

IN THE MATTER OF	*	BEFORE THE
MICHAEL A. BAYLIN, D.D.S.	*	MARYLAND STATE BOARD OF
RESPONDENT	*	DENTAL EXAMINERS
License Number 4133	*	Case Numbers: 99-179
		2000-107, 2000-146, 2001-210,
		and 2002-342

\* \* \* \* \*

**FINAL ORDER**

**INTRODUCTION**

Protection of the public health is the primary function of the Maryland State Board of Dental Examiners (the "Board"). In furtherance of that objective, the Board may take a range of disciplinary actions--including imposition of a fine, reprimand, suspension, or revocation of a license--against a dentist found to have violated the Maryland Dentistry Act (the "Act"), Md. Health Occ. ("H.O.") Code Ann. § 4-315.<sup>1</sup>

The Board pursuant to its statutory authority, H.O. §4-316(c), investigated four patient complaints lodged against Dr. Michael Baylin along with two complaints filed with the Board by the subsequent treating dentists for two of these patients. The allegations involved the standard of care in the practice of dentistry including Dr. Baylin's use of alternative procedures in treating his patients.

**PROCEDURAL BACKGROUND**

The Board received and investigated four patient complaints which were consolidated for charges.

On October 5, 2005, the Board issued charges against Dr. Baylin alleging violations of the Maryland Dentistry Act, specifically, H.O. § 4-315(a)(2), (3), (6), (16), (18), and (20) (2005); Code of Maryland Regulations (COMAR) 10.44.14.03. 04, .05, 06, and .08; and the Principles of Ethics and the Code of Professional Conduct of the American Dental Association (ADA) §5.A.1 & 2, 5.B, 5.B.5 & 6, 5.E, and 5.H.

Pursuant to Md. State Gov't. ("S.G.") Code Ann. Code Ann. § 10-205 et seq, the Board delegated to the Office of Administrative Hearings the authority to hear the case and issue proposed findings of fact and conclusions of law. Dr. Baylin, represented by counsel, contested the charges in a four-day evidentiary hearing in April 2006. At the conclusion of the hearing, after considering the testimony of 13 lay and expert witnesses and more than 50 exhibits, the Administrative Law Judge (ALJ) issued a detailed, comprehensive Proposed Decision <sup>2</sup> on August 11, 2006 which is incorporated by reference herein.

The ALJ found that Dr. Baylin violated H.O. §§ 4-315 (a) (2), (3), (6), (16), (18), and (20); COMAR 10.44.14.03, .04, .05, and .08; and §§ 5.A.2., 5.B, 5.E, 5.H.

Contributing to the bases for the ALJ's findings, which she found proven by a preponderance of the evidence, were Dr. Baylin's failure to record post-operative pain control medication; use of a re-implanted tooth as an abutment; failure to have patient sign written consent for extraction and re-

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<sup>1</sup> Further references to the Maryland Dentistry act are to "H.O. § \_\_\_\_."

<sup>2</sup> Hereinafter PD, pg. \_\_\_\_.

implantation which is an irreversible procedure; failure to document dose percentage of nitrous oxide; failure to document whether sedation was successful; failure to document any post-sedation periods of oxygenation for the patient's recovery; failure to record patient's vital signs during sedation; performance of a Caldwell-Luc procedure; poor record keeping; injection of homeopathic substances; use of Autonomic Response Testing; testing for infectious diseases; use of meridian testing; use of a little box or wand as a diagnostic tool; the use of neural and applied kinesiology; injecting homeopathic substances such as arthrokelen; and holding himself out as a specialist in "Physiologic Dentistry".

The ALJ concluded that Dr. Baylin did not violate COMAR 10.44.14.06, nor §§ 5.A.1., 5.B.5, and 5.B.6., of the ADA code of Professional Conduct.

The Respondent filed Exceptions to the Proposed Decision. The Board held an Exceptions Hearing on February 7, 2007 and issues this Final Order based upon its consideration of the entire record, including the Proposed Decision, Exhibits, Transcripts of the Administrative Hearing, Exception submissions of the parties, and argument at the Exceptions Hearing.

#### **FINDINGS OF FACT**

A. The Board adopts Findings of Fact numbered 1-8, 10-20, 22-24, 26, 28-32, 34-40, 42-49, 51-136, and 138-149 as set forth in the Proposed Decision of August 11, 2006. The Board finds these facts by a preponderance of the evidence.

The Board rejects Findings of Fact numbered 9, 25, 27, 33, 41, 50, and 137.

