

BEFORE THE DENTAL BOARD
OF THE STATE OF IOWA

IN THE MATTER OF :)	
)	FINDINGS OF FACT,
LISA M. KUCERA, R.D.H.)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
RESPONDENT)	
)	

On October 17, 2014, the Iowa Dental Board (Board) filed a Notice of Hearing and Statement of Charges against Lisa M. Kucera, R.D.H. (Respondent), which charged her, pursuant to Iowa Code section 153.34(12)(2013), with enabling the unauthorized practice of dental hygiene, in violation of 650 Iowa Administrative Code 30.4(19). The hearing was held before the Board on January 22, 2015 at 1:30 p.m. The following Board members presided at the hearing: Steven P. Bradley, D.D.S., Chairperson; Steven C. Fuller, D.D.S.; Thomas M. Jeneary, D.D.S.; Matthew J. McCullough, D.D.S.; Kaaren G. Vargas, D.D.S.; Mary C. Kelly, R.D.H.; Nancy A. Slach, R.D.H.; Diane Meier and Lori Elmitt, Public Members.

Respondent appeared for hearing and was represented by attorney Eric C. Hansen. 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)(2013), 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 Board Investigator Brian Sedars and Respondent, and State Exhibits 1-14 (See Exhibit Index for description).

FINDINGS OF FACT

1. On October 18, 1994, Respondent was issued Iowa dental hygiene license number 02443 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, 2015. (State Exhibit 4)

2. Respondent has been employed by Iowa Western Community College (IWCC) as a full-time (didactic and clinical) instructor in the dental hygiene program since 2005. Dental hygiene students complete their didactic coursework at IWCC. The students receive the majority of their clinical experience through Creighton University's Dental Clinic in Omaha, Nebraska, where they are supervised by three dentists. (Testimony of Respondent; State Exhibits 4, 6)

All of the IWCC dental hygiene students are also required to complete an additional four hours at an "off-site" clinical rotation each week. The off-site clinical rotations are arranged by IWCC and are supervised by nonpaid adjunct instructors. Respondent is responsible for scheduling the dental hygiene students for all of their clinical hours each week. (Testimony of Respondent; State Exhibits 4, 6)

Respondent's direct supervisor is Janet Hillis, who is the head of the IWCC Dental Hygiene Department, and Hillis reports to the Dean. Janet Hillis and the Dean approve the off-site clinical rotations for IWCC's dental hygiene program, and they sign any contracts with nonpaid adjunct instructors. (Testimony of Respondent)

3. Linda Meyers is a registered dental hygienist who is the "I-Smile" Coordinator for several counties in southwest Iowa. "I-Smile" is a voluntary public health program that provides free dental hygiene services to children. Meyers initially contacted Respondent to ask if IWCC was interested in having its dental hygiene students obtain clinical experience by providing dental hygiene services at various schools in southwest Iowa as part of the I-Smile program. Respondent referred Meyers to Hillis and the IWCC Dean because Respondent did not have the decision making authority to approve off-site clinical rotations. A decision was ultimately made by IWCC to approve Linda Meyers as a nonpaid adjunct instructor and to allow IWCC dental hygiene students to provide dental hygiene services, including sealants, as part of the I-Smile program coordinated by Meyers. (Testimony of Respondent; State Exhibits 5, 8, 9)

Respondent was responsible for scheduling IWWC's dental hygiene students for their off-site clinical hours with Meyers. Respondent attended some, but not all of the I-Smile clinics. Respondent testified that her role was limited to ensuring that the students were actually seeing patients and that everyone was following the rules and doing what they were supposed to be doing. Respondent did not supervise the students' clinical work at the I-Smile clinics. It was Respondent's understanding that Linda Meyers was supervising the student's clinical work and that Meyers had obtained Board approval for the dental hygiene students to participate in the "I-Smile" program. Respondent never saw any documentation from the Dental Board that approved the dental hygiene students' participation in the "I-Smile" program. (Respondent testimony; State Exhibits 4, 6)

