

IN THE MATTER OF
DONG S. LEE, D.D.S.

Respondent

License Number: 7702

* BEFORE THE MARYLAND
* STATE BOARD OF
* DENTAL EXAMINERS
* Case Numbers: 2013-124
2018-185

* * * * *

CONSENT ORDER

On April 18, 2018, the Maryland State Board of Dental Examiners (the “Board”) summarily suspended the license of **DONG S. LEE, D.D.S.**, (the “Respondent”), License Number 7702, and charged him with violating the Maryland Dentistry Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 4-101 *et seq.* (2014 Repl. Vol.), under Board Case Number 2018-185.

Specifically, the Board charged the Respondent with violating the following provisions of the Act under Health Occ. § 4-315:

- (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]
 - (28) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control’s guidelines on universal precautions[.]

Concurrently, the Board had an open investigation against the Respondent under Board Case Number 2013-124, in which it had grounds to charge the Respondent with violating the following provisions of the Act under Health Occ. § 4-315:

- (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...; [and]
 - (20) Violates any rule or regulation adopted by the Board[.]

The pertinent provisions of the Board's recordkeeping regulations provide:

COMAR 10.44.30.02 General Provisions for Handwritten, Typed and Electronic Health Records.

- K. Dental records shall:
 - (3) Be legible[.]
- L. Entries shall be signed or initialed by the individual who provided the treatment.

COMAR 10.44.30.03 Clinical Charts.

- A. Each patient's clinical chart shall include at a minimum the following:
 - ...
 - (3) Treatment plans that are signed and dated by both the treating dentist and the patient;
 - ...
 - (15) Informed consent; [and]
 - ...
 - (18) Details regarding referrals and consultations[.]

On June 20, 2018, a Case Resolution Conference was held before a committee of the Board. As a resolution of this matter, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

I. BACKGROUND

1. At all times relevant, the Respondent was and is licensed to practice dentistry in the State of Maryland. The Respondent was originally licensed to practice dentistry in Maryland on November 18, 1981, under License Number 7702. The Respondent's license is current through June 30, 2018. On April 18, 2018, the Board summarily suspended the Respondent's license to practice dentistry after its investigation determined that the Respondent failed to comply with Centers for Disease Control and Prevention Guidelines (the "CDC Guidelines") in his practice of dentistry.

2. At all times relevant, the Respondent practiced general dentistry at locations in Fort Washington, Maryland (the "MD Office").¹

3. On or about January 7, 2013, the Board received a complaint from a patient (the "Patient") to whom the Respondent performed a root canal therapy ("RCT") on Tooth #31 on or about July 3, 2012. The Patient alleged that she continued to experience pain on Tooth #31 for two weeks after the Respondent performed the RCT. During the two-week period, the Patient returned to see the Respondent twice, but the Respondent was unable to relief her pain. The Patient stated that the Respondent ultimately referred her to an endodontist who completed the RCT on Tooth #31.

4. Based on the Patient's allegations, the Board initiated an investigation of the Respondent under Case Number 2013-124.

¹ To ensure confidentiality, the names of individuals, hospitals and healthcare facilities involved in this case are not disclosed in this document.

5. On or about March 15, 2018, the Board received another complaint from an individual (the "Complainant") alleging issues concerning the Respondent's compliance with CDC Guidelines at his MD Office.

6. Based on the complaint, the Board initiated a second investigation of the Respondent and his MD Office under Case Number 2018-185.

II. CASE NUMBER 2013-124

7. In the course of its investigation, the Board obtained the Patient's dental chart, along with five additional dental patient charts, from the Respondent and forwarded them to a licensed dentist in Maryland who specialized in endodontics (the "Board Expert") for a practice review. Based on her review, the Board Expert concluded in a written report to the Board that the Respondent practiced dentistry in an incompetent manner and failed to keep adequate dental records in all six dental charts under review.

8. In all six patients under review, the Board Expert opined that the Respondent practiced dentistry in an incompetent manner based on his failure to use a dental dam, which is mandatory during endodontic treatment.

