

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: Roger S. Hirschberg, D.D.S.
License No: 016.0002263

§
§

Docket No.: 2011-41
Follow-Up Case No.: M2014-70

Order Removing Conditions

On November 4, 2015 the Vermont Board of Dental Examiners considered Dr. Roger Hirschberg's request for removal of the conditions imposed on his license as a Dentist by Order of this Board dated May 15, 2014. The Order was Modified on October 8, 2014 to activate the conditions once employment was obtained. The Order was again Modified on June 11, 2015 with respect to coursework. The Investigative Team and the State have no objections.

Based on the representations of OPR staff, the Board finds that Respondent has met all requirements of the Order, and that removal of all conditions from his license is appropriate.

The Board hereby removes the conditions on Dr. Roger Hirschberg's license to practice as a Dentist.

So Ordered.

Board of Dental Examiners, by



Edward P. Pantzar, D.D.S., Chair

November 4, 2015
Date

Date of Entry: 11/4/15

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

In re: Roger S. Hirschberg

License No. 016-0002263

}
} Docket No. M 2014-70
}

Motion To Amend Previous Order

Appearances:

for Petitioner, State of Vermont: Annika Green, Esq.
for Respondent: Roger Hirschberg appeared pro se

Members participating:

David Baasch, DDS, Vice Chair
Sally Buell, RDH
John Lavoie, DDS
Mimi Kevan, Public Member
Katherine Silloway, DDS
Dixie Vallie, CDA
Gerald Theberge, DDS

Presiding Officer: George K. Belcher

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Vermont Board of Dental Examiners held a hearing in the above matter on June 10, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont.

Findings of Fact

Based on the evidence presented and a review of the record in this matter, the Board finds as follows:

1. By Stipulated Order dated May 13, 2014, the Board ordered in Paragraph 4, Page 5, that the Respondent should complete "didactic coursework through Oral Health Enrichment located in Cleveland, Ohio" in the areas of treatment planning, record keeping, and crown and bridge restorative dental work.

2. The order specified hours of coursework in each area and that the Respondent should be examined and pass written competency examinations in the three topic areas.
3. On May 2, 2015 the Respondent filed with the Board a request that the Board modify the order to allow him to take alternative courses. On June 7, 2015 the Respondent submitted to the Board a detailed description of the alternative courses including the presenters and the dates in which the courses will be offered. (Exhibit 1)
4. The Respondent testified that the courses which he proposed were more in germane to his current practice and to his needs for education. The proposed courses included 16 credits in restorative dentistry, 9 credits in treatment planning and 7 credits in record keeping. The Respondent also requested an extension of time such that he could complete the courses. (The original order required that he complete the courses by January 13, 2015, which date was extended by subsequent order.)
5. The State opposed the amendment pointing out that the Respondent initially agreed to the specific language of the coursework requirement. The State was of the view that the Board should evaluate whether the proposed courses are equivalent to the existing requirement and are appropriate to replace the existing order. The Respondent answered that he had not seriously contemplated the education requirement at the time of the stipulated order and that he had changed jobs so that he was now dealing with a different clientele than he was at the time of the order. He also argued that the suggested alternate courses were partially "hands-on" work and were more akin to his "style" of learning.

Conclusions of Law

Based on the evidence presented and facts found above we conclude as follows:

1. The Respondent bears the burden to show that the order should be amended. OPR Administrative Rule 2.4; VRCP 60. The Board may amend an order upon such terms as "are just" provided that the motion is filed within a reasonable time and within one year for certain amendments. Id.
2. The Board considered the amendments which were sought, the reasons given by the Respondent (including his change of jobs since the order), and the nature and extent of the suggested alternate courses. The Board also considered the objections by the State.

Order

The Motion to Amend paragraph 4, Page 5 of the Order of May 14, 2014 is **GRANTED**. Paragraph 4, page 5 of that order is revoked and the following language is supplanted for it:

4. Coursework: On or before October 29, 2015 Respondent shall have completed all the coursework described in Exhibit 1 as admitted into evidence before the Board on June 10, 2015. The Respondent shall file with the Board certification of satisfactory completion of all the coursework within a reasonable time following completion of the last course, and in any event no later than November 7, 2015.

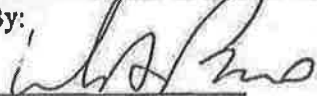
APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing. 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, 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.

Vermont Board of Dental Examiners

By:



David Baasch, D.D.S., Vice Chair

Date June 10, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6/11/15



State of Vermont
Office of the Secretary of State

Office of Professional Regulation
89 Main Street, 3rd Floor
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James C. Condos, Secretary of State
Brian H. Leven, Deputy Secretary

Christopher D. Winters, Director

Vermont Board of Dental Examiners

In re: Roger S. Hirschberg
License Number: 016-2263

Docket Number: 2011-41 (DE)
Follow Up Case Number: M2014-70

Modification to Order

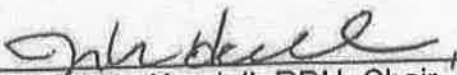
On October 8, 2014 the Vermont Board of Dental Examiners considered Roger S. Hirschberg's request for Modification of his Order. The Investigative Team recommends modifying the Order. The State does not object to Dr. Hirschberg's request.

