

IN THE MATTER OF * BEFORE THE MARYLAND
EDWARD N. SILVERMAN, D.D.S. * STATE BOARD OF
Respondent * DENTAL EXAMINERS
License Number: 13021 * Case Number: 2006-174

* * * * *

CONSENT ORDER

On April 18, 2007, the Maryland State Board of Dental Examiners (the "Board"), charged EDWARD N. SILVERMAN, D.D.S. (the "Respondent"), license number 13021, under the Maryland Dentistry Act (the "Act"), Md. Health Occ. ("H.O.") Code Ann. §§ 4-101 *et seq.* (2005 & Supp. 2006). The pertinent provisions of the Act, and those under which the Charges were based, provide:

H.O. § 4-315

(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:

- (6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner;
- (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;
- (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.

(a) *Practicing without a license.* - Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice dentistry or dental hygiene on a human being in this State unless licensed by the Board.

A dental hygienist may not own or operate a dental practice or a dental hygiene practice.

As a result of negotiations between the Respondent, by his attorney, Marc K. Cohen, Esquire and the Office of the Attorney General, by Kimberly S. Cammarata, Assistant Attorney General and the Board, the parties agreed to enter into this Consent Order as an appropriate resolution of the Charges.

HISTORICAL BACKGROUND

1. The Respondent's father owned and operated a dental practice in Baltimore County with office locations at the Montgomery Ward in the Golden Ring Mall, and at 2507 North Point Road in Dundalk.

2. During 1996, the Respondent's father passed away, but the Respondent's mother, Susan Himmel, R.D.H. (formerly Silverman) continued to own and operate her husband's dental practice after his death.

3. On or about May 5, 1999, a meeting was held between the Board and Ms. Himmel. At the meeting Ms. Himmel informed the Board that it was her intent to retain her late husband's dental practice until the Respondent became licensed by the Board. The Board informed Ms. Himmel that although a surviving spouse may retain a dental practice for a reasonable period of time, it believed that three years was well beyond the reasonable time. In addition, the Board knew that the Respondent had failed the dental boards on several occasions and did not believe that he would be licensed in the near future.

4. As a result, the Board required Ms. Himmel to provide proof of the sale of the practice to a licensed dentist by August 15, 1999. In addition, Ms. Himmel was to provide a list of employees of the practice; affidavits from each of the employees indicating that the employee had been instructed not to make appointments in the name of the Respondent's father or to represent to the public that the Respondent's father was associated with the practice; and to provide copies of correspondence with any entities doing advertising for the dental practice informing them of the necessary advertising changes.

5. If Ms. Himmel complied with the Board's conditions of May 1999, the Board agreed not to take any action against her involving the continued operation of the business, but specifically informed her that it was not precluded from taking disciplinary action against her dental hygiene license. The Board later extended the date for Ms. Himmel to provide proof of the sale of her late husband's dental practice to a licensed dentist until January 1, 2000.

6. On or about January 2, 2000, Ms. Himmel provided the Board with a copy of a Stock Purchase Agreement dated December 30, 1999, between the estate of her husband and Dentist A.¹ She informed the Board that Dentist A was now the owner of all of the issued and outstanding stock of the association. Furthermore, she indicated that Articles of Amendment were filed changing the name of the entity.

7. On or about June 26, 2000, the Board received a complaint from a patient. The Board conducted an inspection of the complaint which revealed that while Ms. Himmel transferred the stock ownership of the practice to another dentist, Dentist A, Ms. Himmel continued to maintain all aspects of owning, operating, and managing her late husband's dental practice. Dentist A stated that Ms. Himmel hired and fired all

¹ The names of certain individuals identified herein are confidential.

employees, ordered all dental supplies, signed the paychecks, and paid all the bills of the dental practice.
8. Dentist A represented that the agreement was simply in place to buy time until the Respondent obtained his license to practice dentistry and the practice could be turned over to the Respondent. The Stock Purchase Agreement dated December 30, 1999, contained a repurchase option between the Ms. Himmel and Dentist A, granting the Ms. Himmel the option to purchase all outstanding and issued shares of the capital stock of the entity, at any time on or before December 31, 2010.

9. The Board charged Ms. Himmel with violations of the Act. On November 7, 2003 the Charges were resolved by Consent Order.
10. In or about November 2001, after the Respondent became licensed by the Board, the dental practice was in fact transferred from Dentist A to the Respondent.
11. On or about March 8, 2006, the Board received a complaint alleging facts that, if true, would be violations of CDC guidelines. The Board referred the complaint to its investigative unit. After conducting inspections of the office, interviews of staff and document reviews, the Board, on April 27, 2006, issued an Order Summarily Suspending the Respondent's license. The Order of Summary Suspension was lifted on May 10, 2006, pursuant to an Interim Consent Order issued on May 3, 2006.

