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| IN THE MATTER OF     | * | BEFORE THE MARYLAND |
| DAVID LEWIS, D.D.S.  | * | STATE BOARD OF      |
| Respondent           | * | DENTAL EXAMINERS    |
| License Number: 6523 | * | Case No.: 2015-163  |
| * * * * *            |   |                     |

**PRE-CHARGE CONSENT ORDER**

The State Board of Dental Examiners (the "Board") **SUMMARILY SUSPENDED** the license of DAVID LEWIS, D.D.S. (the "Respondent"), License Number 6523, to practice dentistry in the State of Maryland, pursuant to its authority under Md. Code Ann., State Gov't II § 10-226(c) (2014 Repl. Vol.), finding that "the public health, safety, or welfare imperatively required emergency action."

A Case Resolution Conference ("CRC") was held in this matter before a Board committee on June 3, 2015. The Respondent represented by counsel, and the Administrative Prosecutor assigned to the case participated in the CRC. As a result of negotiations at the CRC the Respondent waived his right to a Show Cause hearing, and the parties agreed to the following Pre-Charge Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

The Board makes the following findings of fact:

**Background**

1. At all times relevant to this Order, the Respondent was licensed to practice dentistry in the State of Maryland. The Respondent initially received his license

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BOARD OF DENTAL EXAMINERS

to practice dentistry on December 16, 1977. The Respondent's current license expires on June 30, 2015.

2. At all times relevant to this Order, the Respondent operated a general dental practice in Rockville, Maryland. The Respondent is a solo practitioner who practices general dentistry and employs one or more dental assistants.

3. On March 19, 2015, the Board received a complaint from a patient who received treatment from the Respondent, hereinafter identified as "Patient A."<sup>1</sup> Patient A alleged various health and safety concerns, including the following: the Respondent's office was unsanitary and unclean; had an unpleasant odor; dental instruments were not in autoclave bags; the Respondent dipped the mirrors in a blue liquid; the Respondent wore gloves, but between cleanings he washed his hands with the gloves on.

4. Upon review of the complaint, the Board initiated an investigation. On or about April 6, 2015, the Board assigned the case to an independent infection control expert (the "Board Expert") to conduct an inspection of the Respondent's dental office (the "office").

5. On or about April 7, 2015, the Board Expert conducted an unannounced inspection of the Respondent's office to determine whether the Respondent was in compliance with the Centers for Disease Control and Prevention ("CDC")<sup>2</sup> guidelines on universal precautions.

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<sup>1</sup>Patient A is not identified in this document in order to protect the privacy of Patient A.

<sup>2</sup>The CDC is a federal agency dedicated to designing protocols to prevent the spread of disease. The CDC has issued guidelines for dental offices which detail the procedures deemed necessary to minimize the chance of transmitting infection both from one patient to another and from the dentist, dental hygienist and dental staff to and from the patients. These guidelines include some very basic precautions, such as washing one's hands prior to and after treating a patient, and also set forth more involved standards for infection control. Under the Maryland Dentistry Act, Md. Code Ann., Health Occ. I § 4-315(30), all dentists are required to comply with the CDC guidelines, which incorporate by reference the Occupational Safety and Health Administration's ("OSHA") final rule on Occupational Exposure to Bloodborne Pathogens (29

6. The Board received an inspection report from the Board Expert on or about April 9, 2015, which noted numerous violations of the CDC guidelines. The report concluded that:

the infection control practices in the facility do not meet expected standards. There is a question as to if any spore testing is conducted in the facility. The majority of patient care instruments in the facility are left open and unbagged in operatory drawers for patient use. Those items that are in sterilization bags are undated, lack internal indicators and do not identify which autoclave they were sterilized in.

7. A summary of the findings from the report is set forth *infra*.

**A. Board Expert Report**

8. On or about April 7, 2015, the Board Expert arrived at the Respondent's office in Rockville, Maryland for an unannounced, on-site inspection.

9. At the time of the inspection the Respondent and two support staff persons were present.

10. The Board Expert noted over 50 violations in his report that required further corrective action, including, but not limited to the following violations:

- (a) Respondent was observed using a cloth towel to dry his washed hands rather than available disposable towels. Staff advised that the towels were laundered weekly;
- (b) A defogger (blue liquid) was used on mirrors prior to usage. Staff advised that the defogger is changed daily in a common dish in each operatory;
- (c) Mirrors are not kept in sterilization bags and are left open in operatory drawers for usage;
- (d) The office is outdated, cluttered, and dirty;

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CFR 1910.1030). The only exception to this rule arises in an emergency which is: 1) life-threatening; and (2) where it is not feasible or practicable to comply with the guidelines.

- (e) Operatories are carpeted and have multiple pieces of machinery that appear to be broken, unused, and unclean;
- (f) Multiple unsterilized instruments were left in operatory drawers including high speed and low speed hand pieces;
- (g) Protection barriers were not used on dental care units and radiograph units;
- (h) Office staff could not produce any written records of spore tests, biohazard removal, exposure control or infection control policies or procedures; and
- (i) Board Expert observed multiple examples of plastic instruments being cold sterilized;
- (j) Dental instruments were found in sterilization bags, lacked internal indicators and there were no notations as to which autoclave instruments were sterilized in; and
- (k) There were shelves and drawers of expired products with evidence that the products and equipment had been out of use for quite some time

11. The Board Expert noted in his report that the observed infection control violations create a high risk for patient injury.

