski provided care to the resident and made a follow-up appointment for him.

- An IVH resident came into the dental clinic, took out his denture and handed it to Respondent to show her a spot, and then told Respondent that he needed her to do another adjustment. Respondent looked at Dr. Urbanowski and the dental assistant and told the resident that a dentist would have to do that. The resident responded by asking Respondent why she could not adjust the denture again.

(Testimony of Nancy Urbanowski, D.D.S; State Exhibit 2)

7. Dr. Urbanowski's complaint was assigned to a Board investigator, Brian Sedars. Mr. Sedars interviewed Respondent, who reported that Dr. McDonald taught her how to adjust dentures. Respondent described the adjustments she performed as "mostly listening to the patient and just doing small adjustments on someone with a sore spot." Respondent also reported that she had a difficult relationship with Dr. Urbanowski after Dr. Urbanowski returned to IVH in August 2008. Mr. Sedars made several attempts but was never able to speak to Dr. McDonald. (Testimony of Brian Sedars; Respondent; State Exhibit 4; See also Respondent Exhibit A, pp. 22-27, 32-34, 39)

8. Marilyn Corwin has been a licensed dental hygienist since 1966, has practiced dental hygiene for twenty years, and has taught dental hygiene as a faculty member at the Des Moines Area Community College (DMACC). Ms. Corwin is past president of the Iowa Dental Hygiene Association and served on the Iowa Dental Board from 1993-1999. Ms. Corwin reviewed the Accreditation Standards for Dental Hygiene Education programs and the current competencies for DMACC's course in Dental Materials Lab. In Ms. Corwin's opinion, the proper scope of practice for a dental hygienist does not include providing denture adjustments for patients. Dental hygiene students do not receive instruction in the adjustment of clasps or the removal of excess appliance material to alleviate denture discomfort. Rather, dental hygiene students are evaluated on their skills in proper cleaning and care of removable dental appliances and in patient instruction for home care of dental appliances. If a dental hygienist identifies areas of tissue irritation in a patient's oral cavity, they must refer the patient to the dentist for any treatment beyond palliative care. (Testimony of Marilyn Corwin; State Exhibit 8) The Board agreed with Ms. Corwin.

Allegation of Unprofessional Conduct

9. Respondent was on leave from IVH from December 29, 2008 until April 6, 2009. In her absence, Respondent's responsibilities for scheduling appointments were transferred to dental assistant Tammy Keith. When Respondent returned to work, she was informed that Ms. Keith would continue to handle all of the scheduling. There was ongoing tension between Respondent and Ms. Keith over this reassignment. (Testimony of Respondent; Shelly Tilton; Tammy Keith; Respondent Exhibit A, pp. 27-28)

10. On Monday, April 13, 2009, Respondent received a call from a registered nurse who reported that one of the residents who had been seen by Dr. McDonald on the previous Friday but was not given a follow-up appointment for a tooth extraction. Respondent told the nurse that she no longer made the appointments, but she would have Tammy Keith return her call to set up the appointment. Respondent pulled the patient's chart, put a note on it for Ms. Keith to call the nurse, and then gave the chart and the note to Ms. Keith. When Ms. Keith asked Respondent why she did not just go ahead and talk to the nurse to schedule the patient, Respondent replied "that's your job." Ms. Keith then made a comment about Respondent's attitude. (Testimony of Respondent; Tammy Keith)

Respondent and Tammy Keith disagree about what happened next.

