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Commonwealth of Massachusetts

# Executive Office of Health and Human Services Department of Public Health

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MARYLOU SUDDERS

**Secretary**

MONICA BHAREL, MD, MPH

**Commissioner**

July 10, 2017

VIA FIRST-CLASS AND CERTIFIED MAIL RETURN RECEIPT REQUESTED NO. 7015 1730 0000 7974 1325,

Gerard Butler, Jr., Esq.

Smith Duggan Buell & Rufo LLP 55 Old Bedford Road

Lincoln, MA 01773

### **RE: In the matter of Dr. M. Hanif Butt, DN License No. 18051**

###  **Board of Registration in Dentistry, Docket No. DEN-2013-0199**

Dear Attorney Butler:

Enclosed is the Final Decision and Order ("Final Order") issued by the Board of Registration in Dentistry ("Board") in connection with the matter referenced above. The effective date of the Board's Final Order is ten (10) days from the date appearing on page 6 of the Final Order ("Date Issued"). Your client's appeal rights are noted on page 6 of the Final Order.

 Sincerely,

 Barbara A. Young RDH

 Barbara A. Young, RDH

 Executive Director

 Board of Registration in Dentistry

Enc.

Cc: Prosecution (by interoffice mail)

Administrative Hearing Counsel (by interoffice mail)

##### COMMONWEALTH OF MASSACHUSETTS

**SUFFOLK COUNTY BOARD OF REGISTRATION**

 **IN DENTISTRY**

##### In the Matter of )

**Dr. M. Hanif Butt ) Docket No. DEN-2013-0199**

**License No. DN18051 )**

##### Expires March 31, 2018 )

**FINAL DECISION**

On November 23, 2015, the Board of Registration in Dentistry ("Board") issued the Respondent an Order to Show Cause ("OTSC") why it should not take disciplinary action against his dental license. The OTSC alleged the Respondent employed an unlicensed individual-who held himself out as possessing a limited license-to practice dentistry in Respondent’s private dental offices in South Yarmouth, Massachusetts. The OTSC set forth various legal grounds for finding that the Respondent's employment of an unlicensed individual to practice dentistry warranted discipline by the Board.

In December 2016, Prosecuting Counsel and Respondent filed motions for summary decision and oppositions to the other party's motion that together were reviewed by Administrative Hearings Counsel, Jason Barshak ("AHC Barshak'') on the Board's behalf. On January 27, 2017, AHC Barshak submitted his recommended ruling for the Board's review and action.

After review, the Board adopted the AHC Barshak's reasoning and recommendation and voted to issue its Ruling on the parties' motions for summary decision, finding as a matter of law that the Respondent violated 234 CMR 9.05(2) (violating a duty or standard in 234 CMR); 234 CMR 9.05(1) (undermining public confidence); common law relative to undermining public confidence; 234 CMR 9.05(8) (placing public health, safety or welfare at risk) and based on the foregoing the Respondent violated M.G.L. c. 112, §61 (offenses against the laws of the Commonwealth). Thereafter, the Board offered Respondent the opportunity for a hearing limited to sanction, which the Respondent availed himself of. The Board's Ruling on Motions for Summary Decision is appended hereto and incorporated by reference.

The sanction hearing was held on June 7, 2017, and in mitigation, Respondent's counsel averred that Respondent serves and has served low-income patients in a variety of treatment settings. While commendable, the Board does not find this factor mitigate the sanction. Respondent's counsel argued that since Respondent's state of mind as to his violation of Board laws and regulations was not established, the sanction ought to be less than the sanction initially offered to resolve all of the complaint's allegations, including those allegations sounding in deceit and fraud The Board notes that reasoning as well as the memorandum on sanction filed by Prosecuting Counsel.1

After reviewing its Ruling, and considering the information presented by Respondent and Prosecuting Counsel, the Board finds discipline is warranted. The Board's precedent for unlicensed practice generally disciplines by reprimand an individual with an expired license for practicing while not licensed and dismisses the complaint against the employing dentist with an advisory on the employing dentist's obligations under 234 CMR 5.02. This type of complaint involves the basic condition that such individual was initially found by the Board to be qualified for a license, was in fact

1 Prosecuting Counsel points to *In the matter of Richard D. Carr, D.M D.:* DN 00-134, to support discipline of Respondent's license. While not entirely on point as to the underlying violation-delegating dental procedures to untrained (unlicensed) personnel-the rationale of disciplining conduct that undermines public confidence in the integrity of the profession is reasonably related to the promotion of public health, welfare and safety is material to the Board's determination that discipline in this case is warranted.

licensed by the Board, was hired by the employing dentist while licensed and practiced within the scope of the individual's license. Thereafter, for any number of reasons, such licensed individual failed to renew his license and continued to practice on an expired license.

That is not the case here. Respondent hired and employed between September 2010 and May 2013 an individual who was never licensed by the Board and did not possess the educational qualifiers to be licensed as a dentist in the Commonwealth. The Board finds Respondent's conduct more egregious. This is not a matter where he failed to notice his employee's dental license expired. He never checked whether his employee was licensed at all.