4. In February 2014, the Board received an inquiry after a newspaper article reported that IWWC dental hygiene students were cleaning teeth and applying dental sealants and fluoride varnish for elementary students as part of the voluntary "I-Smile" program. According to the article, the students were working under the direction of Linda Meyers, who was identified in the article as the coordinator of the I-Smile program for FAMILY, Inc. The article did not mention any supervising dentist but stated that the elementary students were referred to a dentist for further care, if needed. (State Exhibit 5; Testimony of Brian Sedars)

5. After receiving the newspaper article, the Board's Interim Executive Director (Phil McCollum) emailed Janet Hillis to ask about IWWC's protocol for the I-Smile program. McCollum's email specifically noted that the article did not mention anything about a dentist examining the children. Hillis responded that:

- all of the IWCC full-time faculty (including Respondent and Hillis) have Iowa dental hygiene licenses;
- they collaborated with Linda Meyers, who is a local Public Health RDH and who has a Public Health Permit arrangement with a local dentist;
- Meyers set up Public Health activities and invited Respondent to bring some dental hygiene students to assist her with the Public Health activities; and
- IWWC assumed that the dental hygiene students were working under Meyers' Public Health Permit when they were assisting her with Public Health activities.

(State Exhibits 4, 6; Testimony of Brian Sedars)

McCollum recommended that Hillis stop the students' participation in the I-Smile program until the Board could look into the matter further. He noted that it was not possible for a person (or group of people) to work under another person's license, permit, or public health supervision agreement and that the type of services being provided by the students must be provided under the direct, general, or public health supervision of a dentist. McCollum asked Hillis to provide the name of the dentist who was overseeing the IWWC program when students were providing clinical services in schools. (State Exhibit 7; Testimony of Brian Sedars)

6. Linda Meyers was then contacted, and she provided the name of her supervising dentist (Kent McArdle, D.D.S.) and a copy of her Public Health Supervision Agreement (Agreement) with Dr. McArdle. The Agreement included a list of the public health settings (schools, Head Start, and federal, state or local public health programs) and the specific locations where services could be provided by Meyers. The initial Agreement was signed by Dr. McArdle and Linda Meyers in January 2010, and they signed an Addendum Agreement in February 2014. Dr. McArdle specifically agreed "to provide public health supervision to the dental hygienist named in this document in any of these locations." (State Exhibits 8, 9; Testimony of Brian Sedars)

The Agreement between Meyers and Dr. McArdle included "Standing Orders" for specific procedures, including but not limited to "Sealant Assessment/Screening," "Sealants," "Fluoride Varnish," and "Oral Prophylaxis." Pursuant to the Standing Orders, sealants could be placed on the first and second molars and premolars of children ages 3-18 after a sealant assessment has been performed by Linda Meyers. The agreement required communication between Dr. McArdle and Linda Meyers "in person every 90 days (March, June, September and December) and by phone as needed. (State Exhibit 9)

7. Board investigator Brian Sedars met with Dr. Kent McArdle to ask him about his involvement with the I-Smile Clinics that were being conducted by Linda Meyers. Dr. McArdle was aware that IWWC students were providing dental hygiene services with Meyers at the I-Smile clinics. Dr. McArdle told Sedars that he is not affiliated with IWWC and does not provide supervision for the dental hygiene students. Dr. McArdle also told Sedars that he was under the impression that Meyers had received approval for the dental hygiene students to participate in the program through an email from "Jen Hart." At hearing, Sedars identified Jen Hart as a former Board employee. Dr. McArdle believed that the dental hygiene students were working under the school's supervision. (Testimony of Brian Sedars; State Exhibit 4)

8. Brian Sedars also met with Linda Meyers and asked about her work with the IWWC students. Meyers told Sedars that she had been collaborating with Jan Hillis and Respondent for approximately two years to take IWWC dental hygiene students into schools. At first the students only observed, but for the prior year and a half they had been providing dental hygiene services to children in schools. When Sedars asked Meyers who was providing supervision for the IWWC students, she responded that she "assumed the school had everything covered." Meyers stated that initially both she and Respondent supervised the dental hygiene students while they were providing services in schools but recently it had only been Meyers who was present with the students at the clinics. Meyers further stated that she believed that Jen Hart's email from 2009 covered them. Meyers conceded that she would not be able to supervise the work of another dental hygienist without a dentist being involved. Meyers could not explain how she would be able to supervise unlicensed dental hygiene students without a dentist's involvement. (Testimony of Brian Sedars; State Exhibit 4)