- Tammy Keith testified that she told Respondent something like "your attitude sucks" while pointing her finger at Respondent and at the patient's chart. Ms. Keith maintains that she was standing about four feet away from Respondent when Respondent suddenly lunged at her and put her in a headlock. When asked to describe it, Ms. Keith stated that Respondent wrapped her arm around Ms. Keith's neck or head and pressed Ms. Keith's cheek against her own cheek while telling Ms. Keith that she was tired of her attitude. Tammy Keith reports that she was shocked and stunned and told Respondent to "take your hands off of me." (Testimony of Tammy Keith; State Exhibits 3, 5)
- Respondent, on the other hand, contends that Tammy Keith stood up from the desk where she had been sitting and shook her finger in Respondent's face while telling her "I don't like your attitude." Respondent maintains that she reached out and put her arm on Ms. Keith's shoulder/neck area and told her, "well, I don't like your attitude either." Respondent denies putting Ms. Keith in a

headlock. (Testimony of Respondent; State Exhibit 4, Respondent Exhibit A, pp. 41-43)

There were no witnesses to this incident between Tammy Keith and Respondent. However, one of their co-workers overheard Tammy Keith say "don't touch me" and then saw Ms. Keith walking out of the dental clinic looking visibly upset. The co-worker asked Ms. Keith if she was ok, and Ms. Keith reported that she was going to the supervisor's office. (Testimony of Respondent; Tammy Keith; Respondent Exhibit A, p. 55)

11. Tammy Keith reported the incident to her supervisor, and Respondent was sent home pending an internal investigation. Respondent's employment was terminated, effective April 22, 2009, following a "violence in the workplace" investigation. (Testimony of Respondent; Respondent Exhibit A, pp. 41-56) Respondent filed a grievance, which was heard on June 2, 2009¹ and denied on July 21, 2009. (Respondent Exhibit A, pp. 56-57)

Respondent appealed the denial of her grievance through the Grievance Resolution Improvement Process (G.R.I.P.) On September 24, 2009, the G.R.I.P. panel determined that Respondent would be allowed to resign effective September 24, 2009, that all disciplinary actions would be removed from her personnel file, and that she would be reimbursed for back pay and vacation accruals from April 22, 2009 through September 24, 2009. (Testimony of Respondent; Respondent Exhibit A, p. 19)

12. Prior to the incident with Tammy Keith, Respondent had received excellent Performance Evaluations at the IVH. (Testimony of Respondent; Respondent Exhibit A, pp. 7-11). Respondent has submitted reference letters from former employers and letters of appreciation from some of her patients. (Respondent Exhibit A, pp. 2-4, 15-17) Respondent is currently working as a dental hygienist in Houston, Texas. Her employing dentist is aware of the Board's charges and has written a letter of support for her. (Testimony of Respondent; Respondent Exhibit A, pp. 5-6)

13. Based on their testimony and this record, it is clear that Respondent and Tammy Keith were upset with each other when they had their conversation on April 13, 2009. It is also clear that Respondent made physical contact with Ms. Keith. However, the

¹ Respondent's supervisor filed an ethical complaint with the Board on June 2, 2009, which reported that Respondent's employment had been terminated for violence in the workplace. (State Exhibit

Board was unable to conclude, by a preponderance of the evidence, that Respondent lunged at Ms. Keith, wrapped her arms around Ms. Keith's head or neck, or put Ms. Keith in a "headlock."

CONCLUSIONS OF LAW

Count I – Performing Services Which Exceed the Scope of Practice For Dental Hygiene

Iowa Code section 147.57(2009) provides that the practice of dentistry by a dental hygienist shall also be grounds for discipline of the dental hygienist, and the permitting of such practice by the dentist under whose supervision the dental hygienist is operating shall be grounds for disciplining of the dentist.

650 IAC 10.4(2) provides that the unauthorized practice of dental hygiene also means the performance of services by a dental hygienist that exceeds the scope of practice granted in Iowa Code section 153.15.

Iowa Code section 153.15 provides:

153.15 Dental hygienists-scope of term.

A licensed dental hygienist may perform those services which are educational, therapeutic, and preventive in nature which attain or maintain optimal oral health as determined by the board and may include but are not necessarily limited to complete oral prophylaxis, application of preventive agents to oral structures, exposure and processing of radiographs, administration of medicaments prescribed by a licensed dentist, obtaining and preparing nonsurgical, clinical and oral diagnostic tests for interpretation by the dentist, and preparation of preliminary written records of oral conditions for interpretation by the dentist. Such services shall be performed under the supervision of a licensed dentist and in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but nothing herein shall be construed to authorize a dental hygienist to practice dentistry.

