

**BEFORE THE MISSOURI DENTAL BOARD**

MISSOURI DENTAL BOARD	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2009-007207
	)	
	)	
ARNOLD BARBER, D.D.S.	)	
	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DISCIPLINARY ORDER**

At its scheduled meeting on July 29, 2011, and pursuant to notice described in the Findings of Fact, the Missouri Dental Board (Board) took up the probation violation complaint alleging that Arnold S. Barber, DDS (Licensee) has failed to comply with the terms of his probation.

The Board appeared at the hearing through Attorney Tina Crow Halcomb, Attorney at Law. Licensee was not present at the hearing and was not represented by counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the Board’s legal advisor at the hearing, during deliberations, and in the preparation of this order.

**Findings of Fact**

1. The Board is an agency of the state of Missouri created and established pursuant to § 332.021, RSMo Cum. Supp. 2010, for the purpose of licensing all persons engaged in the practice of dentistry in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapter 332, RSMo (as amended).

2. Licensee Arnold S. Barber, D.D.S. holds dentist license number 010597 issued by the Board. Licensee's license was current and active at all relevant times.

3. On or about May 18, 2009, the Board issued its Findings of Fact, Conclusions of Law and Disciplinary Order (Disciplinary Order) placing Licensee's license on probation for a period of five years, effective June 2, 2009, for violations of § 332.321.2(5), (6), (13), and (15), RSMo.

4. During the disciplinary period, Licensee was entitled to engage in the practice of dentistry pursuant to Chapter 332, RSMo, provided that Licensee adhered to all of the terms and conditions of the Disciplinary Order.

Failure to take and pass the jurisprudence examination

5. As a term of the Disciplinary Order, page 3, paragraph I.B., Licensee was ordered to take and pass the Board's jurisprudence examination within the first twelve months of his disciplinary period.

6. Licensee was scheduled to take the jurisprudence examination on April 14, 2010. Licensee missed the examination because he had a stroke on February 28, 2010.

7. A Board inspector reminded Licensee of the requirement of his probation and Licensee took the examination on September 15, 2010. Licensee failed the examination.

8. Licensee took the examination again on November 17, 2010. Licensee failed the examination.

9. Licensee took the examination for the third time on January 18, 2011. Licensee failed the examination.

10. Licensee never took and passed the Board's jurisprudence examination.

Failure to maintain a practice monitor and file reports

11. As a term of the Disciplinary Order, pages 3-4, paragraph II, Licensee was required to maintain a contract with an approved practice monitor to review and ensure compliance with all applicable drug laws and drug regulations. The practice monitor was required to provide ongoing reports to the Board, commencing 30 days after the beginning of the disciplinary period.

12. A Board inspector reminded Licensee of the requirement to have a practice monitor and for the practice monitor to submit reports to the Board on or about August 20, 2010.

13. The Board received no practice monitor reports regarding Licensee between September 24, 2009 and September 20, 2010.

Violation of federal and state drug laws, rules and regulations

14. As a term of probation, page 4, paragraph III.D., Licensee was required to comply with all provisions of the Dental Practice Act, Chapter 332, RSMo and all state and federal drug laws, rules and regulations.

15. Licensee stocked controlled substances without possessing a current, valid DEA registration between July 31, 2010 and August 24, 2010 when he surrendered his controlled substance stock to the Adair County Sheriff.

16. On or about August 20, 2010, Licensee authorized a prescription for Diazepam, a controlled substance pursuant to § 195.017.8(2)(n), for patient S.R., while Licensee did not have a current, valid Drug Enforcement Agency (DEA) registration. Licensee also did not properly document S.R.'s record regarding the prescription.

17. Licensee obtained a new DEA registration on December 9, 2010.

Licensee also obtained a Missouri Bureau of Narcotics and Dangerous Drugs registration on December 9, 2010.

18. On or about November 6, 2009, Licensee authorized a prescription for 240 mls. of Pro-Red AC Syrup (Codeine/Phenylephrine/Pyrilamine), a controlled substance pursuant to § 195.017.4(1)(a)g, to patient T.R. without properly documenting the prescription pursuant to 19 CSR 30-1.048.