9. Brian Sedars also spoke to Jan Hillis about the IWWC dental hygiene students' involvement with the I-Smile clinics. Hillis recalled that Meyers had initially contacted Respondent to set up the visits to the schools. When asked who was providing supervision for the IWWC students, Hillis replied that she assumed that the students were working under Meyers' Public Health Agreement. (Testimony of Brian Sedars; State Exhibit 4)

In a follow up email to the Board, Hillis confirmed that the IWWC Dental Hygiene program does not have a dentist who supervises the program in general. Hillis further stated that when students are treating patients at Creighton in Omaha, Nebraska, they work under three licensed Nebraska dentists and the Nebraska licenses of the Dental Hygiene program's faculty. When the students were working with Linda Meyers in Iowa, Hillis believed that they were working under Meyers' Iowa license, Meyers' Public Health permit, and Meyers' supervising dentist. (Testimony of Brian Sedars; State Exhibits 4, 11)

10. The record includes a copy of the August 18, 2009 email exchange between Jennifer Hart and Linda Meyers, which is the email referenced by both Dr. McArdle and Meyers in their conversations with Brian Sedars. At that time of this email, Jennifer Hart was employed as an Executive Officer with the Board, but she has since left the Board's employment. Linda Meyers initiated the email correspondence. She identified herself to Hart as one of the I-Smile Coordinators and stated that she was looking into a pilot project providing sealants to school children in some of her service areas. Meyers further stated

that she was discussing the project with IWCC and Creighton University and would like to use some of their students as the actual service providers as part of their community outreach program. Meyers asked Hart if they would need a dentist to supervise the dental students. She also asked if they would need one of the IWCC instructors to be present to supervise the dental hygiene students or if her presence was all that was needed if she was an adjunct instructor. Meyers also asked Hart about her "liabilities." Meyers did not specifically ask if the dental hygiene students would need supervision from a dentist. (State Exhibits 8, 10)

Hart emailed the following response to Meyers:

Students in an accredited program who provide services as part of their degree program through the schools are exempt from license and registration requirements. This means that as long as the services you want the students to provide are considered part of their educational experience, it is fine, and board rules do not apply. In terms of supervision then, it is not board rules that would determine but rather, the accreditation standards for the program. I do not know what those standards are for students. Normally, I would think the students do need to be supervised by faculty, and I believe there are programs in the state that use adjunct faculty for these purposes. In terms of liability, that is not an issue that we deal with and I'm afraid I have no advise other than to consult either an attorney, your malpractice representative, or the school. I wouldn't think this creates any more liability than a normal clinic setting in the school as long as there is informed consent with the patients about who is performing the services, but again, this is not my area of expertise.

Hope this helps. I would start by working directly with the schools and see what they would require in terms of supervision of their students and how it would be incorporated into their degree program.

(State Exhibit 10)

11. Brian Sedars then emailed the Director of the Commission on Dental Accreditation (CODA) to inquire if CODA has standards pertaining to the supervision of dental hygiene students when applying sealants to patients. The Director responded that the standards are not specific as to the level of supervision for any particular procedure since this may vary from state to state. CODA's Standard 3-7 states that "dentists and dental

hygienists who supervise students' clinical procedures should have qualifications which comply with the state dental or dental hygiene practice act." (Testimony of Brian Sedars; State Exhibit 12)

12. Janet Hillis and Linda Meyers each entered into a Combined Statement of Charges, Settlement Agreement and Final Order with the Board for their involvement in allowing unlicensed dental hygiene students to perform dental hygiene services that were not delegated by or performed under the supervision of a dentist. Like Respondent, Hillis and Meyers were also charged, pursuant to Iowa Code section 153.34(12)(2013), with enabling the unauthorized practice of dental hygiene in violation of 650 IAC 30.4(19). Hillis and Meyers both agreed to accept a Citation and Warning and to pay a \$250.00 fine as sanction for their violation. (State Exhibit 14)

CONCLUSIONS OF LAW

I. Relevant Statutes and Rules Pertaining to Scope of Practice and Supervision of Dental Hygienists.

The legislature has defined the scope of practice for dental hygienists as follows:

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.**

(emphasis added)

The legislature has authorized the Board to promulgate rules as may be necessary to implement the provisions of Iowa Code chapter 153. Pursuant to this authority, the Board has adopted rules pertaining to the authorized/unauthorized practice of a dental hygienist and pertaining to public health supervision.¹

650 IAC 10.3 provides, in relevant part:

650-10.3(153) Authorized practice of a dental hygienist.

