

IN THE MATTER OF	*	BEFORE THE MARYLAND
RANDALL R. YAZHARY, D.D.S.	*	STATE BOARD OF
RESPONDENT	*	DENTAL EXAMINERS
License Number: 11517	*	Case Numbers: 2010-249 2011-261

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On June 18, 2014, the Maryland State Board of Dental Examiners (the "Board") charged **RANDAL R. YAZHARY, D.D.S.** (the "Respondent"), License Number 11517, under the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 4-101 *et seq.* (2014 Repl. Vol.) The Board charged the Respondent under Case Number 2010-249 with violating the following provision of the Act under Health Occ. 4-315(a):

§ 4-315. Denials, reprimand, probations, suspension, and revocations -- Grounds.

(a) *License to practice dentistry.* -- Subject to the hearing provisions of § 4-318 of this subtitle, the Board may . . . reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the . . . licensee:

- (6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner[.]

On September 9, 2014, the Board charged the Respondent under Case Number 2011-261 with violating the probationary terms and conditions of the Consent Order (the "Consent Order"), dated November 6, 2013; and with violating the Act. The Board charged the Respondent with violating Conditions Four (4) and Five (5) of the Consent Order, which state as follows:

Condition Four (4)

Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete, at his expense, at least four (4) hours of coursework in dental recordkeeping that is approved by the Board. The Respondent shall obtain Board-approval of this coursework prior to enrolling in it. The Board will approve the coursework only if it deems the subject matter and curriculum are adequate to satisfy its concerns. The Board reserves the right to require the Respondent to provide further information regarding the coursework he proposes and further reserves the right to reject the course the Respondent proposes and require submission of an alternative proposal. The Respondent shall be responsible for submitting timely written documentation to the Board of his successful completion of this coursework. The Respondent understands and agrees that he may not use this coursework to fulfill any requirements mandated for licensure renewal.

Condition Five (5)

Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete and pass, at his expense, the ADEX examination on dental diagnosis and the formulation of dental treatment plans. The Respondent shall be responsible for submitting timely written documentation to the Board that he successfully passed the ADEX examination.

Consent Order at 7-8.

The Board also charged the Respondent with violating the following provisions of the Act under Health Occ. 4-315(a):

§ 4-315. Denials, reprimand, probations, suspension, and revocations -- Grounds.

(a) *License to practice dentistry.* -- Subject to the hearing provisions of § 4-318 of this subtitle, the Board may . . . reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the . . . licensee:

- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; [and]
- (31) Fails to comply with any Board order[.]

On December 22, 2014, the Board, pursuant to its authority under Md. Code Ann., St. Gov't § 10-226(c)(2014 Repl. Vol.), issued an Order for Summary Suspension

against the Respondent, in which it suspended his dental license, concluding that the public health, safety and welfare imperatively require emergency action.

On January 7, 2015, the Respondent appeared before the Board to address the above matters. As a result of negotiations that occurred before the Board, the Respondent agreed to enter into this Consent Order, which consists of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

The Respondent and the Board agree to the following Findings of Fact:

I. Licensing Information

1. The Respondent was licensed to practice dentistry in the State of Maryland. The Respondent was initially licensed to practice dentistry in Maryland on or about August 18, 1993, under License Number 11517. The Respondent's license is renewed through June 30, 2015.

II. Prior Board Disciplinary Action

2. In or around 2011, the Board initiated an investigation of the Respondent under Case Number 2011-261 after reviewing a claim against him that was filed before the Health Claims Alternative Dispute Resolution Office. The claim was filed by a former patient who alleged that the Respondent negligently and improperly performed aspects of root canal therapy ("RCT") and crown placement when treating her in 2008-09.

3. As part of its investigation, the Board referred this case and an additional five charts of patients in which the Respondent performed RCT to an endodontist for an expert review. The reviewer found several deficiencies in the Respondent's

performance of RCT and concluded that the Respondent practiced dentistry in a professionally incompetent manner or in a grossly incompetent manner.

4. Based on these findings, the Board, pursuant to a charging document dated March 21, 2013, charged the Respondent with violating the Act.

5. The Respondent resolved the Board's disciplinary charges by entering into a Consent Order with the Board, dated November 6, 2013, in which the Board concluded as a matter of law that the Respondent practiced dentistry in a professionally incompetent manner or in a grossly incompetent manner, in violation of Health Occ. § 4-315(a)(6).

6. Pursuant to the Consent Order, the Board suspended the Respondent's license to practice dentistry for one year, which it immediately stayed, and placed the Respondent on probation for three years, subject to a series of probationary terms and conditions that included mandatory remediation in endodontics.

