

**IN THE MATTER OF
David Hyde, D.D.S.
Respondent**

*** BEFORE THE
* STATE BOARD OF
* DENTAL EXAMINERS

License Number: 14478

*** Case Number: 2010-212

* * * * *

FINAL DECISION AND ORDER

Background

On November 30, 1999, the Maryland State Board of Dental Examiners entered into a Consent Order with David Hyde, D.D.S., License Number 8105, based on unprofessional conduct regarding a female employee. He agreed to a thirty-day suspension of his license and to comply with an agreement with the Dental Well Being Committee ("DWBC"). After failure to comply with various conditions of the agreement, the Board suspended Dr. Hyde's license for 45 days and ordered that he undergo a drug screen as required by DWBC. After full compliance, he was placed on three years' probation with conditions. On March 25, 2001, in an Order for Reinstatement and Probation, the Board ordered that Dr. Hyde's license be reinstated and that he be placed on probation for five years subject to conditions. On July 12, 2004, the Board suspended Dr. Hyde's license after he tested positive for cocaine and it was reported that he was not able to safely practice dentistry.

On August 17, 2005, in the Consent Order, suspension was continued on Dr. Hyde's license for one year. On April 19, 2006, after the Board was informed that Dr. Hyde had not complied with all required drug testing and had tested positive for cocaine, it revoked his license. In a September 26, 2006 Order, the Board continued the revocation of Dr. Hyde's license based on a hair sample that had tested positive for cocaine. Around July 13, 2009, the Board received an application for dental licensure from Dr. Hyde, and after meeting with the Board, he signed a three-year contract with

DWBC subject to conditions. After failing to comply with conditions of his license (#14478) probation, the DWBC recommended a five-day evaluation at an inpatient treatment center for professionals. On December 10, 2011, the evaluating center reported that Dr. Hyde had relapsed in his cocaine addiction and that he should spend 90 days in an inpatient program. Instead, the DWBC recommended Intensive Outpatient Treatment, 3-4 days per week at a specific outpatient clinic, continued group therapy, and after completion of the IOPT, 2-3 urines per week, continued outpatient individual therapy, and mandatory 12-step meetings, at least 3 times per week. Dr. Hyde tested positive for cocaine on three occasions, in violation of his DWBC Agreement, failed to submit ongoing quarterly progress reports on a regular basis in violation of his Consent Order, and failed to ensure that his employer submitted regular quarterly reports.

On or about August 21, 2012, the Board issued charges against Dr. Hyde. The Board scheduled a CRC for October 3, 2012 at 3 p.m. No resolution was reached. The Board scheduled a hearing for December 5, 2012 at 2 p.m. The Board held a telephonic prehearing conference at 1 p.m. on November 29, 2012. During the prehearing conference Dr. Hyde's exhibit list and the State's Motion to Exclude were discussed. Both Ms. Gill and Dr. Hyde participated in the prehearing conference. As a result of these discussions, Dr. Hyde agreed to limit his witness list to "Rob White." Ms. Gill noted her objection to this witness. The Board did not rule on Ms. Gill's motion during the prehearing conference. Any remaining outstanding issues will be resolved on the record immediately prior to the hearing. Dr. Hyde admitted that he had received Ms. Gill's list of witnesses and a copy of the documents she intended to introduce.

The December 5, 2012 hearing was unable to be concluded by the close of business that day. A continuance was scheduled for January 2, 2013.

Prior to the January 2, 2013 hearing, the Board allowed Dr. Hyde to present Mr. Clifton West, an expert witness, to testify on his behalf. Mr. West's testimony was admitted over the objection of the prosecution.

In accordance with the Administrative Procedure Act, Md. State Gov't. Code Ann. §10-201, et seq., (2009 Repl. Vol. and 2011 Supp.); §4-318 of the Act, and the regulations adopted by the Board under COMAR 10.44.07, hearings were held regarding this matter before a quorum of the Board on December 5, 2012 and January 2, 2013 for the purpose of adjudicating the charges. The following individuals were in attendance at one or both hearings:

- On behalf of the State, Roberta Gill, Esq.
- On behalf of the respondent, Mark J. Kosko, Esq.
- Counsel for the Board, Grant Gerber, Esq.
- Board Members (Ngoc Quang Chu, Cheryl Bruce, Jane S. Casper, Yolanda Goode-Seay, Issie L. Jenkins, Barbara Merritt, Maurice Sebastian Miles, Ronald F. Moser, Donald M. Russell, Irma S. Simon, Sonia Stockton, Edna Street-Jones, Alberto Alejandro (12/5/12), Ali Behnia (12/5/12))
- Board Staff: Dr. Leslie Grant, Dental Compliance Officer; Laurie Sheffield-James, Executive Director; Rebecca Oliver, Compliance Coordinator Assistant
- Montez Thompson, Security Guard (1/2/13)
- Lt. DiJuan Bailey, Security Guard

At the conclusion of the hearing, a quorum of the Board convened to deliberate. Only Board members who attended in the January 2, 2013 hearing and had reviewed the entire record participated in

deliberations. The Board reviewed the entire record and voted to revoke Dr. Hyde's license for the reasons set forth in this Order.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence.

