

**STATE OF VERMONT
OFFICE OF THE SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF DENTAL EXAMINERS**

IN RE: CARMEN M. ALCALA, DMD

License No. 016-1175

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Docket Nos. M2014-68 (2011-
42 and 2011-215)

Board Members Participating:

David Baasch, D.D.S.
Mimi Kevan, Public Member
Gerald Theberge, D.D.S.
Robert Ruhl, D.M.D.
Sally Buel, R.D.H.
William Koch, D.D.S.
Elizabeth Merrill, Public Member

Appearances:

For the State: Elizabeth A. St. James, Esq.
For the Respondent: Carmen M. Alcala, D.M.D., appeared *pro se*

Presiding Officer:

George K. Belcher

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONCERNING
MOTION TO MODIFY PRIOR BOARD ORDER**

This matter was considered on May 10, 2017 and June 14, 2017. The Respondent, Carmen M. Alcala, DMD, was present on May 10, 2017 and represented herself. The State was represented by Elizabeth A. St. James, Esq. The Vermont Board of Dental Examiners (hereinafter referred to as "the Board") issued a decision on August 1, 2013. The matter was heard as a contested case with the respondent and several expert witnesses providing testimony. The Board at that time made extensive findings and an order which suspended the dental license of the Respondent for 180 days; required the completion of a course in clinical practice of 70 hours prior to reinstatement; conditioned her reinstated license for three years with a requirement of independent review of patient files and reporting to the Board; and required a permanent condition that she keep her records in a manner as specifically ordered by the Board. No administrative fine was imposed. The Respondent appealed that decision and the decision was affirmed without modification on November 25, 2013. On April 7, 2017 Dr. Alcala wrote a letter to the Board advising that a course which was ordered in the original order was no longer available. She asked the Board to revise the order to change the rehabilitative course. On April 18, 2017 Dr. Alcala wrote another letter to the Board which requested that part of the Board order (which required future patient-record monitoring) be modified such that the Board would

review her past records. The State agreed with the first request, conceding that the course which was ordered in the original order was no longer available. The State objected to the second request for modification of the order.

FINDINGS OF FACT

1. In addition to the procedural history set forth above, the Board further finds that the Respondent is still under license suspension since she has not petitioned for reinstatement since her license suspension in 2013.
2. The Respondent has sold her dental practice.
3. The Respondent has contacted the Oral Health Enrichment program which was included as a rehabilitative course in the Board Order of August 1, 2013. That course is no longer available. This fact was conceded by the State. Thus, a supplemental or alternative course needs to be included in a revised order.
4. The Respondent did not suggest to the Board any alternative courses. She requested that the Board, in its discretion, decide which alternative course should be ordered.
5. The Respondent also argued that the prior order of the Board concerning future conditions of her license (see paragraphs (1) and (2) of Board Order of August 1, 2013) should be revised to simply call for the review of her past dental records. She argued that this is appropriate because: (1) a prior settlement offer by counsel for the State in 2013 justified a more lenient order; (2) since Dr. Alcala has sold her dental practice with a non-compete clause, and is not currently associated with another dental practice, it will be difficult for her to secure a dentist to review her future work; and (3) if the Board reviews the past dental records of her patients on a server, then "this will be the best sample to clarify the doubts that the Board has with the care I offered to my patients." (See Dr. Alcala's Letter of April 18, 2017).
6. The State argued that the random monitoring of patient files after any reinstatement was a protection which the Board had ordered to assure that the rehabilitative education (which was required as a precondition to reinstatement) had an impact. Thus, the monitoring of patient records in the future was a method of public protection which would not occur if the Board simply looked at old patient records.
7. The monitoring of future patient records if the Respondent's license is reinstated, as ordered, is necessary to protect the public.

CONCLUSIONS OF LAW AND DISCUSSION

1. The Respondent's arguments based upon prior settlement negotiations which occurred before the 2013 hearing and order, are not considered here because they are irrelevant to the matter now in question. Moreover, such evidence would likely be excluded under Vermont Rule of Evidence 408(a).
2. Respondent's motion to change the post-reinstatement monitoring of patient files is out of time under the rule concerning relief from judgements. See Administrative Rules for the Office of Professional Regulation, Rule 2.4 and Vermont Rule of Civil Procedure 60 which requires that motions to amend judgment orders be made within a reasonable time and for most reasons within one year of the date of the judgement.

3. Finally, the Respondent's motion to modify the post-reinstatement monitoring of patient files is rationally directed to the findings in the initial order, rather than the functioning of the order which resulted from those findings. The Board declines to review its prior findings of fact. The Board is not persuaded that the post-reinstatement conditions should be changed.
4. In order to consider alternatives to the rehabilitative course which was ordered and which is no longer available, the Board needed additional time to investigate and consider alternatives. Thus, on May 10, 2017 the Board continued the deliberative session until the Board meeting on June 14, 2017

ORDER ON MOTION TO MODIFY THE PRIOR BOARD ORDER

1. The education condition upon reinstatement of the prior Board Order of August 1, 2013 is hereby modified, in part, to read as follows:

After March 1, 2014 her license, upon petition to the Board, may be reinstated if she has shown compliance with the following:

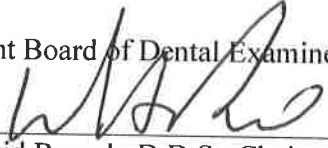
Dr. Alcalá shall successfully complete a program of Dentistry Remediation as offered by the NOVA Southeastern University Dentistry Remediation Program including courses in:

Recordkeeping
Diagnosis and Treatment Planning
Prosthodontics, Fixed Removable, and
Restorative Dentistry

at her own expense to address the deficiencies in her clinical practice and in her record keeping as set forth above. Successful completion will include a clinical assessment as determined by the educator/supervisor. The process of this program requires the Applicant to apply and secure a course plan, and then the course plan is approved by the referring Board of Dental Examiners. (Further information about the Remediation Program offered by NOVA Southeastern University may be secured from Lynette at lynnette@nova.edu (954) 262-1739.) In the event that the Respondent is unable to complete this course for reasons which are persuasive to the Board, she may suggest to the Board an alternative program by describing the alternative program in detail. The Board shall consider such request in its discretion.

2. The Board order of August 1, 2013 in all other regards (concerning post-reinstatement conditions) is not amended or modified. To the extent the Respondent sought modification in her April 18, 2017 letter, that request is DENIED.

Vermont Board of Dental Examiners

By: 
David Baasch, D.D.S., Chair of the Board

Dated

6/19/17

Office of Professional Regulation

Date of Entry 6/21/17

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, 89 Main Street, Fl. 3, Montpelier, VT 056203402 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.