

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Renée D. Coleman-Mitchell, MPH
Commissioner

Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

PUBLIC HEALTH HEARING OFFICE

September 4, 2019

Ammar Idlibi, DDS
33 Maggie Court
Terryville, Connecticut 06786

**Certified Mail RRR #91 7199 9991 7038 3996 1268
and VIA EMAIL (aidlibi@yahoo.com)**

Matthew Antonetti, Principal Attorney
Department of Public Health
410 Capitol Avenue, MS #12LEG
PO Box 340308
Hartford, CT 06134-0308

VIA EMAIL ONLY

RE: Amar Idlibi, DDS - Petition No. 2018-1419

Dear Dr. Idlibi and Attorney Antonetti:

Enclosed please find a copy of the Memorandum of Decision issued by the **Connecticut State Dental Commission** in the above-referenced matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey A. Kardys".

Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Public Health Hearing Office

c: Daniel Shapiro, Assistant Attorney General
Christian Andresen, Section Chief, Practitioner Licensing and Investigations, DPH
David Tilles, Staff Attorney, Office of Legal Compliance, DPH
Lavita Sookram, RN, DPH Monitoring Unit



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**STATE OF CONNECTICUT
CONNECTICUT STATE DENTAL COMMISSION**

Ammar Idlibi, D.M.D.
License No: P07893

Petition No. 2018-1419

MEMORANDUM OF DECISION

Procedural Background

In February of 2019, the Department of Public Health ("Department") filed a motion for Summary Suspension and a Statement of Charges ("Charges") against dental license number P07893 of Ammar Idlibi, D.M.D. ("Respondent"). (Connecticut State Dental Commission "Comm." Exhibit "Ex." 1 and Department "Dept." Ex. 1). The Charges allege that Respondent's license is subject to disciplinary action pursuant to § 20-114(a)(2) of the Connecticut General Statutes ("Statutes"). *Id.* The Motion for Summary Suspension was granted by the Connecticut State Dental Commission ("Commission") on March 20, 2019 based on affidavits which allege facts which show violations of Conn. Gen. Stat. § 20-114(a) and which imperatively require emergency action in that the public health, safety or welfare of the citizens of Connecticut is in clear and immediate danger. Comm. Ex. 1. Pursuant to Conn. Gen. Stat. §§ 4-182(c) and 19a-17(c), the Commission summarily suspended the Respondent's license to practice dentistry pending a final determination by the Commission. *Id.*

The Summary Suspension Order, the Statement of Charges, and a Notice of Hearing were sent to the Respondent by certified mail, return receipt requested, and via email on March 20, 2019. Comm Ex. 2. Respondent was notified to appear before a duly authorized panel of the Commission ("panel") comprised of Jeanne Strathearn, D.D.S., Steven G. Reiss, D.D.S., and Deborah Deodenhoff, R.N. for a hearing on the Charges against him. Comm. Ex. 2.

On March 25, 2019, the Department filed a Motion to Amend Statement of Charges along with the Amended Statement of Charges (“Amended Charges”). (“Dept.”) Ex. 2. By letter dated March 27, 2019 and received March 28, 2019, Respondent requested the Commission lift the suspension on his license that was imposed on March 20, 2019. Respondent’s (“Res.”) Ex. B. On March 28, 2019, the Department filed an objection to the Respondent’s request. Dept. Ex. 3.

On April 2, 2019, the Commission, through its duly authorized panel, held an administrative hearing to adjudicate the Respondent’s Motion to Lift Suspension and the Amended Charges. Respondent appeared *pro se*. Attorney David Tilles represented the Department. *Id.*

On April 2, 2019, during the hearing, Respondent did not object to the Motion to Amend the Statement of Charges. The Commission granted the motion. Tr. p. 8. The Commission granted Respondent’s motion to lift the Summary Suspension of his license. Tr. pp. 16-17. Comm. Ex. #2.

The panel conducted the hearing in accordance with the Statutes § 4-166 *et seq.*, and the Regulations of Connecticut State Agencies (“Regulations”) § 19a-9a-1 *et seq.* Both the Department and Respondent presented evidence, conducted cross-examination, and provided argument on all issues.

