

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Tonya Byrd,

*Appellant,*

v.

Case No. 2013-REM-10-0272

Ohio State University,

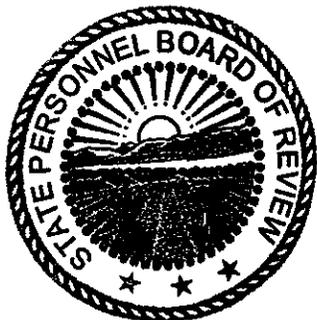
*Appellee,*

**ORDER**

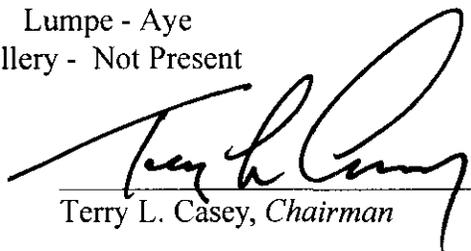
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant order of removal issued to Appellant, effective October 5, 2013, removing the Appellant from the position of Dental Assistant is **AFFIRMED**.



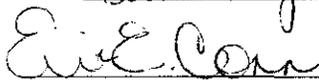
Casey - Aye  
Lumpe - Aye  
Tillery - Not Present

  
\_\_\_\_\_  
Terry L. Casey, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, January 09, 2015.

  
\_\_\_\_\_  
*Clerk*

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Tonya Byrd

Case No. 2013-REM-10-0272

*Appellant*

v.

November 25, 2014

Ohio State University

Christopher R. Young

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

On October 2, 2013, the Ohio State University (hereinafter OSU) served an Order of Removal, in accordance with O.R.C. section 124.34, upon the Appellant, Ms. Tonya Bryd, a Dental Assistant in the Implant Clinic of the Graduate Prosthodontics Program in OSU's College of Dentistry. The order alleged the following:

This will notify you that you are removed ... from your position of Dental Assistant . . . effective October 5, 2013.

The reason for this action have been guilty of Specifically: Failure of good behavior and/or neglect of duty. You received a Level Two Notice on May 3, 2012 due to failure of good behavior and neglect of duty. Since that time, on August 19, 2013, you performed a complex medical procedure without the direct supervision of licensed Dentist or Registered Dental Hygienist which is outside the scope of your job as a Dental Assistant. Consequently, your actions created the potential for serious risk to a patient's health and safety, as well as serious liability for the university. Additionally, on August 19, 2013, you failed to follow established office procedures involving patient billing which demonstrates a neglect duty in the performance of your assigned job duties.

Thereafter, on October 10, 2013, the Appellant timely filed an appeal from the above-mentioned order. The record hearing in this case was held on August 22, 2014, at 10:00 a.m., and concluded that same day. The Appellant, Ms. Tonya Byrd, appeared at the record hearing and was represented by Mr. Daniel Klos, Attorney at Law. The Appellee, OSU, was present through its designee, Ms. Marilyn Miller, Clinic Manager, and was represented by Amanda L. Scheeser and Timothy M. Miller, both Assistant Attorneys General.

This hearing was conducted by the State Personnel Board of Review in accordance with Ohio Revised Code Section 124.34, which specifically provides that an employee may file an appeal of any order filed under Ohio Revised Code Section 124.34, within ten (10) days after having received the order with the State Personnel Board of Review. The parties agreed and stipulated to the timely filing of the appeal. Additionally, although the parties agreed that Appellant's two other appeals (2013-RED-10-0273 and 2013-MIS-10-0274) involved the same issues and were to be heard at the record hearing, the Appellant withdrew those appeals after the record hearing.

Additionally, it should be noted that prior to the record hearing, Appellant's counsel moved this Board for an order to disaffirm the removal order of the Appellant as signed by the Appellee because the signature on the Order was alleged not to have been that of the Appellee's appointing authority. As a result, the undersigned Administrative Law Judge, allowed Appellant's counsel and Appellee's counsel to brief this issue after the close of the record hearing.

The Appellant filed Appellant's Motion to Disaffirm the Defendant's (Appellee's) Removal Order on August 28, 2014. Appellee then filed Appellee's Opposition to Appellant's Motion to Disaffirm the Removal Order on September 12, 2014, followed by Appellee's Supplemental Exhibit in Opposition to Appellant's Motion to Disaffirm the Removal Order filed September 19, 2014. Appellant filed Appellant's Response to Appellee's Opposition to Appellant's Motion to Disaffirm the Defendants Removal Order on October 2, 2014. After consideration of the above noted pleadings, the undersigned Administrative Law Judge hereby **OVERRULES** Appellant's motion to disaffirm the removal order.