7. Among other probationary terms and conditions, the Board required that the Respondent successfully complete the following:

Condition Four (4)

Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete, at his expense, at least four (4) hours of coursework in dental recordkeeping that is approved by the Board. The Respondent shall obtain Board-approval of this coursework prior to enrolling in it. The Board will approve the coursework only if it deems the subject matter and curriculum are adequate to satisfy its concerns. The Board reserves the right to require the Respondent to provide further information regarding the coursework he proposes and further reserves the right to reject the course the Respondent proposes and require submission of an alternative proposal. The Respondent shall be responsible for submitting timely written documentation to the Board of his successful completion of this coursework. The Respondent understands and agrees that he may not use this coursework to fulfill any requirements mandated for licensure renewal.

Condition Five (5)

Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete and pass, at his expense, the ADEX examination on dental diagnosis and the formulation of dental treatment plans. The Respondent shall be responsible for submitting timely written documentation to the Board that he successfully passed the ADEX examination.

8. By certified letter to the Respondent, dated November 8, 2013, the Board's case manager instructed the Respondent to contact her with any questions about the Consent Order and to send all correspondence or required reports to her attention. The Respondent took receipt of this letter on or about November 18, 2013.

III. Current Charges

Case Number 2010-249

9. The Board initiated an investigation of the Respondent under Case Number 2010-249 after reviewing a complaint from an adult female ("Patient A"),¹ who alleged that he made surgical errors and deviated from "common and accepted standards" when providing dental treatment to her in 2009. Patient A also expressed concerns about the Respondent's professional ethics when he provided dental treatment to her.

10. On or about March 20, 2009, Patient A presented to the Respondent's Bethesda office for a dental consultation. Patient A did not have any specific dental complaints. Patient A reported that at the time, she was undergoing a medical evaluation for vertigo, eye problems and fatigue. She had no pain or swelling related to her upper left dental quadrant.

11. The Respondent examined Patient A and proposed removal of an implant and crown at tooth # 13 as well as restorations of tooth #s 3 and 8. Patient A was

¹ To ensure confidentiality, the names of patients or other individuals will not be disclosed in this Consent Order. The Respondent is aware of the identity of all patients or other individuals referenced herein.

scheduled for a treatment appointment for March 24, 2009. Patient A reported that the Respondent did not provide a written informed consent document or a discussion of surgical risks.

12. On or about March 22, 2009, Patient A noticed that there was slight movement of the crown on tooth # 14 and that there was a small clicking sound that was related to the movement of the crown.

13. On or about March 23, 2009, Patient A contacted the Respondent's office to confirm her appointment for the next day for restorations of tooth #s 3 and 8 but informed the office that she was canceling work on the implant at tooth # 13.

14. On or about March 24, 2009, Patient A presented to the Respondent's office, whereupon the Respondent insisted on extracting the implant/crown at tooth # 13, against Patient A's objection. The Respondent insisted that the procedure was essential and urgent and would only take 40 minutes to complete.

15. The Respondent performed the procedure, which took 75 minutes to complete. The Respondent experienced complications when performing the procedure, to the point where he urged Patient A to permit him to remove the implant/crown at tooth # 14, as well as the implant/crown at tooth # 13. Patient A reported that the procedure was very painful and stressful and that during it, she experienced dramatic swelling of her left eye. The Respondent placed two implants at the # 13 and # 14 sites. The Respondent did not address the scheduled planned restorations of tooth #s 3 and 8.

16. Over the next week, Patient A stayed in contact with the Respondent's office regarding her pain, sensitivity and inability to chew food on her front teeth. One week post-operatively, Patient A asked to have an x-ray to evaluate the position of her

new implants. In response, the Respondent reportedly stated that there was no need for post-operative x-rays and that the new implants were the same size and in the same position as the previous implants.

17. On or about April 6, 2009, Patient A determined that she did not feel comfortable about her post-operative care and continued discomfort from tooth # 12, at which point she scheduled a second opinion with an oral surgeon.

18. On or about April 8, 2009, Patient A presented to an oral surgeon ("Dentist A"), who took a periapical x-ray and consulted with her regarding her dental condition. Dentist A evaluated the Respondent's pre-treatment x-ray and determined that the implants at tooth #s 13 and 14 were acceptable and that there was no reason for the Respondent to have removed them.

19. Dentist A advised Patient A that both of the implants the Respondent placed should be removed due to their unfavorable position and that Patient A should seek an additional opinion from a general dentist.

20. On or about April 9, 2009, Patient A presented to a general dentist ("Dentist B"), who reviewed his findings with Dentist A.

