

BEFORE THE IOWA DENTAL BOARD

IN THE MATTER OF :)	
)	FINDINGS OF FACT,
CYNTHIA D. ADAMS, Q.D.A.)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
RESPONDENT)	

On August 13, 2015, the Iowa Dental Board (Board) filed a Notice of Hearing and Statement of Charges against Cynthia D. Adams, Q.D.A. (Respondent) charging her with failing to comply with a decision of the Board imposing licensee discipline, in violation of Iowa Code section 272C.3(2)(a)(2015) and 650 Iowa Administrative Code (IAC) 30.4(23). The hearing was held before the Board on October 23, 2015. The following members of the Board presided at the hearing: Steven P. Bradley, D.D.S.; Chairperson; Thomas M. Jeneary, D.D.S.; Kaaren G. Vargas, D.D.S.; William G. McBride, D.D.S.; Mary C. Kelly, R.D.H.; Nancy A. Slach, R.D.H.; Lori Elmitt and Diane Meier, public members. Respondent appeared and was self-represented. Assistant Attorney General Sara Scott 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)(2015), 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 Brian Sedars and Respondent; State Exhibits 1-12 (See Exhibit Index for description), and Respondent Exhibit A.

FINDINGS OF FACT

1. Respondent has previously been disciplined by the Board based on her alcohol dependence, alcohol abuse, and repeated convictions for Operating While Intoxicated (OWI). (Sedars testimony; State Exhibits 6, 10-12)

A. Respondent initially applied for registration as a dental assistant in 2007. At that time she reported three convictions for operating while intoxicated (OWI), which had occurred in January 1999, February 2000, and September 2005. Respondent also reported that she was diagnosed with alcohol dependence in January 2005. On January 10, 2008, Respondent was issued registration number 09492, pursuant to a Stipulated Registration Agreement with the Board. Respondent's registration was placed on probation for five (5) years, subject to terms and conditions. In part, Respondent was required to:

- completely abstain from the personal use and possession of alcohol and from all controlled substances and drugs unless prescribed by a duly licensed and treating health care provider;
- attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) at least three times a week, to obtain a sponsor, and to provide verification of her attendance;
- submit to random alcohol or drug tests and to inform all employers of the terms of her probation.

(State Exhibit 10)

B. In 2009, Respondent violated her probation by consuming alcohol. Respondent was evaluated and diagnosed with alcohol dependence. The evaluation recommended intensive outpatient substance abuse treatment based on Respondent's continued use of alcohol despite negative consequences, her extensive legal history of OWI charges, her lack of insight into the harmful effects of her drinking, and her total denial about her addictive disorder. Respondent completed treatment and was discharged on July 15, 2009.

On January 16, 2010, Respondent and the Board entered into a Stipulation and Consent Order to resolve the charge that she had consumed alcohol in violation of the terms of probation. Respondent was issued a Citation and Warning and was placed on a new two (2) year period of probation. The issuance of this Consent Order actually shortened the length of time that Respondent was required to be on probation. Respondent successfully completed this probation and was discharged on January 16, 2011. (Exhibits 6, 11, 12)

C. In April 2013, Respondent was again arrested for OWI. On October 4, 2013, Respondent entered a guilty plea to the crime of OWI-2nd Offense.¹ For this conviction, Respondent was fined, sentenced to a short jail term, placed on criminal probation for a period of two years, and required to undergo a substance abuse evaluation and to comply with any treatment recommendations.

In response to this new conviction, the Board issued a Confidential Order requiring Respondent to submit to another substance abuse evaluation. At this evaluation, Respondent reported that her last use of alcohol was on April 19, 2013. The evaluator diagnosed Respondent with alcohol dependence in remission based on her history of four OWIs, her presentation of symptoms, and her past reported use of alcohol. The Board issued a Statement of Charges and following an evidentiary hearing, the Board found that Respondent had violated a law (OWI) that was related to her practice as a dental assistant. Respondent's registration was placed on probation for a period of two years, subject to a number of terms and conditions. The Board's Findings of Fact, Conclusions of Law, Decision and Order was issued on November 5, 2015, and it was served on Respondent two days later. (State Exhibits 6, 7; Sedars testimony)

2. The Board's November 5, 2014 Decision and Order included the following relevant conditions of probation:

1. Respondent shall completely abstain from the personal use and possession of alcohol and from all controlled substances or drugs in any form unless prescribed by a duly licensed and treating health care provider.
2. Respondent shall comply with unannounced and random requests for witnessed blood or urine samples made by any agent or designee of the Board. Respondent's blood or urine samples will be tested for drugs and alcohol a minimum of four times each year. All costs associated with the drug and alcohol screening shall be promptly paid for by Respondent.

The Board contracts with FirstLab to conduct its drug and alcohol screening program. Licensees and registrants who are required to comply with random drug and alcohol screens are required to call in to First Lab on a daily basis and to provide a witnessed urine specimen when selected for testing. The urine specimen is tested by an outside laboratory. The test results are sent directly to Brian Sedars, who is an investigator

¹ Although this was Respondent's fourth OWI, OWI convictions that are more than 12 years old are deleted from the records of the Iowa Department of Transportation and are not considered in determining the number of prior violations. See Iowa Code section 321.12(4).

employed by the Board. Mr. Sedars' responsibilities include monitoring licensees for compliance with terms of probation. (State Exhibit 6; Sedars testimony)