The permissible scope of practice for a dental hygienist, as provided in Iowa Code section 153.15, does not include adjusting patients' dentures. The preponderance of the evidence established that Respondent independently performed denture adjustments for residents of the Iowa Veterans' Home, in violation of Iowa Code sections 153.15,

147.57 and 650 1AC 10.4(2). By her own admission, Respondent provided denture adjustments at times when a dentist was not present in the dental clinic with her.

There were several factors that mitigate Respondent's scope of practice violation. The Board believed that Respondent was motivated by a sincere concern for the IVH residents and a desire to alleviate their discomfort when a dentist was not available. The Board also believes that Respondent complied when her employer told her to stop providing denture adjustments. Based on this record, it appears that one of Respondent's supervising dentists taught her how to make minor denture adjustments and knew that she was providing this service to some residents in his absence. Respondent and her employer did not benefit financially from this practice. Respondent did not try to hide the fact that she was providing these services, and she consistently documented any adjustment in the patient record. When Respondent was notified that denture adjustments may be outside her scope of practice, she contacted a Board employee and wrote to the Board's Dental Hygiene Committee asking for its opinion. For all of these reasons, the Board concluded that Respondent's violation should be addressed through the issuance of a Citation and Warning and the assessment of a minimal fine.

Count II – Unprofessional Conduct

Iowa Code section 153.34(7)(2009) authorizes the Board to discipline a licensed dental hygienist for dishonorable or unprofessional conduct in the practice of dental hygiene.

650 IAC 30.4(13) provides in relevant part:

650-30.4(153) Grounds for discipline. The following shall constitute grounds for the imposition by the board of one or more of the disciplinary sanctions set forth in rule 650-30.2(153) specifically including the imposition of civil penalties not to exceed \$10,000...

...

13. Unprofessional conduct including, but not limited to, those acts defined by Iowa Code section 153.32 or any violation of 650-Chapter 27.

650 IAC 27.9(1) provides that licensee or registrant actions determined by the board to be abusive, coercive, intimidating, harassing, untruthful or threatening in connection with the practice of dentistry shall constitute unethical or unprofessional conduct. The Board was unable to conclude, by a preponderance of the evidence, that Respondent's

interaction with a co-worker on April 13, 2009 constituted unprofessional conduct in the practice of dental hygiene, in violation of Iowa Code section 153.34(7) and 650 IAC 30.4(13). Although it is clear that Respondent touched her co-worker, the evidence was insufficient to support the allegation that Respondent did so in an aggressive manner or placed her co-worker in a headlock. There were no neutral witnesses to the incident, and the comment overheard by one co-worker was more consistent with Respondent's description of the incident than her co-worker's description. Respondent should not have made any unwanted physical contact with her co-worker, particularly in the context of a verbal disagreement. However, it appears that this was an isolated incident. The incident does not rise to the level of the type of workplace conduct that should be sanctioned by the Board through a disciplinary proceeding for unprofessional conduct.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Robin Spencer, R.D.H. is hereby CITED for violating Iowa Code section 147.57 and 650 IAC 10.4(2) by practicing outside the permissible scope of a dental hygienist. [Count I] Respondent is WARNED that further violations may result in more severe sanctions against her license.

IT IS FURTHER ORDERED that Respondent shall pay, within 30 days of the date of this Decision and Order, a civil penalty of one hundred dollars (\$100) for her violation under Count I.

IT IS FURTHER ORDERED that the charges under Count II are hereby DISMISSED.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 650 IAC 51.35(2) that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and any costs calculated by the executive director within thirty (30) days of receipt of the notice of costs.

Dated this 4th day of March, 2011.

A handwritten signature in black ink, appearing to read "Gary Roth DDS", is written over a horizontal line.

Gary Roth, D.D.S.

Chairperson

Iowa Dental Board

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cc: Theresa O'Connell Weeg
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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).