BEFORE THE INDIANA STATE BOARD OF DENTAL EXAMINERS
CAUSE NO.: 94 DB 002

STATE OF INDIANA,

Petitioner,

v.

BERNICE WILLIAMS, D.D.S.,
License No. 12008161,

Respondent.

FILED
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HEALTH PROFESSIONS BUREAU

FINDINGS OF FACT AND ORDER

A preliminary hearing was held on February 3, 1995 in Rooms 1 & 2 of the Conference Center, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana before the Indiana State Board of Dental Examiners ("Board") concerning Bernice Williams' (Respondent's) license to practice dentistry in the State of Indiana. The preliminary hearing was held to determine whether or not the summary suspension imposed by the Board on April 27, 1994, modified on May 23, 1994; continued on August 5, 1994; and modified on October 19, 1994, should be voided, terminated, modified, stayed, or continued.

The State of Indiana was represented by Julia E. Dimick and Connie J. Dinn, Section Chief, Deputy Attorneys General. Respondent appeared in person and was represented by Aaron E. Haith, 740 Market Square Center, 151 North Delaware Street, Indianapolis, Indiana.

The Board, after having considered the evidence presented, taken official notice of the Board's file in this case, now issues the following Findings of Fact and Order:

FINDINGS OF FACT

1. Respondent, who currently resides at 3616 N. Sherman Drive, Indianapolis, IN, is a duly licensed dentist in the State of Indiana holding license number 12008167.

2. On April 27, 1994, the Board summarily suspended Respondent's license after receiving information that Respondent was endangering the public health and safety by: 1) engaging in the practice of dentistry without a current valid license to practice dentistry; 2) failing to ensure proper sterilization of dental instruments; 3) failing to properly dispose of medical waste; and, 4) failing to comply with the laws, rules and regulations relating to universal precautions and infection control at TenderCare Dentistry located at 3616 Sherman Drive and 1934 Perkins Street in Indianapolis, Indiana.

3. Upon notification of the suspension of her license, Respondent sought an expedited hearing which was held on May 13, 1994 and continued on May 23, 1994, Dr. Edward J. Martin presided as ALJ during the expedited hearing.

4. Following the hearing, the Board entered its Findings Of Fact And Order thereon, on July 20, 1994, nunc pro tunc to May 23, 1994, said Findings Of Fact And Order being in the words and figures which follow, to-wit:

(H. I.)

5. A preliminary hearing to determine whether the Board's Order of May 23, 1994 should be voided, terminated, modified, stayed or continued was scheduled for August 5, 1994.

6. Though having received timely and proper notice pursuant

to I.C. 4-21.5-3-20, Respondent and her counsel failed to appear at the August 6, 1994 preliminary hearing. The Board determined that circumstances had not changed since the issuance of the Board's May 23, 1994 Order and continued the emergency suspension of Respondent's license as modified by the May 23, 1994 Order.

7. A preliminary hearing to determine whether the Board's Order of May 23, 1994 should be voided, terminated, modified, stayed or continued was scheduled for October 19, 1994.

8. Following the October 19, 1994 hearing, the Board filed its Findings Of Fact And Order thereon, on November 18, 1994, nunc pro tunc to October 19, 1994, said Findings Of Fact And Order being in the words and figures which follow, to-wit:

(H. I.)

9. On or after December 2, 1994, Respondent submitted, for approval by the Board, her proposed supervising dentist's agreement pursuant to the Board's Order of November 18, 1994. Said proposed "Agreement" being in the words and figures which follow, to-wit:

(H.I.)

10. By letter dated December 8, 1994, the Board, by letter written at the direction of Michael L. Fried, D.D.S., administrative law judge for the Board, advised substantially, as follows:

> ". . . The purpose of this letter is to confirm that the following conditions of the board's order filed on November 18, 1994 have been met:
>
> > 1) Respondent shall obtain a supervising dentist approved by a member of the board. The supervising dentist must meet with a member of the Board to assure that the supervising dentist fully understands

his/her responsibilities to the Board and to Respondent.

2) Respondent shall submit tho the Board a written agreement between Respondent and her supervising dentist regarding the supervision of Respondent.

You may resume the practice of dentistry under the direct, on site, supervision of Dr. Reuben White, according to the terms of the order filed on November 18, 1994.

Please notify the board of the date you resume the practice of dentistry and the date your Sherman Street Office is reinspected by I-OSHA. . . ."

11. A preliminary hearing to determine whether or not the summary suspension imposed by the Board on April 27, 1994, modified on May 23, 1994; continued on August 5, 1994; and modified on October 19, 1994, should be voided, terminated, modified, stayed or continued, was scheduled for January 18, 1995.

