



RECEIVED

JAN 28 2004

STATE OF IOWA  
DEPARTMENT OF JUSTICE

THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

ADDRESS REPLY TO:  
HOOVER BUILDING  
DES MOINES, IOWA 50319  
TELEPHONE: 515/281-5164  
FACSIMILE: 515/281-4209

January 26, 2004

Stephanie Nuebauer  
A Brighter Smile  
214 Kirkwood Blvd.  
Davenport, IA 52803

### CEASE AND DESIST

Dear Ms. Neubauer:

I am counsel for the Iowa Board of Dental Examiners. The Board has reviewed information that indicates you are engaging in acts that constitute the practice of dentistry through your tooth-whitening business, "A Brighter Smile." You are not licensed in the state of Iowa to practice dentistry. Therefore, the Board and the Iowa Attorney General's Office is advising you to **CEASE AND DESIST** from this illegal activity.

The Board considers aspects of your business to be the practice of dentistry under the provisions of Iowa Code Section 153.13 (2001). That section provides that the following persons are deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.
2. Persons who perform examination, diagnosis, treatment, and attempted correction by any medicine, appliance, surgery, or other appropriate method of any disease, condition, disorder, lesion, injury, deformity, or defect of the oral cavity and maxillofacial area, including teeth, gums, jaws, and associated structures and tissue, which methods by education, background experience, and expertise are

common to the practice of dentistry. (emphasis added)

The Board understands that the general public may purchase tooth whitening agents over the counter. However, the Board also understands that your business involves more than the purchase of a tooth whitening kit, and includes the offering of services in using that product in a manner that constitutes the practice of dentistry.

It appears you are "publicly professing to assume the duties incident to the practice of dentistry," in violation of Section 153.13(1), when you offer not simply a product that may be sold over the counter, but when you offer to provide the services related to applying the tooth-whitening agent to customers' teeth. These services constitute the practice of dentistry and are properly offered only by licensed dentists. First, you offer customers a location within which services are provided. You then offer your assistance to customers in taking their impressions, which are then used for the purpose of creating custom trays for those customers. Further, most over-the-counter products use a 10% concentration of carbamide peroxide, a concentration that has been approved by the ADA Council of Therapeutics as safe and effective. You use a bleaching agent that is 15% carbamide peroxide, a concentration that is not accepted by the ADA as safe and effective.

While the Board recognizes these agents may be purchased over the counter, it further believes that the purchase of a tooth-whitening service is qualitatively more significant than the purchase of over the counter agents to be used directly by the purchaser. Your customers purchase not only the tooth-whitening product you sell, but the services you offer, which they presumably understand to be provided by a person with greater expertise than their own. When a person sees a dentist for tooth whitening, a dentist is able to diagnose whether the tooth discoloration is due to factors that bleaching will not affect. You are not trained to make this diagnosis. When a person has tooth whitening performed by a dentist, the dentist determines a starting shade, is able to determine through professional follow-up whether the appropriate final shade is achieved. You do not do this, and therefore have no way of determining if you have achieved the desired results. Again, the services you provide apart from simply selling the tooth whitening product require professional education and training you do not possess.

The scope of the services you offer raise public health and safety concerns. First, there is a serious question as to whether you are following appropriate infection control measures regarding hand washing, glove changing, disinfection of impressions and casts, and other measures as you provide services to your customers. It does not appear you have training in management of hazardous materials, of which the alginate you use to make impressions is one. It does not appear that you have a kit for toxic

spills. It also appears you have no protocol for identifying persons with allergies, to latex gloves, for instance. You do not appear to have any protocol for how any emergencies (such as aspiration of alginate material), or allergic or other adverse reactions, will be addressed; you have not demonstrated training in CPR and basic life support; and you do not appear to have an emergency kit or oxygen for addressing emergencies. Finally, you do not have the professional training to know if the tray fits the patient properly. If it does not, customers could experience tooth sensitivity, gum irritation, and a sore throat. Even if the tray fits appropriately, over-bleaching can occur, which could result in tooth sensitivity and gum irritation.

In addition to the above concerns, the Board notes there are discrepancies in the advice you offer to customers. For instance, you advised the Board investigator he should not sleep at night with the trays in, which is contrary to the information in your written instructional materials.

Based on these facts, the Board believes you are publicly professing to assume the duties incident to the practice of dentistry, in violation of Section 153.13(1). The Board further believes you are performing "treatment" and "attempt[ing] correction" by an "appliance" or "other appropriate method" of a "condition...of the oral cavity," "including teeth, gums, jaws, and associated structures and tissue, which methods by education, background experience, and expertise are common to the practice of dentistry."

A person who engages in the practice of dentistry is required to obtain a license for that purpose. See Iowa Code Section 147.2. In the event a person engages in the practice of dentistry without a license issued by the Board of Dental Examiners, the office of the Iowa Attorney General may file a civil action in a state district court to obtain a permanent injunction prohibiting that person from engaging in the unauthorized practice of dentistry. See Iowa Code Section 147.83. Further, the unlicensed practice of dentistry could subject you to criminal prosecution, as Iowa Code Section 147.86 provides that any violation of Chapter 147, which includes the prohibition against the unlicensed practice of dentistry, constitutes a serious misdemeanor.

You are hereby warned that you must **CEASE AND DESIST** from practicing dentistry without a license. If the Board of Dental Examiners receives information that you have engaged in the unauthorized practice of dentistry after the date you receive this letter, a civil injunction action may be filed against you by the Iowa Attorney General, and the Board may refer this matter to the Scott County Attorney's Office.

I would strongly advise you to contact your attorney to seek advice or answer any questions you have regarding this matter.

Stephanie Neubauer  
January 26, 2004  
Page 4

Sincerely,

THERESA O'CONNELL WEEG  
Assistant Attorney General

TOW

cc: Iowa Board of Dental Examiners