**Additional Findings of Fact**

**B.** Based upon its experience, technical competence, and specialized knowledge, see S.G. § 10-213(i), the Board finds, by a preponderance of the evidence, that Respondent's treatment of Patients A, B and C violated the standard of care in the practice of dentistry in the following ways:

**Patient A** - delayed treatment of tooth 14 for a period of one year.

**Patient B** - failed to document a treatment plan; endodontic treatment fell below the standard of care; inappropriately used a resin crown as a provisional temporary crown; and lack of informed consent.

**Patient C**- dismissed the use of implants; performed root canal treatment on asymptomatic, radiographically normal teeth; based extensive and expensive treatment on a panorex with no individual periapical films; use of nerve block injections, electrotherapy, inferred therapy, and necrotic bone removal; and lack of informed consent.

**CONSIDERATION OF EXCEPTIONS**

The Board has considered Dr. Baylin's written exceptions to the Proposed Decision as follows:

**A. Exception to Evidentiary Rulings**

The ALJ denied admission into evidence certain of Dr. Baylin's exhibits. The Board finds that the admissibility of evidence in administrative proceedings is

well within the discretion of the ALJ. *Md. State Gov't Code Ann. §10-213(d)* (2004).

**B. Exception: Standard of Care for Integrative Dentistry**

The issue is not a standard of care for integrative dentistry as Dr. Baylin suggests, but rather whether Dr. Baylin's treatment of his patients violated the recognized standard of care in the practice of general dentistry. In *Blaker v. State Board of Chiropractic Examiners*, 123 Md. App. 243, 258 (1998), the Court opined that "the fact that a professional uses a technique or method different than that practiced by others in his profession does not release him from the obligation to operate in a professionally competent manner."

**C. Exception: Holding Out As a Specialist**

The Board agrees with the ALJ that Dr. Baylin's use of the term "Physiologic Dentistry" on his letterhead and in office literature implies a specialty. PD. pg. 52.

**CONCLUSIONS OF LAW**

Based upon the foregoing, the Board finds as a mater of law that the Respondent violated H.O. § 4-315(a)(6) and (18); COMAR 10.44.14. 03, .04, .05, and .08; and Code of Professional Conduct of the American Dental association § 5.E and 5.H.

**DISCUSSION**

The Board's mandate is to protect patients and to uphold the highest standards of professional conduct. The record demonstrates that Dr. Baylin's

treatment of patients A, B, C, D, and E violated the standard of care in the practice of dentistry, a violation of the Maryland Dentistry Act, H.O. § 4-315(a)(6).

The ALJ found Dr. James Hupp's testimony on behalf of the State, to be "persuasive and instructive." (PD. Pg. 33). Finding the testimony of Respondent's witness, Dr. Donald Warren, to "incredible", she was not persuaded by his opinion that Dr. Baylin's "use of homeopathic remedies, Applied Kinesiology, Neural Therapy, and other alternative diagnostic treatment methods was not only within the standard of care, but above the standard of care in dentistry." (PD. Pg. 36).

As to Dr. Mark McClure, another of Dr. Baylin's experts, the ALJ was "highly skeptical of his background." She gave little or no weight to his testimony commenting that:

He testified that he practices general dentistry and integrative medicine in Washington, D.C., and that he has a Doctor of Integrative Medicine degree from the Capital University of Integrative Medicine, where he served as provost and interim president. He explained that Capital University was started in 1996 for the study of integrative medicine by variety of professionals. He stated that it was licensed in Washington, D.C., but was not accredited by any organizations and was closing in on June 30, 2006. He admitted that he had been disciplined twice by the Maryland Board of Dental Examiners, once for using low level laser therapy light and once for his assistant using a light to cure a filling on a tooth. The most recent consent order was dated June 2000. He explained that the Board told him to cease the use of laser therapy because he could not document that it was taught in dental school. He explained further that he was unaware that the use of light to cure a filling was not accepted by the Board. I found his explanations vague and evasive. As a result, I find Dr. McClure's testimony as an expert to have little or no weight." (PD. pg. 36, 37).

Based on the expert testimony and the other evidence at the hearing Dr. Baylin's treatment of Patients A, B, C, D, and E violated the standard of care in the following ways:

**Patient A**

Dr. Baylin performed an apicoectomy and intentionally extracted Patient A's tooth 13; failed to document the dose of nitrous oxide administered to patient A; failed to document whether sedation was successful; failed to document the post-sedation period of oxygenation, and failed to document the patient vital signs during sedation; failed to provide required written informed consent when a procedure is irreversible or controversial; injected arthrokehlen which is not an incision and drainage procedure; and delayed treatment of tooth 14 for a period of one year.

