

IN THE MATTER OF
KELLY FOSTER, D.D.S.

Respondent

License Number: 11906

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BEFORE THE MARYLAND

STATE BOARD OF

DENTAL EXAMINERS

Case Number: 2006-056

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CONSENT ORDER

On or about December 27, 2007, the Maryland State Board of Dental Examiners (the "Board") charged KELLY FOSTER, D.D.S. ("Respondent"), date of birth: 8/27/70, license number: 11906, under the Maryland Dentistry Act, Md. Health Occ. ("H.O.") Code Ann. §§ 4-101 *et seq.* (2005 & Supp. 2007) for violations of § 4-315(a). The pertinent provisions of H.O. § 4-315(a), and those under which the charges were brought, are as follows:

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

- (11) Permits an unauthorized individual to practice dentistry under the supervision of the applicant or licensee;
- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; and
- (18) Violates any rule or regulation adopted by the Board[.]

The regulations violated by the Respondent are: Code Md. Regs. ("COMAR") tit. 10, §§ 44.01.03, 44.01.05, 44.01.06 and 08A, and 44.19.07B and .11C and D, which provide:

10.44.01.03 Intraoral Procedures Permitted To Be Performed by a Dental Assistant.

A dentist may use the services of a dental assistant to perform the following intraoral duties under the direct supervision of a dentist:

- A. Rinsing and aspiration of the oral cavity;
- B. Retraction of the lips, cheek, tongue, and flaps;
- C. Placement and removal of materials for the isolation of the dentition provided that the material is not retained by the dentition;
- D. Instructing on oral hygiene;
- E. Performing intraoral photography;
- F. Taking impressions for study models or diagnostic casts;
- G. Constructing athletic mouth guards on models;
- H. Applying topical anesthesia;
- I. Curing by the use of halogen light;
- J. Checking for loose bands; and
- K. Any other duty approved by the Board.

10.44.01.05 Dental Assistants Recognized as Qualified in General Duties.

A. A dentist may use the services of a dental assistant to perform certain duties if the dental assistant:

(1) Is certified by the Dental Assisting National Board as qualified in general duties; or

(2) Was recognized by the Board of Dental Examiners, on or before the effective date of these regulations, as a dental assistant qualified in general duties.

B. If a dental assistant meets the qualifications of §A of this regulation, a dentist may use the services of the dental assistant qualified in general duties to perform the following intraoral tasks, provided that the tasks are

performed only in response to a specific instruction from and under the direct supervision of a licensed dentist:

- (1) Performing vitality tests;
- (2) Taking impressions for study models or diagnostic casts;
- (3) Taking alginate impressions for intraoral appliances;
- (4) Applying topical fluoride;
- (5) Applying desensitizing agents;
- (6) Applying topical anesthesia;
- (7) Placing or removing a rubber dam;
- (8) Etching;
- (9) Curing by the use of a halogen light;
- (10) Fabricating indirect restorations in a dental office;
- (11) Placing or removing a matrix band;
- (12) Drying a root canal;
- (13) Preparing and fitting stainless steel crowns;
- (14) Placing or removing retraction cord;
- (15) Preparing temporary crowns;
- (16) Cementing temporary crowns or restorations;
- (17) Removing temporary crowns;
- (18) Removing excess cement;
- (19) Removing or placing a periodontal dressing (except placing the original periodontal dressing);
- (20) Removing sutures;
- (21) Constructing athletic mouth guards on models; and

(22) Any other duty approved by the Board.

10.44.01.06 Radiographs.

A dentist may not permit a dental assistant to place and expose radiographs unless the dental assistant is a dental assistant certified to practice dental radiation technology.

10.44.01.08A Penalties for Violations of These Regulations.

A dentist who uses the services of a dental assistant who is not qualified or for purposes other than what is permitted may be found guilty of unprofessional conduct under the Health Occupations Article § 4-315(a)(16), Annotated Code of Maryland, or violating any rule or regulation adopted by the Board under Health Occupations Article, § 4-315(a)(18).

10.44.19.01 Dental Radiation Technologist

.07 Prohibitions.

B. An individual shall be certified by the Board as a dental radiation technologist before a licensed dentist may employ the individual to practice dental radiation technology.

.11 Penalties for Violations of These Regulations.

C. A licensed dentist who employs an individual to practice dental radiation technology who is not certified under these regulations is guilty of unprofessional conduct and may be subject to disciplinary action under Health Occupations Article, § 4-315, Annotated Code of Maryland.