The Board votes to modify Roger S. Hirschberg's Order and conditions to add the bold language below:

3. Evaluator: Within sixty (60) days **after obtaining employment....**
4. Coursework: Within eight (8) months **after obtaining employment....**

So Ordered.

Vermont Board of Dental Examiners


Jennie L. Kendall, RDH, Chair

Date: October 8, 2014

Date of Entry:

10 / 8 / 14

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: Roger S. Hirschberg, D.D.S.
License No. 016-2263

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(M2014-70)
Docket No. 2011-41(DE)

**Decision on Respondent's
Motion to Modify Stipulation and Consent Order**

Board Members Participating:

John Lavoie, D.D.S., Chair
Edward P. Pantzar, D.D.S., Vice Chair
Dixie Vallie, C.D.A.
Jennie Kendall, R.D.H.
Mimi Kevan, Public Member
Katherine Silloway, D.D.S.
Gerald Therberge, D.D.S.
Joanne Bugbee, R.D.H.
David Baasch, D.D.S.

Appearances:

Petitioner, State of Vermont: S. Lauren Hibbert
Respondent: Ralph Suozzo

Presiding Officer: Larry S. Novins

This matter came before the Board on September 10, 2014. By motion dated June 25, 2014 Dr. Hirschberg requested that the evaluator condition of the Stipulation and Consent Order accepted by the Board on May 14, 2014 be removed. The State has not filed a response. The Board has authority to hear this matter. 26 V.S.A. § 584, 3 V.S.A. §§ 129, 129a.

The State and Dr. Hirschberg entered into a Stipulation and Consent Order which was accepted by the Board on May 14, 2014. By its terms Dr. Hirschberg's license was conditioned for a period of a minimum of eight months. He was required to complete didactic courses through Oral Health Enrichment of Cleveland, Ohio consisting of a) treatment planning, ten hours; b) record keeping, five hours; and c) crown and bridge restorative dental work, fifteen hours. The Stipulation and Consent Order also required that an evaluator pre-approved by the Board review Dr. Hirschberg's patient files for accuracy, consistency, and completeness as specified in the Order. Before the Board's May meeting the Board in April rejected a somewhat similar proposal. The proposed April Stipulation and Consent Order contained some language which the Board was not prepared to accept. In addition, the agreement named Dr. Tyler Carmack as the evaluator. Dr. Carmack had been disciplined by the Board in April 2013 in Docket No. 2011-323. In April, 2014 Dr. Carmack's license was still conditioned. Dr. Carmack's conditions were removed on May 14, 2014.

Drs. Carmack and Hirschberg worked together. The Board determined that Dr. Carmack was not in a position to provide an independent impartial evaluation of Dr. Hirschberg's work to meet the goal of the Stipulation and Consent Order: protecting the public health, safety, and welfare. The matter was set for hearing at the Board's next meeting May 14, 2014.

On May 14, 2014 the Board accepted a revised Stipulation and Consent Order which is the subject of Dr. Hirschberg's motion. Dr. Hirschberg reported that after the May hearing Dr. Carmack told him he would not agree to having records of the practice reviewed. Dr. Carmack terminated Dr. Hirschberg's employment with his practice. Dr. Hirschberg has been unemployed for three months.

Rather than finding an evaluator, completing his courses, and then searching for employment, Dr. Hirschberg sought employment first with his conditions unmet. Dr. Hirschberg did not propose an evaluator to the Board within sixty days as required by the Stipulation and Consent Order. Dr. Hirschberg filed his motion to modify six weeks after signing the Stipulation and Consent Order. Dr. Hirschberg has not complied with any of the educational requirements of the Stipulation and Consent Order. He attributes to the Stipulation and Consent Order his inability to find employment with another practice. Dr. Hirschberg did not explain why he seeks employment with other dentists rather than maintaining his own practice.

The Evaluation Condition

When considering a Stipulation and Consent Order, the Board must determine whether a proposed sanction adequately addresses the facts and unprofessional conduct contained in the agreement. Dr. Hirschberg's unprofessional conduct was properly addressed in the Stipulation and Consent Order which he signed. Given the Stipulated facts presented in the Stipulation and Consent Order, the evaluation condition remains appropriate.

The Vermont Rules of Civil Procedure inform our decision in this matter. Rule 60 provides"

"Relief from Judgment or Order. . . (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. -- On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. . . ."

Dr. Hirschberg has not shown that the Stipulation and Consent Order resulted from mistake, inadvertence, surprise, or excusable neglect. He made an informed decision to enter the Stipulation and Consent Order. At this point he has taken no steps to meet the conditions imposed by his agreement. The Board is not persuaded that there is sufficient grounds to relieve Dr. Hirschberg of the agreed to evaluation condition. We do, however, feel that clarification of Paragraph A.3 may be helpful.

Order

For the reasons set forth above, Dr. Hirschberg's "Motion to Modify Stipulation and Consent Order" is **denied**. The evaluation condition will not be stricken.

Paragraph A.3 of the Stipulation is **amended** to add the following: "The evaluation herein is limited to treatment provided by Dr. Hirschberg and records created by him."

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 St., Fl. 3, 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: 
John Lavoie, D.D.S., Chair

Dated: September 10, 2014

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 9-10-14