21. On or about April 22, 2009, Dentist A removed both malposed and non-restorable implants at tooth #s 13 and 14 and placed a bone graft to the site.

22. Patient A subsequently requested that the Respondent return her pre-payment for services not yet rendered. The Respondent contested the amount of the unfulfilled services and insisted that she sign a letter releasing him from future claims prior to his refunding her money.

Summary of Treatment Provided by the Respondent

23. On or about January 20, 2009, Patient A presented to the Respondent's office for a prophylaxis and a panorex x-ray. The x-ray revealed that the crown on implant # 13 was not properly seated. The Respondent did not note this finding in Patient A's chart, however.

24. The Respondent noted in Patient A's chart that she returned to his office on March 20, 2009, and informed him of her medical symptoms, which included headaches, dizziness and fatigue. The Respondent mentioned in a summation letter that an MRI was negative and that allergy medications and antibiotics did not remedy her symptoms. The Respondent stated that he examined Patient A and was able to palpate a painful swelling about implant # 13. The Respondent stated that he prescribed an antibiotic, amoxicillin, and that Patient A's condition improved.

25. On or about March 24, 2009, the Respondent took a pre-operative periapical x-ray that he believed confirmed an infection of the periapical area of tooth # 13 as well as coronal bone atrophy at tooth # 14. The Respondent removed the implant/crown at tooth # 13 due to periapical infection and reported finding a significant amount of cotton fiber that was associated with the crown at tooth # 13. The Respondent placed two implants at the same sites.

26. The Respondent reported that the surgery on March 24, 2009, took one hour and fifteen minutes and caused Patient A significant discomfort and severe swelling on her left eye and cheek that occurred as soon as the implant was lifted off the infection.

27. By letter dated June 8, 2009, the Respondent informed Patient A that since she was not completing her entire treatment plan, the previously extended

\$1645.00 courtesy was being withdrawn and that her account actually had an \$ 800.00 credit. The Respondent offered to refund Patient A \$ 1300.00 upon her signing the form that he provided for release of all claims against him.

Expert Review

28. As part of its investigation, the Board referred Patient A's dental records and the dental records of additional patients ("Patients C through F") to whom the Respondent provided dental treatment to a board-certified expert in oral and maxillofacial surgery (the "Expert") for review.

29. The Expert submitted a report in which he concluded as follows:

My findings are that . . . [the Respondent] . . . has provided incompetent care and treatment to . . . [Patient A] . . . regarding the health care record, diagnostic and surgical management. There is suspect diagnostic acumen, inadequate surgical implant care and questionable billing practices. These findings are reinforced by the five additional records reviewed.

30. With respect to **Patient A**, the Expert concluded that the Respondent provided incompetent dental care by:

- (a) His failure to document an adequately detailed medical and dental history, including no mention of daily medications or allergies;
- (b) His inadequate documentation of Patient A's dental and periodontal condition;
- (c) His failure to document upon the patient chart pertinent x-ray findings (e.g., the panorex from January 30, 2009, and periapical x-ray from March 24, 2009);
- (d) His failure to record office progress notes in a timely and detailed basis. There is no progress note related to billed services for February 18, 2009. The patient progress note dated March 20, 2009, was not entered until March 24, 2009;
- (e) His failure to honor Patient A's request to defer treatment to implant/crown # 13 and implant/crown # 14;

- (f) His failure to document informed consent for the surgical procedure performed on March 24, 2009;
- (g) His failure to diagnose and discuss the pathology related to implant/crown at # 13 and # 14 with Patient A prior to surgery. Rather than extracting implant/crown # 13, removing crown # 13 would have led to the discovery of the residual cotton. The mobility related to implant/crown # 14 was likely due to a fracture of the abutment or internal screw. Both implants at # 13 and # 14 were likely restorable;
- (h) His failure to document the type, brand, lot number and expiration of the graft, procedure code D4263, performed on March 24, 2009;
- (i) His failure to stage the implant reconstruction until a future date related to his stated findings of abscess and concerning bone loss on March 24, 2009;
- (j) His failure to take a post-operative x-ray of his implant placement on March 24, 2009, or at follow-up office visits on April 1, 2009, and April 7, 2009;
- (k) His placement of implants to sites # 13 and # 14 was incompetent due to poor alignment and angulation, and thus required immediate removal and surgical site reconstruction;
- (l) The correct code for the surgical removal of a dental implant is D6100. The Respondent incorrectly used CDT 7210, the code for the surgical extraction of an erupted tooth; and
- (m) His failure to release Patient A's records to her in a timely manner.

