

BEFORE THE IOWA DENTAL BOARD

IN THE MATTER OF :)	
)	FINDINGS OF FACT,
TAMMY BERTCH ¹ , R.D.H.)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
RESPONDENT)	
)	

TO: TAMMY BERTCH BROUSSEAU

On October 28, 2009, the Iowa Dental Board (Board) filed a Notice of Hearing and Statement of Charges against Tammy S. Bertch, R.D.H. (Respondent) charging her with failing to comply with the decision of the Board imposing discipline, in violation of Iowa Code section 153.34(4) and 650 Iowa Administrative Code (IAC) 30.4(23).

The hearing was held before the Board on January 14, 2010 at 3:00 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: Deena R. Kuempel, D.D.S., Chairperson; Lynn Curry, D.D.S.; Gary Roth, D.D.S.; Perry Grimes, D.D.S.; Michael Rovner, D.D.S.; Marijo Beasler, R.D.H.; Valinda Parsons, R.D.H.; and Diane Maier, Public Member. Respondent appeared by telephone 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)(2009), 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 1-7 (See Exhibit Index for description), and Respondent Exhibit A (Progress Notes from Respondent's

¹ Respondent's married name is Tammy Bertch Brousseau. (Testimony of Tammy Brousseau)

physician). The Board denied Respondent's request to hold the record open for additional exhibits.

FINDINGS OF FACT

1. On September 18, 1996, Respondent was issued license number 2596 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 expired on August 31, 2009 and has not been renewed. (State Exhibit 6) Respondent has not worked as a dental hygienist since late 2007 or early 2008. (Testimony of Respondent)
2. On March 28, 2007, Respondent pled guilty to Possession of a Prescription Drug without a prescription. On January 10, 2008, the Board charged Respondent with being convicted of a misdemeanor crime related to the practice of dental hygiene. On May 13, 2008, the Board issued Findings of Fact, Conclusions of Law, Decision and Order, which placed Respondent's license on indefinite probation and required her to complete a substance abuse evaluation and comply with all treatment recommendations made by the evaluating facility. (State Exhibits 1, 2)
3. Respondent completed a substance abuse evaluation at a Board approved facility on June 26, 2008. The facility submitted a written report dated July 28, 2008. The facility recommended that Respondent enroll in "Better Choices," which is a Pre-Treatment Program in Waterloo, Iowa. The facility further recommended that Respondent undergo random urine drug screens for a minimum of two years. (State Exhibit 3)
4. On October 29, 2008, the Board issued an Order Modifying Conditions of Probation. In relevant part, the Board's Order required Respondent to:
 - Enroll in the Better Choices Pre-Treatment Program in Waterloo, Iowa within thirty (30) days of the date of the Order;
 - Immediately comply and document successful compliance with all recommendations of the Better Choices facility;
 - Sign releases to allow for the free flow of information between the Board and Respondent's evaluators/treatment providers;
 - Fully cooperate with random unannounced visits by agents of the Board to determine compliance with the Order;
 - Participate in the Board's random drug and alcohol screening program;

- Submit quarterly reports detailing her compliance with the terms of her Order during the remainder of her probationary period;
- Take responsibility for all costs associated with compliance and promptly remit fifty dollars (\$50.00) on or before the first day of January, April, July, and October of each calendar year for monitoring costs.

(State Exhibit 4)

5. Respondent submitted one quarterly report dated June 26, 2008. She has not complied with any of the other requirements set out in the Board's October 29, 2008 Order. Respondent has not provided the Board with any releases and has not contacted First Lab, the Board's approved chemical screening program. Respondent has told the Board's investigator that she does not intend to enroll in the Better Choices program and cannot afford the enrollment fee of \$125.00. Respondent reports that she has filed for bankruptcy and her home is in foreclosure. (Testimony of Brian J. Sedars; Respondent; State Exhibits 5, 7)

6. Respondent has been severely depressed to the extent of being unable to move from her couch or even lift her arms. She admits that she is not currently fit to be practicing as a dental hygienist as a result of her depression. She has provided the Board with progress notes from a recent visit to her physician that documents her depression, mood swings, and her current medications. Respondent has also had other medical conditions, one of which required a surgical procedure in September 2009. Respondent and her husband are considering a move to Florida to live with her husband's family. (Testimony of Respondent; Respondent Exhibit A)

CONCLUSIONS OF LAW

Iowa Code section 153.34(4) provides, in relevant part:

153.34 Discipline

The board may issue an order to discipline a licensed dentist or dental hygienist,... for any of the grounds set forth in this chapter, chapter 272C, or Title IV. Notwithstanding section 272C.3, licensee or registrant discipline may include a civil penalty not to exceed ten thousand dollars. Pursuant to this section, the board may discipline a licensee or registrant for any of the following reasons:

...

4. For willful or repeated violations of this chapter, this subtitle, or the rules of the board.

650 IAC 30.4(23) 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.

...

23. Failure to comply with a decision of the board imposing discipline.

The preponderance of the evidence established that Respondent failed to comply with a decision of the board imposing discipline, in violation of Iowa Code section 153.34(4) and 650 IAC 30.4(23), when she failed to enroll in the Better Choices Program, failed to contact the Board's chemical screening program, failed to provide releases to the Board, and failed to file quarterly reports as required in the Board's Orders issued on May 13, 2008 and October 29, 2008. In order to adequately protect the public, Respondent must be in full compliance with these Board Orders before she is allowed to resume the practice of dental hygiene.

DECISION AND ORDER

IT IS THEREFORE ORDERED that dental hygiene license no. 2596, issued to Respondent Tammy Bertch, R.D.H., is hereby INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED that Respondent's dental hygiene license may not be reinstated until Respondent:

- (1) Fully complies with all of the requirements of the Board Order issued on October 29, 2008, including completion of the Better Choices Program or a similar program approved by the Board, and
- (2) Establishes that the reason for the indefinite suspension no longer exists and that it is in the public interest for her license to be reinstated. See 650 IAC 51.34.

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Dated this 26th day of January, 2010.

Deena R. Kuempel, DDS

Deena Kuempel, D.D.S.

Chairperson

Iowa Dental Board

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).