

**STATE OF VERMONT
BOARD OF**

In re: Peter Barrie Gray
License No. 016-1202

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Docket No. 2010-584(DE)

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian
for Respondent: Dr. Peter Barrie Gray, appeared without counsel

Presiding Officer: Larry S. Novins

**Summary Suspension Order
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

On February 8, 2012 this matter came before the Board of Dental Examiners on the State's Request for a Summary Suspension pursuant to 3 V.S.A. § 814(c). Dr. Gray appeared without his counsel who was out of the country. The Board has authority to summarily suspend a license pending further action, if it determines that public health, safety, or welfare imperatively requires emergency action.

Findings of Fact

Based on a Review of the pleadings and the file, and on evidence presented to the Board at the hearing, the Board finds:

1. Dr. Gray is licensed as a dentist and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 13, 3 V.S.A. § 129, the Administrative Rules of the Board of Dental Examiners, and the Administrative Rules of the Office of Professional Regulation. 3 V.S.A. § 814(c) permits the Board to summarily suspend a license if it finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order.
2. The State has filed a "Request for Summary Suspension" dated January 19, 2012. The Request alleges that Dr. Gray voluntarily stopped operating his dental offices in late October, 2011 because of acute depression and that he is being treated for acute depression at this time.
3. A copy of the Request is attached to this Decision and Order.
4. The State further alleges that the public health, safety or welfare imperatively requires

- emergency action.
5. Notice of this hearing was sent to Dr. Gray's attorney on January 19, 2012. Dr. Gray filed a motion to continue this hearing. That request was denied, as was Dr. Gray's motion to dismiss the summary suspension proceeding.
 6. The Board has reviewed the evidence presented at the hearing, which consisted of a copy of Dr. Gray's deposition.
 7. The Board finds for purposes of this hearing that Dr. Gray is suffering from acute depression. He is under treatment.
 8. Dr. Gray is not treating patients at this time. He has not treated patients since fall of 2011. He has closed his practice and has no staff at this time.
 9. Dr. Gray specifically testified in his deposition taken January 12, 2012 that he cannot, because of his depression, meet the level of care required of a dentist.
 10. We note that Dr. Gray has testified in his deposition that he has no plan to practice until he is told by his medical providers, "that they tell me it would be a good idea to make a plan." Deposition, page 176, line 2.
 11. Summary suspension of Dr. Gray's license is necessary to prevent an ill advised deviation from his assurances.
 12. The allegations in the Request for Summary Suspension have been established to the necessary degree.
 13. The evidence presented does imperatively require emergency action for the public health, safety, and welfare.
 14. Specifically, summary suspension is necessary to prevent harm to patients should Dr. Gray's mental state deprive him of the ability to decide when he can safely resume practice.
 15. If summary suspension is not ordered, the Board believes that patient harm is likely to occur.

Conclusions of Law

Our Findings of Fact and Conclusions of Law in this Summary Suspension hearing are for purposes of deciding whether *at this time* there is an imperative need to take emergency action. 3 V.S.A. § 814(c). Our Findings of Fact and Conclusions of Law herein are for purposes of this Order only.

The State's Request for a Summary Suspension is supported by the evidence presented. The Board concludes that the allegations in the Request for Summary Suspension have been established to the necessary degree. For purposes of this Summary Suspension Hearing, the Findings of Fact above support Summary Suspension of Dr. Gray's license. There is an imperative need to take emergency action. 3 V.S.A. § 814(c).

Order

The State's Request for Summary Suspension is **Granted**. Dr. Gray's license is

summarily suspended pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c). We note that this decision represents the vote of a majority of the board.

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, National Life Bldg., North, FL2, Montpelier, VT 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: Richard A. Dickinson DDS Chair Date: February 8, 2012
Richard Dickinson, D.D.S., Chair

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/8/12

**STATE OF VERMONT
SECRETARY OF STATE
BOARD OF DENTAL EXAMINERS**

IN RE:)
PETER BARRIE GRAY, D.M.D.) Docket No: 2010-584
License No. 016-0001202)

REQUEST FOR SUMMARY SUSPENSION

Board Authority

The Board of Dental Examiners (the "Board") has jurisdiction to investigate and adjudicate complaints of unprofessional conduct against dentists pursuant to 3 V.S.A. §§ 129 and 129a; 26 V.S.A. §§ 767 and 809; the Administrative Rules of the Board of Dental Examiners; and the Rules of the Office of Professional Regulation.