FINDINGS OF FACT

12. At all times relevant hereto, the Respondent was and is a dentist licensed to practice dentistry in the State of Maryland; initially receiving his license on September 18, 2001.
13. The Respondent is the owner of North Point Dental (also known as Edward Silverman and Associates) and permits his mother, Susan Himmel, R.D.H., who is not a licensed dentist, to operate and manage the dental office.

14. The Respondent is only on site at the dental office on Mondays.

15. On or about March 8, 2006, the Board received a complaint alleging facts that, if true, would be violations of CDC guidelines. The Board referred the complaint to its investigative unit.

Office Visit, April 13, 2006

16. On or about April 13, 2006, Board investigators presented to North Point Dental which is owned by the Respondent and currently operates under the Respondent's dental license. The office is operated and managed by the Respondent's mother, Susan Himmel, a licensed dental hygienist. On this date, neither the Respondent nor his mother was present at the office.

17. The investigators interviewed dental assistant, Kim Scurti and Steven Johnson, D.D.S. Dr. Johnson and Ms. Scurti advised that the Respondent is only present in the office on Mondays and that Ms. Himmel operates and manages the dental office. They advised that Ms. Himmel provides the operatories, instruments, dental materials, and all supplies for each practitioner in the office. Ms. Himmel is also responsible for ensuring proper functioning of the autoclave, removal of bio-hazardous waste, and all other administrative functions of the office. They further advised that Ms. Himmel:

a. Directs dentists and assistants to re-use disposable, single-use items including: prophylaxis angles, matrix bands, suction tips, etch & bond and wells. Ms. Himmel has been observed taking disposed items from the trash for re-use;

b. Refuses to purchase adequate quantities of sterilization bags to use for autoclaving instruments. Ms. Himmel has told staff that the bags are expensive. She directs the staff to place instruments directly into the autoclave without bagging. The instruments are run through the autoclave

cycle without the use of a chemical indicator strip to evidence that the autoclave reached the necessary temperature to ensure sterility;²

c. Refuses to purchase adequate quantities of personal protective

apparel; and,

d. Fails to spore test the autoclave to ensure sterilization of

instruments.

18. During the investigation of the office on April 13, 2006, the investigators inspected each operator in the office. Each operator had dental instruments, both disposable and re-usable, strewn about in drawers, un-bagged. These instruments were not verifiably sterile. Dr. Johnson used these instruments during patient care. Ms. Scuti and Dr. Johnson advised that the Respondent uses instruments from these drawers when the Respondent provides patient care. They advised that the instruments are never bagged for sterilization or storage after sterilization.

19. When asked to provide evidence of spore testing of the autoclave, Dr. Johnson advised that it had been well over a year since the autoclave was spore tested.

20. The investigators also observed blood-stained waste in regular trash bags in the public dumpster. Ms. Scuti and Dr. Johnson advised that they were told by Ms. Himmel not to use the bio-hazardous waste bags too often because of the expense.

21. The investigators also observed food products and dental materials contained in the same refrigerators.

Office Visit, April 17, 2006

22. On or about April 17, 2006, Board investigators returned to the dental practice to interview the Respondent and Ms. Himmel. The Respondent and Ms. Himmel advised investigators that they had relied on a dental assistant, Kandi Schrenker, to conduct The investigators did not observe any sterilizer bags in the operatories or in the sterilization area on the first visit to the office.

spore testing of the autoclave. When asked to provide documentation regarding the spore testing, the Respondent and Ms. Himmel advised that they did not "follow the documentation." Ms. Schrenker advised the investigators that she had no training in infection control.

23. The Respondent and Ms. Himmel also advised that they re-used disposable prophylaxis angles in the office and suggested that their supplier told them they could re-use them.

24. When asked about the availability of surgical gloves, the Respondent and Ms. Himmel advised that they had been ordered that day.

25. Once again, investigators observed drawers in the operatories that had dental instruments, both disposable and re-usable, strewn about in drawers, un-bagged. These instruments were not verifiably sterile. The Respondent had some instruments in plastic bag, but they did not have any evidence of sterility. The Respondent advised that he sterilized his orthodontic instruments and that he places them in bags after sterilization.

26. The investigators once again observed food products and dental materials contained in the same refrigerators.

Follow-up documentation

27. On or about April 18, 2006, the Respondent, through counsel, provided a written explanation regarding some of the investigator's findings. The Respondent provided an affidavit from Ms. Schrenker stating that she had been running spore tests on the autoclave on a monthly basis³ since 2003 that she mails to Steri Check Systems, Inc. Information obtained from Steri Check Systems, Inc. revealed that they received spores in May, November and December of 2003 and in January, February, May, June and

³ CDC guidelines require weekly spore testing.

