

IN THE MATTER OF
JOSEPH LEVY, D.D.S.
RESPONDENT

License Number: 7200

* BEFORE THE MARYLAND
* STATE BOARD OF
* DENTAL EXAMINERS
* Case Number: 2015-014

* * * * *

ORDER

PROCEDURAL BACKGROUND

The Maryland State Board of Dental Examiners (the "Board") properly notified **JOSEPH LEVY, D.D.S., License Number 7200** (the "Respondent"), that he was being charged with violation of certain provisions of the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. I §§ 4-101 *et seq.* (2014 Repl. Vol.) and the regulations adopted by the Board, Md. Code Regs. ("COMAR") §§ 10.44.01 *et seq.*

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

§ 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:

(20) Violates any rule or regulation adopted by the Board;

In addition, the Board alleges that the Respondent violated the following regulations adopted by the Board:

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

B. Dental records shall include:

- (1) A patient's clinical chart as described in Regulation .03 of this chapter;

K. Dental records shall:

- (1) Be accurate;
- (2) Be detailed;
- (3) Be legible;
- (4) Be well organized; and
- (5) Document all data in the dentist's possession pertaining to the patient's dental health status;

COMAR § 10.44.30.03 Clinical Charts.

A. Each patient's clinical chart shall include at a minimum the following:

- (5) Diagnosis and treatment notes;
- (10) Identification of medications prescribed, administered, dispensed, quantity, and directions for use;
- (12) Radiographs of diagnostic quality;
- (15) Informed consent;

COMAR § 10.44.30.05 Violations

A. Failure to comply with this chapter constitutes unprofessional conduct and may constitute other violations of law.

On December 6, 2017, a hearing on the merits was held. Present were the following Board members, which constituted a quorum: Arthur Jee, D.M.D., Board President; Louis DePaola D.D.S., M.S.; Barry Cohan, D.D.S.; Arpana Singh Verma, D.D.S.; Robert Windsor, D.D.S.; James Goldsmith, D.M.D.; Jane Casper, R.D.H., M.A.; Ronald Moser, D.D.S.; Roslyn Chester, R.D.H., M.A.; and Stefan Miller, Consumer Member. Also present were the following individuals: Christopher Anderson, Esq., Assistant Attorney General, Administrative

Prosecutor; K.F. Michael Kao, Esq., Assistant Attorney General, Administrative Prosecutor; Grant Gerber, Esq., Assistant Attorney General, Board Counsel; Tony Torain, Executive Director; Patrice McLeod, Chief Dental Officer; Joseph Levy, D.D.S., Respondent; and Joseph Kelley, Esq., Respondent's Counsel. The Respondent was present and represented by counsel throughout the hearing.

SUMMARY OF THE EVIDENCE

The following exhibits were admitted into evidence during the hearing:

STATE'S EXHIBITS

No.	
1	Respondent's Licensing Information
2	Complaint to Board
3	Subpoena to Respondent for Complainant's Records
4	Patient Records of Complainant Received from Respondent
5	Subpoena to Respondent for Appointment Book
6	Subpoena to Respondent for Additional Patient Records
7	Letter from Respondent's Attorney
8	Additional Patient Records
9	Assignment Memo to Expert, Dr. Timothy Skane, D.D.S.

10	Expert Report
11	National Practitioner Databank Response
12	Letter Enclosing Copy of Expert Report to Respondent
13	Respondent's Response to Expert Report
14	Board Investigator's Report of Investigation
15	Charges Against the Respondent under the Maryland Dentistry Act

RESPONDENT'S EXHIBITS

No.

1	Blank Informed Consent, Privacy Practices, Patient Registration, Medical History, and Examination/Treatment Forms
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ARGUMENT

I. State's Argument

Mr. Christopher Anderson, Assistant Attorney General, Administrative Prosecutor, made the following arguments on behalf of the State. This case came about through information provided in a complaint from a former patient ("Patient A") that the Respondent had improperly performed a Root Canal Treatment. This information caused the Board to conduct an investigation and

obtain Patient A's treatment records. The Board subsequently obtained the treatment records of five additional patients ("Patients B, C, D, E, & F") who received Root Canal Treatments, and the Board referred the records to Timothy Skane, D.D.S., an endodontics expert, for review. Dr. Skane reported and subsequently testified that the Respondent's "recordkeeping was inadequate in all cases" because the treatment records of all six patients did not document multiple steps of the Root Canal Treatment or informed consent (T., p. 70-71). The State argued that the Respondent did not conduct himself professionally when he failed to maintain adequate treatment records and, by virtue of his Maryland license to practice dentistry, the Respondent was required "to conduct himself in a professional manner and adhere to the Board's rules and statute" (T., p. 37-38).

