

IN THE MATTER OF
GERRY DUBIN, D.D.S.
RESPONDENT

* BEFORE THE MARYLAND
* STATE BOARD OF
* DENTAL EXAMINERS
* Case Number: 2014-210

License Number: 8457

* * * * *

CONSENT ORDER

On or about June 5, 2014, the Maryland State Board of Dental Examiners (the "Board") issued and served on **Gerry M. Dubin, D.D.S.** (the "Respondent"), License Number 8457, an **ORDER FOR SUMMARY SUSPENSION**, in which it summarily suspended the Respondent's license to practice dentistry in the State of Maryland. The Board took such action pursuant to its authority under Md. Code Ann., State Gov't § 10-226(c)(2009 Repl. Vol.), concluding that the public health, safety and welfare imperatively required emergency action.

In addition, on or about June 11, 2014, the Board charged the Respondent with violating the Maryland Dentistry Act, codified at Md. Code Ann., Health Occ. ("Health Occ.") §4-101 *et seq.* Specifically, the Board charged the Respondent under the following provisions of Health Occ. §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:

(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 ["CDC"] guidelines on universal precautions...

The pertinent regulations under Code Regs. Md. ("COMAR") § 10.44.23.01 include:

- A. A dentist... may not engage in unprofessional or dishonorable conduct.
- B. The following shall constitute unprofessional or dishonorable conduct in the practice of dentistry...:
 - (8) Committing any other unprofessional or dishonorable act or omission in the practice of dentistry...

On June 18, 2014, a Case Resolution Conference ("CRC") was held at the Board's office. As a resolution of this case, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following:

1. At all times relevant to these Charges, the Respondent was licensed to practice dentistry in the State of Maryland. The Respondent was initially licensed to practice dentistry in Maryland on or about August 8, 1983, under license number 8457. In addition, the Respondent obtained a license in the District of Columbia by endorsement on or about May 18, 2012, under license number DEN1001114.
2. At all times relevant to these Charges, the Respondent operated a general dental practice in Gaithersberg, Maryland (the "Gaithersberg Office").
3. On or about April 10, 2014, the Board received a complaint (the "Complaint") from a Certified Dental Assistant (the "Complainant") expressing concern about the state of the Respondent's office, specifically, that she had observed unsanitary conditions.
4. On or about April 21, 2014, based on a review of the Complaint, the Board assigned a Board Expert (the "Expert") to conduct an unannounced inspection of the Respondent's Gaithersberg office.

5. On or about April 23, 2014, the Expert conducted an unannounced CDC inspection of the Gaithersberg Office to determine whether the Respondent was in compliance with the Act and the Centers for Disease Control ("CDC")¹ guidelines on universal precautions.

6. During the inspection, the Expert found widespread CDC violations. The violations were of such significance that the Expert concluded that it was "unsafe for patients to undergo dental treatment" at the Gaithersberg Office.

7. A summary of these findings is set forth *infra*.

Office inspection, dated April 23, 2014

8. At the time the Expert's inspection, the Expert was able observe the Respondent provide dental treatment to several patients and inspect the Office. The Respondent reportedly does not employ any dental hygienists, assistants or other personnel to assist him in his practice.

9. The Expert noted that the Respondent's office consists of a reception area, a receptionist's desk, five dental operatories, and a room used as a laboratory/sterilization/radiology/darkroom.

10. The Expert completed a report, accompanied by photographs, dated April 23, 2014, in which he called the lack of cleanliness "astounding." He found that "Dr. Dubin seems to have a flagrant disregard for cleanliness and the importance of infection control."

¹ 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 Act, all dentists are required to comply with the CDC guidelines which incorporate by reference Occupational Safety and Health Administration's ("OSHA") final rule on Occupational Exposure to Bloodborne Pathogens (29 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.

11. In addition, the Expert found that, "the lack of fundamental infection control compliance . . . places the patients treated in this office at risk for acquiring [an] infections disease."

12. The Expert's findings regarding the condition of the Office included but were not limited to the following:

- (a) The laboratory/sterilization/radiology/darkroom was "filthy with every surface inclusive of the floor covered with dirt and debris";
- (b) The autoclave was "covered with a layer of dust and dirt";
- (c) In the operatories, "almost every clinical contact" including light handles, 3-way syringes, radiology heads, instrument trays, drawers, cabinets, countertops, and other working surfaces were "unclean and littered with particles, dust, debris, splash, splatter, fingerprints and other identifiable spots that may have been blood";
- (d) The Office's Exposure Control Plan was "incomplete and many pages, especially pertaining to daily infection control procedures were left blank";
- (e) The instrument preparation area was dirty, too small and cluttered with material and debris, without provision for the separation of clean and dirty instruments, creating a risk of cross contamination;
- (f) Instruments cleaned in an ultrasonic device were bagged and stored on a filthy cloth towel;
- (g) Debris was present on at least one handpiece inside a sterilization pouch, indicating that pre-cleaning was inadequate;
- (h) The gloves used to prepare instruments were heavily soiled and filthy, as was the entire instrument preparation area;
- (i) Devices such as curing lights and floss holders were not covered or disinfected;
- (j) Instruments were placed on trays or tubs that were not properly cleaned;
- (k) Burs were not properly cleaned;
- (l) There was no self-contained water delivery system in any of the operatories;