9. Additionally, the Board Expert found that in all six patient charts reviewed, the Respondent failed to maintain legible records and failed to sign the patient charts. For five of the six patient charts reviewed, the Board Expert found that the Respondent failed to maintain written informed consent.

III. CASE NUMBER 2018-185

10. Due to the Complainant's allegation of issues concerning the Respondent's compliance with CDC Guidelines at his MD Office, on or about March 19,

2018, in Case Number 2018-185, a Board-contracted infection control expert (the "Board Inspector") visited the Respondent's MD Office and conducted an infection control inspection.

11. Initially, the Board Inspector noted that the Respondent was a sole-practitioner at a general dentistry practice in Maryland. The Respondent employed a part-time dentist and a full-time receptionist.

12. As part of the inspection, the Board Inspector utilized the Centers for Disease Control and Prevention Infection Prevention Checklist for Dental Settings.

13. During the inspection, the Board Inspector found the following CDC violations:

Policies and Practices

- a. Failure to maintain and produce equipment maintenance log for autoclave and dental waterline.
- b. Failure to maintain and produce written policies, guidelines, procedures, protocols, training manuals, training logs, or other records with respect to: Infection Prevention Education and Training; Dental Health Care Personnel Safety; Program Evaluation; Hand Hygiene; Personal Protective Equipment; Respiratory Hygiene/Cough Etiquette; Sharp Safety; Sterilization and Disinfection of Patient Care Items and Devices; Environmental Infection Prevention and Control; and Dental Unit Water Quality.
- c. Failure to maintain and produce customized CDC manual or training log for staff on infection control or bloodborne pathogens.

Direct Observation of Personnel and Patient-Care Practices

- d. Failure to comply with Sterilization and Disinfection of Patient Care Items and Devices. The Board Inspector observed multiple examples of unverifiable sterilization of critical and semi-critical items such as burs, bur blocks, XCP equipment, hand instruments, high speed and low speed hand pieces and other miscellaneous items. The majority of the office instrumentation inventory in both operatories and in the storage area was not in autoclave bags. The vast majority of instruments were maintained exposed in drawers with no evidence of verifiable sterilization.
- e. Failure to comply with Environmental Infection Prevention and Control. The Board Inspector observed multiple examples of missing barrier protection on dental units, waterlines, connectors, radiological equipment and dental devices. The operatory counter tops were cluttered, and non-sterile instruments were present, including burs, bur blocks, XCP equipment and hand instruments. Instrument and supply storage areas were cluttered and contained multiple expired products and hand instruments that could not be verified as sterilized.

14. Based on his observations and inspection, the Board Inspector determined that the Respondent's dental practice at his MD Office posed a risk to patient and staff safety.

15. As a result of the Board Inspector's findings, the Respondent proactively retained an infection control consultant to assist him with CDC policies and procedures. The Respondent's consultant conducted two, six-hour, consultation and training sessions on May 17 and June 4, 2018, to assist the Respondent in correcting the deficiencies the Board Inspector found. The Respondent's consultant has provided the Board with a favorable report of the Respondent's compliance with CDC Guidelines.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's failure to use a dental dam during endodontic treatment of six patients under review constitutes practicing dentistry in a professionally incompetent manner, in violation of Health Occ. § 4-315(a)(6). Additionally, the Respondent failure to maintain legible and signed patient records and his failure to maintain written informed consent from patients constitute violating a regulation adopted by the Board, *i.e.* COMAR 10.44.30.02K(3) and L and COMAR 10.44.30.03A(3), (15) and (18), in violation of Health Occ. § 4-315(a)(20).

