



STATE OF IOWA

CHESTER J. CULVER
GOVERNOR

PATTY JUDGE
LT. GOVERNOR

IOWA DENTAL BOARD
CONSTANCE L. PRICE, EXECUTIVE DIRECTOR

January 30, 2009

Al Bevilacqua
101 Jordan Creek Pkwy.
Suite 11040
West Des Moines, Iowa 50266

CEASE AND DESIST

Dear Mr. Bevilacqua:

The Iowa Dental Board has reviewed information that indicates that you are illegally holding yourself out as a dentist and engaging in acts that constitute the practice of dentistry through the services that you provide with your teeth whitening system. You are not licensed in the state of Iowa to practice dentistry. Therefore, the Board advises you to **CEASE AND DESIST** from this illegal activity.

First, you are "publicly professing to be a dentist" in violation of Section 153.13(1). You have represented yourself as a dentist to Board investigators and others. You designate yourself as a D.D.S. on your business card. You stated to the Board's investigators that you were licensed as a dentist in Illinois, and graduated from North Carolina State University. The Board has been unable to verify that you were licensed as a dentist in Illinois and unable to verify that you graduated with a dental degree from North Carolina State University. The Board is aware that North Carolina State University does not have a dental school. You also stated to the Board's investigators that you have contracted with two Iowa licensed dentists in conjunction with your current tooth whitening business. This statement is also false, as those dentists have stated they have no affiliation with your business and are not willing to assist your practice. These statements are all evidence that you are holding yourself out to the public as a dentist when you do not have a dental license, in violation of Iowa law.

Second, you are providing services to the public that constitute the practice of dentistry by providing tooth whitening services at Nu Image in Jordan Creek Mall. Because you do not hold a license to practice dentistry, you may not lawfully provide these services to the public. On January 16, 2009, the Board adopted a formal policy statement that provides tooth whitening services constitute the practice of dentistry in Iowa, and therefore may only be provided by Iowa licensed dentists. A copy of that policy is enclosed for your review.

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In accordance with that policy, the Board considers aspects of your business to be the practice of dentistry under the provisions of Iowa Code Section 153.13 (2007). 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 sale 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 that you are therefore "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 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.

In addition, you offer customers a location within which services are provided, and have personnel present to instruct and assist the customer in the use of the product. While the Board recognizes whitening agents may be purchased over the counter, it further believes that the purchase of tooth whitening services is qualitatively more significant than the purchase of over the counter agents to be used directly by the purchaser. 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. The concentration that you state you use is 26-32 percent. This concentration is not accepted by the ADA as safe and effective. Further, your customers are purchasing not only a product, but the services you offer, which they presumably understand to be provided by a person with greater expertise than their own, to which you have not demonstrated.

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Finally, the scope of the services you offer raise public health and safety concerns. There is a serious question as to whether you are following appropriate infection control measures regarding hand washing, glove changing, and other measures as you provide services to your customers. You do not appear to have any protocol for how emergencies 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. Further, 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 a licensed dentist in this state, so you are not legally able to make this diagnosis. Finally, you have not demonstrated that you possess the professional education to provide these services; you do not know when over-bleaching can occur, which could result in tooth sensitivity and gum irritation.

Based on these facts, the Board believes that 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." (emphasis added)

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 Iowa Dental Board, 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 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 immediately **CEASE AND DESIST** from holding yourself out to the public as a dentist when you are not licensed to practice dentistry in Iowa. You must also immediately **CEASE AND DESIST** from practicing dentistry without a license by providing tooth whitening services to the public. If the Iowa Dental Board receives information that you have engaged in the unauthorized practice of dentistry after the date you receive this letter, the Board will refer this case to the Polk County Attorney's office for criminal prosecution, and will further refer this case to the Attorney General's office for prosecution of a civil injunction action against you.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Price', with a large, sweeping flourish extending to the right.

Constance L. Price
Executive Director

A handwritten signature in black ink, appearing to read 'Deena R. Kuempel', with a large, sweeping flourish extending to the right.