12. The Respondent's actions as described herein, is a violation of Md. Code Ann., Health Occ. I § 4-315 (30), which requires compliance with the CDC guidelines.

13. The Respondent's inability to follow the CDC guidelines on universal precautions poses an imminent risk of harm to the health, safety and welfare of the public, and imperatively required the suspension of his license.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Respondent's actions constituted a danger to the public health, safety or welfare, and imperatively required emergency

suspension of his license, pursuant to Md. Code Ann., State Gov't II § 10-226(c)(2) (2014 Repl. Vol.).

The Respondent also violated H.O. § 4-315 (30), which requires compliance with the CDC guidelines.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 11th day of June, 2015, by a majority of the quorum of the Board considering this case hereby:

**ORDERED** that effective the date of this Consent Order, the Respondent shall:

1. Retain a Board-assigned CDC Inspector to inspect his office for compliance with the CDC requirements of the regulations. Upon receipt of a favorable inspection report the Respondent's license will be reinstated;

2. The Respondent shall be placed on probation for **Two (2) Years**, subject to the following terms and conditions:

(a) Within **THREE (3) WEEKS** from the date that the suspension is lifted the Respondent shall retain, at his expense, a Board-approved Consultant (the "Consultant") to evaluate his current dental office for compliance with CDC guidelines during a full day of patient care, consisting of at least two (2) patients and prepare a report with findings and recommendations, which the Respondent shall provide to the Board within ten (10) days of the evaluation;

(b) Within **Two (2) MONTHS** from the date that the suspension is lifted the Consultant shall train the Respondent and each employee of the office in applying the CDC guidelines and prepare a report evaluating the training and the Respondent's

progress, which the Respondent shall provide to the Board within ten (10) days of the date of the training;

(c) Thereafter a Board-assigned CDC Inspector shall conduct an unannounced inspection to ensure compliance with the CDC guidelines on a quarterly basis for a period of two years and prepare an inspection report for the Board;

(d) The Respondent shall be responsible for the expense of the Board-assigned CDC inspector;

(e) The Board reserves the right to communicate with the CDC Inspector regarding the findings of any inspection;

3. If the Board finds, based on the inspections of the Board-assigned CDC inspector, future complaint investigations, or unannounced inspections by the Board, that the Respondent is not in compliance with the CDC guidelines in any office where the Respondent practices it shall constitute a violation of the Consent Order, and it may in the Board's discretion be grounds for immediately suspending the Respondent's dentistry license. In the event the Respondent's license is suspended under this provision, he shall be afforded a show cause hearing to show cause as to why his license should not be suspended;

4. Within **SIX (6) months** of this Consent Order, the Respondent shall complete four (4) credit hours of Board-approved infection control courses in addition to the two (2) required hours for license renewal for a total of six (6) hours;

5. The four hour course required under this Consent Order shall not count towards the courses required to maintain the Respondent's dental license in Maryland;

6. The Respondent shall submit the course description/syllabus to the Board for approval prior to enrolling in a course required under this Order. 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 proposed course and require submission of an alternative proposal. The Board will approve a course only if it deems the curriculum and the duration of the course to be adequate to fulfill the Respondent's requirements under this Order. The Respondent shall be responsible for all costs incurred in fulfilling the course requirements and for submitting to the Board written documentary proof of his successful completion of the course.

7. The course completed under this Order cannot be used to satisfy the continuing education requirements for the applicable licensure renewal period.

8. The Respondent is responsible for ensuring that he completes the required course in a timely manner;

**BE IT FURTHER ORDERED** that the Respondent's failure to comply with any of the conditions of this Consent Order in a timely manner as set out above, shall be considered a violation of this Consent Order; and it is further;


**ORDERED** that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any other disciplinary sanctions that the Board may have imposed in this case, including additional probationary terms and conditions, reprimand, suspension, revocation and monetary penalty; and it is further

ORDERED that the Respondent shall comply with the Maryland Dentistry Act and all applicable laws, statutes and regulations; and it is further

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

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. General Provisions §§ 4-104 *et seq.* (2014).

06/23/2015  
Date

  
Ronald F. Moser, D.D.S.  
President, Maryland State Board  
of Dental Examiners



## CONSENT

I, David Lewis, D.D.S., License No. 6523, by affixing my signature hereto, acknowledge that:

1. I am represented by counsel, Paul Weber, Esquire, and I have consulted with counsel in this matter. I have knowingly and voluntarily agreed to enter 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.
2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Health Occ. I, Code Ann. § 4-315 (2014 Repl. Vol.) and Md. State Gov't II, Code Ann. §§ 10-201 *et seq.* (2014 Repl. Vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have 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 am waiving those procedural and substantive protections.
4. I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license to practice as dentist.
6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

6/10/15  
Date

David Lewis  
David Lewis, D.D.S.  
Respondent

**NOTARY**

STATE OF Maryland

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 10<sup>th</sup> day of June, 2015, before me, a Notary Public of the State and County aforesaid, personally appeared David Lewis, D.D.S., License Number 6523, 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:

Michelle Rivera  
Notary Public

MICHELLE M. RIVERA  
NOTARY PUBLIC STATE OF MARYLAND  
MONTGOMERY COUNTY  
MY COMMISSION EXPIRES MARCH 12 2018

My Commission expires: March 12, 2018