- State's Exhibit No. 1 - Computer Printout of License
- State's Exhibit No. 2A - Consent Order, 11/30/99
- State's Exhibit No. 2B - Final Order, 3/17/00
- State's Exhibit No. 2C - Order for Reinstatement, 3/25/01
- State's Exhibit No. 2D - Order for Summary Suspension, 7/12/04
- State's Exhibit No. 2E - Consent Order, 8/17/05
- State's Exhibit No. 2F - Order of Revocation, 4/19/06
- State's Exhibit No. 2G - Order Continuing Revocation, 5/17/06
- State's Exhibit No. 2H - Consent Agreement, 5/5/10
- State's Exhibit No. 3A - Investigative Report
- State's Exhibit No. 3B - E-mail from DWBC to Board, 3/30/11
- State's Exhibit No. 3C - Letter from Counseling Plus to White, 4/6/11
- State's Exhibit No. 3D - E-mail re: 2nd pos. drug screen; Friend's Lab report, 8/30/11
- State's Exhibit No. 3E - Certificate of Lab Analysis, 10/7/11
- State's Exhibit No. 3F - E-mail to Board, 11/29/11
- State's Exhibit No. 4A - Letter from Board to Respondent, 2/24/11

- State's Exhibit No. 4B - Letter from Collier to Board, 3/4/11
- State's Exhibit No. 4C - Letter from Board to Respondent, 3/18/11
- State's Exhibit No. 4D - Letter from Board to Respondent, 4/4/11
- State's Exhibit No. 4E - Letter from Respondent to Board, 4/14/11
- State's Exhibit No. 4F - Letter from Respondent to Board, 7/27/11
- State's Exhibit No. 4G - Letter from Collier to Board, 8/9/11
- State's Exhibit No. 4H - Letter from Collier to Board, 12/2/11
- State's Exhibit No. 5A - DWBC report, 11/30/11
- State's Exhibit No. 5B - Farley Center report, 2/19/11
- State's Exhibit No. 5C - DWBC report, 12/26/11
- State's Exhibit No. 6A - Corrected LOP, 8/21/12
- State's Exhibit No. 6B - Violation of Probation
- State's Exhibit No. 6C - Hearing Notice, 10/11/12

B. Witnesses

- State:** Sharon Oliver, Case Manager for the Maryland State Board of Dental
Examiners
- Respondent:** Clifton West, Expert Witness

Summary of Witness Testimony

The State and the Respondent each had one witness. Ms. Sharon Oliver, Dental Compliance Officer testified for the State. Mr. Clifton West testified on behalf of the Respondent.

Ms. Oliver's testified that she was in charge of monitoring all dental board licensees who are on probation. According to the Board's records, Dr. Hyde had violated the terms of his probation.

She reported these violations to the Board. Then, the Board voted to charge Dr. Hyde with not complying with his consent order.

Specifically, Ms. Oliver stated that Dr. Hyde had not complied with the Dental Well Being Committee's ("DWBC") recommendations. On or about March 30, 2011, Dr. Hyde went to a non-approved testing facility to be tested for substances of abuse. Dr. Hyde tested positive for cocaine at this facility. Later, this non-approved facility sent a letter to the Board stating that Dr. Hyde's positive test result may not be valid.

Ms. Oliver stated that on or about August 30, 2011, the Board received notice of a second positive drug screen. Dr. Hyde tested positive for cocaine. The Board also received a copy of the drug screen laboratory report prepared by Friends Medical Laboratory.

Ms. Oliver also stated that the Board had not received all of the quarterly reports from Dr. Hyde's employer. Under the consent order, Dr. Hyde was required to submit quarterly reports from his employer during his period of probation. Only four reports were produced in a span of over two years. Ms. Oliver stated that Dr. Hyde did not submit all of the required reports he was responsible for under the terms of the order.