### STATEMENT OF THE CASE

The Appellee's first witness to testify was the Appellant, Ms. Tonya Byrd, as called on cross examination. Ms. Byrd testified that she was last employed by The Ohio State University (OSU) as a Dental Assistant in the College of Dentistry in the Implant Clinic of the Graduate Prosthodontics program. In 2006, Ms. Byrd was initially hired by OSU as a Dental Assistant in the Faculty Practice of the College of Dentistry, and subsequently transferred to the Graduate Prosthodontics program in 2012.

Ms. Byrd's Dental Assistant job duties included performing expanded functions as a "chair-side" assistant in the removal of implant abutments, placement of impression posts, placement of prosthesis for esthetic try-in and determination of

shade selection and fabricating surgical templates. (See Appellant's Exhibit 3, Ms. Byrd's position description). However, Ms. Byrd testified that she was only to assist in the performance of dental care when a faculty dentist was present in the clinic and only after she had obtained permission to assist from the faculty dentist or the resident dental student.

Ms. Byrd, when questioned, answered in the affirmative, that she had received previous formal disciplines concerning the performance of her job duties. The first discipline came on January 23, 2009 in the form of a written reprimand for inappropriate workplace behavior. (See Appellee's Exhibit 3). Specifically, the written reprimand stated that Ms. Byrd got extremely upset and said some very derogatory things about one of the faculty members to a new Dental Assistant.

The second discipline came on February 9, 2011 in the form of a Level Two Notice. (See Appellee's Exhibit 4). The letter indicated this discipline was based on Ms. Byrd's insubordination and failure of good behavior.

The third discipline came in the form of another Level Two Notice on May 3, 2012. (See Appellee's Exhibit 5). This discipline was based on a failure of good behavior and/or neglect of duty by leaving the workplace prior to the end of her assigned shift without obtaining prior approval from her supervisor, as required.

Finally, Ms. Byrd testified that she received a letter of reassignment/transfer to the Implant Clinic on May 22, 2012. (See Appellee's Exhibit 6). This letter stated that if any issues that warrant continued corrective action were to arise, another hearing would be scheduled which could result in the termination of employment with the College of Dentistry.

With respect to the August 19, 2013 incident in question, Ms. Byrd testified that she was working in the Implant Clinic. The faculty dentist working in the clinic on August 19, 2013 was Dr. Ernest Svensson and the resident dental student was Dr. Faye Mascarenhas. Ms. Byrd testified when she came back from lunch, she saw Mickey, a temporary Dental Assistant, working with a patient. At that point, Ms. Byrd explained that she then when went to the sterilization room to look at the schedule. Ms. Byrd stated that she then asked Mickey, "If Dr. Mascarenhas was there?" wherein Mickey responded that she was not there. Ms. Byrd testified that she then told Dr. Svensson that Dr. Mascarenhas was not present, but the patient was there, and that she told Dr. Svensson that she was going to start cleaning the healing caps. At approximately 1:10 p.m., Ms. Byrd explained, she began applying the maxillary hybrid prosthesis, a difficult procedure, and that neither Dr. Ernest Svensson nor Dr. Faye Mascarenhas had actually asked her to do the procedure. However, Ms. Byrd testified she was not screwing in the screws of the maxillary prosthesis when Dr. Mascarenhas took over. Ms. Byrd stated she was only

cleaning the healing caps with solution. Again, Ms. Byrd testified that neither Dr. Mascarenhas nor Dr. Svensson instructed her to do anything with the patient; although, she stated she thought Dr. Svensson gave her permission because he did not stop her from working on the patient.

Ms. Byrd, when questioned, testified that she did not actually confirm that the patient had paid before the patient was seated. However, Ms. Byrd explained she confirmed in her "mind" that payment had been made. Further, Ms. Byrd testified that she did not get the prosthesis out of the box, but that she did see the lab box on the counter. Furthermore, Ms. Byrd testified that she did not see the note on the lab box which stated that the patient still needed to pay his or her bill. Additionally, when questioned, the witness identified Appellee's Exhibits 7 and 8 as notices of her pre-disciplinary hearing, along with Appellee's Exhibit 9, and her written statement that she gave at the hearing.