19. On or about November 11, 2009, Licensee authorized controlled substance prescriptions without proper documentation in the patient record pursuant to 19 CSR 30-1.048 to patient B.S. Licensee prescribed Oxycodone/APAP, a controlled substance pursuant to § 195.017.4(1)(a)n, Tylenol #3 (Codeine and Acetaminophen), a controlled substance pursuant to § 195.017.6(4)(b), Dexamethasone, Penicillin VK, Mephyton, and Ibuprofen 800 mg.

20. On or about April 5, 2010, Licensee prescribed APAP/Codeine, a controlled substance pursuant to § 195.017.6(4)(b), Diazepam, a controlled substance pursuant to § 195.017.8(2)(n) and Oxycodone, a controlled substance pursuant to § 195.017.4(1)(a)n to patient C.M. without proper documentation pursuant to 19 CSR 30-1.048.

21. On or about April 30, 2010, Licensee prescribed APAP/Codeine, a controlled substance pursuant to § 195.017.6(4)(b) to patient H.H. without proper documentation pursuant to 19 CSR 30-1.048.

22. On or about May 3, 2010, Licensee prescribed APAP/Codeine, a controlled substance pursuant to § 195.017.6(4)(b) to patient T.M. without proper documentation pursuant to 19 CSR 30-1.048.

23. On or about May 10, 2010, Licensee prescribed Hydrocodone, a controlled substance pursuant to § 195.017.4(1)(a)j to patient L.M. without proper documentation pursuant to 19 CSR 30-1.048.

24. On or about June 7, 2010, Licensee prescribed Hydrocodone, a controlled substance pursuant to § 195.017.4(1)(a)j to patient G.P. without proper documentation pursuant to 19 CSR 30-1.048.

25. Patients C.M., H.H., T.M., L.M., and G.P. all received controlled substances authorized by Licensee after his stroke on February 29, 2010 and prior to his return to practice on August 17, 2010.

26. Licensee prescribed Tr.Re. the following prescriptions, none of which are contained in her patient records:

- a. Methylprednisolone, 4 mg on June 28, 2009.
- b. Hydrocortisone, 2.5% on September 28, 2009.
- c. Methylprednisolone, 4 mg on October 29, 2009.
- d. Azithromycin 250 mg Z pack on November 8, 2009.

27. Licensee began using new prescription forms on or about December 7, 2010 which do not comply with § 338.056.2 and 338.056.3, RSMo.

Violation of federal and state criminal laws

28. As a term of probation, page 4, paragraph III.D., Licensee was required to comply with all federal and state criminal laws.

29. On or about June 3, 2011, Licensee was found guilty by a jury of two counts of the Class C felony of Tampering with a Victim/Witness or Attempted Tampering with a Victim in a Felony prosecution in violation of § 575.270, RSMo.

Notice

30. On or about June 29, 2011, the Board provided notice of the time, date and location of the probation violation hearing to Licensee and his counsel by certified mail. The Board received confirmation from the United States Post Office that the notice was delivered on July 1, 2011.

**Conclusions of Law**

31. The Board has jurisdiction in this proceeding, pursuant to the Disciplinary Order to determine whether Licensee has violated the terms and conditions of the Disciplinary Order.

32. The Board also has jurisdiction pursuant to § 324.042, RSMo to determine whether Licensee has violated the terms and conditions of the Disciplinary Order.

Section 324.042 states, in pertinent part:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

33. Section 332.321.2(2), RSMo states:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or any offense involving moral turpitude, whether or not sentence is imposed;

34. Section 332.361, RSMo states, in relevant part:

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010 only to the extent that:

(1) The dentist possesses the requisite valid federal and state registration to distribute or dispense that class of controlled substance;

(2) The dentist prescribes, administers, dispenses, or distributes the controlled substance in the course of his professional practice of dentistry, and for no other reason;

(3) A bona fide dentist-patient relationship exists; and

(4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

35. Section 338.056, RSMo states, in relevant part:

1. Except as provided in subsection 2 of this section\*, the pharmacist filling prescription orders for drug products prescribed by trade or brand name may select another drug product with the same active chemical ingredients of the same strength, quantity and dosage form, and of the same generic drug type, as determined by the United States Adopted Names and accepted by the Federal Food and Drug Administration. Selection pursuant to this section is within the discretion of the pharmacist, except as provided in subsection 2 of this section\*. The pharmacist who selects the drug product to be dispensed pursuant to this section shall assume the

same responsibility for selecting the dispensed drug product as would be incurred in filling a prescription for a drug product prescribed by generic name. The pharmacist shall not select a drug product pursuant to this section unless the product selected costs the patient less than the prescribed product.