All panel members involved in this decision attest that they have either heard the case or read the record in its entirety. The Commission reviewed the panel’s proposed final decision in accordance with the provisions of § 4-179 of the Statutes. This decision is based entirely on the record and the specialized professional knowledge of the Commission in evaluating the evidence. The Commission relied on the training and experience of its members in making its findings of fact and conclusions of law. *Pet v. Department of Health Services*, 228 Conn. 651, 670 (1994).

Allegations

1. In paragraph 1 of the Amended Charges, the Department alleges that Ammar Idlibi, D.M.D., of Bristol, Connecticut, is and has been at all times referenced in the Charges, the holder of Connecticut dentist license number P07893.

2. In paragraph 2 of the Amended Charges, the Department alleges that on September 5, 2018, the State Dental Commission issued a Memorandum of Decision in Petition Number 2016-640, (the "September 5, 2018 Memorandum of Decision" or the "Order") that placed Respondent's dentist license on probation for a period of three years and further required payment of a \$10,000 civil penalty. Such disciplinary action was based upon proof of Respondent's violation of the applicable standard of care for a patient.
3. In paragraph 3 of the Amended Charges, the Department alleges that said Order specifically provides, in part, that Respondent obtain a practice supervisor, pre-approved by the Department, and that said supervisor would review Respondent's patient records and report to the Department whether Respondent is practicing dentistry with reasonable skill and safety.
4. In paragraph 4 of the Amended Charges, the Department alleges that Respondent has not obtained a practice supervisor, and thus has not submitted a supervisor's report, as required by the Order.
5. In paragraph 5 of the Amended Charges, the Department alleges that said Order specifically provides, in part, that Respondent successfully complete courses, pre-approved by the Department, in ethics, medical record documentation, and informed consent, by March 5, 2019.
6. In paragraph 6 of the Amended Charges, the Department alleges that Respondent has not submitted courses for pre-approval nor provided documentation of successful completion of any such courses.
7. In paragraph 7 of the Amended Charges, the Department alleges that Respondent has not paid the civil penalty.
8. In paragraph 8 of the Amended Charges, the Department alleges that Respondent's conduct as described above constitutes violations of the terms of the Order, and subjects Respondent's license to revocation or other disciplinary action authorized by the General Statutes of Connecticut, §§ 19a-17 and 20-114(a)(2).

Findings of Fact

1. Respondent, of Bristol, Connecticut, is and has been at all times referenced in the Charges, the holder of Connecticut dentist license number P07893. Tr. p. 24.
2. On September 5, 2018, the Commission issued the September 5, 2018 Memorandum of Decision ("MOD"), which placed Respondent's license on probation subject to various terms and required Respondent to pay a \$10,000 civil penalty. Such disciplinary action was based upon proof of Respondent's violation of the applicable standard of care for a patient. Dept. Ex. 1, Attachment B.

3. In accordance with the September 5, 2018 MOD, Respondent was required to obtain a practice supervisor, pre-approved by the Department, to review Respondent's patient records and report to the Department whether Respondent is practicing dentistry with reasonable skill and safety, within fifteen (15) days of the September 5, 2018 Memorandum of Decision. Dept. Ex. 1, Attachment B; Tr. 35.
4. In accordance with the September 5, 2018 Memorandum of Decision, Respondent was required to complete successfully courses, pre-approved by the Department, in ethics, medical record documentation, and informed consent, by March 5, 2019. Dept. Ex. 1, Attachment B; Tr. p. 35.
5. For a period of multiple months in late 2018, Lavita Sookram, RN, BSN, a nurse at the Department with responsibility for monitoring compliance to Memoranda of Decisions and Consent Orders for physicians, dentists, nurses, and physician assistants, (Tr. pp. 18-19), communicated with Respondent in an attempt to obtain his compliance with the September 5, 2018 Memorandum of Decision. Dept. Ex. 5; Tr. pp. 32-33.
6. On January 30, 2019, Nurse Sookram filed a report with her supervisor, Dana Dalton, MSN, RN, SNC, indicating that Respondent was in non-compliance with the September 5, 2018 MOD. Dept. Ex. 1, pp. 7-8.
7. On February 13, 2019, Nurse Sookram filed an affidavit with the Department's Practitioner Licensing and Investigations Section indicating that Respondent was in non-compliance with the September 5, 2018 MOD. Dept. Ex. 1, pp. 5-6.
8. From September 5, 2018 until March 27, 2019, Respondent was out of compliance with the September 5, 2018 MOD because he failed to secure a supervisor to conduct quarterly random review of twenty percent (20%) or twenty (20) of his patient records, whichever is greater. Dept. Ex. 4, pp. 5-6; Tr. p. 34.
9. Sometime after March 27, 2019, Respondent, for the first time, submitted a proposal for the completion of the required course work. Tr. p. 29.
10. Respondent did not complete courses, in ethics, medical record documentation, and informed consent, by the deadline imposed by the MOD. Tr. p. 35. Respondent completed these courses on March 30, 2019, after the March 5, 2019 deadline ordered in the September 5, 2018 MOD. Dept. Ex. 4, pp. 1-3; Tr. p. 52.
11. On April 2, 2019, Respondent became compliant with the supervisor review requirements of the September 5, 2018 MOD in that the supervisor reviewed the required records and submitted a report to the Department in accordance with the Order. Dept. Ex. 1 Attachment B; Tr. pp. 34, 45-46.

