

THE RECORD

The record includes the testimony of Brian Sedars, Respondent, and Jocelyn Wilson, MDiv, LISW; State Exhibits 1-16 (See Exhibit Index for description), and Respondent Exhibits A-G.

FINDINGS OF FACT

Certification, Practice, and Disciplinary History

On June 27, 2007, Respondent applied to the Board for a dental assistant registration. At the time of her application, Respondent reported that she had three convictions for operating a motor vehicle while intoxicated (OWI). Respondent's OWI convictions had occurred in January 1999, February 2000, and September 2005. Respondent further reported that she had been diagnosed with alcohol dependence in January 2005. On January 10, 2008, Respondent and the Board entered into a Stipulated Registration Agreement. Pursuant to that agreement, Respondent was issued registration and qualification number 09492 to practice as a dental assistant in the state of Iowa. Respondent's registration as a dental assistant was made subject to probationary terms and conditions for a period of five (5) years. (Testimony of Brian Sedars; State Exhibits 6, 14)

The terms and conditions of probation required Respondent, in part, to completely abstain from the personal use and possession of alcohol and from all controlled substances and drugs unless prescribed by a duly licensed and treating health care provider. Respondent was also required to attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) at least three times a week, obtain a sponsor, and provide verification of her attendance. Respondent was also required to submit to random alcohol or drug tests and to inform all employers of the terms of her probation. (State Exhibit 14)

In 2009, the Board received a toxicology report indicating that Respondent had consumed alcohol, in violation of the terms of her probation. Respondent admitted consuming alcohol on more than one occasion. Respondent submitted to a substance abuse evaluation and was diagnosed with alcohol dependence. The evaluator recommended that Respondent participate in intensive outpatient substance abuse treatment. This recommendation was based on Respondent's continued use despite negative consequences, her extensive legal history of OWI charges, her lack of insight into the harmful effects of her drinking, and her total denial about her addictive disorder. Respondent completed treatment and was discharged on July 15, 2009. (State Exhibits 10, 11, 15, 16)

On August 28, 2009, Respondent was charged with failure to comply with the terms of the Board's Order placing her registration on probation. On January 16, 2009, Respondent and the Board entered into a Stipulation and Consent Order to resolve the charges. Respondent was placed on probation for a period of two (2) years. Respondent successfully completed probation and was discharged on January 16, 2011. (Testimony of Brian Sedars; State Exhibits 10-11, 15, 16)

Respondent's dental assistant certification is current and will next expire on August 31, 2015. Respondent has been employed by the same dental practice for the past seven years and is currently working 30-35 hours each week as a certified dental assistant with expanded functions certification. Respondent serves as the main chair-side assistant for her employing dentist, who reports that she has had favorable performance reviews. Respondent's employer is aware of her record of convictions and her periods of probation. (Testimony of Respondent; Respondent Exhibits C, D, E)

The Current Charges

In April 2013, Respondent was again arrested for Operating While Intoxicated (OWI). On October 4, 2013, Respondent entered a guilty plea to the crime of OWI-2nd Offense,¹ in violation of Iowa Code section 321J.2. Respondent was fined and sentenced to a short jail term for this conviction. Respondent was placed on criminal probation for a period of two years and was required to undergo a substance abuse evaluation and to comply with any treatment recommendations. Respondent reports that she had the court-ordered evaluation at the time of her most recent conviction, and no treatment recommendations were made as a result of that evaluation. Respondent will be on criminal probation until August 2015. Respondent was also required to install an ignition interlock device on her car which requires her to provide a breath specimen prior to starting her car and every 20 minutes while driving her car. Although the required time period for the ignition interlock device has expired, it is still on Respondent's car because she cannot afford the fee for having it removed. (Testimony of Respondent; State Exhibit 13)

On October 9, 2013, Board Investigator Brian Sedars went to Respondent's place of employment to question Respondent about her recent OWI conviction. Respondent had just returned to work following a medical leave for knee surgery. According to Mr. Sedars' report, Respondent told him that she was "drinking a lot" prior to her June

¹ Although this was Respondent's fourth OWI, OWI convictions that are more than 12 years old are deleted from the records of the Iowa Department of Transportation and are not considered in determining the number of prior violations. See Iowa Code section 321.12(4).