The next person to testify was Ms. Marilyn Miller. Ms. Miller testified that she works in the OSU Department of Dentistry. Ms. Miller explained that she was hired by OSU in 1998 as a Clinical Research Examiner, was a Clinical Hygienist for 10 years, Implant Coordinator for 5 years and has been in her current position as Clinic Manager for 2 years. Ms. Miller testified that she was Ms. Byrd's supervisor from January 2013 until Ms. Byrd's dismissal.

Ms. Miller described the process the Implant Clinic takes when caring for a patient. Ms. Miller testified that each patient is scheduled for two appointments. In the first appointment, the patient's prosthesis is removed so that the implant can be sent to the lab for repair. The witness explained the prosthesis is sent to the lab after the appointment, repaired the same day, and is sent back in the lab box. Before seating the patient for his or her second appointment, staff members are required to ensure the patient has paid his or her bill. Only after the patient has paid his or her bill may the patient be seated for the second appointment. Additionally, Ms. Miller testified that all interactions with the patient, whether they are performed by staff or a resident dental student, are to be under the supervision and direction of the faculty dentist.

On August 19, 2013, Ms. Miller testified, even though the Implant Clinic is usually on the third floor of the building, the Implant Clinic was located on the second of floor of the building that day, to ensure they would have a faculty dentist present. The patient, relative to this case, had had his or her first appointment in the morning, and the prosthesis had been sent to the lab for repair. When the prosthesis came back from the lab, Ms. Miller testified, it was sent to the third floor. Since the Implant Clinic was on the second floor that day, Ms. Miller stated she put a note on the box, so whoever was to seat the patient knew that payment from the

patient was still needed, and to collect this payment before seating the patient. (See Appellee's Exhibit 12). Ms. Miller explained she then delivered the lab box to the second floor and went back to the third floor.

Ms. Miller testified, at 1:00 p.m. that day she went back to the second floor. When she walked into the clinic workspace, she stated she saw Ms. Byrd and Mickey working on the patient without the resident dental student present, as required. Ms. Miller testified she saw Ms. Byrd drop something into the cheek of the patient's mouth. After Ms. Miller saw Ms. Byrd and Mickey working on the patient, she looked for Dr. Svensson and Dr. Mascarenhas. When Ms. Miller started looking for the doctors, both Dr. Svensson and Dr. Mascarenhas walked into the clinic almost simultaneously. At that point, Ms. Miller explained, Dr. Mascarenhas went to work on the patient and relieved Ms. Byrd. Ms. Miller asked Dr. Svensson if he or Dr. Mascarenhas had directed Mr. Byrd to work on the patient, and they both said they had not.

After Dr. Mascarenhas relieved Ms. Byrd, Ms. Miller testified that she told Ms. Byrd that she needed to talk to her at the end of the day. When Ms. Miller spoke with Ms. Byrd, she explained to Ms. Byrd that she was concerned that Ms. Byrd was replacing the maxillary hybrid prosthesis, without direction. Ms. Byrd responded that she felt comfortable with the procedure. Ms. Miller also recalled Ms. Byrd stating that she saw or thought Dr. Svensson was in the clinic, when she began working on the patient.

At the end of Ms. Miller's testimony, she stated that the clinic follows the guidelines issued by the Dental Board which state that there needs to be a dentist present when dental assistants and dental hygienists are performing tasks. Ms. Miller testified reseating a maxillary hybrid prosthesis is a complex procedure and Ms. Byrd is not allowed to work, reseat the prosthesis, or clean healing caps without faculty present. Ms. Miller stated that prior training in dental procedures does not matter, in this regard, as Ms. Byrd was not allowed to do anything without faculty supervision and direction. Finally, Ms. Miller testified that it is the Dental Assistant's responsibility to ensure that faculty is present in the clinic.

The next person to testify was Dr. Ernest Svensson. Dr. Svensson testified that he has been employed as a dentist for 39 years. Dr. Svensson explained that he is the staff prosthodontist at OSU Dental College and his responsibilities are teaching and clinic coverage. In his clinic duties, the witness testified that he is to supervise all resident dental students in clinic activities. Dr. Svensson stated that Dental Assistants are not allowed to work on or clean teeth without supervision.

Dr. Svensson testified that on August 19, 2013, Dr. Svensson was the faculty dentist in the Implant Clinic that day. When he returned from lunch a few minutes

after 1:00 p.m., he testified he was greeted by Ms. Miller who had told him that Ms. Byrd was working on a patient. Dr. Svensson testified that he had had no contact with Ms. Byrd that day and that he did not observe Ms. Byrd doing any work on the patient. Dr. Svensson testified that he did not instruct Ms. Byrd to do anything with the patient. Dr. Svensson then testified that Ms. Byrd had left the clinic workspace before he got onto the workspace floor. The witness explained that after he returned back from lunch, he proceeded to supervise the resident dental student, Dr. Mascarenhas, throughout the completion of the procedure.

The next person to testify was Dr. Faye Mascarenhas, a resident dental student in the Implant Clinic. Regarding the instant allegations, Dr. Mascarenhas described the procedure in the Implant Clinic, wherein the patient has two appointments in one day, to repair a broken prosthesis. At the first appointment, the patient's prosthesis is removed and sent to the lab for repair and is returned the same day. The witness described that at the second appointment the patient's prosthesis is resealed. However, before the prosthesis is resealed, staff is trained to and must collect payment from the patient.

Dr. Mascarenhas then testified about the events of August 19, 2013, involving Ms. Byrd. Dr. Mascarenhas explained that she had seen the patient in question in the morning and removed the prosthesis and sent it to the lab for repair. After the patient's prosthesis was sent to the lab, Dr. Mascarenhas testified, she continued to work on other patients until lunch. At lunch, the witness stated, she went to the resident lunch lounge. The witness stated, toward the end of her lunch break, she received a phone call from someone asking if she had given Ms. Byrd direction to seat the maxillary hybrid prosthesis, which she testified she did not.

Dr. Mascarenhas testified that after she received this phone call she went to the clinic right away. The witness testified that she walked in right after Dr. Svensson walked through the door. When she arrived at the clinic, Dr. Mascarenhas explained that Ms. Byrd handed her the screw driver and she relieved Ms. Byrd of her duties. Dr. Mascarenhas testified that when she took over for Ms. Byrd, the prosthesis was in the mouth of the patient and 2 or 3 screws had been placed in the prosthesis. Dr. Mascarenhas testified that she placed the final 3 screws in the maxillary hybrid prosthesis. Further, when questioned, Dr. Mascarenhas testified that she noticed a sticky note on the box while she was doing the procedure. However, the witness testified that she did not inquire about whether the payment had been collected or not because she was concerned with the patient's safety.

The next person to testify was Mr. Keith Callaway. Mr. Callaway testified he has been employed with OSU since July 2010 as an Employee and Labor Relations Consultant. As an Employment and Labor Relations Consultant, the witness

testified, he answers questions from faculty and staff regarding policy and procedure with respect to employment related issues. Mr. Callaway also testified that he serves as a pre-disciplinary hearing officer. As a pre-disciplinary hearing officer, Mr. Callaway testified, he recommends whether discipline is necessary and what level of discipline should be issued. Additionally, Mr. Callaway testified that he makes his decision about the appropriate discipline based on the Corrective Action and Involuntary Termination Policy. (See Appellee's Exhibit 2). Mr. Callaway explained that there are four levels to the progressive disciplinary process policy as follows; Level one is a written coaching; Level two is a level one notice; Level three is a level two notice and the Level four is termination.

Before every corrective hearing, Mr. Callaway testified, the department that is issuing the corrective action must fill out a pre-corrective hearing packet with a statement why they think corrective action must be taken. Next, the witness explained that an ER consultant reviews the packet and schedules a hearing. Mr. Callaway testified that employees are given the packet and notice of any pre-disciplinary hearing at least five (5) days prior to the hearing and Mr. Callaway takes this packet with him and uses it during the hearing. Mr. Callaway testified that the hearing is to ensure due process and provide a response to a department's request.

Mr. Callaway testified that Ms. Miller, the OSU College of Dentistry Clinic Manager, and Ms. Byrd attended a corrective hearing, where he was the hearing officer. Mr. Callaway testified management's testimony was that Ms. Byrd worked outside the scope of her job duties and there was a failure to complete a duty inside the scope of her job duties. Ms. Callaway testified that at the corrective hearing Ms. Byrd testified that she performed the procedure under the assumption she was allowed to do so. Ms. Byrd also testified that she was not aware she could not do procedures without supervision because she had done so in the past. However, Ms. Byrd contended that in this case she was supervised and that she was not trying to harm the patient.

Mr. Callaway testified that, to his knowledge, the patient was not injured. However, Mr. Callaway indicated that there is a small threshold, with respect to when discipline is considered, when employees are violating patient care rules. Mr. Callaway testified that in similar situations with patient care, any issue is taken very seriously and termination is not uncommon, especially when that employee had previous discipline.

