BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In the Matter of: )
) )
) ) ) CONSENT ORDER
Francis A. Bald, D.D.S. )
(License No. 4745) )
 )

This matter is before the North Carolina State Board of Dental Examiners ["Board"] as authorized by G.S. §90-41.1(b) for consideration of a Consent Order in lieu of a formal administrative hearing. The Investigative Panel was represented by Douglas J. Brocker and K. Brooke Ottesen. Respondent, Francis A. Bald, D.D.S., was represented by Carrie E. Meigs and Justin G. May. The parties hereby consent to the Findings of Fact and Conclusions of Law set forth herein, and to the entry of the Order of Discipline.

FINDINGS OF FACT

1. The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding pursuant to the authority granted to it in Chapter 90 of the North Carolina General Statutes, including the Dental Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.

2. Respondent was licensed to practice dentistry in North Carolina on July 14, 1980 and holds License No. 4745.

3. Respondent has remained licensed to practice dentistry in North Carolina and was subject to the Dental Practice Act and the Board’s rules and regulations at all times relevant hereto.

4. From at least 2009-12, Respondent was engaged in the practice of oral surgery in Nags Head, NC and Elizabeth City, NC in his dental practice, Dr. Francis A. Bald & Associates, P.A.
5. On or about March 28, 2016, the Board’s Investigative Panel ["IP"] served its Notice of Hearing against Respondent, pursuant to which the IP asserted allegations against Respondent arising out of Respondent’s billings to the North Carolina Division of Medical Services ["DMA" or "Medicaid"].

**Improper Billing and Misrepresentations to Medicaid**

6. From at least 2009-12, Respondent was an approved dental provider for Medicaid and was required to abide by Medicaid’s billing policies and guidelines. At all times relevant hereto, Medicaid required its providers to submit bills for their services using the codes set out in the American Dental Association’s Code of Dental Terminology ["CDT"].

7. Respondent was and is professionally responsible for the actions of the employees and staff in his dental office. References to “Respondent” in this Consent Order include actions taken by his employees and staff under his supervision.

8. On September 5, 2013, Respondent pled guilty in Wake County District Court pursuant to misdemeanor criminal charges to two separate counts of Medicaid Assistance Provider Fraud Scheme or Artifice. Specifically, Respondent pled guilty to attempting to make or causing to be made false statements or representations of material facts in applications for payment to Medicaid and attempting to regularly submit, or causing to be submitted, false billing claims for additional dental procedures that were not performed or needed during dental visits and operations for Medicaid recipients.

9. On September 5, 2013, Respondent was ordered to pay $114,723.68 in restitution to the NC Fund for Medical Assistance and was ordered to serve sixty (60) months of probation.

10. In 2014, Respondent entered a settlement agreement with the State of North Carolina and agreed to pay $286,809.20 to the NC Fund for Medical Assistance.
General Anesthesia

11. From at least 2009-12, CDT Code D9220 was properly used to bill for the first 30 minutes of general anesthesia. CDT Code D9221 was properly used to bill for each additional 15 minutes of general anesthesia administered, beyond the first 30 minutes by a dentist who remained in continuous attendance of each patient. Anesthesia services are considered completed when the patient may be safely left under the observation of trained personnel and the doctor may safely leave the room to attend to other patients or duties.

12. Respondent improperly billed and misrepresented to Medicaid on numerous occasions by submitting CDT Code D9220 and one or more CDT Code D9221 when 30 minutes or less of general anesthesia had actually been administered while Respondent remained in continuous attendance of the patient.

13. In reliance upon Respondent’s misrepresentations, Medicaid paid Respondent for administering general anesthesia to numerous patients for time periods during which he did not do so or did not remain in continuous attendance and left the patients under the observation of other personnel.

Nitrous Oxide

14. From at least 2009-12, CDT Code D9230 was designated for “Analgesia, anxiolysis, inhalation of nitrous oxide.”

15. Respondent improperly billed and misrepresented to Medicaid on numerous occasions by submitting CDT Code D9230 for administering nitrous oxide to patients that was not provided.
16. In reliance upon Respondent's misrepresentations, Medicaid paid Respondent for administering nitrous oxide to numerous patients to whom he had not provided it.

Surgical Extractions

17. From at least 2009-12, CDT Code D7210 was properly used when a dentist surgically removed an erupted tooth requiring elevation of a mucoperiosteal flap and removal of bone or sectioning of a tooth.

18. Respondent improperly billed and misrepresented to Medicaid on numerous occasions by submitting Code D7210 when he had not removed an erupted tooth requiring elevation of a mucoperiosteal flap and removal of bone or sectioning of the tooth.

19. In reliance upon Respondent's misrepresentations, Medicaid reimbursed Respondent for surgically removing an erupted tooth that required elevation of a mucoperiosteal flap and removal of bone or sectioning of the tooth when such surgical extraction was not required for numerous patients.