II. Respondent's Argument

Mr. Joseph Kelley made the following arguments on behalf of the Respondent. The Respondent is licensed as a general dentist and has practiced in Maryland for thirty-seven years without any adverse licensure action (T., p. 132-133). The Respondent argued that it was clear from the treatment records that Root Canal Treatments had been performed on all patients and that, prior to 2012, the Board's rules were not enforced to require more detailed recordkeeping (T., p. 51-52). The Respondent further argued that the Board "instituted a new rule after the treatment of the Complainant in early 2012 regarding recordkeeping", and that the Respondent "subsequently changed his recordkeeping practices consistent with the rules" (T., p. 51, 106). The Respondent testified during the hearing but called no witnesses for testimony.

FINDINGS OF FACT

The Board makes the following Findings of Fact based on the foregoing record:

1. At all times relevant hereto, the Respondent was and is licensed to practice dentistry in the State of Maryland. The Respondent was initially licensed to practice dentistry in Maryland on or about June 5, 1980, under License Number 7200. The Respondent's license is renewed through July 30, 2018.
2. At all times relevant hereto, the Respondent operated a dental practice at 19 Walker Avenue, Suite #30, Baltimore, Maryland, 21208.
3. On or about July 30, 2015, the Board received a complaint (the "Complaint") from a former patient ("Patient A") of the Respondent.
4. The Complaint alleged *inter alia* that Patient A experienced pain and infection as a result of the Respondent improperly performing a Root Canal Treatment on Patient A, and that the tooth had to be re-treated by another provider.
5. Based on the Complaint, the Board initiated an investigation of the Respondent.
6. In furtherance of its investigation, the Board requested from the Respondent Patient A's treatment records and a narrative response to the Complaint.
7. Subsequently, the Board obtained the treatment records of five additional patients ("Patients B, C, D, E, & F").
8. The Board referred the treatment records of Patients A through F to an expert in endodontics (the "Expert") for a review of the Respondent's care.
9. On or about November 24, 2015, the Expert issued a report (the "Expert Report") of his findings. The Expert Report revealed the following:

Patient A

10. Patient A was under the Respondent's care from approximately January 2012 until May 2012. During this period, the Respondent performed treatments, including: examination, root canal therapy, and delivery of a crown.

11. The Expert Report documents the following deficiencies in the Respondent's documentation for Patient A:

- (a) Failure to document Patient A's chief complaint;
- (b) Failure to perform and/or document pulpal diagnostic testing;
- (c) Failure to perform and/or document oral cancer screening;
- (d) Failure to perform and/or document occlusal evaluation;
- (e) Failure to obtain and/or document informed consent for root canal therapy;
- (f) Failure to document anesthesia used in root canal therapy;
- (g) Failure to document instrumentation used in root canal therapy
- (h) Failure to document irrigants used in root canal therapy; and
- (i) Failure to document appropriate tooth isolation during root canal therapy.

12. Based on his review, the Expert concluded that the Respondent's documentation of his treatment of Patient A was inadequate.

Patient B

13. Patient B was under the Respondent's care in 2012 and 2013. During this period, the Respondent performed various treatments on Patient B, including root canal therapies.

14. The Expert Report documents the following deficiencies in the Respondent's documentation related to the root canal therapy:

- (a) Failure to obtain and/or document informed consent;
- (b) Failure to perform and/or document diagnostic testing;

- (c) Failure to document a diagnosis;
- (d) Failure to document anesthesia used;
- (e) Failure to document tooth appropriate isolation; and
- (f) Failure to document irrigants used.

15. Based on his review, the Expert concluded that the Respondent's documentation of his treatment of Patient B was inadequate.

Patient C

16. Patient C was under the Respondent's care in 2012. During this period, the Respondent performed various treatments on Patient C, including root canal therapy.

17. The Expert Report documents the following deficiencies in the Respondent's documentation related to the root canal therapy:

- (a) Failure to obtain and/or document informed consent;
- (b) Failure to perform and/or document diagnostic testing;
- (c) Failure to document anesthesia used;
- (d) Failure to document tooth appropriate isolation; and
- (e) Failure to document irrigants used.

18. Based on his review, the Expert concluded that the Respondent's documentation of his treatment of Patient C was inadequate.

Patient D

19. Patient D was under the Respondent's care for over a decade. During this period, the Respondent performed various treatments on Patient D, including root canal therapies.

20. The Expert Report documents the following deficiencies in the Respondent's documentation related to the root canal therapy:

- (f) Failure to obtain and/or document informed consent;
- (g) Failure to perform and/or document diagnostic testing;
- (h) Failure to obtain and/or maintain radiographs of diagnostic quality;
- (i) Failure to document anesthesia used;
- (j) Failure to document tooth appropriate isolation; and
- (k) Failure to document irrigants used.

