STATE OF VERMONT
BOARD OF DENTAL EXAMINERS

Docket No. DE06-1199

In re Glen B. Moyer, D.D.S.	}	Hearing held at
	}	Montpelier, Vermont
	}	December 13, 2000

PRESENT: David C. Averill, D.D.S., Chair
Charles Bowen, D.M.D.
Gertrude Hodge
Miriam Lane Findeisen, R.D.H.
Philippa Maloney
Katherine A. Silloway, D.D.S.
Dorothy Wootton, R.D.H.
James E. Wright, D.D.S.

APPEARANCES: William H. Ahlers, Assistant Attorney General
for the State

Richard R. Goldsborough, Esq.
for respondent

Glen B. Moyer, D.D.S.
respondent

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

This matter came before the Board of Dental Examiners (Board) on a specification of charges filed by the State against Glen B. Moyer, D.D.S. (respondent). Having heard the evidence on the charges, the Board has determined that the findings of fact and conclusions of law set forth below are supported by the preponderant weight of the evidence.

Findings of Fact

1. Respondent Glen B. Moyer, D.D.S., is a dentist licensed by the Board. He holds license number 16-0773.

2. This matter first came before the Board on July 5, 2000, on a request for summary suspension of respondent's license. By order effective that same day, the Board did not summarily suspend respondent's license but restricted it to prohibit him from, among other things, writing prescriptions for narcotic

drugs.

3. Respondent practices general dentistry as a sole practitioner. He is not an oral surgeon. The only other person who works in his dental office is his wife, who serves as office manager. She has no dental training.

4. Respondent treats approximately 1,100 patients, of whom approximately 39 per cent are Medicaid recipients. The fact that respondent is willing to accept Medicaid recipients as patients is a benefit to the community, since there is a shortage of dentists in the state and many who are in practice prefer not to accept Medicaid patients.

5. At least two patients, D.C. and M.R., warned respondent on more than one occasion that some of his other patients, whom D.C. and M.R. identified by name, were selling drugs or were engaged in drug-seeking activity.

6. An oral surgeon called respondent with concerns that one of respondent's patients, K.B., was abusing drugs.

7. Four pharmacists contacted respondent personally by telephone with concerns about possible drug abuse by some of his patients. When confronted with the pharmacists' concerns, respondent's reaction was nonchalant. At other times, respondent did not return the phone calls of some of these pharmacists.

8. At one time or another, each of the four pharmacists refused to fill prescriptions for narcotics written by respondent, because they were concerned that the patients were engaged in drug-seeking activity.

9. Despite these warnings about specific patients, respondent continued to prescribe narcotic medications for the patients. His prescription writing for these patients was excessive.

10. Drug-seeking behavior exhibited by some of respondent's patients included going to other dentists besides respondent and obtaining prescriptions for narcotic medications, traveling from 30 to 40 minutes away and from other counties to obtain treatment and prescriptions for narcotics from respondent, obtaining a prescription for narcotic medication from respondent and re-appearing shortly thereafter for more, getting the narcotic painkiller prescription filled but ignoring the accompanying antibiotic prescription, altering a prescription, and requesting prescriptions for narcotic medications by specific name and

quantity.

11. To induce respondent to re-issue prescriptions for narcotics, patients would also make incredible claims that their prescriptions or medications had been lost or stolen, had been ruined in the wash, or had been flushed down the toilet accidentally.

12. In response to such drug-seeking behavior, respondent should have immediately stopped prescribing narcotic medications for these patients and should have referred them to other health care practitioners for treatment of any underlying medical conditions from which the patients claimed to be suffering. Instead, respondent took the wholly inadequate step of writing prescriptions in green ink to make them less easy to alter.

13. Respondent also continued to prescribe excessive amounts of narcotic medications for some of these patients. For example, during one seven-month period between October 1999 and May 2000, respondent wrote prescriptions for more than 1,054 tablets of Oxycontin for Patient E.B. This means that, on average, E.B. would have had to take at least five tablets of Oxycontin each and every day if he were to consume all of the medication himself.

14. According to the 2000 edition of the Physicians' Desk Reference, Oxycontin is an opioid with an abuse liability similar to morphine and is a Schedule II controlled substance. Oxycontin is typically prescribed for cancer patients and other patients with long-term pain who have been using opioids for a long time and who have therefore developed a tolerance for them. Oxycodone products, including Oxycontin, are common targets for both drug abusers and drug addicts.