Ms. Oliver stated that Dr. Hyde was found to be in violation of his order for both his drug test results and failure to submit reports. The Board found her testimony to be quite credible.

Mr. Clifton West testified as an expert on behalf of Dr. Hyde. Mr. West stated that he did not know anything about hair follicle test results. Mr. West stated that he did not think that the Department of Agriculture would accept hair follicle test results. Mr. West's testimony was credible, but the Board did not find that there was any basis to discredit Dr. Hyde's drug test

results. Mr. West provided little relevant testimony on Dr. Hyde's drug test results. For this reason, the Board gave little weight to his testimony.

FINDINGS OF FACT

1. Dr. Hyde was first licensed to practice dentistry in the State of Maryland on March 7, 1983 under License # 8105.
2. Dr. Hyde entered into the WBC contract on October 28, 1999. Upon presenting to the DWBC, Dr. Hyde admitted to and sought assistance for cocaine dependency.
3. On or about November 30, 1999, Dr. Hyde entered into a Consent Order with the Board. In the November 30, 1999 Consent Order, Dr. Hyde admitted to engaging in unprofessional conduct regarding a female employee and agreed to a 30-day suspension and also agreed that he would enter into and comply with a contract with the DWBC.
4. A condition of the DWBC contract was for Dr. Hyde to enter the Farley Center, an inpatient residential facility for chemical dependency treatment. Dr. Hyde was admitted to the Farley Center on November 18, 1999 and a treatment plan was established.
5. On January 14, 2000, Dr. Hyde was discharged from the Farley Center and received a negative discharge summary based on his overall progress.
6. Dr. Hyde was required to receive continuing care. Through January and February 2000, Dr. Hyde failed to appear and/or participate in his treatment. Dr. Hyde failed to provide urine samples, as also required.
7. Dr. Hyde was charged with a violation of the November 30, 1999 Consent Order on February 24, 2000, and a hearing was scheduled for March 1, 2000 on the matter.

8. On March 7, 2000, a Final Order was issued. This Order provided for a 45-day suspension and required compliance with the WBC contract in order for his license to be reinstated.
9. Dr. Hyde requested that his license be reinstated on January 8, 2001. An Order for Reinstatement and Order of Probation was issued after the Board voted on February 21, 2001 to reinstate Dr. Hyde's license. Dr. Hyde received 5 years probation and was required to continue to comply with the DWBC contract.
10. On March 25, 2001, an Order for Reinstatement and Probation was issued. Based on conditions set forth in the March 7th Order, the Board ordered that Dr. Hyde's license be reinstated and that he be placed on probation for five years, subject to the following conditions: that he enter into a treatment contract and urine monitoring program with the DWBC; and attend and actively participate in any support programs recommended by the DWBC. Dr. Hyde was prohibited from prescribing or administering scheduled drugs and had to turn in his DEA permit.
11. On June 12, 2004, the Board voted to suspend Dr. Hyde's license, based on Dr. Hyde's failure to wear his drug detection patch, positive test result when tested for cocaine, and admission to having used cocaine for over one week. Based upon these factors, the treatment provider reported that Dr. Hyde was not able to safely practice dentistry.
12. On August 17, 2005, Dr. Hyde and the Board entered into a Consent Agreement which required a suspension of at least one year and continued compliance with the DWBC.

13. On April 19, 2006, the Board voted to revoke Dr. Hyde's license to practice dentistry, after being notified by the DWBC that hair samples from Dr. Hyde tested positive for cocaine and Dr. Hyde refused to provide urine samples as he agreed.
14. In an Order of Revocation from April 19, 2006, the Board revoked Dr. Hyde's license, License # 8105.
15. On September 26, 2006, the Board issued an Order continuing the revocation of Dr. Hyde's license based on an April 3, 2006 hair sample that tested positive for cocaine and bezoylecognine.
16. On or about July 13, 2009, Dr. Hyde submitted an application for dental licensure to the Board.
17. Dr. Hyde met with the Board regarding the application for licensure on September 2, 2009.
18. On May 5, 2010, Dr. Hyde signed the Non Public Consent Agreement, from the September 2, 2009 meeting.
19. On May 19, 2010, the Board approved Dr. Hyde's licensure application for License #14478
20. Dr. Hyde's license was granted subject to the conditions set forth in the May 5, 2010 Non Public Consent Agreement, including but not limited to drug testing, self-reporting, and supervision by the Dental Well Being Committee.