Moreover, the Respondent's failure to comply with CDC Guidelines in his practice of dentistry at his MD Office constitutes: behaving dishonorably or unprofessionally, or violating a professional code of ethics pertaining to the dentistry profession, in violation of Health Occ. I § 4-315(a)(16); and except in an emergency life-threatening situation where it is not feasible or practicable, failing to comply with the Centers for Disease Control's guidelines on universal precautions, in violation of Health Occ. I § 4-315(a)(28).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the Board considering this case:

ORDERED that the Respondent is hereby **SUSPENDED** for a period of **SIX (6) MONTHS** with all but **SIXTY-THREE (63) DAYS STAYED**, effective April 18, 2018, and it is further

ORDERED that the Respondent is placed on **PROBATION** for a period of **TWO (2) YEARS**, subject to the following terms and conditions:

1. A Board-assigned inspector who is a licensed dentist shall conduct an unannounced inspection no earlier than fifteen (15) business days of the date of this Consent Order in order to evaluate the Respondent and his staff regarding compliance with the Act and infection control guidelines. The Board-assigned inspector shall be provided with copies of the Board's file, the Consent Order, and any other documentation deemed relevant by the Board.
2. The Respondent shall provide to the Board-assigned inspector a schedule of his office's regular weekly hours of practice and promptly apprise the inspector of any changes.
3. During the probationary period, the Respondent shall be subject to quarterly unannounced onsite inspections by a Board-assigned inspector.
4. The Board-assigned inspector shall provide inspection reports to the Board within ten (10) business days of the date of each inspection and may consult the Board regarding the findings of the inspections.
5. The Respondent shall, at all times, practice dentistry in accordance with the Act, related regulations, and shall comply with CDC and Occupational Safety and Health Administration's ("OSHA") guidelines on infection control for dental healthcare settings.
6. Any non-compliance with the Maryland Dentistry Act, all related statutes and regulations, and CDC and OSHA guidelines shall constitute a violation of probation and of this Consent Order.

7. On or before the fifth day of each month, the Respondent shall provide to the Board a copy of his current patient appointment book for that month.
8. Within one (1) year of the date of this Consent Order, the Respondent shall successfully complete the following Board-approved courses: (1) infection control protocols, (2) endodontics and (3) dental recordkeeping. The mandated courses under this provision may not be applied toward his license renewal.
9. The Respondent is subject to chart reviews by the Board. The Board, at its discretion, may conduct office visits for the purpose of chart review to ensure that the Respondent is in compliance with dental and recordkeeping standards.
10. Up on the execution of this Consent Order, the Respondent shall immediately pay a fine in the amount of **Three Thousand dollars (\$3,000)** with all but **One Thousand Five Hundred Dollars (\$1,500) STAYED**. The payment shall be made by bank certified check or money order made payable to the Maryland Board of Dental Examiners.
11. The Respondent may file a petition for early termination of his probation and waiver of the terms and conditions of his probation. On a showing of good cause as determined by the Board, the Board, or a designated committee of the Board, may grant or deny such petition at its sole discretion.

AND IT IS FURTHER ORDERED that, unless an early termination of probation is granted, after the conclusion of the **TWO (2) YEAR** probationary period, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated, through an order of the Board, or a designated Board committee. The Board, or designated Board committee, may grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints of similar nature; and it is further

ORDERED that if the Board has reason to believe that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If there is a genuine dispute as to a material fact, the hearing shall be an evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board; and it is further


ORDERED that after the appropriate hearing, if the Board determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice dentistry in Maryland. The Board may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with the Board-assigned inspector, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

7/19/18
Date



Arthur C. Jee, D.M.D.
Board President
Maryland State Board of Dental Examiners


CONSENT

I, Dong S. Lee, D.D.S., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

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

6/29/2018
Date ₃₅₀



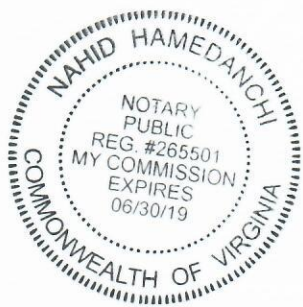
Dong S. Lee, D.D.S.
Respondent

NOTARY

STATE OF MARYLAND Virginia
CITY/COUNTY OF Fairfax

I HEREBY CERTIFY that on this 29th day of June,
2018, before me, a Notary Public of the foregoing State and City/County personally
appear Dong S. Lee, D.D.S., and made oath in due form of law that signing the
foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Nahid Hamedanchi
Notary Public

My commission expires: 06/30/2019

RECEIVED
JUN 29 2018
NOTARY PUBLIC