Deena R. Kuempel, D.D.S.
Chairperson of the Board

IOWA DENTAL BOARD

POSITION STATEMENT: TOOTH WHITENING/BLEACHING SERVICES BY NON-LICENSED PERSONS

The purpose of this policy statement is to establish the Iowa Dental Board's position that persons who are not licensed to practice dentistry are engaged in the unlicensed practice of dentistry, in violation of Iowa law, when such persons offer tooth whitening services and products to the public.

Iowa Code section 153.13 (2007) 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

Any 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 Iowa Dental Board, 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 sections 147.83 and 147.92. Further, the unlicensed practice of dentistry may subject persons to criminal prosecution, as section 147.86 provides that a violation of section 147.2 is a serious misdemeanor.

It is the Board's opinion that providing services related to the application of tooth whitening material is the practice of dentistry. This is true for a number of reasons.

When a patient sees a dentist for tooth whitening, a dentist is educated and trained to perform a complete dental examination. That education and training allows the dentist to diagnose whether tooth whitening is a safe or appropriate procedure for a particular patient. Cases in which tooth whitening may not be safe or appropriate include, but are not limited to, the following:

- cases in which tooth whitening may cause damage to existing restorations or to previous cosmetic dental work; cases in which tooth whitening may cause pain or sensitivity due to a pre-existing root exposure or undiagnosed decay;
- cases in which the patient is suffering from an undiagnosed medical condition; or
- cases in which tooth whitening will not be successful because a tooth is dark due to injury or the need for endodontic treatment.

The Board notes that in dental offices, 10-20% of patients who request tooth whitening services are not provided those services for one or more of the reasons specified above. Persons who are not licensed to practice dentistry are not trained to make a diagnosis as to whether tooth whitening

is appropriate, or to identify the existence of conditions that contraindicate tooth whitening. Unlicensed persons also do not have the professional training to know when over-bleaching can occur, which can result in tooth sensitivity and gum irritation. In addition, persons who are not licensed to practice dentistry are not educated regarding the infection control requirements that apply when providing dental care to patients. Given the extensive national standards established by the CDC for infection control in dental offices, there is little question that failure to comply with infection control requirements could pose a serious risk to the public.

The Board understands that the general public may purchase tooth whitening products over the counter. The purchase and use of these products is legal. However, when a non-dentist offers such products for sale in conjunction with services related to the tooth whitening product, that sale is transformed into the sale of services that require a dental license.¹ Such services include not only the sale of the tooth whitening product, but the offering of advice regarding the use of the product, providing a location for use of that product, and the provision of any other services to facilitate use of the product. Further, when customers purchase a tooth whitening product along with related services, such customers reasonably presume the provider of such services has greater expertise than the customer with regard to that product, a presumption which is not correct if the provider is not licensed. Finally, the scope of the services offered by non-licensed persons raise health and safety concerns, including compliance with appropriate infection control measures including hand washing and glove changing, as well as other protocols in place in dental offices, such as those for addressing potential emergencies.

It should also be noted that under the law governing the practice of dentistry in Iowa, even licensed dental hygienists or registered dental assistants in a dental office cannot legally provide tooth whitening services unless a dentist performs an examination and prescribes those services for a patient.

In conclusion, when persons who are not licensed to practice dentistry in Iowa offer tooth whitening products and services to the public, they are "publicly professing to assume the duties incident to the practice of dentistry," in violation of section 153.13(1). These services constitute the practice of dentistry and are properly offered only by licensed dentists.

NOVEMBER 2008

¹ Further, the Board notes that most over the counter tooth whitening products use a 10% concentration of carbamide peroxide, a concentration that has been approved by the ADA Council of Therapeutics as safe and effective. However, the Board is aware many non-licensed persons and businesses offering tooth whitening services are offering solutions of carbamide peroxide at concentrations higher than those accepted by the ADA as safe and effective.