10.3(1) "Practice of dental hygiene" as defined in Iowa Code section 153.15 means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene procedures which are delegated by and under the supervision of a licensed dentist pursuant to Iowa Code chapter 153.

...

e. The following services may only be delegated by a dentist to a dental hygienist:...placement of sealants,...

10.3(2) All authorized services provided by a dental hygienist shall be performed under the general, direct, or public health supervision of a dentist currently licensed in the state of Iowa in accordance with 650-1.1(153) and 650-10.5(153).

10.3(3) Under the general or public health supervision of a dentist, a dental hygienist may provide educational services, assessment, screening, or data collection for the preparation of preliminary written records for evaluation by a licensed dentist. A dentist is not required to examine a patient prior to the provision of these dental hygiene services.

...

650 IAC 10.4 provides, in relevant part:

650-10.4(153) Unauthorized practice of a dental hygienist...

...

10.4(2) 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.

10.4(3) A dental hygienist shall not practice independent from the supervision of a dentist nor shall a dental hygienist establish or maintain an

¹ See 650 IAC 10.3, 10.4, 10.5.

office or other workplace separate or independent from the office or other workplace in which the supervision of a dentist is provided.

650 IAC 1.1 provides the following relevant definitions:

“Direct supervision” means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

...

“General supervision of a dental hygienist” means that a dentist has examined the patient and has prescribed authorized services to be provided by a dental hygienist. The dentist need not be present in the facility while these services are being provided. If a dentist will not be present, the following requirements shall be met:

...

The Board’s rules also allow an Iowa licensed dentist to provide “public health supervision” to a dental hygienist if services are provided in a public health setting and if certain requirements are met.² “Public health settings” include but are not limited to schools, Head Start programs, and child care centers.³ The requirements of “public health supervision” include but are not limited to:

- a dentist must authorize and delegate the services provided by a dental hygienist to the patient in the public health setting, but the services may be rendered without the patient first being examined by a licensed dentist and the dentist is not required to provide future dental treatment to patients served under public health supervision;⁴
- the dentist and the dental hygienist must have entered into a written supervision agreement that details the responsibilities of each licensee, as specified in rule 10.5(3);⁵
- the dental hygienist must have an active Iowa license and a minimum of three years of clinical practice experience.⁶

² 650 IAC 10.5.

³ 650 IAC 10.5(1).

⁴ 650 IAC 10.5(2)“a,”“b.”

⁵ 650 IAC 10.5(2)“c.”

⁶ 650 IAC 10.5(2)“d.”

II. Statute and Rule Authorizing License Discipline for Unauthorized Practice by a Dental Hygienist

By statute, the Board is authorized to discipline a licensed dental hygienist for knowingly aiding, assisting, procuring, or advising a person to unlawfully practice dental hygiene.⁷

Pursuant to its rulemaking authority, the Board has adopted rules pertaining to licensee discipline.⁸ 650 IAC 30.4(19) 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...

...

19. Encouraging, assisting or enabling the unauthorized practice of dentistry, dental hygiene, or dental assisting in any manner.

III. Analysis

The preponderance of the evidence established that the IWWC dental hygiene students were engaged in the unauthorized practice of dental hygiene when they provided dental hygiene services to elementary students through the I-Smile program without any supervision from a dentist. The Board's statutes and rules clearly require all dental hygiene services performed in Iowa to be provided under the general, direct, or public health supervision of an Iowa licensed dentist. No exception is made for dental hygiene students obtaining their clinical experience. In addition, the standards promulgated by the Commission on Dental Accreditation (CODA) state that dentists and dental hygienists who supervise students' clinical procedures should have qualifications which comply with the state dental or dental hygiene practice act.