The Board is authorized by 3 V.S.A. § 814 to summarily suspend the license of a dentist when it finds that the public health, safety, or welfare imperatively requires emergency action.

Facts

- 1) Respondent, Peter Barrie Gray, is licensed as a dentist in the State of Vermont holding license number 016-0001202. This license was originally issued on or about April 14, 1993 and is currently set to expire on September 30, 2013. The Respondent's license is conditioned pursuant to two separate stipulations Attachment 1 and A.
- 2) There are charges of unprofessional conduct levied against the Respondent dated September 27, 2011 that are currently pending before this Board. Attachment AA.
- 3) On January 12, 2012 the Respondent was deposed by the undersigned. At the time of deposition the Respondent admitted to the following:
 - a) He voluntarily stopped operating his dental offices in late October, 2011 because of acute depression.
 - b) He is being treated for the acute depression by Mark Logan, M.D. a family physician and addictionologist. He is also being treated for the acute depression by Dean McKenzie, a psychiatrist. He is currently prescribed Celexa (Citalopram), and anti-depressant medication.
 - c) The Respondent testified that on January 12, 2012 he was psychologically and emotionally unable to provide reasonable patient care at the present time.

STATE OF VERMONT



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d) The Respondent testified on January 12, 2012 that in his mind, he was not currently able to provide the level of care required of a dentist.

e) The Respondent testified on January 12, 2012 that he was selling his real estate ownership in his office building, but planned to keep his dental equipment and records with the expectation that he would start up his practice again.

4) By virtue of possessing a license to practice dentistry (even a conditioned one) the Respondent has been and continues to practice the profession of dentistry. His voluntary cessation of running his dental offices does not render moot the question of whether he still continues to practice dentistry. In discussing the case of a chiropractor the Iowa Supreme Court stated in 1944 that:

We do not consider the question involved moot, merely because the appellee is not at present making full use of his license to practice. 'It may be noted that the question whether a provision in a decree confers a particular right upon a party is not rendered moot on appeal merely because such party testified at the trial that he did not expect to exercise such right.' 3 Am.Jur. p. 366, Par. 824. [Citations omitted]. **To hold otherwise places in the hands of the accused practitioner himself the power to escape the penalty provided by law for a violation of the rules governing the conduct of his profession, no matter how gross his misconduct may have been.** The cause of action has not ceased to exist so long as there remain rights undetermined and all matters involved in the action have not been adjudicated. We are satisfied that the cause of action has not ceased to exist.

State v. Otterholt, 15 N.W. 529, 532 (Iowa, 1944)(Emphasis added). As was the case in Otterhold just because the Respondent is not currently making full use of his license to practice, does not render the issue as to whether he should possess an active license moot. The Respondent cannot be allowed to sidestep the authority of the Board merely because he closed down his office.

5) By maintaining a license to practice dentistry, while psychologically or medically unfit to practice the profession, the Respondent has committed unprofessional conduct and his current position, by his own admission, puts at immediate risk the health, safety and welfare of his patients and thereby imperatively requiring emergency action from this Board. By continuing to practice dentistry, when psychologically and emotionally unable to provide the minimum level of care required of a dentist, the Respondent has failed to conform to the essential standards of acceptable and prevailing practice. By maintaining the necessary equipment and records for his dental office, the Respondent places the health and safety of the public at risk.

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Request for Relief

1. The facts as set out above establish that in order to protect the public health, safety, or welfare of the people of the State of Vermont, emergency action is imperative.
2. The above acts and circumstances, alone or in combination, violate:
 - a. 26 V.S.A. § 809(a)(15) (practicing or maintaining a dental office in a manner so as to endanger the health or safety of the public);
 - b. 3 V.S.A. § 129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
 - c. 3 V.S.A. § 129a(b)(1) and (2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and
 - d. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's dental license number 016.0001202 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 19th day of January, 2012.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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