In keeping with its duty to promote the public health, welfare, and safety; the Board issues the following order after careful consideration of its Ruling, the information presented by Respondent related to mitigation of sanction, the information presented by Prosecuting Counsel.

The Board voted to adopt the within Final Decision at its meeting held on July 5, 2017, by the following vote:

In Favor: Dr. Keith Batchelder, Ward J. Cromer, Ph.D., Dr. Stephen C. DuLong, Dr. Paul F. Levy,

 Ms. Lois Sobel, RDH, Ms. Jacyn Stultz, RDH and Dr. Patricia Wu.

Opposed: None

Abstained: None

Recused: None

Absent: Ms. Kathleen Held, M.Ed., Dr. John Hsu, Dr. Cynthia M. Stevens and Ms. Ailish M. Wilkie.

**ORDER**

Based on its Final Decision, the Board orders Respondent's license to practice dentistry in the Commonwealth be placed on **probation for one (1) year** ("Probation"), commencing on the Effective Date of the Final Decision and Order ("Probation Period").

Respondent may petition the Board for termination of the Probation no sooner than 30 days prior to the end of the Probation Period and upon demonstration that he has fulfilled each of the following conditions:

1. Respondent shall successfully pass the Board's *Jurisprudence and Ethics Examination* within **thirty days** after the Effective Date.
2. Within thirty days of the Effective Date, Respondent shall provide a copy of this Final Decision and Order to all jurisdictions in which he holds or has held a license to practice dentistry.
	1. Respondent shall provide written documentation to the Board demonstrating his compliance with paragraph 2.
	2. If Respondent is not licensed to practice dentistry he shall submit a signed attestation to the Board stating such. ·
3. Respondent shall successfully complete six (6) hours of Board pre­ approved continuing education in risk management during the Probation Period. Such continuing education shall be taken in person and not as self-study and shall count only toward satisfying the requirements of this Order and not toward renewal of his dental license.

Upon receipt of Respondent's petition for termination of probation the Board may require Respondent to appear before it.

During the Probation Period, the Respondent shall comply with the additional conditions:

1. Respondent shall timely renew his license to practice dentistry in accordance with 234 CMR 4.14.
2. Respondent shall fully and promptly cooperate with any Board inspection of the Respondent's dental practice, regardless of whether Respondent is given prior notice of the inspection.
3. Respondent shall notify the Board in writing of any change to his address of record within seven (7) calendar days of such change.
4. Respondent shall not during the Probation Period:
	1. violate any state or federal law or regulation relating to the practice of dentistry; and
	2. commit any act that constitutes deceit, malpractice, gross misconduct in the practice of dentistry, unprofessional conduct or conduct which undermines public confidence in the integrity of the profession.
5. Respondent has the burden to prove compliance with the requirements of this Order and his Probation.

If, during the Probation Period, the Respondent fails to comply with any condition in paragraphs 1 - 8 above, the Respondent shall be entitled to a hearing as to whether he violated such condition. This hearing shall be conducted in accordance with the State Administrative Procedure Act, M.GL. c. 30A, §§ 10 and 11 and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03 *et seq.* After a hearing, if the Board determines a violation did occur during the Probation Period, it may impose a further sanction, deemed appropriate in its sole discretion; Such sanction may include suspension or revocation of Respondent's license to practice dentistry in the Commonwealth.

On July 5, 2017, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order, by the following vote:

In Favor: Dr. Keith Batchelder, Ward J. Cromer, Ph.D., Dr. Stephern C. DuLong, Dr. Paul F. Levy, Ms. Lois Sobel, RDH, Ms. Jacyn Stultz, RDH and Dr. Patricia Wu.

Opposed: None

Abstained: None

Recused: None

Absent: Ms. Kathleen Held, M.Ed., Dr. John Hsu, Dr. Cynthia M. Stevens and Ms. Ailish M. Wilkie.

**EFFECTIVE DATE**

This Final Decision and Order becomes effective upon the tenth (1otty day from the date it is issued (see "Date Issued" below).

##### RIGHT OF APPEAL

Respondent is hereby notified of his right to appeal this Final Decision and Order pursuant to M.G.L. c. 30A, § 14 within thirty days of receipt of this Final Decision and Order.

DATE ISSUED: July 10, 2017

Barbara A. Young RDH

Barbara A. Young, Executive Director

Notify:

*By first-class and certified mail no.*

*7015 1730 0000 7974 1325,*

#### return receipt requested ·

Gerard Butler, Jr., Esq.

Smith Duggan Buell & Rufo LLP

55 Old Bedford Road,

Lincoln, MA 01773

*By Interoffice mail*

Eugene Langner, Esq. Prosecutor

Department of Public Health

Bureau of Health Professions Licensure

239 Causeway Street, 4th Floor

Boston, MA 02114

#### By Interoffice mail

Jason Barshak, Esq.

Chief Administrative Hearings Counsel Department of Public Health

Bureau of Health Professions Licensure

250 Washington Street, 8th Floor

Boston, MA 02108