

IN THE MATTER OF	*	BEFORE THE
BENHAM MANESH, D.D.S.	*	MARYLAND STATE BOARD OF
RESPONDENT	*	DENTAL EXAMINERS
License Number 11469	*	Case Numbers: 2003-279,
		2004-045, 2005-221

* * * * *

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. § 4-315.¹

The Board pursuant to its statutory authority, H.O. §4-316(c), investigated three patient complaints lodged against Dr. Benham Manesh. The allegations involved the standard of care in the practice of dentistry.

PROCEDURAL BACKGROUND

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

On October 5, 2005, the Board issued charges against Dr. Manesh alleging violations of the Maryland Dentistry Act, specifically, H.O. § 4-315(a), (3), (6), (16), and (20) (2005 Repl. Vol.).

¹ Further references to the Maryland Dentistry act are to "H.O. §____."

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. Manesh, represented by counsel, contested the charges in a five-day evidentiary hearing in November 2007. At the conclusion of the hearing, after considering the testimony of each side's expert witnesses and more than 50 exhibits, the Administrative Law Judge (ALJ) issued a detailed, comprehensive Proposed Decision ² on February 25, 2008 which is incorporated by reference herein. The ALJ found that Dr. Manesh violated H.O. §§ 4-315 (a) (6) and (16).

Contributing to the bases for the ALJ's findings, which she found proven by a preponderance of the evidence, were, among other things, Dr. Manesh's misdiagnosing dental disease; performing excessive treatment; incompetently applying composite restoration; placing composite restorations in teeth not requiring restorations; failing to obtain written informed consent and failing to document verbal informed consent for the replacement of amalgam restorations with composite restorations; and providing prophylaxis in the presence of periodontal disease without initial perpetration by debridement. (PD. pg. 70-71)

The Respondent filed Exceptions to the Proposed Decision as did the State. The Board held an Exceptions Hearing on May 21, 2008 and issues this Final Order based upon its consideration of the entire record, including the Proposed Decision, Exhibits, Transcripts of the Administrative Hearing, the

² Hereinafter PD, pg. _____.

parties Exception submissions, and argument at the Exceptions Hearing.

FINDINGS OF FACT

The Board adopts Findings of Fact numbered 1-174 as set forth in the ALJ's Proposed Decision of February 25, 2008. The Board finds these facts by a preponderance of the evidence.

CONSIDERATION OF EXCEPTIONS

The Board has considered each Party's written Exceptions to the Proposed Decision as well as the arguments presented at the hearing before the Board. A discussion follows. Those exceptions not specifically discussed are overruled.

EXCEPTION: STANDARD OF CARE

Dr. Manesh excepts to the ALJ's findings that he violated the standard of care in the practice of dentistry in his treatment of Patients A and R. The Board overrules this Exception. Like the ALJ, the Board credits the expert testimony of Dr. Frederick Magaziner, who clearly testified that Dr. Manesh violated the standard of care in his treatment of these patients. The ALJ found the testimony of Dr. Magaziner to be knowledgeable and credible and the Board adopts that evaluation of the testimony.

CONCLUSIONS OF LAW

Based upon the foregoing, the Board finds as a matter of law that the Respondent violated H.O. § 4-315(a)(6). The Board dismisses H.O. §§ 4-315(a)(3)(16) and 20.

DISCUSSION

The Board's mandate is to protect patients and to uphold the highest standards of professional conduct. The record demonstrates that Dr. Manesh's treatment of patients A and R violated the standard of care in the practice of dentistry, a violation of the Maryland Dentistry Act, H.O. § 4-315(a)(6).

Patient A

The ALJ found the testimony of Dr. Manesh's expert witness, Dr. Myron Kellner, to be vague, replete with generalities and of little probative value. Dr. Kellner acknowledged that radiographs are an important tool in the diagnosis of dental disease. In spite of this, he had not reviewed Patient A's radiographs before offering his written opinion on Dr. Manesh's diagnosis and treatment of Patient A. She, therefore, gave no weight to his testimony commenting that:

Dr. Kellner formed an opinion without adequate factual basis, and maintained it, regardless of what he saw in the radiographs shown to him at the hearing...Dr. Kellner's testimony was often speculative. He theorized that there might have been something wrong with the substances used by the Respondent or the light gun used to cure the composite fillings. Since Dr. Kellner had no basis in fact for those statements, his testimony is no more than mere speculation, and is not entitled to any weight. The speculative nature of Dr. Kellner's testimony is further evident from his frequent use of tentative words such as "maybe" and "possible."
(PD. pg. 34, 35, 36).

