

BEFORE THE DENTAL BOARD
OF THE STATE OF IOWA

<p>RE:</p> <p>Application for Dental License of</p> <p>DAVID WEBER, D.D.S</p> <p>Applicant.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION and ORDER</p>
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On August 5, 2021, a hearing in this case was held before the Iowa Dental Board (“Board”). David Weber, D.D.S. (“Dr. Weber”) appeared and testified; he was represented by Michael Byrne. Laura Steffensmeier appeared on behalf of the State. The entire administrative file, including the parties’ exhibits, was admitted into the record, and the matter is now fully submitted.

FINDINGS OF FACT

Dr. Weber graduated from dental school at the University of Illinois in 1983, and he has been licensed dentist in the State of Illinois since then. Ex. 2. By all accounts, his career has been marked by difficulty, and the parties agree the following summarizes the various incidents over time, which is taken from portions of a summary prepared by the State:

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| October 1985 | Reported malpractice settlement (\$60,000) for failure to properly diagnose and treat. |
| ... | |
| April 1988 | Reported malpractice settlement (\$50,000) for alleged failure to treat periodontal disease and placement of implants. |
| ... | |
| July 1991 | Reported malpractice settlement (\$30,000) for improper performance of treatment bridgework. |
| August 1995 | Reported malpractice settlement (\$36,000) for improper performance of treatment. |
| April 1996 | Reported malpractice settlement (\$9,000) for alleged improper treatment. |
| December 1998 | Reported malpractice settlement (\$38,000) for improper treatment periodontal care. |
| April 2000 | State of Illinois fined Dr. Weber and placed his license on probation for one year for billing a patient for placement of crowns, which were not placed; and failing to submit proof of required CE hours. |
| May 2004 | State of Illinois fined Dr. Weber and placed his license on probation for two years for billing for services not rendered. |
| July 2005 | Reported malpractice settlement (\$50,000) for improper procedure. |

October 2010	Reported malpractice settlement (\$75,000) alleging dentist to place proper implant.
November 2010	State of Illinois reprimanded Dr. Weber for failure to report an adverse occurrence.
October 2015	State of Illinois temporarily suspended Dr. Weber's license for 30 days and placed the license on probation for three years for rendering substandard care with the placement of surgical placement and restoration of implants; failure to diagnose bone loss leading to implant failure; failure to establish and maintain adequate records of patient care and treatment; and failure to complete CE as required by law.
December 2018	State of Illinois suspended Dr. Weber's license for and for failure to submit proof of CE and failure to submit quarterly reports to the Department's probation compliance unit.
March 2020	State of Illinois suspended Dr. Weber's license for six months and placed the license on probation for two years due to unlicensed practice and aiding or abetting the unlicensed practice of dentistry.

Ex. 2; see also Hearing Recording, at 1:11:00-1:13:11. On March 19, 2021, Dr. Weber filed an application with the Board, requesting licensure in the State of Iowa, and the Board issued a preliminary notice of denial of the application on June 14, 2021. Ex. 1, at p. 1; 3. The Board's denial cited the various disciplinary and malpractice actions and noted its rules allowed for denial for past disciplinary actions, willful and gross malpractice, and failure to maintain a reasonably satisfactory standard of competency. Id.

Dr. Weber appealed, triggering the present proceeding, and at the contested case hearing, he argued and testified he should be granted a license under any conditions the Board sees fit that would allow him to accept a pending offer to join a practice in Davenport, Iowa. Ex. B. In support, Dr. Weber submitted a letter from his potential employer, stating the Davenport area is underserved in the area of dentistry and his service would be helpful to the public. Id. The letter also notes the potential employer would assure any conditions of the license would be met, and Dr. Weber testified as to the personal difficulty he had when he could not practice dentistry during the recent suspension and the potential for his current practice to be closed in the future. Id. Dr. Weber further provided testimony to put his various disciplinary and malpractice actions in context. He first pointed out the last malpractice action was years ago, and the malpractice payments were a result of settlements and not admissions of guilt. See, e.g., A, at p. 2. He testified these matters were effectively nuisance settlements forced by the insurance companies that did not want to pay the costs of litigating the respective matters, and he asserts they cannot be used as a ground to deny his application.