21. Paragraph 12 of the May 5, 2010 Non Public Consent Agreement stipulates that in the event of a positive drug test result, Dr. Hyde's license to practice dentistry in the State of Maryland would be suspended immediately.
22. On or about March 30, 2011, the Board received notification from the Dental Well Being Committee of a positive drug screen result for Dr. Hyde. The screen indicated a positive result for cocaine. The Board also received a Hair Test Result Report provided by Hairconfirm, a facility not approved by the Dental Well Being Committee for drug testing. According to the May 5, 2010 Non Public Consent Agreement, Dr. Hyde was required to be tested at a facility approved by the Dental Well Being Committee for drug testing. Having the test performed at a non approved facility was a violation of the May 5, 2010 Non Public Consent Agreement.
23. On February 24, 2011, the Board wrote to Dr. Hyde informing him that the Board had not received a quarterly hair analysis, an employer's quarterly report, or a quarterly self-report, pursuant to the contract with the DWBC.
24. On March 18, 2011, Dr. Hyde was informed by the Board via letter that Dr. Hyde had not submitted the required quarterly reports from his employer nor had the Board received a quarterly report from him describing his progress.
25. By letter dated April 4, 2011, the Board notified Dr. Hyde that he had not complied with the DWBC Agreement because he had not sent a quarterly hair analysis, employer report, or self-report.

26. On or about April 6, 2011, the Board received a copy of an undated letter from Counseling Plus, Inc. to Rob White, Clinical Coordinator of the Dental Well Being Committee. The letter indicated that proper procedures were not followed during the collection of Dr. Hyde's hair sample for drug test on March 10, 2011.
27. On or about August 30, 2011, the Board received notification of a second positive drug screen. Dr. Hyde tested positive for cocaine. The Board also received a copy of the drug screen laboratory report prepared by Friends Medical Laboratory.
28. On October 5, 2011, the Board voted to charge Dr. Hyde with violation of the Non-Public Consent Agreement dated May 5, 2010 based on the fact that Dr. Hyde tested positive for the use of cocaine.
29. On or about October 7, 2011, the Board received a Certificate of Laboratory Analysis from United States Drug Testing Laboratories.
30. On or about November 30, 2011, the Board received notification of a November 16, 2011 positive drug screen. The results were positive for cocaine. The DWBC recommended a five-day evaluation at an inpatient treatment center for professionals in order to determine the appropriate levels for treatment.
31. On December 10, 2011, the evaluating center reported that Dr. Hyde had relapsed in his cocaine addiction, and they recommended that he spend 90 days in an inpatient program. The DWBC instead recommended Intensive Outpatient Treatment (IOPT), 3-4 days per week at a specific outpatient clinic, continued group therapy, after the completion of the

IOPT, 2-3 urines per week; continued outpatient individual therapy; and, mandatory 12-step meetings, at least 3 times per week.

CONCLUSIONS OF LAW

After a hearing and a review of the record, the Board finds that Dr. Hyde is in violation of the terms of his consent order. Three aspects to the Non-Public Consent Order from May 5, 2010 existed and required compliance by Dr. Hyde. First, he was required to abstain from drugs and alcohol. On three occasions he was found to have violated this aspect of the Order. Twice he was found to have cocaine in his system by hair sampling; cocaine was also found in his system through urinalysis. The second aspect required that his employer write quarterly reports regarding Dr. Hyde. Only four reports were produced in a span of over two years. After being contacted by the Board through certified mail, Dr. Hyde wrote two reports. By failing to comply with the terms of his order, the Board finds that Dr. Hyde violated Md. Code Ann., Health Occ. S 4-315(a)(31).

The Board determined that Dr. Hyde's license should be revoked for failing to abide by the terms of his consent order. This determination was made in accordance with the Board's sanctioning guidelines. COMAR 10.44.31. Dr. Hyde has an extensive disciplinary history with the Board and his failure to abide by the terms of the order has the potential to cause serious patient harm. *See* COMAR 10.44.31.05(C)(1)(a) & (c). Dr. Hyde has previously been unsuccessful in his attempts at rehabilitation. *See* COMAR 10.44.31.05.(C)(1)(j). These are the aggravating factors that the Board best fit this case. These aggravating factors trumped any of the possible mitigating factors.

ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusions of Law, it is hereby orders Dr. Hyde's licensed revoked. Further, the Board orders that Dr. Hyde cannot apply for reinstatement for five years from the date of this order.

Additionally, it is ordered that this is a final order of the Maryland State Board of Dental Examiners and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, et seq.

07/02/2013
Date


Ngoc Q. Chu D.D.S., President
Maryland Board of Dental Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules