



ARIZONA STATE BOARD OF DENTAL EXAMINERS

4205 North 7th Avenue, Suite 205 • Phoenix, Arizona 85013

Telephone (602) 242-1492 • Fax (602) 242-1445

www.azdentalboard.us

MEETING OF THE ARIZONA STATE BOARD OF DENTAL EXAMINERS MINUTES OF THE BOARD MEETING WEDNESDAY, JULY 15, 2015

Board Members Present:

Michael R. Hauer, DDS, President
Mr. Joshua Greer

Board Members Present (telephonically):

Robert H. Foster, DDS, Vice President
Howard Sorensen, DDS
Darren L. Flowers, DMD
Heather N. Hardy, RDH
Ms. Carole A. Crevier
Mr. Charles E. Jackson

Board Members Absent:

Robert B. Taylor, DDS
Marilyn J. McClain, RDH

Staff Present:

Ms. Elaine Hugunin, Executive Director
Ms. Nancy Chambers, Deputy Director
Ms. Mary DeLaat Williams, Assistant Attorney General
Ms. Sherrie Biggs, Licensing Supervisor
Ms. Yubeka James, Legal Administrator

Agenda Item No. 1 – Call to Order and Instructions

Dr. Hauer called the meeting to order at 7:30 a.m.

Agenda Item No. 2 – Dr. Vincent Arthur Martinez – Case No 201400032-C – Review, discussion and possible action regarding opening an investigation for non-compliance with Stipulated Rehabilitation Agreement and making false statements to a Board representative, issuance of an Interim Order for Substance Abuse Evaluation and possible summary suspension.

For the record, Dr. Sucher, the Board's Medical Director, was present on the phone call. Jeffrey Tonner, attorney for Dr. Martinez was present in the Board room. Ms. McClain and Dr. Taylor were absent.

Dr. Martinez tested positive for cocaine on June 8, 2015. Dr. Sucher requested a meeting with Dr. Martinez. The meeting never occurred; however, Dr. Martinez provided a hair sample on June 26, 2015 that tested positive for cocaine and alcohol. As to the reason he tested positive, Dr. Martinez provided a letter from Banner University Medical Center stating that TAC was used to prepare the site for local anesthesia. Upon investigation by Dr. Sucher, the letter was found to be false and written by a scheduling clerk. Dr. Martinez was asked to sign an interim voluntary suspension form in accordance with his Stipulated Rehabilitation Agreement with the Board. At the last minute a signed agreement with

**ARIZONA STATE BOARD OF DENTAL EXAMINERS
MINUTES OF THE BOARD MEETING
JULY 15, 2015
PAGE 2**

a significant part deleted was provided to the Board. His legal counsel was informed that this was not acceptable and the Board would convene to discuss the matter.

Dr. Sucher commented from the professional, clinical aspect of the case.

Dr. Sucher addressed the Board. Dr. Sucher has been acquainted with Dr. Martinez since November of 2011. While living in Tucson, Dr. Martinez had a suspended New Mexico dental license and wanted to obtain an Arizona dental license one day. He asked to be monitored privately by Dr. Sucher. It is important to note that Dr. Martinez has had three episodes of suspension or revocation of his license by the New Mexico Dental Board. He has been previously treated for cocaine addiction around 1999 in Palmetto, which is a professional treatment program in the Southeastern United States. He did relapse after treatment, which Dr. Sucher believes resulted in the first suspension or revocation of Dr. Martinez' New Mexico dental license. Dr. Martinez' revocation in May or June of 2008 was due to relapse type behavior and non-compliance. He monitored with Dr. Sucher beginning November 22, 2011 through September, 2012. On September 11, 2012, Dr. Martinez had a positive cocaine drug screen at 214mg per mL and no medical explanation. Three days later he had a positive ethyl glucuronide, which is an alcohol metabolite, and he decided to cease monitoring at that time. Dr. Martinez denied using cocaine and believes that someone at work spiked his coffee with alcohol and/or cocaine. He began monitoring again on November 19, 2013. A urine screening done on June 8, 2015 tested positive for cocaine at 495mg per mL. Dr. Sucher did not receive the results until June 16th and called Dr. Martinez immediately. Dr. Martinez stated he had a medical procedure done on June 5th at Banner University Medical Center. It was an outpatient procedure and a topical anesthetic was used. There are some topical anesthetics that contain cocaine and Dr. Sucher requested that Dr. Martinez provide medical documentation. Dr. Martinez provided a letter a week later that was dated June 18th from Banner University which included a detailed description of the use of TCA and that Dr. Martinez has requested that it not be used in the future.

The letter had an unusual look and appeared to be on incomplete stationary. Upon further investigation by Dr. Sucher, the signature and typed name at the bottom was a scheduling clerk and Dr. Sucher was told that scheduling clerks do not write medical letters. It was further confirmed that Dr. Martinez had not been seen at Banner University since March of 2009 and the letter was not in his patient file. Dr. Martinez admitted that he had not been straightforward, but did not provide the details of what transpired. On June 26th, Dr. Martinez presented on the last day possible, for a hair drug test. It tested positive for cocaine, benzo ethylene (a metabolite of cocaine), and coca ethylene (a metabolite of cocaine and alcohol). This indicated that Dr. Martinez has used alcohol and cocaine simultaneously. Based upon his history of multiple prior relapse, and the results of the testing, Dr. Sucher opined that he does not believe Dr. Martinez is safe to practice and is in need of a comprehensive evaluation, which should include a polygraph. Dr. Sucher has not been in communication with Dr. Martinez for approximately one week.

The Board asked Dr. Sucher to clarify the reasons he believes Dr. Martinez isn't safe to practice.

Dr. Martinez has been diagnosed with cocaine dependency. He has been treated and has had subsequent treatment with Palmetto following a relapse and relapsed evaluation. He is under an agreement that states he will not consume alcohol and he will not use any drugs unless prescribed by a knowledgeable provider for proper therapeutic purposes. He violated that agreement by using cocaine as demonstrated by both the positive urine drug screen and the positive hair test. Additionally, because the hair test shows the presence of cocoa ethylene (a metabolite which only comes from the use of cocaine and alcohol together), Dr. Sucher believes Dr. Martinez has relapsed and needs either long term residential treatment or an evaluation to determine the exact extent of treatment. As such, Dr. Martinez is not safe to practice dentistry until that has been accomplished and all recommendations have been complied with, and he has been reevaluated by Dr. Sucher and received some permanent approval from the Board.

The Board asked Dr. Sucher to explain the danger to the public if Dr. Martinez was to continue practicing. Dr. Sucher explained the essence of addiction is the loss of control. Most professionals go to great lengths to avoid having problems in the workplace. With this type of diagnosis, you cannot tell when a

**ARIZONA STATE BOARD OF DENTAL EXAMINERS
MINUTES OF THE BOARD MEETING
JULY 15, 2015
PAGE 3**

loss of control will occur and directly impact patient care. Due to the long time history of this diagnosis, Dr. Martinez is not safe to practice until he has received a satisfactory evaluation and all necessary treatment. He is a cocaine addict and alcoholic in relapse.

The Board asked what a comprehensive evaluation entailed. A comprehensive evaluation is typically a three - five day process at a recognized center. It includes a medical evaluation, an addiction and relapse evaluation, a psychiatric evaluation, psychological evaluation, psychological testing, laboratory work, additional laboratory work, drug testing beyond what was previously done, a medical polygraph, and the obtaining of collateral information. Obtaining collateral information would be done by speaking to his coworkers, his monitor, his AA sponsor, and anyone else who is involved in Dr. Martinez' recovery and care.

The Board asked Dr. Sucher if it was common to have a patient get a three-day evaluation for a positive urine test, but did not have a history of relapse.

Dr. Sucher replied yes and that it depends on where the person is in the process. At the initial visit, Dr. Sucher performs a brief health assessment. This is usually an interview that lasts for a couple of hours and where Dr. Sucher accesses the current records available. It often contains hair and drug testing. In about 90% of the cases, upon review of the last three to four years for the Medical and Dental Board, a determination can be made as to what the issue may be. If there is uncertainty or if the patient is in denial, the patient will be sent for a comprehensive evaluation. In a case such as Dr. Martinez, a positive result without a legitimate medical explanation represents the use of cocaine. This is in violation of his agreement and a relapse for this addiction would typically warrant additional treatment. Dr. Martinez' Stipulated Rehabilitation Agreement states this.

Dr. Waite MOVED to open an investigation for non-compliance with a Stipulated Rehabilitation Agreement based upon Dr. Martinez' positive drug test, submission of false documentation, and lying to a Board representative.

Mr. Tonner addressed the Board.

Dr. Martinez signed the voluntary suspension submitted to the board on Monday. He scratched out the middle clause which would have waived his right to due process. It states that he will do what the Board or Dr. Sucher orders. This was not in the agreement that he has signed. Dr. Martinez last practiced on Thursday. He has not practiced Friday, Monday, Tuesday, or Wednesday. When Mr. Tonner last spoke to him, he was in the process of trying to find a facility. Mr. Tonner stated that Dr. Martinez had spoken to several of them that had been recommended by Dr. Sucher and it was now a matter of convenience and cost. Mr. Tonner recommended that the Board accept the voluntary surrender of Mr. Martinez' license and order him to go into a testing facility for a program.

The Board discussed not accepting the signed voluntary surrender form with the clause scratched out and opening an investigation for non-compliance with a Stipulated Rehabilitation Agreement. The opening of an investigation will not stop Dr. Martinez from practicing. Based upon Dr. Sucher's testimony, Dr. Martinez is not safe to practice and his license should be suspended until he completes the comprehensive evaluation.

Upon MOTION by Dr. Waite, second by Mr. Greer, the Board voted to OPEN an investigation for failure to comply with the Stipulated Rehabilitation Agreement which encompasses the possible substance abuse relapse and Dr. Martinez' failure to comply with the terms and false statements made to the Board's Medical Director. MOTION PASSED UNANIMOUSLY

Ms. Williams proposed the following of Finding of Facts for the Summary Suspension of Dr. Martinez' license:

ARIZONA STATE BOARD OF DENTAL EXAMINERS
MINUTES OF THE BOARD MEETING
JULY 15, 2015
PAGE 4

1. The Board has the authority for the regulation and control of the practice of dentistry in the State of Arizona.
2. Respondent is the holder of License No. D8889, issued on February 10, 2014 for the practice of dentistry in the State of Arizona.
3. On February 19, 2014, Respondent entered into a Stipulated Rehabilitation Agreement ("SRA") with the Board in which he agreed to participate in the Board's Confidential Monitored Aftercare Treatment Program ("MATP") for a period of five years.
4. Respondent agreed to comply with the following terms in the SRA:
 - Respondent shall submit to random biological fluid or hair sample testing performed by a Board-approved laboratory;
 - Respondent shall not consume alcohol or any food or other substance containing alcohol or poppy seeds;
 - Except in an emergency, Respondent shall take no medications unless prescribed by his primary care physician ("PCP") or other health-care provider to whom the PCP refers Respondent. Respondent shall not self-prescribe any medication. Respondent shall notify the Medical Director (Dr. Michel Sucher) in writing within forty-hours of a prescription being issued for controlled substances.
 - Respondent shall submit to mental, physical, and medical competency examinations at such times and under such conditions directed by the MATP Medical Director to assist the Executive Director and Board staff in monitoring compliance with the terms of SRA and Respondent's ability to safely engage in the practice of dentistry;
 - Respondent shall obey all federal, state and local laws, and all rules governing the practice of dentistry in Arizona;
 - In the event of chemical dependency relapse by Respondent or his use of drugs or alcohol in violation of the SRA, Respondent shall promptly enter into an interim order for practice restriction that requires, among other things, that Respondent not practice dentistry until such time as Respondent successfully completes long-term inpatient treatment for chemical dependency designated by the Medical Director and obtains affirmative approval from the Board or the Executive Director to return to the practice of dentistry.
5. On June 8, 2015, a urine sample submitted by Respondent pursuant to the SRA tested positive for Cocaine.
6. Respondent denied using Cocaine. Respondent informed the MATP Medical Director that on June 5, 2015, he underwent a medical procedure on his left ring finger at Banner University Medical Center and that Tetracaine-Adrenalin-Cocaine ("TAC") was used to prepare the finger for local anesthesia. The Medical Director instructed Respondent to provide medical documentation supporting his explanation. Respondent provided a letter dated June 18, 2015, purportedly from Banner University Medical Center stating that Respondent had a medical procedure performed on June 5, 2015 and that TAC was used for anesthesia. The Medical Director was concerned with the authenticity of the letter.
7. Subsequent information the Medical Director received indicated that Respondent has not been seen as a patient at Banner University Medical Center since March 17, 2009.
8. The Medical Director ordered Respondent to submit to a hair test on or before June 26, 2015. The hair sample Respondent submitted tested positive for Cocaine and alcohol metabolites.
9. Respondent has not provided a satisfactory legitimate medical explanation for the positive urine and hair tests.

**ARIZONA STATE BOARD OF DENTAL EXAMINERS
MINUTES OF THE BOARD MEETING
JULY 15, 2015
PAGE 5**

10. Respondent has refused Board staff's and the Medical Director's repeated requests to voluntarily enter into an interim agreement not to practice dentistry and to obtain a substance abuse evaluation and subsequent treatment, if recommended by the Medical Director or substance abuse facility.
11. Respondent has also failed to provide requested releases of medical information and respond to emails and voice mails on a timely basis.