As for his disciplinary history, Dr. Weber notes he has only been sanctioned for substandard and inadequate care once in 2015, which according to him, is too isolated and distant of an incident to support an outright denial of his application. Id., at p. 8. Dr. Weber also challenges whether his care was substandard, noting the discipline was a settlement. Ex. 6, at p. 17 (consent order noting: "Respondent neither admits nor denies the Department's allegations . . . but chooses not to contest this matter[.]"). As for his other disciplinary matters, Dr. Weber notes they were generally consent orders and specifically states the 2000 probation was a result of a misunderstanding, as he was claimed to have billed patients for work not performed and as he had already refunded the money before Illinois became aware of the matter. Ex. A, at p. 2. Dr. Weber explains his 2004 probation was not really an issue of services not being rendered,

but it was the result of him performing part of a procedure, only to have the patient go to another dentist to finish the work. Id., at p. 3. Dr. Weber further provided context for the 2010 reprimand for failure to report an adverse occurrence, stating it was the result of a rule requiring a report within 24 hours and him not learning about the adverse incident until days later when he returned to the clinic after the weekend and working at another location. Id. As for the 2018 discipline for failing to submit reports and proof of continuing education, Dr. Weber claims this was an inadvertent error caused by his probation officer not contacting him (due to budget difficulties in the State) and the relocation of his practice. Id., at p. 4. Finally, Dr. Weber states the 2020 sanction for the unlicensed practice of dentistry and aiding or abetting the unlicensed practice of dentistry was due to not being aware his business partner, a dentist with whom he had entered a consulting agreement, was in fact unlicensed. Id., at p. 5. Dr. Weber further claimed his business partner “fraudulently and without Dr. Weber’s consent” accessed a dental account and charged for services. Id. In sum, Dr. Weber argues that, while he is on probation, his license is unrestricted and he has been practicing dentistry since September 2, 2020 without incident. All of this, according to him, shows he should be granted a license. Id.

For clarity, and as discussed below, Dr. Weber’s various explanations for the disciplinary actions are generally unsupported by anything material in the record but his own testimony. Given the lack of independent evidence as well as the inability of his own demeanor to have enough weight to overcome the lack of corroborating evidence, his claims as to what occurred in each incident are generally not found to be fully persuasive. This is at least true given it is his burden of proof as discussed below.

CONCLUSIONS OF LAW AND DECISION

A.

Pursuant to Iowa law, the Board was created to regulate the practice of dentistry, dental hygiene, and dental assisting. Iowa Code § 147.13(8). Its authority includes the power to “initiate and prosecute disciplinary proceedings” and “impose licensee discipline.” Id. §§ 272C.3(e), (f). Its authority also includes considering license applications, with the Board authorized to “refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended.” Iowa Code § 147.4; see also 650 Iowa Administrative Code (“I.A.C.”) § 11.9(3). Some of the grounds for discipline that can lead to revocation or suspension include:

2. For being guilty of willful and gross malpractice or willful and gross neglect in the practice of dentistry, dental hygiene, or dental assisting.
...
8. For failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry, dental hygiene, or dental assisting.
...
10. The revocation or suspension of a license or registration to practice dentistry, dental hygiene, or dental assisting or other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

Iowa Code § 153.34; see also 650 I.A.C. § 30.4.

“Prior to the denial of licensure to an applicant, the [B]oard shall issue a preliminary notice of denial that shall be sent to the applicant.” 650 I.A.C. § 11.10(1). “An applicant who has received a

preliminary notice of denial may appeal the notice and request a hearing on the issues related to the preliminary notice of denial[.]” Id. § 11.10(2). “If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case[.]” Id. § 11.10(3). Importantly, an application “shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.” Id. § 11.10(3)(a). Further, the Board, “after a hearing on license denial, may grant the license, grant the license with restrictions, or deny the license,” with the Board issuing a written decision stating “the reasons for its final decision[.]” Id. § 11.10(3)(b).

