

IN THE MATTER OF	*	BEFORE THE MARYLAND
NAVID ASGARI, D.M.D.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
License Number: 12143	*	Case Numbers: 2006-156 and 2008-087
* * * * *	* * * * *	* * * * *

FINAL ORDER

Pursuant to the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §4-319(a),¹ and Maryland Code of Regulations (COMAR) 10.44.07.16, the Maryland State Board of Dental Examiners (the "Board") hereby renders the following final decision and order.

PROCEDURAL BACKGROUND

Pursuant to its statutory authority, H.O. §4-316(c), the Board investigated complaints lodged against Dr. Navid Asgari that alleged violations of the Act. Subsequently, on November 7, 2007, the Board issued charges alleging that Dr. Asgari (1) obtained or attempted to obtain a fee by fraud in violation of H.O. § 4-315(a)(3); (2) practiced dentistry in a professionally incompetent manner or in a grossly incompetent manner in violation of H.O. § 4-315(a)(6); (3) had a license to practice dentistry suspended or revoked in any other state in violation of H.O. § 4-315(a)(7); (4) behaved dishonorably or unprofessionally in violation of § 4-315(a)(16); and (5) willfully made or filed a false report or record in the practice of dentistry in violation of H.O. §4-315(a)(20).

Pursuant to Md. Code Ann., State Gov't ("S.G.") § 10-205 et seq., the Board delegated to the Office of Administrative Hearings ("OAH") the authority to hear the

case and issue proposed findings of fact and conclusions of law. Dr. Asgari, represented by counsel, contested the charges in a four-day evidentiary hearing. At the conclusion of the hearing, after considering the testimony and exhibits, the Administrative Law Judge (“ALJ”), on September 17, 2008, issued a detailed comprehensive proposed decision (“PD”)² which is incorporated by reference herein and which contains Findings of Fact and Conclusions of Law that the Board adopts in their entirety.

The parties filed exceptions to the Proposed Decision. An exceptions hearing was held before a full quorum of the Board on December 17, 2008. The Board issues this final order based upon its consideration of the entire record, including the proposed decision, exhibits, and transcripts of the administrative hearing, the parties’ exceptions, and argument at the exceptions hearing.

FINDINGS OF FACT

The Board adopts the findings of fact set forth in the ALJ’s Proposed Decision of September 17, 2008. (PD. pg. 5-20.)

CONCLUSIONS OF LAW

The Board adopts the conclusions of law proposed by the ALJ, finding as a matter of law that Dr. Asgari violated H.O. § 4-315(a)(6), (16), and (20) and dismissing H.O. §§ 4-315(a) (3) and (7).

¹ Further references to the Maryland Dentistry Act are to “H.O. § ____.”

² Herein PD. pg. ____.

CONSIDERATION OF EXCEPTIONS

The Board has considered each party's written exceptions to the proposed decision as well as the arguments presented at the hearing before the Board. Those exceptions not specifically discussed below are overruled.

Exclusion of Expert Testimony

Dr. Asgari excepted to the ALJ's ruling precluding him from designating or calling an expert witness, including himself. The Board overrules this exception.

Dr. Asgari failed to comply with the Board's mandatory discovery requirements found at Code of Maryland Regulations (COMAR) 10.44.07.08B. These regulations require that the parties, no later than fifteen days before the pre-hearing conference, name the expert witnesses that they intend to call at the hearing. COMAR 10.44.07.08B(1)(a). Should a party fail to comply with this requirement, the party's witnesses "shall be excluded from the hearing." COMAR 10.44.07.08 B(2). (PD. pg. 29). In the course of the hearing, Dr. Asgari's attempt to offer himself as an expert witness was rejected by the ALJ because he had failed to comply with the Board's mandatory discovery requirements. (PD. pg. 29.)

The Board rejects Dr. Asgari's argument that the ALJ ought to have allowed expert testimony pursuant to the more liberal OAH discovery regulations found in COMAR 28.02.01.08. Where there is a conflict, the Board's discovery regulations take precedence. COMAR 10.44.07.08G(2).

