

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stanley Dubin, D.D.S.,	:		
	:	Petitioner	
	:		
v.	:		
	:		
Department of State, State Board	:		
of Dentistry,	:		
	:		No. 2006 C.D. 2009
Respondent	:		Submitted: April 16, 2010

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: May 27, 2010

Stanley Dubin, D.D.S. (Dubin) petitions this Court for review of the September 18, 2009 order of the State Board of Dentistry (Board) revoking Dubin's license to practice dentistry. Dubin essentially presents one issue for this Court's review: whether the Board abused its discretion in revoking Dubin's license. For reasons that follow, we affirm the Board's order.

Dubin, a licensed dentist, operated a dental practice in Philadelphia, Pennsylvania. On May 21, 1991, Dubin entered a guilty plea to one count of Medicaid Fraud for which he was sentenced to two years probation, and a \$10,000.00 fine. As a result, Dubin entered into a consent decree with the Board whereby his license to practice dentistry was suspended for one year. The suspension was stayed in favor of a three month active suspension, followed by a nine month probationary period and a civil penalty of \$1,000.00. Thereafter, on June 18, 1998, the Board

reprimanded Dubin and issued a \$100.00 civil penalty for his having made misleading, deceptive, untrue or fraudulent representations.

On December 17, 2003, Dubin was indicted in the Superior Court of New Jersey on four counts of Forgery-False Issue, five counts of Forgery-Uttering, two counts of Falsifying or Tampering with Records, two counts of Impersonation – Theft of Identity, two counts of Simulated Document, two counts of Conspiracy, and one count of Theft by Deception. On March 22, 2004, Dubin entered a guilty plea on one count of Theft by Deception and one count of Forgery-Uttering. All other charges were dismissed. He received a sentence of 30 days imprisonment plus five years probation and was ordered to pay restitution in the amount of \$1,141.00 on the Theft by Deception charge; and a concurrent term of 30 days imprisonment plus five years probation, conditioned upon drug and alcohol screenings, no motor vehicle infractions and no acts of domestic violence on the Forgery-Uttering charge. Dubin subsequently served his sentence by reporting to the Day Reporting Program in New Jersey, and completing community service in lieu of imprisonment.

Between November of 2005 and March of 2007, Dubin utilized the services of his wife, Katie Karmanicki (Karmanicki), as a dental hygienist. Karmanicki did not have a license to practice as a dental hygienist. Dubin was subsequently charged by the Board with violating multiple provisions of the Dental Law¹ including making misleading, deceptive, untrue or fraudulent representations to an agent of the Board, knowingly aiding and assisting unlicensed persons as dental hygienists, unprofessional conduct by and through 49 Pa. Code § 33.211(a)(3) for delegating duties to persons that the dentist knows or has reason to know the persons

¹ Act of May 1, 1933, P.L. 216, *as amended*, 63 P.S. §§ 120-130j.

are not authorized to perform, and two counts of being found guilty of a crime or misdemeanor involving moral turpitude.

On June 18, 2008, Dubin was served with a Notice that a formal disciplinary action before the Board was filed against him, and an Order to Show Cause why disciplinary action should not be taken. Dubin filed an answer and stipulations, but failed to attend the hearing on December 9, 2008. On December 26, 2008, the Hearing Examiner issued an order suspending Dubin's license for one year and ordering him to pay a civil penalty of \$1,000.00. On January 5, 2009, the Board filed a Notice of Intent to Review Proposed Adjudication and Order. On January 27, 2009, Dubin filed his Brief on Exceptions claiming that the New Jersey convictions were not an appropriate basis for any sanction.

On March 31, 2009, the Board filed an order adopting the proposed adjudication of the Hearing Examiner, but substituting its own final order revoking Dubin's license to practice dentistry. Dubin filed a Petition for Reconsideration which was granted, and the Board vacated its order of March 31, 2009. On September 18, 2009, the Board again entered an order revoking Dubin's license to practice dentistry. On October 14, 2009, Dubin appealed to this Court.²

Dubin argues the Board abused its discretion in revoking his license. The primary basis of his argument is that his original Order to Show Cause only included the violation of permitting his unlicensed wife to work in his office as a hygienist. Based on that violation, a proposed consent agreement was reached whereby Dubin would receive a civil penalty of \$1,000.00. However, before the consent agreement was accepted, the prosecutor discovered Dubin's prior

² "Our review is limited to determining whether constitutional rights were violated, whether the decision is in accordance with the law and supported by substantial evidence." *Mostatab v. State Bd. of Dentistry*, 881 A.2d 1271, 1274 n.2 (Pa. Cmwlth. 2005).

convictions. At that point, the Order to Show Cause was amended to include the criminal charges, and the prosecutor added a one year suspension of Dubin's license to the proposed consent decree. Dubin refused to consent, and asked that the stipulated facts be presented to the Hearing Examiner in order to determine sanctions. Dubin argues that to go from a \$1,000.00 civil penalty to a license revocation on the basis of a conviction that happened years ago and is unrelated to the practice of dentistry is an abuse of discretion, even in combination with his prior disciplinary action and permitting his unlicensed wife to practice.

Section 4.1(a)(7) of the Dental Law, specifically states:

The board shall have authority, by majority action, to refuse, revoke or suspend the license of any dentist or dental hygienist or certificate of an expanded function dental assistant for any or all of the following reasons:

Knowingly maintaining a professional connection or association with any person who is in violation of this act or regulations of the board or **knowingly aiding, assisting, procuring or advising any unlicensed person to practice dentistry or dental hygiene** or uncertified person for expanded function dental assisting contrary to this act or regulations of the board.

Added by the Act of December 20, 1985, P.L. 513, *as amended*, 63 P.S. § 123.1(a)(7) (emphasis added). In addition, Section 10 of the Dental Law, 63 P.S. § 129(e), provides: "It is unlawful for a person practicing dentistry to employ a person as a dental hygienist unless such person is licensed as a dental hygienist as required by this act and the rules and regulations of the board" And Section 4.1(a)(6) of the Dental Law, 63 P.S. § 123.1(a)(6), provides that the board shall have authority to revoke a license for: "Violating any of the provisions of this act or of a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding." Moreover, Section

4.1(a)(8) of the Dental Law, 63 P.S. § 123.1(a)(8), provides that a license can be revoked for: “Engaging in unprofessional conduct.” Under 49 Pa. Code § 33.211(a)(3), unprofessional conduct includes: “Delegating to a person duties that the dentist knows, or has reason to know, the person is not competent to perform or not authorized to perform.”

It is undisputed that Dubin permitted his unlicensed wife to work in his office as a dental hygienist from November of 2005 to March of 2007. Accordingly, even without giving any consideration to Dubin’s criminal history and his prior disciplinary action, the Board had the authority to revoke his license. Clearly, taking action specifically authorized by the Dental Law is not an abuse of discretion. The fact that other factors may have been considered only buttresses the Board’s sanction.

This Court notes that it is of no consequence that the prosecutor originally offered Dubin a civil penalty, and then increased the penalty to a one year suspension when the criminal charges were discovered. The original consent decree was never accepted and is therefore irrelevant. Within the confines of the Dental Law, the Board was free to impose any sanction it believed Dubin’s actions warranted. This Court has no reason to disturb its decision.

For all of the above reasons, the Board’s order is affirmed.

JOHNNY J. BUTLER, Judge

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	:	
Respondent	:	

ORDER

AND NOW, this 27th day of May, 2010, the September 18, 2009
order of the State Board of Dentistry is affirmed.

JOHNNY J. BUTLER, Judge