



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Suite 500, Boston, MA 02114

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

Tel: 617-973-0800
TTY : 617-973-0988
www.mass.gov/dph/boards

MARYLOU SUDDERS
Secretary
MONICA BHAREL, MD, MPH
Commissioner

September 8, 2015

VIA FIRST CLASS AND CERTIFIED MAIL NO. 7014 0510 0001 0375 2343
RETURN RECEIPT REQUESTED

Michelle Weed

redacted

VIA FIRST CLASS AND CERTIFIED MAIL NO. 7014 0510 0001 0375 2336
RETURN RECEIPT REQUESTED

Michelle Weed

redacted

RE: **In the Matter of Michelle Weed, DH License No. 11190**
Board of Registration in Dentistry Docket No. DEN-2013-0050

Dear Ms. Weed:

Enclosed is the *Final Decision and Order by Default* ("Final Order") issued by the Board of Registration in Dentistry (Board) in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 5 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 5 of the *Final Order*.

Sincerely,


Barbara A. Young
Executive Director
Board of Registration in Dentistry

Enc.

cc: Richard Banks, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

_____)
In the Matter of)
Michelle Weed)
License No. DH11190)
Expired April 1, 2015)
_____)

Docket No. DEN-2013-0050

FINAL DECISION AND ORDER BY DEFAULT

On June 17, 2015, the Board of Registration in Dentistry (“Board”) issued and duly served on Michelle Weed (“Respondent”) an Order to Show Cause (“Show Cause Order”) ¹ alleging violations of statutes and regulations relating to the practice of dental hygiene in Massachusetts. In addition to stating the allegations against the Respondent, the Show Cause Order notified Respondent that she was required to submit an Answer to the Show Cause Order within 21 days of receipt of the Show Cause Order.² Additionally, the Show Cause Order also notified Respondent that she had 21 days from the receipt of the Show Cause Order in which to request a hearing on the allegations.^{3/4} Both the Show Cause Order and the accompanying cover letter notified the Respondent that failure to submit an Answer within 21 days would “result in the entry of default in the captioned matter” and, that upon making a finding of default “the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Show Cause Order and may revoke, suspend, or take other disciplinary action against Respondent’s license . . .

¹ Pursuant to 801 CMR 1.01(6)(a).

² In accordance with 801 CMR 1.01(6)(d)(2).

³ Pursuant to M.G.L. c. 112, § 61.

⁴ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

including any right to renew Respondent's license." A copy of the Show Cause Order is attached to this Final Decision and Order by Default at Exhibit A and is incorporated herein by reference.

As of the date of this Final Decision and Order by Default, Respondent has failed to file either an Answer or a Request for Hearing.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, § 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, § 11(1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, § 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass.App.Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard.

ORDER

In accordance with the Board's authority and statutory mandate, the Board orders that Respondent's license to practice dental hygiene in the Commonwealth be **REVOKED**, commencing on the Effective Date of the Order.

Respondent may petition the Board for reinstatement of her dental hygiene license in writing no earlier than one year from the Effective Date of the Order. Respondent's petition for reinstatement shall satisfy the requirements found at 234 CMR 4.16 and the Board may request additional documentation prior to acting on Respondent's petition for reinstatement. Respondent's petition for reinstatement shall include documentation of successful completion of the following:

- (1) Respondent shall successfully pass the Board's *Jurisprudence and Ethics Examination* within **sixty days** of submitting her petition for reinstatement.
- (2) Respondent shall submit documentation demonstrating successful completion of continuing education courses of three hours each in the following areas:

Infection Control in the Dental Setting
Basic Life Support for Healthcare Providers
Record Keeping
Risk Management
Ethics

- (a) All courses must be attended and shall not be taken on-line or as self-study courses;
- (b) All courses must be pre-approved by the Board prior to registration and/or taking the course;
- (c) No course shall be pre-approved or approved if offered or sponsored by the Berkshire District Dental Society; and
- (d) The Board's pre-approved continuing education courses shall be

taken in addition to the continuing education courses required to renew her license to practice dental hygiene pursuant to 234 CMR 8.02(3).

- (3) Within thirty days of submitting her petition for reinstatement, Licensee shall provide a copy of this Final Decision and Order by Default to all jurisdictions in which she holds a license to practice dental hygiene.
 - (i) Licensee shall provide written documentation to the Board demonstrating his compliance with paragraph 3.
 - (ii) If licensee is not licensed to practice dentistry or another profession in any other jurisdiction, she shall submit an attestation to the Board stating such.

The Board may choose to reinstate Respondent's dental hygiene license if the Board determines in its sole discretion that reinstatement is in the best interest of the public health, safety, and welfare.

The Board's approval of Respondent's petition for reinstatement may be conditioned upon, and immediately followed by, probation of Respondent's dental hygiene license for a period of time, as well as other requirements the Board may then determine in its sole discretion are in the best interest of the public health, safety, and welfare.

The Board voted to adopt the within Final Decision and Order by Default at its meeting held on September 2, 2015, by the following vote: In favor: Dr. Stephen C. DuLong, Dr. Paul Levy, Dr. David Samuels, Ms. Kathleen Held, M.Ed., Ms. Lois Sobel, RDH and Ward Cromer, Ph.D.; Opposed: none; Abstained: none; Recused: none.

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see Date Issued, below).

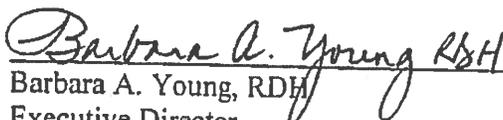
RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court within thirty (30) days of receipt of notice of this Final Decision and Order by Default pursuant to M.G.L. c. 112, § 64 or by filing a claim for judicial review in Superior Court within thirty (30) days of receipt of notice of this Final Decision and Order by Default pursuant to M.G.L. c. 30A, § 14.