- (m) During patient care observed by the Expert, except for a barrier on the headrest of the patient chair, "no other barriers were in place";
- (n) The barrier on the chair was not replaced between patients treated;
- (o) The Respondent did not wear a gown when performing treatment, nor did his glasses have side-shields;
- (p) The Respondent failed to perform hand hygiene before or after patient treatment.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that the Respondent's conduct as described above constitutes behaving dishonorably or unprofessionally, in violation of H.O. § 4-315(a)(16), as defined by Code Md. Regs. 10.44.23.01A and B(8); and failing to comply with Centers for Disease Control's guidelines on universal precautions in violation of H.O. § 4-315(a)(28).

ORDER

Based on the foregoing findings, it is, by a majority of a quorum of the Board, hereby:

ORDERED that upon the Board's receipt of documentation that the Respondent has formally retained the services of an independent Board approved CDC consultant and that the consultant has issued a favorable report substantiating that the Respondent and his office staff understand CDC and OSHA guidelines and are in substantial compliance therewith, the Board shall issue an Order for Reinstatement staying the summary suspension ordered on June 5, 2014; and it is further

ORDERED that from the date of the Board's the Order for Reinstatement, the Respondent shall be placed on **PROBATION** for a period of **THREE (3) YEARS** under the following terms and conditions:

1. The Board-approved consultant shall conduct an unannounced inspection within ten (10) business days after the Respondent's license is reinstated in order to evaluate the Respondent and his staff regarding compliance with the Act and infection control guidelines. If necessary, the consultant shall train the Respondent and his staff in the proper implementation of infection control protocols. The consultant shall be provided with copies of the Board file, this Consent Order, all prior inspections and any and all documentation deemed relevant by the Board.
2. The Respondent shall provide to the Board-approved consultant a schedule of his regular weekly hours of practice and promptly apprise the consultant of any changes.
3. The Respondent shall be subject to quarterly, unannounced onsite inspections by the Board approved consultant, during the first year of his three (3) year probationary period. If there are no documented violations noted by the consultant during the first year of the probationary period, the Respondent shall be subject to semi-annual unannounced, onsite inspections during the second and third year of his probationary period.
4. The Board approved consultant shall provide reports to the Board within ten (10) business days of the date of each inspection and may consult with the Board regarding the findings of the inspections.
5. During the probationary term, in each of the three years, the Respondent shall successfully complete a Board-approved course in Infection Control.
6. The Respondent shall, at all times, practice dentistry in accordance with the Act, related regulations, and further comply with CDC guidelines, including Occupational Safety and Health Administration's ("OSHA") for dental healthcare settings.
7. At any time during the period of probation, if the Board makes a finding that the Respondent is not in compliance with CDC and OSHA guidelines or the Act, the Respondent shall have the opportunity to correct the infractions within seven (7) days and shall be subject to a repeat inspection within seven (7) days. Any and all non-compliance with CDC guidelines shall constitute a violation of this consent order, and may, in the Board's discretion, be grounds for disciplinary action including but not limited to, immediate suspension of the Respondent's license to practice dentistry. Under this provision, the Respondent shall be afforded a Show Cause Hearing before the Board to show cause as to why his license

should not be subject to discipline.

IT IS FURTHER ORDERED that no part of the training or education that the Respondent receives in order to comply with this Consent Order may be applied to his required continuing education credits, 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 the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that after a minimum of three (3) years from the effective date of the Order for Reinstatement, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board. The Board shall grant termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending investigations or outstanding complaints related to the charges; and it is further

ORDERED that if the Respondent violates any of the terms or conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case under §§ 4-315 and 4-317 of the Maryland Dentistry Act, including an additional probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said violation of probation being proved by a preponderance of the evidence; and it is further

06/20/2014
Date

Maurice S. Miles
Maurice S. Miles, D.D.S., President
Maryland State Board of Dental Examiners

CONSENT

By this Consent, I, Gerry M. Dubin, D.D.S., agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of 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 as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having consulted with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its effect.

6-19-14
Date

Gerry M. Dubin
Gerry M. Dubin, D.D.S.
Respondent

ATTORNEY CONSENT

I have reviewed this Consent Order and advised the Respondent regarding it.

6-19-14

John C. Maynard

Date

Robert Maynard, Esq.
Attorney for the Respondent

NOTARY

STATE OF Maryland
CITY/COUNTY OF: Frederick

I HEREBY CERTIFY that on this 19th day of June, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared Gerry M. Dubin, D.D.S., 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.

Brenda Jacobs
Notary Public

My commission expires: 12/10/16