21. Based on his review, the Expert concluded that the Respondent's documentation of his treatment of Patient D was inadequate.

Patient E

22. Patient E was under the Respondent's care in 2012. During this period, the Respondent performed various treatments on Patient E, including root canal therapies.

23. The Expert Report documents the following deficiencies in the Respondent's documentation related to the root canal therapy:

- (l) Failure to obtain and/or document informed consent;
- (m) Failure to perform and/or document diagnostic testing;
- (n) Failure to document anesthesia used;
- (o) Failure to document tooth appropriate isolation; and
- (p) Failure to document irrigants used.

24. Based on his review, the Expert concluded that the Respondent's documentation of his treatment of Patient E was inadequate.

Patient F

25. Patient F was under the Respondent's care in 2011. During this period, the Respondent performed various treatments on Patient F, including root canal therapies.

26. The Expert Report documents the following deficiencies in the Respondent's documentation related to the root canal therapy:

- (q) Failure to obtain and/or document informed consent;
- (r) Failure to perform and/or document diagnostic testing;
- (s) Failure to obtain and/or maintain radiographs of diagnostic quality
- (t) Failure to document anesthesia used;
- (u) Failure to document tooth appropriate isolation; and
- (v) Failure to document irrigants used.

27. Based on his review, the Expert concluded that the Respondent's documentation of his treatment of Patient F was inadequate.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated the following laws and regulations. The Board found Dr. Skane's expert testimony regarding the inadequacy of the Respondents recordkeeping to be credible. As a licensed dentist in Maryland, the Respondent must comply with the Act and regulations adopted by the Board. Accordingly, the Board finds that the Respondent violated H.O. § 4-315(a)(20), COMAR § 10.44.30.02, and COMAR § 10.44.30.03 when he failed to maintain adequate treatment records. Based on these findings, the Board concludes that the Respondent's conduct was unprofessional, and the Board issues the following order in accordance with its sanctioning guidelines under COMAR § 10.44.30.05.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 4th day of September, 2019, by the majority of the Board, hereby:

ORDERED that the Respondent is hereby **REPRIMANDED**, 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. Within ninety (90) days, Respondent shall pay a monetary penalty in the amount of **ONE THOUSAND DOLLARS** (\$1,000.00) by bank certified check or money order made payable to the Maryland State Board of Dental Examiners;
2. Within six (6) months of the date of this Consent Order, the Respondent shall, at his own expense, successfully complete in-person course(s), approved by the Board in advance, in professional ethics equivalent to six (6) credit hours. Respondent shall submit written verification that satisfies the Board of the successful completion of the course(s) within thirty (30) days of completion of the course;
3. Within six (6) months of the date of this Consent Order, the Respondent shall, at his own expense, successfully complete in-person course(s), approved by the Board in advance, in recordkeeping equivalent to six (6) credit hours. Respondent shall submit written verification that satisfies the Board of the successful completion of the course(s) within thirty (30) days of completion of the course;
4. During the probationary period, the Respondent shall be subject to biannual record reviews of the Respondent's records. Each record review shall be conducted by a Board-designated expert, who shall review the records of a selection of patients whom the Respondent treated after completion of the recordkeeping course mentioned above. The Board

designee shall personally select the records on-site at the Respondent's practice, and may do so at either a scheduled or unannounced visit. An unsatisfactory review, as determined in the sole discretion of the Board, shall constitute a violation of this Consent Order;

5. In order to facilitate record reviews as described above, the Respondent shall, on the first (1st) day of each month, provide the Board with a copy of his current patient appointment book for that month. The Respondent shall notify the Board beforehand of any changes to his schedule that will result in his absence from the office, unless he is unable to do so by reason of documented emergency or illness; and
6. The Respondent shall, at all times, practice dentistry in accordance with the Maryland Dentistry Act and all related statutes and regulations;

AND IT IS FURTHER ORDERED that no part of the training or education that the Respondent receives in order to comply with this Consent Order may be applied to his required continuing education requirements for licensure renewal, and it is further

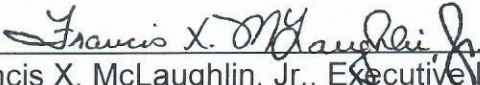
ORDERED shall at all times cooperate with the Board, any of its agents or employees, and with the Board-designated Expert, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order, and it is further

ORDERED that 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 a 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 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 constitutes an Order of the Board and is therefore a **PUBLIC DOCUMENT** for purposes of public disclosure, as required by Md. State Govt. Code Ann. §10-617(h) (2009 Repl. Vol.).



Francis X. McLaughlin, Jr., Executive Director
Maryland State Board of Dental Examiners

NOTICE OF THE RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.