

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)	
BOARD OF DENTISTRY,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-1921
)	
HOUSHANG J. DAYAN, D.D.S.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

A hearing was held pursuant to notice on November 28, 2000, by Barbara J. Staros, assigned Administrative Law Judge of the Division of Administrative Hearings, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Rosanna M. Catalano, Esquire
Agency for Health Car Administration
2727 Mahan Drive
Fort Knox Building, Mail Stop 39
Tallahassee, Florida 32308

For Respondent: No appearance was made on behalf
of Respondent.

STATEMENT OF THE ISSUE

At issue is whether Respondent committed the offenses set forth in the Amended Administrative Complaint and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner, Department of Health, Board of Dentistry, filed an Amended Administrative Complaint on or about February 17, 2000, with two counts of professional violations against Respondent, a licensed dentist.

Respondent disputed the allegations in the Amended Administrative Complaint and petitioned for a formal hearing involving disputed issues of material fact. The case was referred to the Division of Administrative Hearings on or about May 8, 2000. A formal hearing was set for November 28, 2000, with notice of said hearing sent to counsel for both parties.

On September 20, 2000, counsel for Respondent filed a Motion to Withdraw. No response to the motion was filed and the motion was granted on October 3, 2000. On October 4, 2000, a Notice of Hearing was sent directly to Respondent to the address identified as Respondent's by his attorney.

No pre-hearing stipulation was filed. Counsel for Petitioner indicated that Respondent had not responded to discovery or attempts at contacting him.

At hearing, Petitioner presented the testimony of Evangaline Rentz and Michael Kennedy. Official recognition was taken of Chapters 455 and 466, Florida Statutes, and Section 20.43, Florida Statutes. Petitioner's Exhibits numbered 1-3 were admitted into evidence.

At the time the hearing was scheduled to commence, the hearing was opened but no appearance was made on behalf of Respondent. The hearing recessed for one-half hour to give Respondent every opportunity to appear, but no appearance was made on his behalf.

A transcript consisting of one volume was filed on January 5, 2001. On January 8, 2001, Petitioner timely filed a Proposed Recommended Order which has been considered in the preparation of this Recommended order. Respondent has not filed any post-hearing submission.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of dentistry pursuant to Section 20.43, Florida Statutes, and Chapters 455 and 466, Florida Statutes. Pursuant to the authority of Section 20.43(3)(g), Florida Statutes, Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative and prosecutorial services by the Division of Medical Quality Assurance, councils, or boards.

2. Respondent is and has been at all times material hereto, a licensed dentist in the State of Florida, having been issued license number DN0006759. Respondent's dental license has been delinquent since March 1, 2000.

3. Respondent's last known address is 8081 Park Villa Circle, Cupertino, California 95014.

4. On or about December 16, 1993, Respondent was convicted in a jury trial of one count of soliciting prostitution, five counts of sexual battery and two counts of false imprisonment in the County of Santa Clara, California. Respondent was sentenced to three years in prison. The sentence was suspended and Respondent was placed on felony probation for five years subject to the following conditions: that he serve one year in the county jail; that he pay fines and penalties; that he undergo psychiatric counseling; that he report his conviction to future employers; that he report to the California Dental Board; that he treat male patients only; and that he have no contact with the victims.

5. The circumstances underlying Respondent's criminal convictions involved sexual battery of female employees in the dental office and of female patients during dental treatments in his office while he was engaged in the practice of dentistry.

6. In or around January 1996, the California Board of Dentistry accepted Respondent's surrender of his California license to practice dentistry in case number AGN 1994-18, and allowing Respondent to apply for reinstatement after one year, subject to the terms and conditions of Respondent's criminal probation.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

8. Petitioner has the burden of proving by clear and convincing evidence the specific allegations of the Amended Administrative Complaint. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

9. Section 466.028, Florida Statutes, reads in pertinent part as follows:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

* * *

(b) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of dentistry or dental hygiene. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges.

* * *

(2) When the board finds any applicant or licensee guilty of any of the grounds set

forth in subsection (1), it may enter an order imposing one or more of the following penalties:

- (a) Denial of an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$3,000 for each count or separate offense.
- (d) Issuance of a reprimand.
- (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or demonstrate competency through a written or practical examination or to work under the supervision of another licensee.
- (f) Restricting the authorized scope of practice.