2013 knee surgery. Respondent told Mr. Sedars that at the time of her arrest, she was driving to southern Iowa to get a walker and some crutches in preparation for her surgery. Respondent also told Mr. Sedars that she had not consumed any alcohol since her arrest. (Testimony of Respondent; State Exhibit 5)

On October 31, 2013, the Board issued a Confidential Order requiring Respondent to submit to another substance abuse evaluation. On November 27, 2013, Respondent submitted to an evaluation by the same licensed psychologist who had assessed her for the Board in 2009. At the time of this evaluation, Respondent reported that her last use of alcohol was on April 19, 2013. She further reported that she had been prescribed hydrocodone following her knee replacement surgery in June 2013 and that she was still taking hydrocodone at bedtime on occasion. The licensed psychologist diagnosed Respondent with alcohol dependence in remission. This recommendation was based on Respondent's diagnosis, her legal history of four OWIs, her presentation of symptoms, and her past reported use of alcohol. (State Exhibits 7, 8)

Respondent attended weekly mental health therapy sessions with Jocelyn A. Wilson, MDiv, LICSW from August 26, 2013 through October 28, 2013. Payment issues caused Respondent to suspend her participation in therapy from late October 2013 through early August 2014. On August 9, 2014, Respondent resumed therapy with Jocelyn Wilson, and she now has an estimated date of discharge of December 20, 2014. During this time, Ms. Wilson has performed two psychosocial assessments of Respondent using criteria from the DSM-V. In Ms. Wilson's opinion, Respondent does not meet the criteria for diagnosis with a substance abuse disorder. Ms. Wilson reports that Respondent is making satisfactory progress in their therapy sessions, which have addressed mental health issues and substance abuse. Ms. Wilson has not recommended that Respondent abstain from the use of alcohol. (Testimony of Respondent; JocelynWilson, MDiv, LISW; Respondent Exhibits A, B, F).

Respondent testified that she may have told the investigator that she had been "drinking a lot" on the day of her most recent OWI, but she denied that she had been drinking a lot over any extended period of time. Respondent testified that she had a total of four drinks the day of her OWI arrest and made a "stupid decision" to drive. Respondent explained that at the time she felt it was urgent that she pick up the cane and walker from her friend prior to her surgery because insurance would not be covering these items. At hearing, Respondent admitted that she still has an occasional beer but denied that she has a substance abuse problem. (Testimony of Respondent)

CONCLUSIONS OF LAW

Count I

Iowa Code section 272C.10(3)(2013) and 650 IAC 30.4(4) authorize the Board to discipline licensees for habitual intoxication or addiction to the use of drugs.

A majority of the Board was not persuaded that Respondent's pattern of problematic drinking can fairly be characterized as constituting "habitual intoxication" at this time. The Board determined that its significant concerns about Respondent's pattern of problematic drinking and OWIs can be adequately addressed through Count II of the Statement of Charges. Therefore, the Board is not finding a violation under Count I.

Count II

Iowa Code section 153.34(10) provides, in relevant part:

153.34 Discipline

The board may issue an order to discipline a licensed dentist or dental hygienist, or registered dental assistant for any of the grounds set forth in this chapter, chapter 272C, or Title IV. Notwithstanding section 272C.3, licensee or registrant discipline may include a civil penalty not to exceed ten thousand dollars. Pursuant to this section, the board may discipline a licensee or registrant for any of the following reasons:

...

10. For a violation of a law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which law relates to the practice of dentistry, dental hygiene, or dental assisting. A certified copy of the final order or judgment of conviction or plea of guilty

650 IAC 30.4(4) and (28) provide, in relevant part:

650-30.4(153) Grounds for discipline. The following shall constitute grounds for the imposition by the board of one or more of the disciplinary sanctions set forth in rule 650-30.2(153) specifically including the imposition of civil penalties not to exceed \$10,000.

...

4. Conviction of a felony or conviction of a misdemeanor crime if the misdemeanor relates to the practice of the profession.

...

28. Violating any provision of Iowa law, or being a party to or assisting in any violation of a provision of Iowa law.

The preponderance of the evidence established that Respondent violated Iowa Code section 153.34(10) and 650 IAC 30.4(4) and 30.4(28) when she was convicted of Operating While Intoxicated (OWI)-Second Offense on October 4, 2013. Respondent's fourth OWI conviction was related to her practice as a registered dental assistant because it raises serious concerns about Respondent's ability to control her drinking. Patient safety would be threatened if a registered dental assistant provides services to patients while under the influence or effects of alcohol.