15. As another example, during the 11-month period from June 1999 to May 2000, respondent wrote prescriptions for more than 6,042 tablets of narcotic medication (mainly Percocet) for Patient B.B. This means that, on average, B.B. would have had to take at least 18 tablets of narcotic medication each and every day if he were to consume all of the medication himself.

16. In some months, respondent wrote prescriptions for B.B. for over 1,000 tablets of narcotics. On at least two occasions, respondent issued two prescriptions for narcotics to B.B. on the same day. B.B. filled the prescriptions at different pharmacies.

17. According to the 2000 edition of the Physicians' Desk Reference, Percocet is a Schedule II controlled substance that

can produce drug dependence and has the potential for being abused. It should be prescribed with the same degree of caution appropriate to the use of other oral narcotic-containing medications.

18. As another example, during a two-month period from October to December 1998, respondent wrote prescriptions for 218 tablets of narcotic medication (mainly Vicodin) for Patient R.J. This means that, on average, R.J. would have had to take more than three tablets of narcotic medication each and every day if he were to consume all of the medication himself.

19. According to the 2000 edition of the Physicians' Desk Reference, Vicodin is a Schedule III controlled substance that may be habit forming and that should be prescribed with caution.

20. As another example, during a three-year period from 1996 to 1999, Patient E.R. had 44 scheduled appointments with respondent. This means that, on average, E.R. came to see respondent more than once every month during that three-year period. During the three-year period, respondent wrote prescriptions for 681 tablets of narcotic medication (mainly Vicodin and some Percocet) for E.R.

21. During that same time period, E.R. was having prescriptions for narcotics filled at pharmacies in four different towns in Chittenden and Addison Counties. A pharmacist at one of those pharmacies called respondent's office to convey concerns about possible drug abuse by E.R. The pharmacist's concern was noted in the patient's chart, but respondent continued to prescribe narcotic medications for E.R. anyway.

22. In addition to over-prescribing narcotics, respondent's medical record keeping was inadequate. Some of his prescriptions for narcotic medications lacked dates. He extracted teeth from Patient A.B. without noting sufficient reasoning in the patient's chart. Respondent's charts were difficult to read. He did not always note in a chart when he prescribed a narcotic or when he prescribed on the basis of a phone call from the patient.

23. According to respondent's expert witness, some of respondent's patients were sophisticated drug-seekers who "hoodwinked" respondent.

24. Respondent may have been initially deceived by those patients, but he could not have remained deceived after being warned repeatedly about their drug-seeking behavior.

25. Even respondent's own expert witness advised the Board to take action against respondent's license, by requiring him to show evidence of "re-education" beyond mere home-study courses and to practice under a mentor arrangement.

Conclusions of Law

A. Respondent's conduct was unprofessional, as set forth in 26 V.S.A. § 809(a)(15), in that, by over-prescribing and inappropriately prescribing narcotic medications to some of his patients, he practiced or maintained his dental office in a manner so as to endanger the health or safety of the public.

B. Respondent's conduct was unprofessional, as set forth in 3 V.S.A. § 129a(a)(3), in that, by engaging in unprofessional conduct under 26 V.S.A. § 809(a)(15), he failed to comply with provisions of state statutes governing the practice of dentistry.

Opinion

To begin, respondent was charged with violation of Board R. 3.8(11) (consistent improper use of procedures or services, whether or not actual injury to a patient has occurred). The Board cannot find respondent in violation of Rule 3.8(11), because subsection (11) of the rule applies only to dental assistants: "Section 862 empowers the Board to set professional standards for dental assistants. The Board will take disciplinary action against registered dental assistants for the following reasons . . ." (listing reasons 1 through 16).

Next, respondent was charged with violation of 3 V.S.A. § 129a(a)(7) (willfully making or filing false reports or records in the practice of the profession . . . or willfully failing to file the proper reports or records). The Board cannot find respondent in violation of § 129a(a)(7), because the statute requires proof of willfulness. Willful means intentional, in contrast to accidental or unavoidable. State Agency of Natural Resources v. Riendeau, 157 Vt. 615, 624, 603 A.2d 360 (1991).

The evidence shows that respondent's record keeping was inadequate. However, respondent did not testify at the hearing before the Board, and there is no evidence from him or from any other witness showing that he intentionally kept inadequate dental records.

Next, respondent argues that lack of an oral or written national or community practice standard prevents the Board from determining that his conduct was unprofessional. Respondent's

argument fails because, in fact, both expert witnesses in this case testified that respondent's prescription writing went far beyond the norm. The State's expert called it "excessive," while respondent's expert characterized it as "far more than I would normally prescribe."

This case was charged as a case where, by over-prescribing and inappropriately prescribing narcotics, respondent practiced so as to endanger the health or safety of the public. The evidence must show, and does show, that respondent practiced in a way that endangered public health or safety. Despite being warned repeatedly by patients, other practitioners, and pharmacists, respondent prescribed large quantities of Schedule II and III narcotics to patients who exhibited classic drug-seeking behavior. In essence, he allowed his practice to become a bountiful source of controlled, dangerous substances.

The danger is not mitigated by the fact that only 14 out of approximately 1,100 patients appeared in the charges. The evidence presented for the patients cited in the charges shows that, through the prescriptions he issued, respondent facilitated release into the community of thousands and thousands of tablets of highly addictive narcotic medications. Some of the patients received prescriptions for far more medication than they could consume themselves. The inescapable conclusion is that they sold the excess illegally in the local community or elsewhere.

Finally, both parties agree that some action needs to be taken against respondent's license to address problems in his prescribing practices. The State advocates license revocation, while respondent argues for re-education and a mentor arrangement.

In deciding what action to take, the Board notes that the evidence does not show that respondent deliberately engaged in a scheme to further the illegal drug trade. Rather, the evidence shows that respondent acquiesced in his patients' requests for narcotics and obligingly wrote the prescriptions even though he had been warned repeatedly about the patients' drug-seeking activities.

Removing respondent completely from practice by revoking his license would prevent him from prescribing narcotics but would also leave approximately 1,100 patients, including a significant number of Medicaid patients, without dental care. Instead, the Board can address respondent's prescribing deficiencies by requiring him to attend an intensive course specially designed for that purpose and by continuing to restrict his ability to

prescribe narcotics.

In addition, rather than requiring another dentist to spend considerable time supervising respondent's practice as a mentor, the Board can achieve much the same result by requiring respondent to attend risk management courses on a regular and continuing basis. Such courses will address concerns raised in this case about record keeping, documentation, and drug-seeking patients.

Order

IT IS HEREBY ORDERED by the Board of Dental Examiners of the State of Vermont that:

1. On the basis of the Findings of Fact and Conclusions of Law, respondent's Vermont dental license is hereby CONDITIONED and RESTRICTED as follows:

A. Within one year of the effective date of this order, respondent shall furnish evidence to the Board or its designee of successful completion of the "Mini-Residency in the Proper Prescribing of Controlled Substances," under the direction of William Vilensky, D.O., R.Ph., and affiliated with the University of Medicine and Dentistry of New Jersey.

B. Within one year of the effective date of this order, and for each of the five successive years, respondent shall furnish evidence to the Board or its designee of attendance at a dental risk management course approved in advance by the Board or its designee.

C. Once every two years thereafter and continuing until ordered otherwise by the Board, respondent shall furnish evidence to the Board or its designee of attendance at a dental risk management course approved in advance by the Board or its designee.

D. Respondent shall not write prescriptions for narcotic drugs.

E. If respondent anticipates that a patient's care will require narcotic drugs, respondent shall refer the patient to another dental health care professional for treatment.

F. If respondent writes prescriptions for non-narcotic drugs, he shall complete each prescription fully and enter it promptly in his records.

G. Respondent shall promptly document all call-in non-narcotic prescriptions in the patient's record.

H. Respondent shall make his patient records available to the Board or its agents during normal business hours, to allow the Board to investigate, monitor, and audit his prescribing practices.

2. The conditions and restrictions imposed by this order shall remain in effect until removed by the Board. Violation of any of the conditions or restrictions imposed by this order may result in further discipline, including revocation of respondent's license.

3. Respondent shall bear all costs of compliance with this order.

4. Pursuant to 3 V.S.A. §§ 129(a)(7) and 131(c)(2)(C), this document is a public record and may be provided to other licensing authorities.

5. This order takes effect as of the date of entry shown below.

Appeal Rights

This is a final administrative determination. A party may appeal by filing a written notice of appeal with the Director of the Office of Professional Regulation, Office of the Secretary of State, within 30 days of the effective date of this order.

Dated: 2/06/01

BOARD OF DENTAL EXAMINERS

David C. Averill DDS

David C. Averill, D.D.S.
Chair

Date of entry: 2-12-01