10. Count I of the Amended Administrative Complaint charged Respondent with committing an act which disciplinary action may be taken pursuant to Section 466.028(1)(b), Florida Statutes, for having a license to practice dentistry revoked, suspended, or otherwise acted against by the licensing authority of another state. As Respondent's license to practice dentistry was suspended by the licensing authority of California, Petitioner has met its burden of proving Count I.

11. Count II of the Amended Administrative Complaint charged Respondent with committing an act for which disciplinary action may be taken pursuant to Section 466.028(1)(c), Florida

Statutes, for being convicted or found guilty of a crime in any jurisdiction which relates to the practice of dentistry. As Respondent was convicted by a California jury of one count of soliciting an act of prostitution, five counts of sexual battery and two counts of false imprisonment, all crimes which were related to Respondent's practice of dentistry, Petitioner has met its burden of proving Count II.

12. Rule 64B5-13.005, Florida Administrative Code, reads in pertinent part as follows:

(3) When the Board finds an applicant or licensee whom it regulates under Chapter 466, Florida Statutes, has committed any of the acts set forth in Section 466.028, Florida Statutes, it shall issue a Final Order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

* * *

(c) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory, or country. The usual action of the Board shall be to impose a period or probation, restriction of practice, suspension and/or revocation depending upon the conduct involved and penalties imposed by the other jurisdiction. In the case of an applicant, the Board shall deny the application.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of dentistry or dental hygiene. The usual action of the Board shall be to impose

any of the penalties specified in subsection 466.028(2), F.S. dependent upon the gravity of the underlying conduct. However, in the case of criminal conduct involving insurance fraud, sexual misconduct, or drug violations, the Board shall impose a suspension or revocation. In the case of an applicant, the Board shall deny the application.

* * *

(4) Based upon consideration of aggravating or mitigating factors, present in an individual case, the Board may deviate from the penalties recommended in subsections (2) and (3) above. The Board shall consider as aggravating or mitigating factors the following:

- (a) The severity of the offence;
- (b) The danger to the public;
- (c) The number of repetitions of offenses or number of patients involved;
- (d) The length of time since the violation;
- (e) The number of times the licensee has been previously disciplined by the Board;
- (f) The length of time the licensee has practiced;
- (g) The actual damage, physical or otherwise, caused by the violation and the reversibility of the damage;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty upon the licensee's livelihood;
- (j) Any efforts of rehabilitation by the licensee;
- (k) The actual knowledge of the licensee pertaining to the violation;
- (l) Attempts by the licensee to correct or stop the violation or refusal by the licensee to correct or stop violation;
- (m) Related violations against the licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;

- (n) Penalties imposed for related offenses under sections (2) and (3) above;
 - (o) Any other relevant mitigating or aggravating factor under the circumstances.
- (Emphasis supplied.)

* * *

13. Petitioner seeks revocation of Respondent's license to practice dentistry. Revocation is one of the penalties which the board may impose pursuant to Section 466.028(2), Florida Statutes, and is within the permissible range established by Rule 64B-13.005. Moreover, several of the aggravating factors which are enumerated in said rule are present. No mitigating factors were presented by Respondent. Accordingly, there being no reason to deviate from Petitioner's recommendation, its proposed penalty is accepted as appropriate. Walker v. Department of Business and Professional Regulation, 705 So. 2d 652, (Fla. 5th DCA 1998).

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That the Board of Dentistry enter a final order adopting the foregoing findings of fact and conclusions of law and which revokes Respondent's license.

DONE AND ENTERED this 9th day of February, 2001, in
Tallahassee, Leon County, Florida.

BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of February, 2001.

COPIES FURNISHED:

Rosanna M. Catalano, Esquire
Agency for Health Care Administration
Post Office Box 14229
Mail Stop 39
Tallahassee, Florida 32317-4229

Houshang J. Dayan, D.D.S.
8081 Park Villa Circle
Cupertino, California 95014

William H. Buckhalt, Executive Director
Board of Dentistry
Department of Health
4052 Bald Cypress Way
Tallahassee, Florida 32399-1701

Theodore M. Henderson, Agency Clerk
Department of Health
4052 Bald Cypress Way Bin A02
Tallahassee, Florida 32399-1701

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.