The IWWC dental hygiene students did not have supervision from any dentist when they were providing dental hygiene services at schools through the I-Smile clinics arranged by Linda Meyers. Linda Meyers' Public Health Agreement with Dr. Kent McArdle pertained only to those dental hygiene services that were directly provided by Meyers. Dr. McArdle has acknowledged that he was not providing any form of supervision for

⁷ Iowa Code section 153.34(12)(2013).

⁸ 650 IAC chapter 30.

the IWWC students. The students' provision of dental hygiene services through the I-Smile clinics were not authorized under Meyers' Public Health Agreement and could not be authorized under her Agreement.

In addition, the 2009 email from former Board employee Jennifer Hart did not endorse or approve the IWWC dental hygiene students' participation in the I-Smile clinics without supervision from a dentist and cannot reasonably be cited as Board approval for the I-Smile clinics conducted by Meyers in 2012 and 2013. Moreover, Respondent admits that she never saw the 2009 email, and there is no evidence that her supervisors reviewed the Hart email before approving the students' participation in the I-Smile clinics.

Respondent argues that she should not be sanctioned for the students' unauthorized practice of dental hygiene because she did not have the authority to establish or approve the off-site clinical programs for IWWC, because she acted at the direction of her supervisors, and because she believed that Linda Meyers had Board approval for the dental hygiene students to participate in the I-Smile program as it was structured.

The Board acknowledges that Respondent's lack of authority to approve the off-site clinical programs makes her somewhat less culpable than Janet Hillis and Linda Meyers. This fact was considered by the Board in determining an appropriate sanction. Nevertheless, Respondent was the person that Linda Meyers initially contacted to arrange the off-site clinics, and Respondent was directly responsible for scheduling the students for their clinical hours at the I-Smile clinics. Respondent also provided some on-site supervision for the students at the I-Smile clinics. Respondent had sufficient involvement in setting up and supervising the students' participation in the I-Smile clinics to support the charge against her for enabling the unauthorized practice of dental hygiene.

Respondent is charged, pursuant to Iowa Code section 153.34(12), with enabling the unauthorized practice of dental hygiene in violation of Board rule 650 IAC 30.4(19). Respondent's attorney emphasizes that Iowa Code section 153.34(12) prohibits licensees from *knowingly* aiding, assisting, procuring or advising a person to unlawfully practice dental hygiene and argues that Respondent should not be held liable for the students' unauthorized practice because she did not know that the students' participation in the clinics was unlawful. Respondent clearly knew that her students were providing clinical services (including sealants) in the I-Smile clinics. Respondent scheduled the students' clinical hours. Respondent knew that the students were only supervised by another dental hygienist and not by a dentist. As an Iowa licensed dental hygienist and as a full-

time dental hygiene instructor, Respondent is expected to know and understand the legal and ethical requirements relating to dental hygiene practice. Respondent clearly should have known that her students' participation in the I-Smile clinics required appropriate supervision from a dentist. The evidence in the record is sufficient to support the conclusion that Respondent knowingly aided, assisted, or procured the unauthorized practice of dental hygiene by the students, as prohibited by Iowa Code section 153.34(12)

.⁹

The Board's rule was validly promulgated and it does not include the word "knowingly." The rule authorizes discipline for licensees who encourage, assist or enable the unauthorized practice of dental hygiene. The preponderance of the evidence established that Respondent's actions enabled the unauthorized practice of dental hygiene, in violation of 650 IAC 30.4(19).

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Lisa M. Kucera, R.D.H. is hereby CITED for enabling the unauthorized practice of dental hygiene, in violation of Iowa Code section 153.34(12) and 650 IAC 30.4(19). Respondent is WARNED that further violations may result in more severe sanctions against her license.

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 ^{25th} day of February, 2015.

⁹ See *Sullivan v. Iowa Departmental Hearing Board*, 325 NW2d 923 (Iowa App. 1982)(holding that a statute prohibiting a liquor licensee from knowingly permitting gambling does not require a showing that the licensee knew he was violating the law by permitting gambling and noting that a person's knowledge of the law is generally presumed, particularly when the activity is regularly conducted by the person in the course of business.)

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Steven P. Bradley, D.D.S.
Chairperson
Iowa Dental Board

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Eric C. Hansen, Gallner & Pattermann, P.C., 300 West Broadway, Suite 145,
Council Bluffs, Iowa 51503 (CERTIFIED)

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).