Violation of H.O. § 4-315(a)(6) and (16)

Dr. Asgari excepted to the ALJ's interpretation of H.O. § 4-315(a)(6) because, he claimed, the ALJ only required the Board to show failure to meet the standard of care

rather than the professional incompetence. The ALJ accepted the definition of the State's expert, Dr. Robert Johnson: "[I] think if you're incompetent you don't even have the learning [or] the skills to carry out what should be everyday practice in a reasonably effective manner. You ought to do that or you're not competent." (PD. pg. 31.) That definition of incompetence is consistent with Maryland law. *Blaker v. State Board of Chiropractic Examiners*, 123 Md. App. 243, 258 (1998). ("Incompetence' means a lack of skills necessary to perform, day in and day out, the characteristic tasks of a given calling in at least a reasonably effective way." (citation omitted) Thus, the Board overrules this exception.

Violation of H.O. § 4-315(a)(20)

Dr. Asgari excepts to the ALJ's finding that he violated H.O. §4-315(a)(20) by willfully filing a false report when, on his 2007 Maryland license renewal application, he failed to disclose that the Pennsylvania Dental Board sanctioned him on October 16, 2006. (PD. pg. 19-20, 60.) The Board overrules this exception.

The license renewal character and fitness question could not be more straightforward and unambiguous. (PD. pg. 19.) Dr. Asgari acknowledged that he was obligated to answer the question. (T. 667, 22-25.)³ His explanation for failing to disclose the Pennsylvania action was that he was confused by the question. (T. 668, 5-6.) Yet he fully disclosed, with a written explanation, that he had entered into a Consent Order with the [Maryland] Board on November 21, 2005. (PD. pg. 19.) There can be no doubt that Dr. Asgari understood the question and simply chose not to disclose Pennsylvania action. *See Board of Physicians v. Elliott*, 170 Md. App. 369, 412 (2006).

ORDER

Based on the foregoing, it is this 5th day of August, 2009, by a majority of the full authorized membership of the Board:

ORDERED that the charges filed against Navid Asgari, D.D.S., License Number 12143, be **UPHELD** as to *H.O. §4-315(a)(6), (16)and (20)* ; and **DISMISSED** as to *H.O. § 4-315 (3) and (7)*; and it is further

ORDERED that the Respondent shall be and is **REPRIMANDED** and it is further

ORDERED that commencing on the effective date of this Order, the Respondent shall serve **PROBATION** for a period of two (2) years; and it is further

ORDERED that at the Respondent may not petition for early termination of probation prior to the expiration of one (1) year from the effective date of this Order; and it is further

ORDERED that it is within the Board's discretion whether to grant early termination of probation; and it further

ORDERED that within ninety (90) days form the date of this Order the Respondent shall document to the Board that he has taken and passed a Board approved course in ethics; and it is further

ORDERED that within ninety days (90) days from the date of this Order, the Respondent shall document to the Board that he has taken and passed a Board approved course in the medical records documentation; and it is further

ORDERED that failure to comply with any of the terms and conditions of this Order shall be deemed a violation of this Order and of probation from which the Board

³ T. Refers to the hearing transcript


may take any action it deems appropriate under the Act, including, but not limited to, charging the Respondent and/or immediately suspending the Respondent's Maryland dental license. In the event the Respondent's license is suspended under this provision, he shall be afforded a Show Cause Hearing before the Board to show cause as to why his license should not be suspended, and it is further

ORDERED that any violation of any of the terms of this Order shall constitute unprofessional conduct in addition to any other applicable grounds under the Act; and it is further

ORDERED that the Respondent shall comply with and practice within all statutes and regulations governing the practice of dentistry in the State of Maryland; and it is further

ORDERED that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-611 *et seq.* (2004 & Supp. 2008).

8/5/09
Date


Jane S. Casper, R.D.H., M.A.
President

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. Article, § 4-319, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Article, §§ 10-201 *et seq.* (2004 & Supp. 2008), and Title 7 Chapter 200 of the Maryland Rules.