Radiographs

20. From at least 2009-12, CDT Code D0220 was properly used if a dentist took the first intraoral periapical film, and CDT Code D0230 was properly used for each additional intraoral periapical film if taken by a dentist on the same visit.

21. Respondent improperly billed and misrepresented to Medicaid on numerous occasions by billing Medicaid CDT Codes D0220 and 0230 for taking radiographs that Respondent had not taken.

22. In reliance upon Respondent's misrepresentations, Medicaid paid Respondent for taking radiographs that Respondent did not take for numerous patients.
Failure to Maintain Proper Patient and Anesthesia Records

23. The standard of care for dentists licensed to practice dentistry in North Carolina, during 2009-12, required that dentists maintain proper records for each patient, including but not limited to keeping patient records in compliance with the Board's regulations on patient and anesthesia records, 21 NCAC 16T .0101 and 21 NCAC 16Q .0202(a)(6).

24. For oral and maxillofacial surgeons, such as Respondent, the standard of care in North Carolina for maintaining patient records also is reflected in part in "The Parameters of Care: Clinical Guidelines for Oral and Maxillofacial Surgery," as adopted by the American Association of Oral and Maxillofacial Surgeons.

25. Respondent violated the standard of care and the Board's regulations for dentists licensed to practice dentistry in North Carolina, and specifically for oral and maxillofacial surgeons, by not maintaining proper records for each patient, including regularly failing to:

a. customize the template language included in each patient's chart to reflect the particular circumstances, information, and treatment provided to each patient;

b. include consistently progress notes or operation reports specifying the care provided;

c. include a chief complaint of the patient in the health history or other records and include signatures by the patient or the doctor on the health history;

d. include a diagnosis of the condition(s) warranting the need for surgery or other treatment;

e. record or document a physical evaluation of the patient, including a review of patient systems;
f. properly assess or document classifications for anesthesia patients and provide documentation of the reasons sedation or general anesthesia was needed;

g. maintain a separate anesthesia record with all the required information and the individual specific patient responses to medication and vital signs;

h. include complete informed consents, including the patient names, dates, and properly document review of informed consent in the patient record; and

i. include consistently the name, strength and quantity of all drugs prescribed and the clinical diagnosis or specific reason warranting prescribing a controlled substance.

26. Through counsel, the parties have engaged in substantial discovery, including the exchange of records and documents and the identification of expert witnesses.

27. The parties desire to enter into this Consent Order to resolve all the allegations made against Respondent in the Notice of Hearing prior to a contested case hearing scheduled to begin on April 7, 2017.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Board hereby makes the following:

CONCLUSIONS OF LAW

1. The Board is authorized under G.S. §90-41(a) to discipline a licensee who has engaged in the conduct set forth in Findings of Fact Nos. 6-25 above.

2. Respondent’s misconduct of obtaining fees from Medicaid through fraud, misrepresentation, or deceit, to which he pled guilty in Wake County District Court to two misdemeanor counts of attempting to defraud Medicaid during the periods of 2010-2011, constitutes an offense involving moral turpitude in violation of N.C. Gen. Stat. § 90-41(a)(4).

a) submitting CDT Code D9221 and CDT Code D9221 and obtaining payment from Medicaid for numerous patients, when 30 minutes or less of general anesthesia had been administered while Respondent remained in continuous attendance of the patient;

b) submitting CDT Code D9230 and obtaining payment from Medicaid for administering nitrous oxide to numerous patients when no nitrous oxide was provided;

c) submitting Code D7210 and obtaining payment from Medicaid for numerous patients when Respondent had not removed an erupted tooth requiring elevation of a mucoperiosteal flap and removal of bone or sectioning of the tooth; and

d) submitting Codes 0220 and 0230 and obtaining payment from Medicaid for numerous patients for radiographs that were not taken.

FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. Normally the discipline warranted for the above violations would be much more severe, except for several factors set forth below.

2. The Dental Board commenced its investigation based on Dr. Bald’s criminal charges but no patient filed a complaint against Respondent in this matter.

3. There were delays in concluding the proceedings in this matter that were not Respondent’s fault.

4. The Dental Board received no further evidence of Respondent violating its rules or statutes once this investigation began.

5. Respondent made payments from September 2013 through October 2016 and has now paid in full the $114,723.68 in restitution he was ordered to repay as part of his criminal judgment entered in September 2013.

6. Respondent has made regular payments to the NC Fund Medical Assistance toward the $286,809.20 he is required to repay pursuant to his 2014 Settlement Agreement with the State of North Carolina. As of December 31, 2016, Respondent had paid approximately $46,000 of the civil settlement and has a remaining balance of more than $240,000 yet to be paid.

7. Respondent has accepted responsibility for his conduct at issue herein, including by signing this Consent Order, pleading guilty to criminal charges, and entering into a Settlement Agreement with the State.

8. The Respondent has taken steps to improve the clinical and billing processes to prevent future errors and to ensure appropriate supervision of staff, including obtaining training for himself and his administrative staff regarding proper billing and record keeping.
9. Respondent was the sole owner of his dental practice and all sums improperly obtained through DMA solely benefited Respondent and his dental practice.

10. The Dental Board previously reprimanded Respondent for allowing a dental assistant to treat a patient’s dry socket on one occasion in 1992.

11. Respondent’s prior discipline was remote in time and not related to the allegations in this Consent Order.

Based upon the Findings of Fact, Conclusions of Law and with the consent of the parties hereto, the Board enters the following:

CONSENT ORDER OF DISCIPLINE

1. License No. 4745 issued to Respondent for the practice of dentistry in North Carolina is hereby suspended for a period of three (3) year(s), effective 30 days from service of this order upon Respondent.

2. Respondent shall surrender his license and current renewal certificate to the Board’s Deputy Operations Officer no later than 30 days following service of this Order upon Respondent.

3. Respondent’s license to practice dentistry shall be conditionally restored 60 days from the effective date of the Order, provided that Respondent complies with the following probationary terms and conditions throughout a period of either five (5) years or until Respondent repays all amounts owed pursuant to the 2014 settlement agreement with the State of North Carolina, whichever occurs later:

   a. Respondent shall violate no provision of the Dental Practice Act or the Board’s rules and regulations;
b. Respondent shall give written notice to the Board of the street and mailing addresses of his places of employment and residence. Respondent shall notify the Board of any changes of either address within ten (10) days of the change.

c. Respondent shall neither direct nor permit any of his employees to violate any provision of the Dental Practice Act or the Board's rules;

d. Respondent shall submit to interviews by the Board or its authorized agent during regular office hours or as such other times as are mutually convenient. Respondent shall also permit the Board or its agents to interview his employees during regular office hours and conduct random patient chart reviews;

e. Respondent shall complete, within 60 days from the effective date of this Order and before his license is conditionally restored, twelve (12) hours of continuing education courses approved in advance by the North Carolina State Board of Dental Examiners. These shall be comprehensive, remedial courses in recordkeeping, ethics and jurisprudence, and the use of proper billing codes. This requirement shall be in addition to the continuing education required by the Board for the renewal of Respondent's dental license. Respondent shall submit to the Board's Deputy Operations Officer written proof of satisfactory completion of these courses before they will be accepted in satisfaction of this requirement and his license is conditionally restored. It is the Respondent's responsibility to make all arrangements for and bear the costs of these courses within the specified time. If Respondent has not submitted written proof of satisfactory completion of the approved 12 hours of continuing education courses within 60 days following the effective date of the Consent Order, the
active suspension will continue indefinitely until Respondent submits written proof of satisfactory completion of the approved 12 hours of continuing education courses;

f. Within sixty (60) days of the effective date of this Order, Respondent shall reimburse the Board for the costs associated with the investigation of this matter in the amount of $2,500; and

g. Respondent shall make timely payments to the NC Fund Medical Assistance as required by Respondent’s 2014 Settlement Agreement with the State of North Carolina and any related modifications of installment payment schedules with the State. Respondent shall submit to the Board’s Deputy Operations Officer on a quarterly basis satisfactory written proof of timely payments until he submits documentation that the settlement amount has been paid in full, confirmed by the State.

4. If Respondent fails to comply with any provision of this Order or breaches any term or condition thereof, the Board shall promptly schedule a public show cause hearing to permit Respondent to show cause why his dental license should not be suspended. If, as a result of the show cause hearing, the Board is satisfied that the Respondent failed to comply with or breached any term or condition of this Order, Respondent’s license shall be rescinded and, upon written demand, Respondent shall immediately surrender his license and current renewal certificate to the Board for a period of three (3) years. Respondent must be compliant with the terms and conditions of this Order before his license can be reinstated from a suspension. The sanctions shall be in addition to and not in lieu of any sanction the Board may impose as a result of future violations of the Dental Practice Act or the Board’s rules.
This the 13 day of March, 2017.

THE NORTH CAROLINA STATE BOARD OF EXAMINERS

BY: Terry W. Friddle
Deputy Operations Officer
STATEMENT OF CONSENT

I, Francis A. Bald, D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety. I assent to its terms and conditions set out herein. I freely and voluntarily admit that there is a factual basis for the findings of fact herein, that the findings of fact support the conclusions of law, that I will not contest the findings of fact, the conclusions of law, or the order of suspension in any future proceedings before or involving the Dental Board, including if future disciplinary proceedings or action is warranted in this matter. I knowingly waive any right to appeal or otherwise later challenge this Consent Order once entered. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and at this Consent Order will become part of the Board’s permanent public record. I further acknowledge that this required reporting may have adverse consequences in other contexts and any potential effects will not be the basis for a reconsideration of this Consent Order. I have consulted with my attorney prior to signing this Consent Order.

This the 23rd day of February, 2017.

[Signature]
Francis A. Bald, D.D.S.
Reviewed and executed:

[Signature]
Douglas Brooker, Esq.
Counsel for Investigative Panel

[Signature]
Carrie Meigs, Esq.
Counsel for Respondent