D. A licensed dentist who supervises an individual practicing dental radiation technology who is not certified under these regulations is guilty of permitting an unauthorized individual to practice dentistry under the supervision of that licensed dentist, and may be subject to disciplinary action under Health Occupations Article, § 4-315, Annotated Code of Maryland.

The Code of Ethics provision violated by the Respondent is: American Dental Association, Principles of Ethics and Code of Professional Conduct, § 2.C. which provides:

2.C. USE OF AUXILIARY PERSONNEL.

Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care by all auxiliary personnel working under their direction.

As a result of negotiations with the Office of the Attorney General, by Kimberly S. Cammarata, Assistant Attorney General, the Respondent, by her attorney, Pamela J. Diedrich, Esquire and the Board, the parties agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order, and with the terms and conditions set forth herein.

FINDINGS OF FACT

1. The Respondent is, and at all times relevant to these charges, was licensed to practice dentistry in the State of Maryland, initially receiving her license on October 7, 1996.
2. On or about August 22, 2005, the Board received a complaint from a patient of the Respondent alleging, *inter alia*, that the Respondent permitted uncertified persons to perform the majority of her bridge work and that the patient suffered a reaction to an overdose of epinephrine which was administered by an assistant. The Board referred the complaint to its investigative unit.
3. The investigation revealed that on or about July 29, 2004, Patient A,¹ the complainant, presented to the Respondent's office to have a final impression made for a bridge from ## 5-12 (## 7-10 as pontics). During that visit, *inter alia*, the Respondent recorded that she administered two carpules of 4% septocaine with epi 1:100k. She

¹ In order to protect patient privacy and the confidentiality of health care records, patient names are not used in this Consent Order. The employees at issue are also not revealed.

then permitted C.W., a dental assistant employed by the Respondent, to remove the temporary bridge. The Respondent then refined the preparations and placed retraction cords. C.W. placed Racelett pellets with epinephrine and the Respondent took the final impression for the bridge. C.W. then refined the temporary bridge and cemented the temporary bridge. The patient, when getting up from the dental chair, complained of dizziness, lightheadedness and racing heartbeat. The patient was given a drink and sat in the waiting room until feeling better.

4. During her employment with the Respondent C.W., a dental assistant, was permitted to take radiographs, take impressions for intraoral appliance, place racellets, and remove, fabricate and cement temporary bridges and crowns. C.W. was not certified by the Dental Assisting National Board ("DANB") as qualified in general duties, nor was she recognized by the Board as a dental assistant qualified in general duties. C.W. was not certified by the Board as a dental radiation technologist while working for the Respondent. C.W.'s radiation technology certification, issued on 6/4/97, lapsed on 3/1/99. C.W. worked for the Respondent from approximately 1/1/00 through 6/9/06.

5. The Respondent also permitted A.S., a dental assistant, to take radiographs of the Respondent's patients. A.S. was not certified by the Board as a dental radiation technologist while working for the Respondent. A.S.'s radiation technology certification, issued on 7/20/98, lapsed on 3/1/03. A.S. began working for the Respondent on 5/24/06 and took radiographs thereafter without certification until becoming licensed by the Board as a dental hygienist on 9/7/06.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated H. O. § 4-315(a)(11) and (18) which provide:

(11) Permits an unauthorized individual to practice dentistry under the supervision of the applicant or licensee;
and

(18) Violates any rule or regulation adopted by the Board[.]

The Board further finds that the Respondent violated the regulatory provisions and Code of Ethics provisions as charged.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Maryland State Board of Dental Examiners, hereby:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent is subject to the following **CONDITIONS** for a period of One (1) Year from the date this Order is signed by the Board:

1. **Pro Bono Community Service**

a. The Respondent shall perform, without remuneration, forty (40) hours of *pro bono* community service dentistry as proposed by the Respondent and approved by the Board.

b. Upon completion of the forty (40) hours of *pro bono* community service dentistry required, the Respondent shall file a written report with the Board that verifies that the Respondent performed the *pro bono* community

service dentistry without remuneration, and which describes with particularity the professional services performed.

c. If requested by the Board, the Respondent shall make available for the Board, or its designee, all records of treatment for each patient for whom *pro bono* dentistry was performed.

2. Donation

a. The Respondent shall make an anonymous donation in the amount of One Thousand Five Hundred Dollars (\$1500.00), payable within six (6) months from the date this Order is signed by the Board, to the Maryland Foundation of Dentistry for the Handicapped, the People's Community Health Center, Montgomery County Colesville Adult Dental Clinic or other Board approved charitable entity.

b. The Respondent shall submit a copy of the letter transmitting the anonymous donation and payment confirmation (e.g. carbon copy of money order or certified check) to the Board within sixty (60) days of the date of the donation.

