

IN THE MATTER OF
KERRY CROCKEN, D.D.S.
RESPONDENT

License Number: 12762

* BEFORE THE MARYLAND
* STATE BOARD OF
* DENTAL EXAMINERS
* Case Numbers: 2014-160; 2014-216;
* 2014-237; 2014-260; and 2014-264
*

* * * * *

CONSENT ORDER

In or around January of 2014, the Maryland State Board of Dental Examiners (the "Board") opened an investigation into **Kerry Crocken, D.D.S., License Number 12762** (the "Respondent"). The Board has grounds to charge the Respondent with violations of the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. I. ("Health Occ.") §§ 4-101 *et seq.* (2014 Repl. Vol.) and the regulations adopted by the Board, Md. Code Regs. ("COMAR") §§ 10.44.01 *et seq.*

Specifically, the pertinent provisions of law are as follows:

Health Occ. § 4-315. Denials, reprimand, probations, suspension, and revocations -- Grounds.

(a) *License to practice dentistry.* -- Subject to the hearing provisions of §4-318 of this subtitle, the Board may . . . reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the . . . licensee:

- (11) Permits an unauthorized individual to practice dentistry under the supervision of the applicant or licensee.
- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession;

The relevant provision of the Act defines the practice of dentistry in relevant part as follows:

Health Occ. § 4-101. Definitions

... (l) Practice dentistry. -- "Practice dentistry" means to:

- (1) Be a manager, a proprietor, or a conductor of or an operator in any place in which a dental service or dental operation is performed intraorally;

In order to resolve the case, and in lieu of the Board issuing charges, the Respondent and the Board agreed to enter into this public Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following facts.

Background

1. The Respondent was initially licensed to practice dentistry in Maryland on or about March 11, 2002, under License Number 12762. Respondent's license was non-renewed as of June 30, 2014, however, because the Board had initiated the investigation prior to this date, by operation of law, the Board retained jurisdiction to discipline his license.

2. At all times relevant, the Respondent operated a dental practice at #122 North Philadelphia Boulevard, Aberdeen, Maryland 21001.

Complaint

3. On or about January 27, 2014, the Board received a written complaint (the "Complaint") from a former patient of the Respondent ("Patient A"),¹ stating that the

¹ To ensure confidentiality, the names of patients or other individuals will not be disclosed in this charging document. The Respondent may obtain the identity of any patient or individual referenced herein by contacting the administrative prosecutor.

Respondent's practice had been closed without notice and the Complainant had been unable to access his records after the closure some time near the end of 2013.

4. Subsequently, the Board received several additional complaints from other patients making similar allegations.

5. Based on the Complaint, the Board initiated an investigation.

Board investigation

6. On or about March 18, 2014, the Board sent a letter to the Respondent requesting the release of records to Patient A and advising Dr. Crocken of his obligation to release patient records.

7. On or about June 9, 2014, the Board issued a subpoena to the Respondent for the records of the Complainant.

8. On or about June 12, 2014, the Board received a narrative response from the Respondent. In his response, the Respondent stated that a limited liability company in which he was one of two members, called Hyperion Dental Management, L.L.C. ("Hyperion") had owned the practice approximately from February until September, 2013.

9. At that time, he relinquished any ownership interest in the practice, and ownership transferred from Hyperion to new owners. The Respondent stated that after the transfer of ownership, he was barred from the premises and no longer had access to the patient records.

10. Additional investigation revealed that a non-dentist was the other member of Hyperion, and therefore had been the co-owner with the Respondent of the dental practice.

11. On or about January 22, 2015, the Board's investigator interviewed the Respondent at the Board's offices. During the interview, the Respondent stated that the practice has had multiple different ownership arrangements since 2007. In approximately February of 2013, the previous owners sold the practice to Hyperion, of which Dr. Crocken was a member. Hyperion managed the practice until approximately September 23, 2013, when Hyperion lost ownership of the practice. Shortly thereafter, in approximately November, 2013, the practice closed permanently.