Board of Registration in Dentistry

September 8, 2015

Date Issued


Barbara A. Young, RDH
Executive Director

Notified:

BY FIRST CLASS AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michelle Weed

redacted


Michelle Weed

redacted


BY HAND

Richard Banks, Esq.

Office of Prosecutions

Department of Public Health

Division of Health Professions Licensure

239 Causeway Street, Suite 400

Boston, MA 02114

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

In the Matter of
MICHELLE WEED

DH License No. 11190
License expired 3/31/15

Docket No. DEN-2013-0050

ORDER TO SHOW CAUSE

MICHELLE WEED, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Dentistry (the "Board") should not suspend, revoke or otherwise take action against your right to renew your license to practice as a Dental Hygienist in the Commonwealth of Massachusetts, License No. 11190, pursuant to Massachusetts General Laws (G. L.) Chapter 112, section 61, based upon the following facts and allegations:

1. On or about July 14, 1997, the Board issued to you a license to practice as a Dental Hygienist in Massachusetts, License No. 11190.
2. Your license to practice as a Dental Hygienist in Massachusetts expired on March 31, 2015 and has not been renewed.
3. In and around February of 2013, you were employed by the Yarmosky Pediatric Dentistry practice ("Yarmosky Dentistry") and worked in the Yarmosky Dentistry offices in Great Barrington and Pittsfield, Massachusetts (hereafter "the Great Barrington office" and "the Pittsfield office," respectively).
4. On February 21, 2013, Board investigators conducted compliance inspections of both Yarmosky Dentistry offices.
5. You were present and working at the Great Barrington office of Yarmosky Dentistry during the February 21, 2013 inspection of that office.
6. Multiple violation regulations were observed in each of the Yarmosky Dentistry offices inspected on February 21, 2013. At both locations, the violations included multiple violations of infection control practices.

7. You failed to ensure that the activities you carried out in the Great Barrington office of Yarmosky Dentistry on February 21, 2013 were carried out with appropriate infection control practices in place.
8. You failed to ensure that the activities you carried out in the Great Barrington and Pittsfield offices of Yarmosky Dentistry in 2012 and early 2013 were carried out with appropriate infection control practices in place.
9. You were notified by mail and telephone that a complaint had been opened against your license based on the facts alleged in the preceding allegations of this Order to Show Cause. As of the date of this Order to Show Cause you have failed to provide documents which were requested of you at the time you received notice of the complaint against your license.
10. You verbally informed a Board investigator that you had moved from your address of record and acknowledged that you failed to give notice of that new address to the Board of Registration in Dentistry.

* * *

11. Your conduct warrants disciplinary action by the Board against your license to practice as a Dentist pursuant to the following Board regulations:
 - 1) your conduct violates 234 CMR 5.05 (1) for failing to operate in compliance with the current *Centers for Disease Control Recommended Infection Control in Dental Healthcare Settings standards -2003*;
 - 2) your conduct violates 234 CMR 9.05 (13) for failing to furnish the Board, its investigators, or representatives with records, documents, information, or testimony to which it is legally entitled;
 - 3) your conduct violates 234 CMR 4.11 (1) for failing to notify the Board (in writing within 30 calendar days) of any changes in any information provided to the Board in connection with your license.
12. Your conduct as described above, warrants disciplinary action by the Board against your license to practice as a Dental Hygienist pursuant to G. L. c. 112, §61 for deceit, malpractice, and gross misconduct in the practice of the profession or for any offense against the laws of the commonwealth relating thereto.
13. Your conduct, as described above, also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

* * *

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at [your] own expense. Pursuant to 801 CMR 1.01 (10) (i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at your own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including but not limited to, the written transcript of the hearing is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations therein and on any Board disciplinary action.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your right to renew your license to practice as a Dental Hygienist in the Commonwealth of Massachusetts.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Richard L. Banks, Prosecuting Counsel, at the following address:

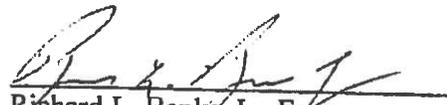
Richard L. Banks, Jr., Esq.
Department of Public Health
Office of the General Counsel
239 Causeway Street, 4th Floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0835 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION
IN DENTISTRY,

Dr. David Samuels, Chair

By:


Richard L. Banks, Jr., Esq.
Department of Public Health

Date: June 17th, 2015

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

In the Matter of
MICHELLE WEED

DH License No. 11190
License expired 3/31/15

Docket No. DEN-2013-0050

CERTIFICATE OF SERVICE

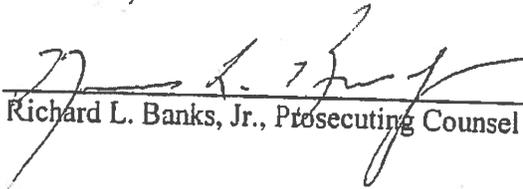
I, Richard L. Banks, Jr., hereby certify that I have served a copy of the attached *ORDER TO SHOW CAUSE* in the above-captioned matter upon the following individual in the manner and at the address specified below:

Upon: Michelle Weed
by: First Class Mail and
Cert. Mail No. 7012 3460 0002 3702 7460
at: redacted

And

by: First Class Mail and
Cert. Mail No. 7012 3460 0002 3702 7453
at: redacted

Sworn this 17th day of June, 2015


Richard L. Banks, Jr., Prosecuting Counsel