12. Respondent filed an administrative appeal of the Memorandum of Decision. (HHB-CV18-5023867-S). The Court granted a stay of the payment of the fine of \$10,000 pending appeal. Respondent is therefore not in violation of the Memorandum of Decision for his failure to pay the \$10,000 fine, and no discipline is taken against Respondent based upon the failure to pay the \$10,000 fine. Tr. p. 9.
13. The Commission finds that Respondent's testimony was not credible with regard to the reasons he failed to comply with the Order.

Discussion and Conclusions of Law

Section 20-114 of the Statutes provides, in pertinent part, that:

- (a) The Dental Commission may take any of the actions set forth in section 19a-17 for any of the following causes . . . (2) proof that a practitioner has become unfit or incompetent or has been guilty of cruelty, incompetence, negligence or indecent conduct toward patients;

The Department alleged that Respondent is not in compliance with the September 5, 2018 MOD and Order that placed Respondent's license on probation for three years, and that violation of such Order subjects Respondent to disciplinary action in accordance with §§ 19a-17 and 20-114(a)(2) of the Statutes. The Department bears the burden of proof by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 227 (2013).

The Department sustained its burden of proof with regard to the allegations contained in the Amended Charges. Furthermore, the Department sustained its burden of proof that Respondent's violation of the Order establishes good cause for issuance of a disciplinary action in accordance with Conn. Gen. Stats. §§ 19a-17 and 20-114.

The preponderance of the evidence establishes that on September 5, 2018, the Commission issued its MOD, which placed Respondent's license on probation subject to various terms and required Respondent to pay a \$10,000 civil penalty. Findings of Fact ("FF") 2. The September 5, 2018 MOD further required that Respondent obtain a practice supervisor, pre-approved by the Department, who would review Respondent's patient records and would report to the Department whether Respondent is practicing dentistry with reasonable skill and safety within fifteen (15) days of the date of the Order.

FF 3. Moreover, Respondent was also required to successfully complete courses, pre-approved by the Department, in ethics, medical record documentation, and informed consent by May 5, 2019. FF 4.

Sometime after March 27, 2019, Respondent, for the first time, submitted a proposal for the completion of the required course work. Tr. p. 29. Thus, Respondent did not complete courses, in ethics, medical record documentation, and informed consent, in a timely manner. FF 9. Respondent belatedly complied with the Commission's Order, which was after the March 5, 2019 deadline, and has now completed the required courses in ethics, medical record documentation, and informed consent. FF 9-10.

From September 5, 2019 until April 2, 2019, Respondent was out of compliance with the Commission's MOD of September 5, 2018 by failing to secure a supervisor to conduct quarterly random review of twenty percent (20%) or twenty (20) of his patient records, whichever is greater. FF 4-8. On April 2, 2019, Respondent became compliant with this aspect of the September 5, 2018 Memorandum of Decision. FF 11.

Respondent filed an administrative appeal of the Memorandum of Decision. (HHB-CV18-5023867-S). The Court granted a stay of the payment of the civil penalty of \$10,000 pending appeal. Respondent is therefore not in violation of the Memorandum of Decision for his failure to pay the \$10,000 civil penalty, and no discipline is taken against Respondent based upon the failure to pay the \$10,000 civil penalty. Tr. p. 9. Respondent is not required to pay the civil penalty required by the MOD because the Court stayed that portion of the discipline.