12. Respondent received timely and proper notice of this hearing date in accordance with I.C. 4-21.5-3-20.

13. Due to an injury sustained by Respondent's counsel, Aaron E. Haith and subsequent hospitalization, an oral motion to continue the preliminary hearing was made, and the Board being duly advised in the premises granted the continuance through February 3, 1995.

14. Respondent received timely and proper notice of the re-scheduled hearing date in accordance with I.C. 4-21.5-3-20.

15. Respondent testified that she caused the Department of Health to reinspect the Sherman Street office as required by the May 23, 1994 Order, as modified. The report by the Department of Health had not been received as of the date of hearing.

16. Respondent testified that she caused I-OSHA to reinspect

the Sherman Street office as required by the May 23, 1994 Order, as modified. The report by I-OSHA had not been received as of the date of hearing.

17. Respondent testified and provided a receipt evidencing payment of the first installment of the fine imposed by I-OSHA pursuant to the abatement agreement she concluded with I-OSHA.

18. Respondent testified that she had resumed the practice of dentistry under the direct, on site, supervision of Dr. Reuben White, and had been able to practice an estimated fifteen (15) to twenty (20) hours per week. The limitation of her practice, she testified, was due to the existing schedule of Dr. White.

19. Respondent testified that she had entered into a contract with Indiana University to biologically test her autoclave. Respondent produced reports of current testing by Indiana University. Her supervising dentist, Dr. White, testified that the testing was being done as described by Respondent.

20. Respondent testified that she had contracted with a waste disposal company to dispose of medical waste generated at the Sherman office. Respondent provided receipts evidencing disposal of such waste by said contractor, and her supervising dentist, Dr. White testified that a disposal agreement was in place and operating as described by Respondent.

21. Respondent testified that all prescriptions written in connection with her treatment of a patient had been written by her and signed by Dr. White.

22. Respondent testified that she had not seen any patients or engaged in any form of the practice of dentistry without the

direct supervision of Dr. White.

23. Dr. Reuben White testified that he had entered into a supervisory dentist's agreement with Respondent which had been approved by the Board.

24. Dr. White advised that State's Exhibit A was a true list of the patients seen by Respondent under his supervision, and that he had compared the list to the daily register maintained by Respondent under his supervision.

25. Dr. White testified that his supervision included a review of the patients seen by Respondent, the procedures followed, the proper sterilization of equipment, proper use of barriers, the proper posting of universal procedures in the treatment and lab areas, and the proper disposal of medical waste. He had observed no controlled substances in Respondent's office, and signed all prescriptions written by Respondent.

26. Dr. White testified that he had been present when the State Department of Health and I-OSHA inspectors visited the Sherman Street office of Respondent.

27. Dr. White testified that he had no indications or reason to believe that Respondent saw any patients when he was not present. Rather, Respondent only scheduled patients when he could be present. His schedule often required that he be gone for up to five (5) days during which Respondent did not see patients. His schedule was controlling in that if he had a conflict, Respondent did not schedule patients. Dr. White did not require and is not compensated by Respondent for his supervisory services.

28. Dr. White expressed his belief and opinion that

Respondent was in full compliance with the Board's Order of November 18, 1994.

29. The Board, not having received the inspection reports from either the State Department of Health or I-OSHA as of the hearing, expressly reserves the right to re-convene this preliminary hearing if the reports should prove negative or otherwise demonstrates non-compliance by Respondent with the Order of the Board.

ORDER

Based upon the foregoing Findings of Fact, the Board issues the following Order:

1. The emergency suspension of Respondent's License, as modified by the ALJ's May 23, 1994 Order, continued on August 5, 1994 and modified on October 19, 1994, is hereby **CONTINUED** and **MODIFIED** as follows:

a) The supervision requirement and condition of Respondent's continued license to practice dentistry is modified from direct to indirect supervision on a random, weekly, on-site basis and shall include the following:

i. Review of all procedures and patient charts;

ii. Review of all patient lists;

iii. Review of all procedures done/completed in the relevant time period;

iv. Review of any prescriptions written; and,

v. Reports shall be submitted respecting same on the 10th day of each month.

b) Respondent's license to prescribe controlled substances is

suspended.

c) No controlled substances are permitted on Respondent's premises.

d) Respondent's supervising dentist may prescribe controlled substances for patients of Respondent in his discretion and upon consultation with Respondent.

e) If the report of I-OSHA proves to be negative, the Board reserves the right to schedule an immediate hearing concerning the report and to make such modifications of this order as may be deemed appropriate.

SO ORDERED this 30th day of March, 1995 nunc pro tunc to February 3, 1995.

INDIANA STATE BOARD OF DENTAL EXAMINERS

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Executive Director
Health Professions Bureau

cc:

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