31. With respect to Patients C through F, the Expert found that the Respondent provided incompetent dental care, noting the following deficiencies:

32. With respect to **Patient C**:

- (a) The Respondent failed to complete Patient C's medical/dental history; and
- (b) The post-treatment x-rays for RCT performed on tooth #s 3 and 12 on August 6, 2009, do not adequately demonstrate the adjacent periapical tissues.

33. With respect to **Patient D**:

- (a) The Respondent failed to complete Patient D's medical/dental history; and
- (b) There are major billing adjustments/courtesies that are detailed as cash payments in patient notes dated December 23, 2008, April 6, 2009, and June 24, 2009.

34. With respect to **Patient E**:

- (a) The Respondent failed to complete Patient E's medical/dental history; and
- (b) The Respondent failed to record periodontal probing notes or dental charting when Patient E was initially seen as a new patient.

35. With respect to **Patient F**:

- (a) The Respondent failed to complete Patient F's medical/dental history; and
- (b) Patient F's bitewing x-ray bite block was not seated in an optimal position, and thus the x-rays taken on April 16, 2010, have less diagnostic value.

36. Based on the above, the Board finds that the Respondent practiced dentistry in a professionally incompetent manner or in a grossly incompetent manner in violation of Health Occ. § 4-315(a)(6),.

Case Number 2011-261

37. The Board conducted an investigation under Case Number 2011-261 after determining that the Respondent failed to comply with certain terms and conditions that were mandated under the Consent Order.

38. The Board's investigation determined that the Respondent did not complete Condition Four (4) of the Consent Order (requiring successful completion of at least four hours of coursework in dental recordkeeping) within the time frame mandated in the Consent Order, *i.e.*, within six months of the date the Board executed the Consent Order, or May 6, 2014.

39. The Board's investigation determined that the Respondent did not complete Condition Five (5) of the Consent Order (requiring passing the ADEX examination) within the time frame mandated in the Consent Order, *i.e.*, within six months of the date the Board executed the Consent Order, or May 6, 2014.

40. The Respondent failed to comply with Condition Four (4) of the Consent Order in that he failed to successfully complete at least four hours of Board-approved coursework in dental recordkeeping within the time frame mandated in the Consent Order.

41. The Respondent's failure to complete Condition Four (4) of the Consent Order constitutes a violation of: the probationary terms and conditions of the Consent Order; Health Occ. § 4-315(a)(16) (Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession); and Health Occ. § 4-315(a)(31) (Fails to comply with any Board order).

42. The Respondent failed to comply with Condition Five (5) of the Consent Order in that he failed to successfully complete and pass the ADEX examination within the time frame mandated in the Consent Order.

43. The Respondent's failure to complete Condition Five (5) of the Consent Order constitutes a violation of: the probationary terms and conditions of the Consent Order; Health Occ. § 4-315(a)(16) (Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession); and Health Occ. § 4-315(a)(31) (Fails to comply with any Board order).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that with respect to Case Number 2010-249, the Respondent violated the following

provision of the Act under Health Occ. § 4-315(a): (6), Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner.

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that with respect to Case Number 2011-261, the Respondent violated the following provisions of the Act under Health Occ. § 4-315(a): (16), Behaves dishonorably or unprofessionally or violates a professional code of ethics pertaining to the dentistry profession; and (31) Fails to comply with any Board order. In addition, the Board concludes as a matter of law that the Respondent violated Conditions Four and Five of the Consent Order, dated November 6, 2013.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED that the Order for Summary Suspension, dated December 22, 2014, is hereby **TERMINATED**; and it is further

ORDERED that the Respondent's license to practice dentistry in the State of Maryland is hereby **SUSPENDED** for **ONE (1) YEAR**, commencing on December 22, 2014; and it is further

ORDERED that the Board shall place the Respondent on **PROBATION** for a minimum period of **TWO (2) YEARS**, to commence on the date the Board executes this Consent Order, and continuing until he successfully complies with the following terms and conditions:

1. The Respondent shall at all times comply with and practice according to the Maryland Dentistry Act and all laws and regulations pertaining to the practice of dentistry.

2. Within twelve (12) months of the date the Board executes this Consent Order, the Respondent shall enroll in and successfully complete a minimum of sixteen (16) credit hours clinical training in endodontics in a Board-approved training program, with the requirement that he take and pass the ADEX endodontic clinical examination (Manikin-based) prior to resuming providing any endodontic therapy in his practice.