In his defense Respondent testified that he did not comply with the September 19, 2018 MOD on time because he was appealing it in Superior Court, he had filed a motion to stay the decision and he thought the motion to stay would be granted. Tr. pp. 49-54. The Commission finds that Respondent's defense is meritless and not credible. Respondent was aware that the Court did not stay the decision of the Dental Commission. Id. Therefore, the Department sustained its burden of proof with regard to the allegations contained in the Amended Charges.

Respondent also asserts that the Commission does not have the legal authority to take discipline against his license for violating the terms of the MOD. He argues that

Conn. Gen. Stat. § 20-114(a)(2) requires that the Department prove that the conduct in question involved "conduct toward patients". The Commission rejects this argument. Conn. Gen. Stat. § 20-114(a)(2) provides that the Dental Commission can take any of the actions set forth in Conn. Gen. Stat. § 19a-17 due to "proof that a practitioner has become unfit or incompetent or has been guilty of cruelty, incompetence, negligence or indecent conduct toward patients." (emphasis supplied).

The two clauses in this subsection are independent. It would not make sense to interpret it any other way. The word "incompetent" is in both clauses. If the legislature had wanted the statute to provide that a practitioner could only be disciplined for incompetent conduct toward patients, there would be no reason to include such word in the first part of the subsection. In interpreting statutes, it must be presumed that there is a purpose behind every sentence, clause or phrase and that no part of a statute is superfluous. Doe v. Norwich Roman Catholic Diocesan Corp., 279 Conn. 207, 216-17 (2006). In construing a statute, common sense must be used and it must be assumed that a reasonable and rational result was intended. Rocco v. Garrison, 268 Conn. 541, 550 (2004). In this case, if respondent's interpretation was accepted, the Commission would not be able to take disciplinary action against a practitioner for violation of the Commission's own order. So, in this case, if respondent's interpretation was accepted, even though the Commission found in the prior case that respondent's practice of dentistry fell below the standard of care and required a period of probation and coursework and a supervisor, the Commission would not be able to discipline respondent if he failed to comply with such Order of the Commission. Clearly, this does not make sense and could not have been intended by the legislature. Respondent's failure to comply with the Order of the Commission violates Conn. Gen. Stat. § 20-114(a)(2). The probationary period imposed by the Commission in the prior matter was required in order to ensure that respondent was fit and/or competent to practice dentistry with reasonable skill and safety. By not complying with the terms of probation, respondent, for that period when he was out of compliance, was unfit or incompetent.

Conclusion

After considering the facts as proven by the Department, as well as Respondent's defenses and testimony, the Commission finds that the Department sustained its burden of proof, except for the allegation contained in paragraph 7 of the Amended Charges, and finds that Respondent failed to comply with the terms imposed by the September 5, 2018 MOD. Furthermore, the Department sustained its burden of proof that Respondent's violation of the Order establishes good cause for the issuance of a disciplinary action in accordance with the Connecticut General Statutes.

Order

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by §§ 19a-17 and 20-114 of the Statutes, the Commission orders the following in the case of Connecticut dental license number P07893 held by Ammar Idlibi, D.D.S., Petition No. 2018-1419: Respondent's license number P07893 to practice as a dentist in the State of Connecticut is hereby reprimanded, *and*

Dated at Hartford, Connecticut this 4th day of September, 2019.

Connecticut State Dental Commission



Commission Member

Respondent's license shall be on probation for three years from April 2, 2019 subject to the terms and conditions of the Memorandum of Decision in Petition No. 2016-640.

PRK
Sept 4, 2019

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 4th day of SEPTEMBER 2019, by certified mail, return receipt requested, and email to:

Ammar Idlibi, DDS
33 Maggie Court
Terryville, Connecticut 06786

Certified Mail RRR #91 7199 9991 7038 3996 1268

and via email to:

Matthew Antonetti, Principal Attorney
Office of Legal Compliance
Department of Public Health
410 Capitol Avenue, MS #12LEG
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Jeffrey A. Kardys
Administrative Hearings Specialist
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