Finally, the Appellant's final witness was Ms. Byrd on direct examination. Ms. Byrd testified that when she got back to the clinic from lunch, she saw that Mickey, a co-worker, had already seated the patient. The witness stated that she then went to the sterilization room to check the schedule. Ms. Byrd testified that Dr. Svensson was sitting in his normal observation spot when she thought she got permission to

work on the patient at 1:10 p.m. Ms. Byrd said that she was cleaning a sore spot on the patient and was cleaning a healing cap, when she saw Ms. Miller. At that point when she saw Ms. Miller, is when a healing cap, not a screw, dropped into the mouth of the patient. Ms. Byrd testified that she did not know that she had done anything wrong until 4:15 p.m. that day. When questioned, Ms. Byrd recalled that she had a short conversation with Ms. Miller and Ms. Byrd testified she asked for a list of permitted and prohibited practices from Ms. Miller, which Ms. Miller declined to give her. Ms. Byrd testified the first time she was really able to give her side of the story was at the pre-disciplinary hearing.

On cross examination, Ms. Byrd testified that no one actually instructed her to clean the healing caps, nor to touch the patient. Further, when questioned, Ms. Byrd agreed that patients can choke and then aspirate the healing caps/screws into the lungs, if not done correctly.

With regard to payment, Ms. Byrd testified that she did not know the patient had not paid his or her bill. Further, Ms. Byrd testified that the patient would normally be sent to the third floor for payment and back down to the second floor. Ms. Byrd testified that she did not open the lab box and she did not see any note on the box.

#### **FINDINGS OF FACT**

1. The jurisdiction of this Board to conduct this hearing was established by O.R.C. section 124.34.
2. The Appellant, Tonya Byrd, served OSU as a Dental Assistant for the College of Dentistry from 2006 to October 5, 2013.
3. The Appellant, Tonya Byrd, as a Dental Assistant, was removed from her position with OSU for violating the O.R.C. section 124.34 for failure of good behavior and/or neglect of duty.
4. On October, 2013, OSU hand delivered Ms. Byrd an O.R.C. section 124.34 Order of Removal which removed Ms. Byrd from her position effective October 5, 2013.
5. Appellee stipulates to the fact that Appellant's appeal was timely filed.

6. The Appellant, Ms. Byrd, in her seven years of service as a Dental Assistant with OSU College of Dentistry, had received one letter of written reprimand, two (2) Level two notices, and a letter of transfer, prior to the instant action.

7. The issue of disparate treatment was never raised by the Appellant.

8. The Appellee did prove by a preponderance of the evidence that Ms. Byrd received her procedural due process which included a pre-disciplinary hearing.

9. The Appellee, by a preponderance of the evidence, established that standards of conduct existed for and were known by Ms. Byrd regarding her job duties as a Dental Assistant in taking direction from the faculty dentist. The testimony and documentary evidence presented at the record established by a preponderance of the evidence that the Appellant:

- a. Was assisting with a dental procedure without being instructed to do so;
- b. Did not receive actual instruction/direction from Dr. Svensson/Dr. Mascarenhas to work on the patient; and
- c. Did not ensure payment was received.

#### **CONCLUSION OF LAW**

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing, by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, and that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and committed one or more of the enumerated infractions listed in O.R.C. section 124.34 and the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was

communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against her, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of the discipline, coupled with post-disciplinary administrative procedures as provided by O.R.C. section 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Information contained in the record indicates that Appellant was notified of and had an opportunity to participate in a pre-disciplinary hearing. The Appellant also had notice of the charges against her and an opportunity to respond to those charges. Accordingly, the undersigned Administrative Law Judge finds that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and the Ohio Administrative Code in removing Appellant.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellee established standards of conduct and that such standards had been communicated to Appellant. According to the O.R.C. section 124.34 Order, Appellant's removal was based upon her failure of good behavior and/or neglect of duty.

*Failure of Good behavior*

Revised Code Chapter 124 nowhere defines "failure of good behavior". However, Black's Law Dictionary defines "failure good behavior" to mean:

... Behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct. (Further citations omitted).  
Black's Law Dictionary, p.594 (Deluxe 6th Edition 1990).

For the Appellee to establish that the employee violated and/or was guilty of failure of good behavior, the Appellee must demonstrate that the behavior in question was contrary to the recognized standards of propriety and morality.

As was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant violated and/or was guilty of failure of good behavior, as she had committed misconduct/wrong conduct.