August of 2004. Further information revealed that spores were received by Steri Check in January, March, April, May and June of 2005, but that the spores were expired, were clearly marked expired, and that they could not be tested. Steri Check received no spores in 2006.

28. The Respondent, as the owner of North Point Dental, is ultimately responsible for ensuring that the office is compliant with CDC guidelines.

29. Additional investigation revealed that the Respondent, as owner of the practice, completely abdicated control of the operation and management of the practice to his mother, Ms. Himmel. In her operation and management of the practice, Ms. Himmel,

inter alia,

a. Advised staff to re-use biohazard bags. On one occasion assistant S.W.

had bio-hazardous waste in a biohazard bag. The bag split so she threw the bag into the biohazard box. Ms. Himmel saw her throw the bag into the box and told her to dump the contents into the box and re-use the bag. S.W. advised Ms. Himmel that the bag was split and could not be re-used. Ms. Himmel dug the bag out of the biohazard box, dumped the contents and gave the bag back to S.W. The Respondent overheard this exchange. S.W. told the Respondent about Ms. Himmel's directive and the Respondent advised S.W. to do what Ms. Himmel said.

b. Refused to order adequate quantities of suction tips for use in the office, necessitating the re-use of the disposable items;

c. Refused to order adequate quantities of micro brushes for composites for use in the office, necessitating the re-use of the disposable items;

d. Refused to order adequate quantities of prophyl angles for use in the office, necessitating the re-use of the disposable items;

- e. Refused to order adequate quantities of etch and bond wells for use in the office, necessitating the re-use of the disposable items;
 - f. Told employees to re-use disposable matrix bands;
 - g. Advised staff not to autoclave burs;
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- h. Kept items locked up so the staff could not access the materials they needed;
 - i. Did not provide sterile gloves for surgical procedures;
 - j. Advised staff to dump the contents of small sharps containers into a cardboard box (not puncture proof). In one instance employee S.W. was punctured by a needle that popped out of the cardboard box while she was dumping in the contents of a small sharps container. When S.W. advised Ms. Himmel of the puncture and her need to obtain medical care, Ms. Himmel told her not to worry about it. S.W. did receive medical care only after insisting on the need.
 - k. Removed contaminated items from the trash cans and indicate that they were perfectly usable and insisted on their re-use;
 - l. Was observed looking into sharps containers for items;
 - m. Was observed going through trash in the public dumpster to remove "re-usable items;"
 - n. Required re-use of masks and lab coats even those that were visibly soiled;
 - o. Re-used gloves; and
 - p. Did not, in some instances, provide bio-hazard containers with red bags for bio-hazardous waste.

30. The staff members reported Ms. Himmel's directives and practices to the Respondent. The Respondent took no independent action or management role and simply advised the staff to do what Ms. Himmel directed.
31. After the Board investigators visited the Respondent's office, the Respondent retained a consultant who conducted on-site visits and training of the Respondent and staff in infection control. The consultant noted additional violations during her visits that are recorded in her reports. Her reports indicated, *inter alia*:
- a. That the office did not have an exposure control plan; and
 - b. There was no procedure for flushing the waterlines. In some instances the lines were flushed with hand-pieces attached.
32. The Respondent practiced dentistry on patients under these office conditions.
33. The Respondent did not provide infection control training to clinical employees.
34. The Respondent permitted Ms. Himmel to operate and manage, *inter alia*, patient treatment, the office staff, finances, control over dental materials and armamentarium, supplies, and payroll, and her management and significant control over all office functions directly impacted and adversely affected patient care. In addition to the facts previously noted herein, additional investigative information revealed that she operated and managed the office. Among other things, Ms. Himmel:
- a. Owned the building where the practice was located;
 - b. Advertised for, interviewed and hired office personnel, including the dentists;
 - c. Fired personnel;
 - d. Had complete control over the ordering of dental materials and other supplies and limited the amount of materials provided to the dentists for use on their patients;

- e. Signed the payroll checks;
- f. Required dentists to use a homemade acid etch for composites, indicating that she would not purchase more until the homemade etch was used up;
- g. Refused to purchase supplies requested by dentists for use on their patients;
- h. Had final decision making on the amount of compensation for dentist's commissions;
- i. Had final decision making regarding days of work;
- j. Would talk to dentists about amount of time used to complete treatment, suggesting that they reduce their treatment time;
- k. Had authority over worker's compensation matters. Employee S.W., who was injured on the job, had to plead with the Respondent's mother to file the appropriate paperwork in order to be compensated. The Respondent's mother told her to sell her Percocet for money;
- l. When staff complained to the Respondent about many of the issues delineated herein, Dr. Silverman would tell the staff to follow the directives of Ms. Himmel;
- m. Told the dental assistants, who were paid directly by the dentist with whom they worked, that they worked for her because she paid the dentists; and
- n. Was paid more in salary for operating and managing the dental practice than for practicing hygiene.