3. The Respondent shall document in a patient's record the following, as applicable: clinical examination findings; pulpal testing findings; pre-operative diagnoses; full and complete informed consent; local anesthetics delivered or medications administered; use or non-use of a rubber dam; canal lengths/final preparation size; irrigants used; the filling material used; and a notation and interpretation of all radiographs taken;

4. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete, at his expense, at least four (4) credit hours of coursework in dental recordkeeping that is approved by the Board. The Board will approve the coursework only if it deems the subject matter and curriculum are adequate to satisfy its concerns. The Board reserves the right to require the Respondent to provide further information regarding the coursework he proposes and further reserves the right to reject the course the Respondent proposes and require submission of an alternative proposal. The Respondent shall be responsible for submitting timely written documentation to the Board of his successful completion of this coursework. The Respondent understands and agrees that he may not use this coursework to fulfill any requirements mandated for licensure renewal.

5. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete and pass, at his expense, the ADEX examination on dental diagnosis and the formulation of dental treatment plans.

6. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete, at his expense, a Board-approved course in dental ethics, consisting of not less than six (6) credit hours in length. The Board will approve the course only if it deems the subject matter, curriculum and duration of the course are adequate to satisfy its concerns. The Board reserves the right to require the Respondent to provide further information regarding the course he proposes and further reserves the right to reject the course he proposes and require submission of an alternative proposal. The Respondent shall be responsible for submitting timely written documentation to the Board of his successful completion of this course. The Respondent understands and agrees that he may not use this course to fulfill any requirements mandated for licensure renewal.

7. Within twelve (12) months of the date the Board executes this Consent Order, the Respondent shall enroll in and successfully complete a minimum of sixteen (16) credit hours of clinical training in implants in a Board-approved training program. The Board will approve the course only if it deems the subject matter, curriculum and duration of the course are adequate to satisfy its concerns. The Board reserves the right to require the Respondent to provide further information regarding the course he proposes and further reserves the right to reject the course the Respondent proposes and require submission of an alternative proposal. The Respondent shall be responsible for submitting timely written documentation to the Board of his successful

completion of this course. The Respondent understands and agrees that he may not use this course to fulfill any requirements mandated for licensure renewal.

AND IT IS FURTHER ORDERED that if the Respondent successfully completes all of the terms and conditions set forth above to the Board's satisfaction, he may petition the Board prior to the conclusion of the one (1) year suspension, to lift the suspension imposed above; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

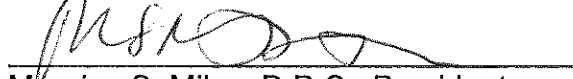
ORDERED that after the conclusion of the two (2) year period of probation imposed above, and provided the Respondent has completed the above probationary conditions, he may file a written petition to the Board requesting termination of his probation. After consideration of his petition, the probation may be terminated through an order of the Board or a designated Board committee. The Board, or designated Board committee, will grant the termination only if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions of this Consent Order, including the two (2) year probationary period set forth above, and there are no outstanding complaints about him before the Board; and it is further

ORDERED that if the Respondent violates any of the terms or conditions of this Consent Order, or the probationary conditions set forth herein, the Board shall provide the Respondent with the opportunity to appear for a show cause hearing before the Board. The Respondent understands and agrees that the Board may impose any other disciplinary sanctions it may have imposed, including a reprimand, probation, suspension, revocation and/or a monetary fine, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall not apply for early termination of probation;
and it is further

ORDERED that the Consent Order is considered a **PUBLIC DOCUMENT**
pursuant to Md. Code Ann., General Provisions §§ 4-101 to 4-601 (2014).

2/2/15
Date


Maurice S. Miles, D.D.S., President
Maryland State Board of Dental Examiners

CONSENT

I, Randall R. Yazhary, D.D.S., acknowledge that I have had the opportunity to consult with counsel before signing this document. I admit to the Findings of Fact and accept the Conclusions of Law and by this Consent, I agree and accept to be bound by this Consent Order and its conditions and restrictions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal the Board's Final Order in this matter.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

January 30, 2015
Date


Randall R. Yazhary, D.D.S.
Respondent

Read and approved by:

Catherine A. Hanrahan
Catherine A. Hanrahan, Esquire
Counsel for Dr. Yazhary

NOTARY

STATE OF see stamp

CITY/COUNTY OF: see stamp

District of Columbia: SS
Subscribed and Sworn to before me,
this 30th day of January, 2015
Jennifer Thompson
Notary Public, D.C.
My commission expires 01/14/2017

I HEREBY CERTIFY that on this 30th day of January, 2015, before me, a Notary Public of the State and County aforesaid, personally appeared Randall R. Yazhary, D.D.S., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Jennifer Thompson
Notary Public

My commission expires: 01/14/2017

