

BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROY ALBERT LEWIS
Pleasanton, California

Dental License No. 30722,

Respondent.

Case No. DBC 2008-79

OAH No. 2009060194

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 27, 2010.

Claudia H. Phillips, Deputy Attorney General, represented complainant Richard DeCuir, Executive Officer, Dental Board of California.

Michael Kowalski, Attorney at Law, represented respondent Roy Albert Lewis, who was present.

The matter was submitted for decision on January 27, 2010.

FACTUAL FINDINGS

1. On June 29, 1982, the Dental Board of California (board) issued Dental License No. 30722 to respondent Roy Albert Lewis. Respondent's license was in full force and effect at all times relevant to the charges herein and will expire on May 31, 2010.

2. On August 10, 2006, in the United States District Court for the Northern District of California, respondent was convicted by a jury of violating one count of title 18, United States Code, section 371 (conspiracy to defraud the United States) and four counts of title 26, United States Code, section 7201 (tax fraud). These felony offenses are substantially related to the qualifications, functions or duties of a dentist in that they demonstrate, to a substantial degree, a potential unfitness to perform the functions authorized

by his license in a manner consistent with public safety.¹ The court sentenced respondent to two years in federal prison, followed by three years of formal probation. Respondent was also ordered to complete 100 hours of community service and pay restitution in the amount of \$162,135.00.

3. The indictment filed against respondent alleged, among other illegal acts, that respondent conspired with others to defraud the United States by attempting to obstruct the lawful functions of the Internal Revenue Service (IRS) in the computation and collection of federal income taxes through deceit, trickery and dishonest means. It also alleged that respondent transferred his income to an organization named Tower Executive Resources, Ltd. (Tower) which, in turn, deposited these funds into offshore bank accounts controlled by respondent.² The indictment further alleged that on his income tax returns, respondent claimed that the payments he made to Tower were business expenses. The indictment further alleged that respondent filed fraudulent tax returns for the 1998, 1999 and 2000 calendar years, and failed to file a tax return for the 2001 calendar year.

When asked about his role in committing the acts alleged in the indictment respondent flatly denied culpability. Respondent does not believe that he engaged in any wrongdoing. He stated that “if [he] made a mistake it was joining Tower.” Respondent denied misstating his income on his tax returns and blamed his attorney, who he claims advised him not to file tax a return. Respondent maintained that he had no intent to defraud the United States or to underpay the amount of taxes he owed to the government.

4. On December 16, 2008, respondent completed an on-line application, under penalty of perjury, for the renewal of his dental license. On this application, he answered “no” to the following question:

Since You Last Renewed Your License, Have You Had Any License Disciplined By A Government Agency Or Any Other Disciplinary Body; Or, Have You Been Convicted Of Any Crime In Any State, The USA And Its Territories, Military Court Or A Foreign County?

¹ David Ramirez, D.D.S., testified on behalf of respondent. Dr. Ramirez is in private practice in San Francisco. He also provides expert consultation services to Delta Dental and to the board, but has never provided opinions as to the relationship between a dentist’s criminal conviction and his fitness to practice dentistry. Dr. Ramirez initially opined that respondent’s convictions were not substantially related to the practice of dentistry. He later modified his opinion and stated that if a dentist commits dishonest acts outside of the practice of dentistry, it could impact his qualification to practice dentistry. On this point, Dr. Ramirez acknowledged the relationship between a dentist’s honesty and his fitness to provide proper care and treatment to his patients.

² According to the indictment, Tower’s primary purpose was to assist its clients in evading income taxes, filing false tax returns and protecting assets from the IRS. It did so by transferring its clients’ income into secret offshore bank accounts, primarily located in the Turks and Caicos Islands.

This answer was false, inasmuch as respondent had been convicted of the crimes set forth in Factual Finding 2 since he last renewed his dental license on May 9, 2006.

Respondent testified that he did not remember the specific answers that he provided on his on-line license renewal application on December 16, 2008. He further stated, however, that if he failed to disclose his criminal convictions, his omission was a mistake. Respondent's testimony was unpersuasive.

5. Respondent has held a dental license since 1982, and has been in private practice in Pleasanton since 1983. This is his first disciplinary matter. Following his release from prison, he resumed practicing dentistry in January 2009. He enjoys his work and would like to retain his dental license. Respondent stated that he will remain on probation for 23 months. He estimates that he has made restitution payments in the amount of \$2,400.

6. Since 2005 he has donated 60 hours of dental services to residents of Shepherd's Gate, an organization that provides housing for battered women and children. Steve McRee, Executive Director, and Vivian Valentine, Program Director, of Shepherd's Gate praised respondent's philanthropic efforts.