3. Maryland Law Examination

a. Within ninety (90) days from the date this Order is signed by the Board, the Respondent shall take the Maryland Law Examination and obtain a grade of at least ninety percent (90%) without using any reference materials, books, or other aids during the examination.

b. The Respondent may retake the examination if she does not attain a score of at least ninety percent (90%). The Respondent's failure to attain a

score of at least ninety percent (90%) after three (3) attempts shall constitute a Violation of Probation and shall result in an Suspension of the Respondent's license until such time as the Respondent successfully completes the examination, closed book, with at least a ninety percent (90%); and it is further

ORDERED that the Respondent shall provide to the Board within sixty (60) days of the effective date of this Order (and within thirty (30) days of the date of hire of any new employee in her office) a Board-approved document signed by each employee in the office, verifying that each has read, reviewed and understands the law and regulations delineating what duties they are legally permitted to perform under the Maryland Dentistry Act. A copy of the applicable law and regulations, as well as the chart delineating duties (Md. Health Occ. Code Ann. § 4-101, *et seq.*; Md. Reg. Code (COMAR) tit. 10, § 44.01 *et seq.*) shall be attached to each signed document; and it is further

ORDERED that the Respondent shall comply with all laws governing the practice of dentistry under the Act, and all rules and regulations promulgated there under; and it is further


ORDERED that if the Respondent fails to follow any of the terms and conditions of this Consent Order, such failure shall be deemed a Violation of this Consent Order and the Board may take any action it deems appropriate under the Act, including, but not limited to, immediately suspending the Respondent's license, provided the Respondent is given the opportunity for a show cause hearing at the next regularly scheduled meeting of the Board; and it is further

ORDERED that One (1) Year from the effective date of this Order, the Respondent may petition the Board for termination of this Order without any conditions or restrictions whatsoever. If the Respondent has satisfactorily complied with all conditions of this Order and there are no outstanding complaints regarding the Respondent, the Board shall terminate the Order; 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 this Consent Order is a PUBLIC DOCUMENT as defined in Md. State Gov't Code Ann. § 10-611 *et seq.* (2004).

2/21/08
Date


Barry D. Lyon, D.D.S., Secretary/Treasurer
Maryland Board of Dental Examiners

CONSENT

I, **KELLY FOSTER, D.D.S.**, License No. 11906, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with counsel, Pamela J. Diedrich, Esquire, before signing this document.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 4-318 (2005 & Supp. 2007) and Md. State Gov't. Code Ann. §§10-201 *et seq.* (2004 & Supp. 2007)
3. I acknowledge the validity of this Consent Order as if entered into after 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 law.

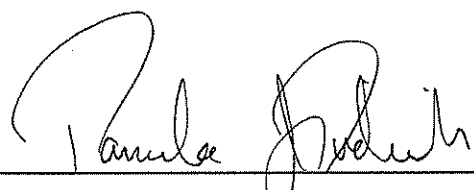
4. I voluntarily enter into and consent to the foregoing Findings of Fact, Conclusions of Law and Order, provided that the Board adopts the foregoing Consent Order in its entirety. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order as set forth in § 4-318 of the Act and Md. State Gov't. Code Ann. §§ 10-201 *et seq.* (2004 & Supp. 2007).

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, and, following proper procedures, I may suffer disciplinary action, which may include revocation of my license to practice dentistry in the State of Maryland.

6. I sign this Consent Order without reservation as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

2/20/08
Date


Kelly Foster, D.D.S.


Reviewed and approved by: Pamela J. Diedrich, Esquire

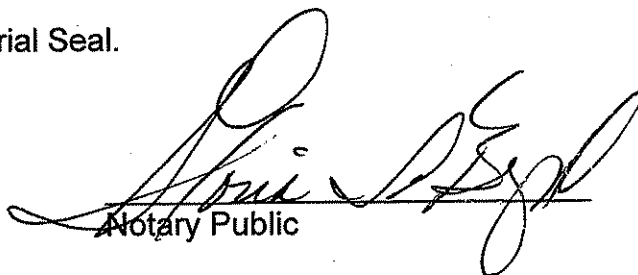
NOTARY

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY THAT on this 20th day of February, 2008, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared Kelly Foster, D.D.S., and made oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 1/1/2010