This was the fourth time that Respondent was convicted of an OWI. Because of Respondent's history of three OWIs and the substance abuse evaluation that diagnosed her with alcohol dependence, her initial registration was granted on a five year term of probation in 2009. Respondent violated the terms of that probation by consuming alcohol. After her fourth OWI conviction in 2013, another substance abuse evaluation report diagnosed Respondent with alcohol dependence in remission and recommended further treatment.

Respondent's decision to drive her vehicle after consuming alcohol to the point of intoxication, even after she has repeatedly faced serious legal consequences for similar behavior, raises serious concerns about her ability to consume alcohol safely and in moderation. Respondent was vague in her responses to the Board's questions about her drinking. Patient safety must be the Board's first priority. Respondent's repeated convictions for alcohol related offenses raise significant concerns about whether or not she has the necessary self-control to ensure that she does not practice dental assisting while under the influence or effects of alcohol.

DECISION AND ORDER

IT IS THEREFORE ORDERED that dental assistant registration #09492, issued to Respondent Cynthia Adams, R.D.A., is hereby placed on probation for a period of two (2) years, subject to the following terms and conditions:

1. Respondent shall completely abstain from the personal use and possession of alcohol and from all controlled substances or drugs in any form unless prescribed by a duly licensed and treating health care provider.

2. Respondent shall comply with unannounced and random requests for witnessed blood or urine samples made by any agent or designee of the Board. Respondent's blood or urine samples will be tested for drugs and alcohol a minimum of four times each year. All costs associated with the drug and alcohol screening shall be promptly paid for by Respondent.

3. Respondent shall continue in therapy with her current therapist or with another Board-approved therapist until she is discharged from therapy and the discharge has been approved by the Board. Respondent's Board approved therapist shall provide quarterly written reports to the Board concerning her attendance and progress in therapy sessions and shall provide the Board with a written discharge summary at the time that discharge is recommended. Respondent shall ensure that the reports are submitted prior to the first day of January, April, July, and October of each calendar year for the duration of this Order. Respondent shall be responsible for all costs associated with her therapy and shall sign releases to allow for the free flow of information between the Board and her therapist.

4. Respondent shall fully disclose this Order to all current and future employers who employ her as a dental assistant. Within 14 days of the issuance of this Decision and Order and within 14 days of any new employment relationship, Respondent shall provide the Board with a signed statement from her employer stating that they have read the Board's Decision and Order.

5. Respondent shall report any new criminal charges and any new criminal convictions (including deferred judgments) to the Board within ten (10) days of the date of the charge or the date of the conviction.

6. Respondent shall submit quarterly written reports to the Board detailing her compliance with the terms and conditions of this Order. Respondent shall ensure that the reports are submitted prior to the first day of January, April, July, and October of each calendar year for the duration of this Order.

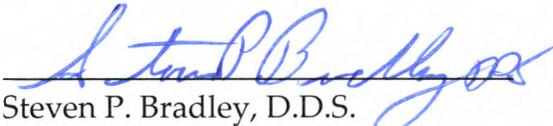
7. Respondent shall be responsible for all costs associated with compliance with this Order. Respondent shall promptly remit twenty five dollars (\$25) on or before the first day of January, April, July, and October of each calendar year for the duration of this Order.

8. Respondent shall upon reasonable notice, and subject to the provisions of 650 IAC 31.6, appear before the Board at the time and place designated by the Board.

9. Periods of residence outside the state of Iowa may be applied toward the period of probation if approved by the Board prior to the commencement of the out of state residency. Notice of any change of residence must be provided to the Board within fourteen (14) days of the change.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 650 IAC 51.35, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and any costs calculated by the executive director within thirty (30) days of receipt of the notice of costs.

Dated this ^{5th} day of *November*, 2014.


Steven P. Bradley, D.D.S.
Chairperson
Iowa Dental Board

cc: Sara Scott, Assistant Attorney General, Hoover Building, Des Moines, Iowa 50319

Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A and Iowa Code section 153.33(5)(g) and (h).