### *Neglect of Duty*

Appellee proved by a preponderance of the evidence that Ms. Byrd was guilty of neglect of duty. Ohio Revised Code Chapter 124 does not define "neglect of duty." However, Black's Law Dictionary does define "neglect" to mean:

... To omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in doing or omission of a given act. And it may mean a designed refusal, indifference or unwillingness to perform one's duty. Black's Law Dictionary, page 1031, (Deluxe 6th Edition 1990).

For the Appellee to establish that an employee committed neglect of duty, the Appellee must demonstrate that a duty upon the part of the employee existed, the employee knew of that duty, and that knowing of that duty, the employee breached that duty.

As was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant violated and/or was guilty of neglect of duty as she failed to receive direction from either Dr. Svensson/Dr. Mascarenhas before working on a patient, and failed to collect money from the patient prior to work commencing.

### *Standard of Conduct*

The Appellee has successfully established a standard of conduct. The record indicates that Dental Assistants are not to work on patients without the direction of the faculty dentist and/or resident dental student. It was also established that training and knowledge of a procedure are not relevant, as a Dental Assistant must have instruction/direction from a faculty dentist and/or resident dental student. Further, there is a standard of making sure the patient has paid his or her bill before the patient is seated for his or her second appointment. This was proven by the testimony of all the witnesses, including Ms. Byrd.

*Standard was Communicated*

This standard of conduct was successfully communicated to Ms. Byrd. By her own admission, she has been a Dental Assistant since the 1980's and knows that Dental Assistants are to take direction from the dentist before working with a patient. Further, she has been employed with the Appellee since 2006. Before working in the Implant Clinic, she was a Dental Assistant in the Faculty and Family Dentistry Clinic where she took direction from dentists before working with patients. Ms. Byrd was then moved to the Implant Clinic in May of 2012. The record indicates that everyone, including Ms. Byrd, knew the standard of taking direction from the faculty dentist and/or resident dental student. Further, the record indicates that everyone, including Ms. Byrd, knew that payment was required before seating the patient for the second appointment.

*Violation of the Standards of Conduct*

The record indicates a violation of the standard of conduct. Ms. Miller, Dr. Svensson and Dr. Mascarenhas all testified that Dr. Svensson did not give Ms. Byrd direction to work on the patient. Ms. Byrd testified that she thought in her head that she was given permission to work on the patient because Dr. Svensson gave her a "hi" sign after she saw him. However, Dr. Svensson testified that he had not spoken to Ms. Byrd that day. Further, Dr. Svensson testified that Ms. Byrd had left the workspace before he got to his usual observation seat. This testimony is consistent with Dr. Mascarenhas' testimony when she stated that Ms. Byrd left the patient's procedure once Dr. Mascarenhas took over. Ms. Byrd did not have permission to reseat the maxillary hybrid prosthesis and violated the standard of conduct set by the Appellee. Thus, Ms. Byrd violated and/or was guilty of failure of good behavior, in participating in misconduct or wrong conduct. Ms. Byrd was also being neglectful of her duties, as she did not ensure that the patient had paid his or her bill before work began on the patient, and did not wait for direction/instruction from either the faculty dentist and/or resident dental student.

*Discipline was an Appropriate Response*

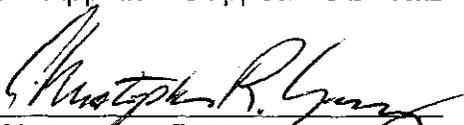
In this instance, Ms. Byrd had received one letter of reprimand, two (2) Level Two Notices, and a letter of transfer, prior to the instant action. Though her disciplinary action regarding her walking off the workspace floor indirectly dealt with patient safety, the situation at hand directly involved patient safety. Ms. Byrd is neither a licensed dentist, nor dental hygienist. Though she has worked the dental

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field since the 1980's, Ms. Byrd still needs to follow the direction of the licensed dentist. Further, Ms. Byrd acknowledged the serious health risk that a patient could have if he or she had aspirated on a screw/healing cap. Given the fact that this incident involved patient safety, coupled with all of her previous disciplines, termination was the appropriate discipline.

**RECOMMENDATION**

Therefore, I respectfully **RECOMMEND** that the instant order of removal issued to Appellant, effective, October 5, 2013, removing the Appellant from the position of Dental Assistant be **AFFIRMED**, and the Appellant's appeal be **DENIED**.

  
Christopher R. Young  
Administrative Law Judge