

BEFORE THE MISSOURI DENTAL BOARD

In the Matter of the Application of)
)
SHAWN ANTHONY CHARLES TOLNAY, D.M.D.)
)
Applicant.)

**ORDER OF THE MISSOURI DENTAL BOARD ISSUING A PROBATIONARY
DENTAL LICENSE TO SHAWN ANTHONY CHARLES TOLNAY, D.M.D.**

The Missouri Dental Board (“Board”) hereby issues its **ORDER** granting the **DENTAL LICENSE** of Shawn Anthony Charles Tolnay (hereafter “Tolnay”), License No. 2010028124 **subject to FIVE (5) YEARS PROBATION under terms and conditions described below**, pursuant to the provisions of § 324.038, RSMo. As set forth in § 324.038.2, RSMo, Tolnay may submit a written request to the Administrative Hearing Commission seeking a hearing and review of the Board’s decision to issue a probated license. Such written request must be filed with the Administrative Hearing Commission within 30 days of delivery or mailing of this Order of the Board. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman State Office Building, Room 640, Jefferson City, MO 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board’s decision shall be considered waived. Should Tolnay file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

I.

Based upon the foregoing, the Board hereby states:

FINDINGS OF FACT

1. The Missouri Dental Board (“Board”) is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 332.
2. Shawn Anthony Charles Tolnay currently resides at 1522 Rosewood Terrace Drive, Manchester, Missouri 63021.
3. Tolnay’s social security number is xxx-xx-0480.
4. On or about October 16, 2009, Tolnay applied for licensure as a dentist. On his application, Tolnay answered yes to the following questions:
 - a. 3. Are you presently being investigated or is any disciplinary action pending against any professional license, certification, registration or permit you hold or have applied for? If yes, attach a full explanation.
 - b. 8. Have you ever had any controlled substance registration issued by the Drug Enforcement Agency, state bureau of narcotics, or any other lawful authority concerned with controlled substances denied, voluntarily surrendered, revoked, suspended, placed on probation, censured, reprimanded, fined or otherwise subject to any type of disciplinary action, or are such actions currently pending? If yes, attach a full explanation.
5. At the time of application, Tolnay had an active license from the Montana Board of Dentistry (Montana Board), with an expiration date of March 31, 2010, an expired license from the Oregon Board of Dentistry (Oregon Board), and a license expired and revoked from the New Mexico Board of Dental Health (New Mexico Board).
6. Tolnay attached a statement regarding his answers to questions 3 and 8 on the application. Based on Tolnay’s application and statement, the Board conducted an investigation

related to Tolnay's application. The Board's investigation, including Tolnay's statement revealed:

- a. The Oregon Board disciplined Tolnay's license on March 3, 1996. The Oregon Board reprimanded his license and ordered him to pay a civil penalty in the amount of \$300. The Oregon Board disciplined Tolnay because he ordered controlled substances for his personal consumption from his dental supply company. In his response, Tolnay states he did have a prescription for the controlled substances but "it was wrong and may have been a[n] early sign of my future addiction."
- b. Tolnay's Class 3 (Deep Sedation) permit issued by the Oregon Board expired on March 31, 2001.
- c. Tolnay re-applied for a license to practice in Oregon. The Oregon Board denied the application because Tolnay: 1) practiced dental hygiene without a license in Oregon on December 3 and 4, 2001; 2) falsified his application in that he failed to disclose that he had been disciplined by the New Mexico Board on March 22, 1999; 3) purchased controlled substances for his personal consumption, other than by prescription from a licensed practitioner in conjunction with treatment between March 27, 2001 and August 27, 2001; and 4) attempted to obtain a controlled substance by misrepresentation when he telephonically obtained a prescription for Vicodin from Anne Meyer, DDS for a non-existent tooth ache on December 11, 2001.
- d. The New Mexico Board revoked Tolnay's license on July 26, 2003. The New Mexico Board had issued Tolnay's license conditioned on him refraining from self-prescribing or abusing drugs. Tolnay stipulated at a hearing before the New

Mexico Board that he violated the conditions of his license concerning drug abuse in that he prescribed drugs outside the scope of dental practice and injudiciously prescribed drugs.

- e. On or about February 1, 2002, Tolnay entered into treatment at Serenity Lane Treatment, a substance abuse treatment facility in Eugene, Oregon. Tolnay then moved to Missouri where he voluntarily participated in the Missouri Well Being Program until he received his Montana dental license in 2004.
- f. On or about July 1, 2004, Tolnay entered into an aftercare agreement with the Montana Professional Assistance Program (MPAP). Participation in MPAP was required to maintain his DEA certification. Tolnay was required to attend meetings, meet with physicians, limit his practice, notify MPAP of use of substances, attend continuing education related to prescribing controlled drugs, and drug and alcohol testing. Tolnay agreed to participate in MPAP for as long as he held a Montana dental license. Tolnay entered into an amended aftercare agreement with MPAP on December 15, 2008.
- g. In December 2008, a former employee, who Tolnay had fired, filed a complaint against Tolnay alleging numerous violations of Montana law. The Montana Board investigated the complaint and found Tolnay was over-sedating patients. On June 11, 2009, the Montana Board summarily suspended Tolnay's sedation permit for an indefinite period of time pending additional disciplinary hearings. On or about December 8, 2009, the Montana Board entered a stipulation and final order to resolve the matter. The stipulation and final order publicly censured Tolnay for the sedation violation and Tolnay voluntarily surrendered his sedation

permit. Additionally, the Montana Board placed his dental license on probation for one year, required Tolnay to participate in MPAP and attend continuing education courses in the area of ethics.