The State's expert witness, Dr. Frederick Magaziner opined that Dr. Manesh violated the standard of care in the practice of dentistry: The ALJ concluded that:

...Dr. Magaziner had an adequate basis for his opinion, sufficient to sustain the burden of proof by the preponderance of the evidence.
(PD. pg. 42, 43).

Having considered all of the evidence and testimony, the ALJ concluded that, Dr. Manesh's treatment of patient A was incompetent and unprofessional.
(PD. pg. 43).

The expert testimony and the other evidence at the hearing supported the ALJ's finding that Dr. Manesh's treatment of Patient A violated the standard of care in the practice of dentistry in the following ways:

Among other things, Dr. Manesh misdiagnosed dental disease in patient A's teeth 3, 4, 5, 14, 15, 18 and 20; he failed to obtain written or verbal informed consent for replacement of sound and serviceable amalgam restorations with composite restoration of teeth 2 and 19; and applied a restoration leaving an open margin; and placed composite restorations in teeth not requiring restoration.

Patient R

Referring to the testimony of Dr. Magaziner and that of Dr. Kellner, the ALJ stated that:

The standard in the dental profession for documenting dental procedures was explained by Dr. Magaziner, who opined that a dentist must record any information necessary to enable the same or a different dentist to

treat the patient later. (Tr. 506-540)³. On this point, Dr. Kellner supported Dr. Magaziner in many respects. Dr. Kellner agreed that information should be documented if it would help in subsequent of the treatment of the patient. (Tr. 331, 361, 366), to document medications to which the patient may have an allergic reaction (Tr. 367), to protect the dentist legally (Tr. 366), and to assist a dentist who follows up with the patient (Tr. 367). (PD. pg. 61).

The ALJ found that Dr. Manesh's documentation of Patient R's treatment fell below the standard for the dental profession and thus was incompetent and unprofessional. Among other things, he failed to record the measurements of the dimensions of the three canals of the molar tooth number 3, nor did he stipulate in the treatment record the instrument size reached in beginning the root canal; and failed to document the material placed in the tooth after the first part of the root canal therapy. (PD. pgs. 64-66).

Finally, the ALJ found that Dr. Manesh violated the standard of care in the practice of dentistry by providing prophylaxis in the presence of periodontal disease without initial preparation by debridement. (PD. pg. 68). She stated that:

The standard in the dental profession requires that dentist provide a patient with periodontal disease with a full mouth debridement, which includes a comprehensive evaluation and diagnosis, the removal of subgingival and/or superingival plaque and calculus. The Respondent's hygienist performed an adult prophylaxis or cleaning and polishing, which is not appropriate for a patient with periodontal disease. (PD. pg. 67).

The board agrees with and adopts the ALJ's evaluation of the evidence set out above and also throughout the decision.

³ "Tr." refers to the hearing transcript.

ORDER

Based on the foregoing, it is this 29th day of October 2008, by a majority of the full authorized membership of the Board:

ORDERED that the charges filed against Benham Manesh, D.D.S., License Number 11469, be **UPHELD** as to *H.O. §4-315(a)(6)*; and **DISMISSED** as to *H.O. § 4-315 (3), (16) and (20)*; 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 **twenty four months (24)**; and it is further;

ORDERED that within **sixty (60)** days of the date of this Order, the Respondent shall document to the Board that he has taken and passed, with a minimum score of 75%, NERB's Jurisprudence, Ethics, and Risk Management (JERM) examination; and it is further

ORDERED that within **one (1)** year of the date of this Order, the Respondent shall demonstrate to the Board that he has successfully completed a Board approved didactic course in billing and CDT coding; and it is further

ORDERED that the Respondent shall retain, at his expense, a Board approved clinical practice reviewer in general dentistry and billing procedures to whom the respondent shall provide a copy of this Final Order, and who will, over the first year of probation, conduct quarterly unannounced chart reviews. The

reviewer shall discuss with the Respondent the cases and treatment, and billing issues he or she believes to be necessary. The Respondent shall be responsible for ensuring that the reviewer submits written reports to the Board on her or his observations, findings and recommendations. The reviewer may consult with the Board and its agents regarding her or his findings. The Respondent shall abide by all written recommendations of the reviewer; and it is further

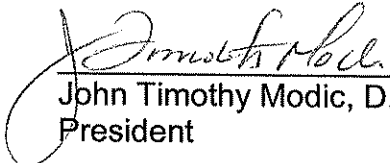
ORDERED that the Respondent may, no sooner than **one (1)** year from the date of this Order, petition the Board for early termination of his probationary status. The Board is free to accept or reject the petition; and it is further

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).

10/29/08
Date


John Timothy Modic, 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.