Upon MOTION by Mr. Greer, second by Dr. Foster, the Board voted to ACCEPT the Interim Findings of Facts read into the record by Ms. Williams. MOTION PASSED UNANIMOUSLY.

Mr. Greer proposed the following additional Interim Findings of Facts

- 1) It is Dr. Sucher's opinion that Respondent is not safe to practice. Dr. Sucher opines that the Respondent is cocaine dependent. The essence of any kind of addiction, specifically cocaine dependency is a loss of control as is the Board is unable to determine when Respondent's loss of control will spill over into his practice.
- 2) The Respondent is in relapse of his cocaine addiction.
- 3) As a result of Respondent's addiction, the Board finds there is a danger to the public health, safety or welfare that requires emergency action.
- 4) The Board finds that the Respondent's June 18th letter was a forgery based on Dr. Sucher's concerns and subsequent investigation, specifically his conversation with the hospital.
- 5) Respondent altered the Interim Voluntary Suspension and the alteration was unacceptable to the Board.

Upon Motion by Mr. Greer, second by Dr. Flowers, the Board voted to ACCEPT additional Interim Findings of Facts. MOTION PASSED UNANIMOUSLY

For the record, Dr. Martinez did not ask Dr. Sucher for a list of approved evaluation centers that can perform a polygraph as part of that evaluation. Dr. Sucher has not provided Dr. Martinez a list of acceptable evaluation centers to date.

Based on the conduct described in the Interim Findings of Facts, Ms. Williams proposed the following Interim Conclusions of Law for the Summary Suspension of Dr. Martinez' license:

- 1) The Board has jurisdiction over the subject matter hereof and over Respondent, holder of License No. D8889 for the practice of dentistry in the State of Arizona.
- 2) The conduct and circumstances described above constitute unprofessional conduct as defined in the following sections of A.R.S. § 32-1201.01:
 - (2) Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, denturist or dental hygienist to practice that person's profession;
 - (12) knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

**ARIZONA STATE BOARD OF DENTAL EXAMINERS
MINUTES OF THE BOARD MEETING
JULY 15, 2015
PAGE 6**

- (14) Any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public;
- (22) Failing to comply with a board order, including an order of censure or probation.

Such conduct constitutes grounds for disciplinary action, including suspension or revocation of Respondent's dental license, pursuant to A.R.S. 32-1263(A)(1).

The Board discussed eliminating number twelve as Dr. Martinez violated his Board Order by lying to the Medical Director and not as it relates to the practice of dentistry.

Upon MOTION BY Mr. Greer, second by Dr. Sorensen, the Board voted to ACCEPT the Interim Conclusions of Law read into the record by Ms. Williams with the exception of number twelve. MOTION PASSED UNANIMOUSLY

Upon MOTION by Mr. Greer, second by Dr. Foster, the Board voted to ACCEPT the Finding of Emergency that the public health, safety and welfare imperatively requires emergency action and as a result of that emergency ORDER a summary suspension of Dr. Martinez' license. MOTION PASSED UNANIMOUSLY

A member of the Board asked if Dr. Martinez' employer would be notified of the summary suspension. Generally, the Board does not notify the employer of a summary suspension. It is public information and is listed on the website. Unless the business entity is informed they are unaware of the suspension unless notified by the licensee. If Dr. Martinez practices and the Board is made aware, he would be in violation of this order.

Under 32.1263.01(g), the Board may post a notice of suspension or revocation at the licensee's place of business. The notice shall remain posted for 90 days, a person who removes this notice without Board or court approval is guilty of a class III misdemeanor. The Board has the discretion to post it.

Upon MOTION by Mr. Greer, second by Ms. Hardy, the Board voted to DIRECT the Executive Director to refer this matter to the Office of Administrative Hearing to schedule a hearing as expeditiously as possible. MOTION PASSED UNANIMOUSLY

The remaining issue on the agenda is consideration of issuing an interim order for substance abuse evaluation.

Upon Motion by Mr. Greer, second by Dr. Foster, the Board voted to ORDER that the Respondent shall successfully complete a comprehensive substance abuse evaluation and/or treatment including a medical polygraph at a substance abuse facility the Board and/or the Medical Director approve within 30 days of the Board's order. It is further ordered that the Respondent shall inform the Board of his chosen facility four days prior to his entry into that facility. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 3 – Adjournment

Upon MOTION by Dr. Hauer, so moved, the Board voted to ADJOURN the Board meeting. MOTION PASSED UNANIMOUSLY.

Dr. Hauer adjourned the meeting at 8:23 a.m.

Minutes APPROVED at the October 2, 2015 Board Meeting

Elaine Hugunin, Executive Director