2. A pharmacist who receives a prescription for a brand name drug may, unless requested otherwise by the purchaser, select a less expensive generically equivalent product under the following circumstances:

(1) If a written prescription is involved, the prescription form used shall have two signature lines at opposite ends at the bottom of the form. Under the line at the right side shall be clearly printed the words: "Dispense as Written". Under the line at the left side shall be clearly printed the words "Substitution Permitted". The prescriber shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the prescriber on one of these lines;

(2) If an oral prescription is involved, the practitioner or the practitioner's agent, communicating the instructions to the pharmacist, shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted. The pharmacist shall note the instructions on the file copy of the prescription.

3. All prescriptions written in the state of Missouri by practitioners authorized to write prescriptions shall be on forms which comply with subsection 2 hereof.

36. 19 CSR 30-1.048 states, in relevant part:

(1) Each individual practitioner, institutional practitioner and pharmacy shall maintain records with the following information for each controlled substance received, maintained, dispensed or disposed:

(A) The name of the substance;

(B) Each finished form (for example, ten milligrams (10 mg) tablet or ten milligram (10 mg) concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (for example, 100 tablet bottle or three milliliter (3 ml) vial);

(C) The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received;

(D) The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance;

(E) The number of units or volume of the finished forms, commercial containers, or both, disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

(2) Each individual practitioner shall maintain a record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient's medical record. When the controlled substance record is maintained in the patient's medical record and the practitioner is not the custodian of the medical record, the practitioner shall make the controlled substance record available as required in 19 CSR 30-1.041 and 19 CSR 30-1.044.

...

(4) A registrant who transfers a controlled substance to or receives a controlled substance from another registrant shall maintain a written record of the transfer which contains the following information: the date of transfer, drug name, strength, dosage form, quantity, name, address and registration number of the transferring registrant and the name, address and registration number of the receiving registrant.

37. Regulation 20 CSR 2110-2.160 states, in relevant part:

(6) Any violation of a suspension order or a post-order requirement shall constitute grounds for the Missouri Dental Board to impose a further suspension or to revoke the licensee's certificate of registration, license to practice dentistry, or both.

(7) Any violation of a probationary agreement shall constitute grounds for the Missouri Dental Board to impose a further period of probation, a period of suspension or to revoke the licensee's certificate of registration, license to practice dentistry, or both.

38. Licensee's failure to take and pass the Board's jurisprudence examination within the first twelve months of the effective date of the Disciplinary Order, failure to maintain a contract with a practice monitor and submit reports between September 24, 2009 and September 20, 2010, failure to comply with the Dental Practice Act, Chapter 332, RSMo, state and federal drug laws and state criminal law, gives cause for the Board to impose further discipline upon Licensee's dental license pursuant to the Disciplinary Order and § 324.042, RSMo., § 332.321.2(2), and 20 CSR 2110-2.160(6) and (7).

39. The Disciplinary Order, § 324.042 and § 332.321.2(2) allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of the Disciplinary Order.

40. The Board has determined this Order is necessary for the protection of the public.

### **Decision and Order**

It is the decision of the Board that Licensee has violated the terms of the Disciplinary Order, and that his license is, therefore, subject to further disciplinary action.

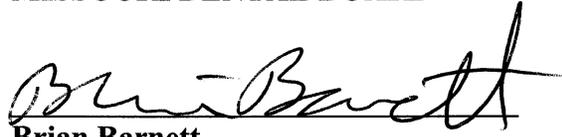
The Board orders that the dental license of Licensee, license number 010597, shall be **REVOKED**.

Licensee shall return all indicia of licensure to the Board immediately.

This Order will be maintained as an open record of the Board as provided in Chapters 332, 610, 324, RSMo.

SO ORDERED this 9th day of August 2011.

**MISSOURI DENTAL BOARD**

A handwritten signature in black ink, appearing to read "Brian Barnett", written over a horizontal line.

**Brian Barnett,  
Executive Director**