7. Complainant has incurred costs totaling \$13,415.75 in the investigation and prosecution of this case. This amount includes \$2,220 in investigative costs, representing 25 hours of work, \$11,188.50 in deputy attorney general costs, representing 68.25 hours of work, and \$227.25 in paralegal costs, representing 2.25 hours of work. Respondent does not challenge the reasonableness of these costs. The costs are found to be reasonable

LEGAL CONCLUSIONS

1. First Cause for Discipline: Pursuant to Business and Professions Code sections 490 and 1670.1, a licensee may have his license revoked or suspended for conviction of a criminal offense that is substantially related to the qualifications, functions or duties of a dentist.³ California Code of Regulations, title 16, section 1019, provides that a crime is deemed to be substantially related to the qualifications, functions or duties of a dentist "if to a substantial degree it evidences a present or potential unfitness of a licensee to perform the functions authorized by his license in a manner consistent with the public health, safety or welfare." Respondent's convictions for conspiracy to defraud the United States and tax evasion, as set forth in Factual Finding 2, are substantially related to the qualifications, functions or duties of a dentist because the crimes evidence, to a substantial degree, a present or potential unfitness of a licensee to perform the functions authorized by his license in a manner consistent with public safety. (*Windam v. Board of Medical Quality Assurance*

³ All citations are to the Business and Professions Code unless otherwise indicated.

(1980) 104 Cal.App.3d 461, 470.)⁴ As such, cause to suspend or revoke his dental license exists under sections 490 and 1670.1.

2. Second Cause for Discipline: Pursuant to section 1670, a licensee who engages in unprofessional conduct may have his license suspended or revoked. Unprofessional conduct includes any conduct which would have warranted denial of a license. (§ 1680, subd. (x).) Section 480, subdivision (a)(2), provides that the board may deny a license application if the applicant has done “any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another.” Based upon the matters set forth in Factual Finding 2 and 3, respondent committed acts involving dishonesty, fraud or deceit with the intent to benefit himself, and therefore, engaged in unprofessional conduct. As such, cause to suspend or revoke respondent’s dental license exists under section 1670, as that section interacts with sections 1680, subdivision (x), and 480, subdivision (a)(2).

3. Third Cause for Discipline: Pursuant to section 1670, a licensee who engages in unprofessional conduct may have his license revoked or suspended. Unprofessional conduct includes “the violation of any of the provisions of this division.” (§ 1680, subd. (n).) Section 1701, subdivision (e), prohibits a license applicant from willfully making a material false statement in a required affidavit. Based upon the matters set forth in Factual Finding 4, respondent willfully made a material false statement in an affidavit required in connection with the renewal of his dental license. As such, cause to suspend or revoke respondent’s dental license exists under section 1670, as that section interacts with sections 1680, subdivision (n), and 1701, subdivision (e).

4. Appropriate Discipline: The board’s criteria for evaluating the rehabilitation of a licensee is set forth in California Code of Regulations, title 16, section 1020, subdivision (b). It includes the nature and severity of the offenses, the time that has elapsed since the commission of the acts or crimes, the extent to which the licensee has complied with probation, and evidence of rehabilitation presented by the licensee. When exercising its licensing, regulatory and disciplinary functions, the protection of the public is the board’s “highest priority.” (§ 1601.2). In order to ensure the public’s protection, the board must be satisfied that its licensees are willing and able to conduct their business in an honest fashion.

In the instant case, respondent was convicted of five felonies involving dishonest conduct, and he is currently on probation for these crimes. Respondent flatly denies culpability for his offenses. He maintains that his only mistakes were joining Tower and following the advice of his attorney. He has made little headway in satisfying his restitution obligation of \$162,135.00. Respondent also denies any wrongdoing with respect to his failure to inform the board of his felony convictions. The board cannot be assured that the public is protected when, as here, a licensee engages in a pattern of dishonest conduct and

⁴ In *Windam*, the Court of Appeal found that a physician’s felony tax fraud conviction was substantially related to the physician’s qualifications to practice medicine. The court reasoned that it could not “compartmentalize dishonesty” and underscored the importance of honesty and integrity to the doctor-patient relationship. (*Windam v. Board of Medical Quality Assurance, supra*, at p. 470.)

continues to deny culpability. In consideration of these factors, it is determined that respondent has not rehabilitated himself to the extent that the public interest will be adequately protected by allowing him to retain his dental license on a probationary basis. Accordingly, it is determined that revocation of respondent's dental license is the appropriate discipline.

5. Cost Recovery: Section 125.3 provides that a licensee found to have violated licensing laws may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the cause." Based upon the matters set forth in Factual Finding 7, cause exists to order respondent to reimburse the board the sum of \$13,415.75.

ORDER

1. Dental license No. 30722, issued to Roy Albert Lewis, is revoked pursuant to Legal Conclusions 1, 2, and 3, jointly and individually.

2. Respondent shall pay to the board costs of investigation and enforcement in the amount of \$13,415.75.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings