BEFORE THE MISSOURI DENTAL BOARD

MISSOURI DENTAL BOARD

Petitioner,

v.

No. DB-17-001-PV

ELLIOTT L. MUNALULA, DDS

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISCIPLINARY ORDER

At its scheduled meeting on October 26, 2017, and pursuant to notice described in the Findings of Fact, the Missouri Dental Board (Board) took up the probation violation complaint alleging that Elliott L. Munalula, DDS (Licensee) has failed to comply with the terms of his probation.

The Board appeared at the hearing through Attorney Scott T. Evans, Attorney at Law. Licensee was not present at the hearing and was not represented by counsel. Division of Professional Registration Senior Legal Counsel Thomas Mark Townsend 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,\(^1\) 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 holds dentist license number 013064 issued by the Board. Licensee’s license was current and active at all relevant times. Licensee’s license is currently on probation.

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\(^1\) All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.
3. On or about June 2, 2016, the Board executed a Settlement Agreement and Disciplinary Order (Disciplinary Order) between the Board and Licensee. The Disciplinary Order found cause to discipline Licensee’s license pursuant to § 332.321.2(5), (6), and (13), RSMo based on Licensee’s failure to maintain records sufficient to document the examination, treatment plan, diagnosis and what treatment was completed and; Licensee failed to keep adequate records and failed to complete the required continuing education to which he attested on his November 2014 renewal application.

4. The Disciplinary Order placed Licensee’s license to practice dentistry on probation for a period of two years. The probation constituted the disciplinary period of Licensee’s license.

5. Pursuant to paragraph I.A. of the Settlement Agreement Respondent was to take and pass the Board’s jurisprudence examination within the first twelve months of the disciplinary period and also providing that failure to pass as required within the time frame required would constitute a violation of the Settlement Agreement.

6. Respondent took and failed the Board’s jurisprudence examination on August 17, 2016 and again on November 16, 2016.

7. The first twelve months of the disciplinary period expired on June 18, 2017.

8. As of the date of this hearing, October 26, 2017, Respondent had not taken and passed the Board’s jurisprudence examination, as required by the Settlement Agreement executed by Petitioner and Respondent.

9. Pursuant to paragraph I.B. of the Settlement Agreement Respondent was to complete forty (40) hours of remedial education in diagnosis, treatment planning and record keeping from an accredited dental school within the first nine (9) months of the disciplinary period. Respondent was to submit the proposed remedial education plan in writing to the Petitioner for approval, and was to complete a competency examination upon the conclusion of the education, and also providing that a failure to comply with the requirements would constitute a violation of the Settlement Agreement executed by the Petitioner and the Respondent.

10. The first nine months of the disciplinary period expired on March 18, 2017.
11. As of the date of this hearing, October 26, 2017, Respondent had not completed the required remedial education and did not complete a competency examination, as required by the Settlement Agreement executed by Petitioner and Respondent.

12. Pursuant to paragraph I.C. of the Settlement Agreement Respondent was to enter into a contract with Affiliated Monitors, Inc., to monitor Respondent's record keeping, diagnosis, treatment planning, infection control, and other areas of the practice of dentistry within the first thirty days of the disciplinary period. Respondent was to contact an evaluator approved by Petitioner and was to arrange for said evaluator to submit to Petitioner written reports and also providing that any failure by Respondent to follow the recommendations of the contracted evaluator shall constitute a violation of the Settlement Agreement executed by the Petitioner and the Respondent.

13. The first thirty days of the disciplinary period expired on July 18, 2016.

14. As of the date of this hearing, October 26, 2017, Respondent had not submitted any documentation or evidence to Petitioner of entering into a contract with Affiliated Monitors, Inc., as required by the Settlement Agreement executed by Petitioner and Respondent.

15. Paragraph II.G. of the Settlement Agreement executed by Petitioner and Respondent stated that if Respondent failed to comply with the terms of the Settlement Agreement, in any respect, Petitioner may impose such additional or other discipline that it deems appropriate.

16. On or about September 27, 2016, Board Investigator, Tracey Pfaff, spoke with Respondent to ensure Respondent understood the terms and conditions of the Settlement Agreement. Respondent acknowledged that he understood what was required under the Settlement Agreement.

17. On or about September 6, 2017, the Board sent Licensee notice of the Probation Violation hearing. The Notice contained the date, time and place for the hearing. The Board also provided Licensee a copy of the Probation Violation Complaint filed with the Board on or about July 6, 2017.
Conclusions of Law

18. 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.

19. 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.

20. 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.

21. The Board also has jurisdiction to discipline Licensee pursuant to § 332.321.2(5), (6), and (13), RSMo and .3, RSMo. Sections 332.321.2(5), (6), and (13), RSMo and 332.321..3, RSMo state, in relevant part:

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:

(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;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter; or any lawful rule or regulation adopted pursuant to this chapter;
(13) Violation of any professional trust or confidence.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2, for disciplinary action are met, the board may, singly or in combination:

(3) Revoke the license, certificate, or permit. In any order of revocation, the board may provide that the person shall not apply for licensure for a period of not less than one year following the date of the order of revocation.

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

23. 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 013064, shall be REVOKED. Licensee shall be precluded from re-applying for a Missouri dental license for ONE YEAR from the date of this Order.

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 12th day of DECEMBER 2017.

MISSOURI DENTAL BOARD

[Signature]
Brian Barnett,
Executive Director