**Patient B**

Dr. Baylin's endodontic treatment was below the accepted standard of care; failed to provide a documented treatment plan; failed to provide informed consent; and used a resin crown as a provisional crown; and failed to provide written informed consent.

**Patient C**

Dr. Baylin performed root canal therapy on asymptomatic, radiographically normal teeth; based extensive and expensive treatment solely on a panorex with no individual periapical films; dismissed, out of hand, the use of implants; failed

to provide written informed consent; and used nerve block injections, electrotherapy, inferred therapy, and necrotic bone removal.

**Patient D**

Dr. Baylin's use of Autonomic Response Testing, his testing for infectious diseases, the uses of Meridian Testing are not within the standard of care of the practice of dentistry.

**Patient E**

Dr. Baylin performed root canal therapy on asymptomatic tooth 18. Dr. Baylin offered Dr. Stewart Rosenberg as his expert in general dentistry and on whose testimony the ALJ was unable to rely:

My main concern regarding Dr. Rosenberg's testimony is that his opinions are based, at least in part on assumptions that the respondent acted appropriately. For example, in discussing Patient E, Dr. Rosenberg stated that tooth 18 was "obviously" non-vital "or I don't think he would have recommended treatment." Tr. p. 1450. Whether the respondent was treating patients appropriately is at issue; thus, I cannot accept opinions that assume he was doing so.  
(PD. pg. 35).

**ORDER**

Based on the foregoing, it is this 5<sup>th</sup> day of September 2007, by a majority of the full authorized membership of the Board:

**ORDERED** that the charges filed against Michael Baylin, D.D.S., License Number 4133, be **UPHELD** as to *H.O. §4-315(a)(6)*; and *H.O. § 4-315(a)(18)*; *COMAR 10.44.14.03, .04, .05, and .08*; and the *Code of Professional Conduct of the American Dental Association § 5.E and 5.H.* and **DISMISSED** as to *H.O. § 4-*



315 (a)(2) (3) (16) and (20); COMAR 10.44.14.06; and the *principals of Ethics of the American Dental Association* §§ 5, 5.A.1, 5.A.2, 5.B., 5.B.5, and 5.B.6.; and it is further

**ORDERED** that the Respondent shall be and is **REPRIMANDED** and it is further

**ORDERED** that beginning with the effective date of this Order, the Respondent shall serve **PROBATION** for a period of **one (1) year** and it is further;

**ORDERED** that during the period of probation the Respondent shall document to the Board that he has taken and passed a Board approved course in endodontics; and it is further

**ORDERED** that the Respondent shall retain, at his expense, a Board approved mentor/practice reviewer in general dentistry who will conduct random chart reviews and to whom the Respondent shall provide a copy of this Final Order. The mentor/practice reviewer shall meet with the Respondent 4 times over the course of probation to review patient charts, and to discuss cases and treatment. The Respondent shall be responsible for ensuring that the mentor/practice reviewer submits written reports to the Board on her or his observations, findings and recommendations. The mentor/practice reviewer may consult with the Board and its agents regarding her or his findings. The Respondent shall abide by all written recommendations of the mentor/practice reviewer; and it is further

**ORDERED** that the respondent shall remove from his letter head and office literature the term "Physiologic Dentistry" and within 30 days from the date of this Order shall submit corrected samples for Board review; and it is further

**ORDERED** that the Respondent shall, within 30 days from the date of this Order submit for Board review copies of the Informed Consent documents he is currently providing patients; 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 his probationary status. The Board is free to accept or reject the petition; and it is further


**ORDERED** that the Respondent shall practice in accordance with the laws and regulations governing the practice of dentistry in Maryland; and be it further

**ORDERED** that Respondent's failure to fully comply with the terms and conditions of this Consent Order shall be deemed a violation of Probation and of this Consent Order and Respondent may be subject to additional charges by the Board; and it is further

**ORDERED** that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-611 *et seq.* (2004 & Supp.2006).

10-3-07

Date

  
David A. Williams, D.D.S.  
President

**NOTICE OF RIGHT OF APPEAL**

In accordance with Md. Code Ann., Health Occ. Article, § 4-319, you have a right to take a direct judicial appeal. A petition for appeal shall be filed

within thirty days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Article, §§ 10-201 *et seq.*, and Title 7 Chapter 200 of the Maryland Rules.