B.

In this case, Dr. Weber has not carried his burden of persuasion that he should be issued a license. As both parties acknowledge and as just explained, the Board may refuse to grant a license based on disciplinary action taken against an applicant in another State. See, e.g., Iowa Code §§ 147.4, 153.34. It is here where Dr. Weber’s request for a license fails because, even just looking at the past ten years or so, he was disciplined for unlicensed practice of dentistry and aiding and abetting such; failure to comply with probation and the requirements of the profession; substandard care; and the failure to timely report an adverse occurrence. This shows he was disciplined for conduct in nearly every area of his practice, which indicates a general unwillingness or inability to adhere to the standards of the profession and which, in turns, indicates a material risk to the public should a license be granted even with conditions. In fact, Dr. Weber is still on probation in Illinois, and there is only marginal support in the record to suggest he will be able to complete it without incident or remain without supervision for any meaningful period of time given how frequently issues in his practice have arisen. Thus, the license should not be issued.

While there is an appreciation for the difficulty this decision may cause for Dr. Weber given the financial status of the Illinois office in which he currently works and the difficulty he had earning a living when his license was suspended in Illinois, the denial must remain. It is true Dr. Weber generally entered into consent orders where he did not acknowledge wrongdoing for these disciplinary matters and he testified how each matter did not factually occur or was the result of a misunderstanding or unfortunate circumstances. However, his claims, based mostly on his own testimony, carry little weight. There is little in the way of independent evidence to corroborate his testimony, and in any event, the sheer number and gravity of the various disciplinary actions overwhelms any effort to explain them away at least when it is his burden of proof.

The remainder of the record also cannot change the denial. Dr. Weber’s career has been marked by malpractice lawsuits, and whatever may be said about the passage of time since the lawsuits, the reason Dr. Weber settled them, or the ability of the lawsuits to independently support a denial, the fact remains they do not cut in favor of granting a license. Indeed, the amount paid was not trivial particularly if inflation is considered, and while there has been some lapse in time since the last lawsuit, there are a significant number. Likewise, the information from Dr. Weber’s prospective Iowa employer that he would work in an underserved area with supervision does not permit the granting of a license because, even if the prospective employer’s statements were taken as true, the standards of the profession do not lower in underserved communities. Further, some of Dr. Weber’s difficulties have occurred while being supervised, and as such, the promise of supervision offers little protection for the public.

In addition, Dr. Weber’s conduct prior to the last ten years also cannot overshadow his more recent difficulties, as this included two disciplinary actions for billing for services not rendered and as Dr. Weber’s explanation of why this was not really the case have no material force. To accept Dr. Weber’s claims about all of his disciplinary and malpractice matters would mean he effectively engaged in no wrong

conduct outside of a few technical errors, but he chose to accept an ever increasing amount of settlements and discipline even though such resulted in numerous payouts and stringent supervision and sanctions. At least where it is his burden of proof and not the State's burden, such is a difficult proposition to sustain on this record. Finally, the fact Dr. Weber has not had any action against him in the last year of his practice after his suspension was lifted is laudable, but it cannot remove the risk of harm to the public that his prior actions would create should an Iowa license be granted. For these reasons, the application must be denied.

ORDER

The application for dental license submitted by Dr. Weber is DENIED.

IT IS SO ORDERED.

Dated this 1st day of October, 2021.



Monica Foley, D.D.S., Chair
Dental Board of the State of Iowa

cc: Laura Steffensmeier, Assistant Attorney General
Michael Byrne, Attorney for Respondent
Jill Stuecker, Executive Director, Iowa Dental Board
(All parties served by email)

NOTICE

Pursuant to Iowa Code sections 17A.19, 153.33 and Iowa Administrative Code Rule 650-51.31, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 650-51.24.