- h. On or about August 4, 2009, MPAP filed a complaint with the Montana Board alleging violations of the aftercare agreements. Additionally, MPAP withdrew its support of Tolnay as a result of missing treatment meetings and other deviations. MPAP did state, in a letter to the Missouri Dental Board, that Tolnay had no relapses of substance abuse and all drug screening had been negative. As a result of MPAP's complaint, the Montana Board summarily suspended Tolnay's dental license. On or about October 6, 2009, the Montana Board entered its stipulation and final order. The stipulation publicly censured Tolnay's dental license and ordered him to enter into a new agreement with MPAP. On or about October 6, 2009, Tolnay entered into a new agreement with MPAP which is still valid today.
7. Tolnay appeared before the Board at its July 2010 meeting. He admitted to his substance abuse problems and treatment history. He stated he had been sober for eight years with no relapses. He stated he has an Alcoholics Anonymous sponsor and attends meetings. He admitted to the discipline of his licenses described in paragraph 6 above. He admitted to the loss of his sedation permit as a result of over-sedating a patient as described in paragraph 6 above.

II.

CONCLUSIONS OF LAW

8. The Board has authority to deny or refuse a license application pursuant to § 332.321.1, RSMo 2000, which provides:

The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes

stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

9. The Board has cause to deny or refuse Tolnay's application for a dental license pursuant to § 332.321.2 RSMo 2000, which provides:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter imposed by another state, province, territory, federal agency or country upon grounds for which discipline is authorized in this state[.]

10. As a result of Tolnay's substance abuse history, as described in paragraphs 6 and 7 above, as well as disciplinary action against his licenses and permits as described in paragraphs 6 and 7 above, the Board has cause to deny or refuse Tolnay's application for a dental license pursuant to § 332.321.1, RSMo, and § 332.321.2 (1), (5) and (8), RSMo.

11. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, RSMo, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

12. The Board issues this Order in lieu of denial of Tolnay's application for a dental license. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Based on the foregoing, Shawn Anthony Charles Tolnay is granted a dental license, which is hereby placed on **PROBATION** for a period of five (5) years from the effective date of this Order, subject to the terms and conditions set forth below.

IV.

TERMS AND CONDITIONS

During the aforementioned probation, Tolnay shall be entitled to present himself and serve as a licensed dentist subject to the following terms and conditions:

I. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Order by no later than January 1 and July 1 during each year of the disciplinary period.
- C. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

- E. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of her current place of business and residence, the time of her absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor her compliance with the terms and conditions of this Order.
- H. If Licensee fails to comply with the terms of this order, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- I. This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

II. ADDITIONAL REQUIREMENTS

- A. Licensee shall not make application to the Board for, or hold, any sedation permits pursuant to § 332.362, RSMo and any rules or regulations validly promulgated pursuant thereto.
- B. During the disciplinary period, Licensee shall participate in the Missouri Dental Well-being Committee ("Committee"). Within fifteen (15) days of the effective date of this agreement, Licensee shall cause the Committee to send written notification to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, confirming that Licensee has joined the program. Licensee shall follow all recommendations of the Committee or the Committee Administrator with regards to counseling, evaluations, any treatment deemed necessary by an evaluation, and any follow-up care. Failure to fully participate in the Well-Being Committee shall constitute a violation of this Agreement.
- C. During the disciplinary period, Licensee shall, at Licensee's expense, submit to drug screens as required by the Board. Licensee shall, upon demand and without delay, provide a biological sample to the Board's designated representative, including allowing the Board's designated representative to obtain witnessed biological fluid samples and shall cooperate fully and completely with the Board's designated representative in providing such samples. The presence of any controlled substance,

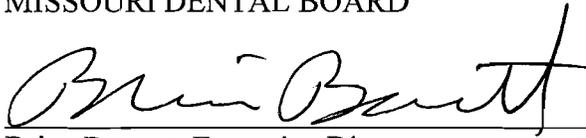
alcohol, or any drug whatsoever in a drug screen for which Licensee does not hold a valid prescription shall constitute a violation of this Agreement.

- D. Licensee shall not engage in the solo practice of dentistry.
- E. Licensee shall not make application with the Missouri Department of Health and Senior Services, Board of Narcotics and Dangerous Drugs (BNDD) registration.
- F. Licensee shall not allow his license to lapse.

This Order does not bind the Board or restrict the remedies available to it concerning any violation by Respondent of the terms and conditions of this Order, Chapter 332, RSMo (as amended), or the regulations promulgated thereunder.

SO ORDERED, EFFECTIVE THIS 10th DAY OF AUGUST, 2010.

MISSOURI DENTAL BOARD

A handwritten signature in cursive script, appearing to read "Brian Barnett", is written over a horizontal line.

Brian Barnett, Executive Director