3. On May 13, 2015, Brian Sedars received a laboratory report documenting that the urine screen collected from Respondent on May 6, 2015 had tested positive for Ethyl Glucuronide (ETG) and Ethyl Sulfate (ETS), which are alcohol by-products. The cut-off level for ETG is 500 ng/mL, and Respondent's test results were 864 ng/mL ETG and 1160 ng/mL ETS. A test result of less than 500 ng/mL may indicate incidental contact with alcohol, such as contact from consuming food or using hand sanitizer. According to FirstLab, test results in excess of 1000 ng/mL can be assumed (with 99% certainty) to be from alcohol use. (Sedars testimony; State Exhibit 8)

4. On May 13, 2015, Mr. Sedars and another member of the Board's staff interviewed Respondent at the dental office where she works as a full-time dental assistant. Respondent admitted to them that she was continuing to consume alcohol, but she was not willing to submit to another evaluation or to quit working as a dental assistant. Respondent insisted that she has no problems with alcohol, that the Board's Order prohibiting her from drinking alcohol was excessive, and that all of her problems were the result of mental injuries she suffered as a child. Respondent agreed to continue to cooperate with the alcohol screening until the Board met in July. (Sedars testimony; State Exhibit 5)

5. The hearing record includes FirstLab's "All Instances Chronological Report," which documents Respondent's missed calls and missed tests for the time period from April 2, 2015 through September 28, 2015. Respondent failed to call in to FirstLab more than 75 times during this time period. On May 7 and June 9, Respondent failed to appear for a UA test when notified by FirstLab that she was required to test. (State Exhibit 9; Sedars testimony)

6. At hearing, Respondent initially denied telling Brian Sedars that she consumed alcohol on more than one occasion. Respondent claimed that the only time that she consumed alcohol while on probation was the time that led to her positive test result in April 2015. On cross-examination, however, Respondent eventually admitted that she consumed alcohol on multiple occasions while on probation and that she continues to consume alcohol on occasion. Respondent denies that her drinking is problematic, and she does not understand why the Board is requiring her to abstain from alcohol. Respondent also testified that she is unable to afford the cost of the laboratory tests, which is approximately \$75. (Respondent testimony)

The terms of Respondent's probation required her to continue in therapy until discharged. Respondent testified that she has not seen her therapist since April 2015. Respondent initially stopped seeing her therapist because the therapist was moving her office and was not making appointments. Although Respondent's therapist resumed seeing clients in September 2015, Respondent has not made another therapy appointment. Respondent occasionally communicates with her therapist by text or email but testified that she could not afford to continue in therapy because the sessions are not covered by her insurance. (Respondent testimony)

Respondent is not attending Alcoholics Anonymous (AA) and testified that she does not find the meetings helpful. Respondent testified that Al-Anon meetings, which are for families of alcoholics, have been helpful for her in the past, but she no longer attends Al-Anon because no meetings are available in her area. (Respondent testimony)

Respondent submitted a copy of a report from an evaluation that Respondent completed in November 2014 in order to regain her driver's license. The evaluator diagnosed Respondent with Alcohol Abuse (DSM-IV). This evaluation report is not signed by the evaluator, and the name of the evaluator does not appear on the report. Respondent provided a curriculum vitae for Robert Thacker, M.A., International Advance Certified Alcohol and Drug Counselor, (DOT) Substance Abuse Professional, who she identifies as the person who conducted the evaluation. (Respondent testimony; Respondent Exhibit A)

CONCLUSIONS OF LAW

Iowa Code section 272C.3(2)(a)(2015) authorizes the Board to revoke or suspend a license for failure of the licensee to comply with a decision of the Board imposing licensee discipline.

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 has failed to comply with a decision of the board imposing discipline, in violation of Iowa Code section

272C.3(2)(a)(2015) and 650 IAC 30.4(23). Respondent has repeatedly consumed alcohol in violation of the terms of the Board's November 5, 2014 Findings of Fact, Conclusions of Law, Decision and Order. This violation was established by Respondent's positive urine screen and by Respondent's admissions that she has been consuming alcohol while on probation.

The Board's Order requires Respondent to abstain from alcohol, to cooperate with random alcohol screening, and to attend ongoing therapy until discharged. Respondent has made it clear, however, that she disagrees with the requirement that she abstain from alcohol while on probation and that she does not intend to comply with this requirement in the future. The evidence at hearing did not persuade the Board that Respondent should be excused from complying with the requirements of the Order. If maintaining her registration and employment as a dental assistant was truly a priority for Respondent, she would have complied with the terms of her probation. Moreover, the evidence at hearing convinced the Board that if Respondent was allowed to continue on probation, she would continue to violate the terms of probation. For these reasons, the Board has concluded that its only reasonable option is to revoke Respondent's registration as a dental assistant.

DECISION AND ORDER

IT IS THEREFORE ORDERED that dental assistant registration #09492, issued to Respondent Cynthia Adams, Q.D.A., is hereby REVOKED, effective fourteen (14) calendar days from the date of service of this Decision and Order upon Respondent. The revocation shall be for a minimum period of one year.

IT IS FURTHER ORDERED that Respondent's dental assistant registration may not be reinstated until Respondent:

- (1) Provides documentation, satisfactory to the Board, that she has maintained continuous sobriety for a period of 12 months immediately preceding the reinstatement application;
- (2) Establishes that she has had no further criminal charges or convictions for the 12 months immediately preceding the reinstatement application; and
- (2) Establishes that the reason for the revocation no longer exists and that it is in the public interest for her registration to be reinstated. See 650 IAC 51.34.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 650 IAC 51.35, that 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 3rd day of December, 2015.

Handwritten signature of Steven P. Bradley in cursive, with the initials "D.D.S." written to the right of the signature.

Steven P. Bradley, D.D.S.

Chairperson

Iowa Dental Board

cc: Sara Scott, Assistant 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).