35. The Respondent has been subject to numerous office visits and inspections in accordance with the Interim Consent Order. The Respondent has been fully compliant with the Act since that time.

the following conditions:

two (2) years effective May 3, 2006, the date of the Interim Consent Order, subject to **ORDERED** that the Respondent shall be placed on **PROBATION** for a period of

permanent restriction; and it is further

This condition remains in effect beyond the duration of this Consent Order and is a

R.D.H., in any capacity in the Respondent's dental office(s), effective August 20, 2007.

ORDERED that the Respondent will not employ his mother, Susan Himmel,

and that the **SUSPENSION** shall be **STAYED** on July 16, 2007; and it is further

Maryland is **SUSPENDED** for a period of **THIRTY (30) DAYS**, effective July 1, 2007;

ORDERED that the Respondent's license to practice dentistry in the State of

Maryland State Board of Dental Examiners, hereby:

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the

ORDER

(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.

(16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; and

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

(6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner;

violated H.O. § 4-315(a)(6), (11), (16) and (28) which provide:

Based on the foregoing Findings of Fact, the Board finds that the Respondent

CONCLUSIONS OF LAW

1. Inspection

a. The Respondent shall provide to the Board, on or before the fifth day of each month, a listing of his regularly scheduled days and hours for patient care;

b. The Respondent shall be subject to a minimum of one (1) unannounced inspection by the consultant, or other Board-approved agent within nine (9) months from the date of this Order. The consultant or Board-approved agent shall provide reports to the Board within ten (10) days of the date of the inspection and may consult with the Board regarding the findings of the inspections. A finding by the Board indicating that the Respondent or his practice is not in compliance with the CDC guidelines shall constitute a violation of this Order and may, in the Board's discretion, be grounds for immediately suspending the Respondent's license. In the event that the Respondent's license is suspended under this provision, he shall be afforded a Show Cause Hearing before the Board to show cause as to why his license should not be suspended or should not have been suspended;

c. The Respondent shall also be subject to random, unannounced inspections by the consultant, or other Board-approved agent, at any time during the duration of this Order. A finding by the Board indicating that the Respondent or his practice is not in compliance with the CDC guidelines or this Order shall constitute a violation of this Order and may, in the Board's discretion, be grounds for immediately suspending the Respondent's license. In the event that the Respondent's license is suspended under this provision, he shall be afforded a Show Cause Hearing before the Board to show cause as to why his license should not be suspended or should not have been suspended.

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 he 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 immediate lifting of the Stay of the Suspension, 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 at all times cooperate with the Board, any of its agents or employees, and with his consultant, in the monitoring, supervision and

investigation of the Respondent's compliance with the terms and conditions of this Consent Order, and it is further

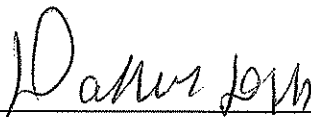
ORDERED that on May 3, 2008 or thereafter, the Respondent may petition the Board for termination of his probationary status without any conditions or restrictions whatsoever. If the Respondent has satisfactorily complied with all conditions of probation, and there are no outstanding complaints regarding the Respondent, the Board may terminate the probation; 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 Order SUPERSEDES the terms and conditions contained in the May 3, 2006 Interim Consent Order; and it is further

ORDERED that this Consent Order is PUBLIC DOCUMENT as defined in Md. State Gov't Code Ann. §§ 10-611 *et seq.* (2004 & Supp. 2006).

7-18-07
Date of Consent Order



David A. Williams, D.D.S.
President
Maryland State Board of Dental Examiners

CONSENT OF EDWARD SILVERMAN, D.D.S.

I, **EDWARD SILVERMAN, D.D.S.**, License No. 13021, by affixing my signature

hereto, acknowledge that:

1. I have had the opportunity to consult with Marc K. Cohen, 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) and Md. State Gov't. Code Ann. §§10-201 *et seq.* (2004 & Supp. 2006).

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 consent to the foregoing Findings of Fact, Conclusions of Law and Order. 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. 2006).

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order I may be subject to 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.

7-6-07

Date

Marc K. Cohen

Reviewed and approved by: Marc K. Cohen, Esquire

Edward Silverman, D.D.S.

Edward Silverman, D.D.S.

NOTARY

STATE OF MARYLAND

~~CITY/COUNTY OF~~ BALTIMORE

I HEREBY CERTIFY THAT on this 6 day of July, 2006, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared Edward Silverman, D.D.S., and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

[Signature]
Notary Public

My Commission Expires: 3/1/09