12. In answer to the question of who was the custodian of the records after the closure of the practice, the Respondent said he was unsure.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's conduct, as described above, constitutes violations of the Act and the regulations adopted by the Board as cited above.

Specifically, the Respondent entered into a co-ownership arrangement of a dental practice with a non-dentist, in the form of a limited liability company. This arrangement violated the Act's requirement that only a licensed dentist may own a dental practice, codified at Health Occ. § 4-101(l)(1).

Regardless of the legal organization, whether sole practitioner, professional corporation, limited liability company (LLC), or any other, all members with an ownership stake in a dental practice must be licensed dentists.

The Respondent's conduct constitutes: permitting an unauthorized individual to practice dentistry under the supervision of the applicant or licensee, in violation of

Health Occ. § 4-315(a)(11); and behaving unprofessionally, in violation of Health Occ. § 4-315(a)(16).

The Respondent also failed to timely release patient records upon request, which constitutes behaving unprofessionally, in violation of Health Occ. § 4-315(a)(16).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the Board, hereby:

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent is **FINED** in the following amounts:

I. Regarding the Respondent's failure to timely release patient records: \$1500, of which \$500 is stayed pending compliance with this Consent Order, leaving **\$1000 PAYABLE TO THE BOARD WITHIN THIRTY (30) DAYS** of the execution date of this Consent Order; and

II. Regarding the Respondent's entrance into a co-ownership arrangement of a dental practice with a non-dentist: \$5000, of which \$4000 is stayed pending compliance with this Consent Order, leaving **\$1000 PAYABLE TO THE BOARD WITHIN THIRTY (30) DAYS** of the execution date of this Consent Order; and it is further

ORDERED that the Respondent shall comply with the Act; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board, and any of its agents or employees, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order, and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

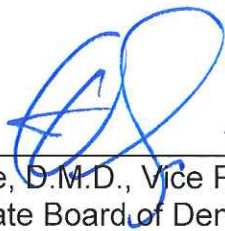
ORDERED that if the Respondent violates any of the terms or conditions of the Consent Order, the Board, in its discretion, after notice and an opportunity for a show

cause hearing before the Board, or an evidentiary hearing if there is a genuine dispute of fact, may impose an additional probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty; and it is further

ORDERED that this Consent Order is a Final Order of the Board and a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 et seq. (2014).

5/17/17

Date



Arthur C. Jee, D.M.D., Vice President
Maryland State Board of Dental Examiners

CONSENT

By this Consent, I, Kerry Crocken, D.D.S., acknowledge that I have had the opportunity to consult with legal counsel at all stages of this matter but have freely decided not to do so. I understand that this Consent Order will resolve the Charges against me and forfeit my right to a formal evidentiary hearing on the Charges. By this Consent, I agree to be bound by the terms of this Consent Order. I acknowledge under oath that I in fact committed the specific violations as set forth above. I acknowledge under oath the accuracy of the Findings of Fact and the validity of the Conclusions of Law contained in this Consent Order. I acknowledge that for all purposes, the Findings of Fact and Conclusions of Law will be treated as if proven in a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these Findings of Fact and Conclusions of Law. I acknowledge the legal

authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I waive my right to any appeal in this matter. I affirm that I have asked and received satisfactory answers to all my questions regarding the language, meaning, and terms of this Consent Order. I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order.

5/2/17
Date

Kerry Crocken, D.D.S.
The Respondent

NOTARY

STATE OF De

CITY/COUNTY OF: New Castle

I HEREBY CERTIFY that on this 2 day of May, 2017, before me, a Notary Public of the State and County aforesaid, personally appeared Kerry Crocken, D.D.S., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Jason M Raab
Notary Public

My commission expires: 8-16-17

Jason M. Raab
Notary Public
#20130816000023
Commission Expires 8/16/2017