

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: Carmen Alcala, D.M.D.	}	
License No. 016-1175(suspended)	}	Docket No. 2013-645(DE)
	}	

**Decision on
Unprofessional Conduct Charge**

Board Members Participating:

John Lavoie, D.D.S., Chair
Edward P. Pantzar, D.D.S.
Jennie Kendall, R.D.H.
Joanne Bugbee, R.D.H.
Gerald Theberge, D.D.S.
Mimi Kevan, Public Member
David Baasch, D.D.S.
Judith Newman, Public Member

Appearances:

for Petitioner, State of Vermont: S. Lauren Hibbert
for Respondent: Pro se

Presiding Officer: Larry S. Novins

**Findings of Fact, Conclusions of Law,
and Order**

The Board of Dental Examiners held a hearing in the above matter on May 14, 2014 at the Office of Professional Regulation hearing room at the City Center in Montpelier, Vermont.

Background

The prosecution alleges in its Specification of Charges that Dr. Alcala, in violation of Vermont Statutes, practiced dentistry while she did not possess an active license.

Findings of Fact

Based on the evidence presented, the Board finds as follows:

1. Dr. Alcala was licensed to practice dentistry. The license is under suspension and has been since this Board's decision of August 1, 2013. Dr. Alcala remains under the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. §§ 584, the Administrative Rules of the Board of Dental Examiners, and the Rules of the Office of Professional Regulation.
2. The Board's Order of August 1, 2013 suspended Dr. Alcala's license for a minimum of

180 days. It permits reinstatement no earlier than March 1, 2014. Dr. Alcalá has not yet sought reinstatement.

3. One of Dr. Alcalá's patients was scheduled to see another dentist on October 15, 2013.
4. On October 9, 2013 the patient called the office asking for a new prescription for Diazepam before her October 15 procedure. Dr. Alcalá had treated the patient for some time, and was very familiar with the patient. She felt that the patient's request was appropriate. Dr. Alcalá did not discuss the matter with the other dentist. She did not refer the patient to her primary care provider for the prescription. Dr. Alcalá did not consider that although she was not providing hands on "dental" care to the patient, that calling in the prescription constituted the practice of dentistry.
5. Prescribing a drug to a patient for an upcoming dental procedure is part of the practice of dentistry as defined in 26 V.S.A. § 561. Dr. Alcalá acknowledged that she has recently reviewed the statute. She agrees that prescribing Diazepam for the patient was practicing dentistry.
6. Dr. Alcalá practiced in violation of the Board Order of August, 2013 which suspended her license.
7. There was no evidence that the prescription was in any way improper or ill-advised.
8. Dr. Alcalá has not provided any other prescriptions during her suspension.
9. Dr. Alcalá testified on her own behalf at the hearing. She freely admitted that by calling in the prescription she had practiced dentistry while suspended.
10. Dr. Alcalá's hearing testimony indicates a new-found appreciation of the responsibilities that come with a license to practice dentistry. Her self-education in preparation for today's hearing shows that she is approaching those responsibilities with a positive attitude.

Conclusions of Law

1. **Re: Alleged Violation of 3 V.S.A. § 129a(b)(1) and (2):** We decline to find a violation of this statute.
2. **Re: Alleged Violation of 26 V.S.A. § 129a(a)(3):** 3 V.S.A. § 129a(a)(3) defines unprofessional conduct to include failing to comply with provisions of federal or state statutes or rules governing the practice of the profession. Any allegation of failure to comply with statutes or rules is addressed below. This statute does not provide separate/additional grounds for discipline. There is no independent violation of this statute.
3. **Re: Alleged Violation of 3 V.S.A. § 127(b):** The statute is a limited grant of authority allowing boards to impose only a civil penalty when an individual has practiced a licensed profession without authority. We do not impose an unprofessional conduct finding under this statute.
4. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(4):** The Prosecution has proved by a preponderance of the evidence that Dr. Alcalá violated this Board's Order suspending her from practice. This is unprofessional conduct.

Discussion

Dr. Alcala's unprofessional conduct in this case constituted one ill-advised decision to prescribe Diazepam to a patient.

Order

For the violations above, the following sanction is necessary:

- Dr. Alcala's license is issued a **reprimand**.
- Within 90 days of this Order Dr. Alcala shall pay an **administrative penalty in the amount of \$1,000.00**. Failure to pay this penalty will bar reinstatement of her license.
- Dr. Alcala's license may be eligible for reinstatement as set forth in our Order of August, 2013. If reinstated, she must comply with the conditions set forth in that Order.

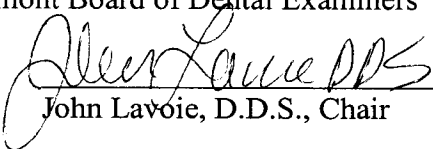
APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Dental Examiners. A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, Office of Professional Regulation, 89 Main St. Fl. 3, Montpelier, Vermont 05620-3402 within 30 days of the entry of this Order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Dental Examiners

By: 

John Lavoie, D.D.S., Chair

Dated: May 14, 2014

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/15/14