

IN THE MATTER OF
PAYAM HARIRI, D.M.D.

* BEFORE THE MARYLAND
* STATE BOARD OF
* DENTAL EXAMINERS

Respondent

License Number: 11407

* Case Nos. 2002-201 & 2003-049

* * * * *

CONSENT ORDER

On or about March 5, 2003, the Maryland State Board of Dental Examiners ("the Board") charged **Payam Hariri, D.M.D.**, (the "Respondent"), D.O.B. 12/01/65, License No. 11407, under the Maryland Dentistry Act (the "Act"), Md. Health Occ. Code Ann. §§ 4-101 *et seq.* (2000 & Supp. 2003). The pertinent provisions charged were 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, a limited license to practice dentistry, or a teacher's license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the applicant or licensee:

- (3) Obtains a fee by fraud or attempts to obtain a fee by fraud;
- (6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner;
- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; or
- (20) Willfully makes or files a false report or record in the practice of dentistry.

BACKGROUND

On Wednesday, January 19, 2005, the Respondent appeared before the Board's Case Resolution Conference Committee. As a result of negotiations that have occurred between the parties, the Respondent agreed to enter into this Consent Order, consisting

of Background, Findings of Fact, Conclusions of Law, and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was and is licensed to practice dentistry in the State of Maryland. The Respondent was initially licensed on June 25, 1993, under license number 11407.
2. At all times relevant hereto, the Respondent maintained an endodontics practice at Chesapeake Endodontics, 2021-B Emmorton Road, Suite 222, Bel Air, Maryland 21013.

Case No. 2002-201 Patient Specific Allegations

Patient A¹

3. On or about November 28, 2001, the Respondent treated Patient A, who complained of a cracked crown on tooth #18. The Respondent performed root canal therapy on Patient A's tooth #18.
4. Patient A's treatment record and billing statement also indicate that on or about November 28, 2001, the Respondent performed a clinical crown lengthening on tooth #18.
5. In Patient A's chart, there is no written request from Patient A's referring dentist for a crown lengthening procedure to be performed on tooth #18.
6. Patient A was billed under Current Dental Terminology Code ("CDT Code") D4249, entitled "clinical crown lengthening – hard tissue," for the clinical crown lengthening on tooth #18. However, a clinical crown lengthening as defined under CDT

¹ The names of the individuals identified herein are confidential.

Code D4249 was not performed, as radiographs do not demonstrate any change to the bone.

Patient B

7. On or about November 26, 2001, the Respondent treated Patient B, who complained of a broken tooth #14. The Respondent performed root canal therapy on Patient B's tooth #14.

8. Patient B's treatment record and billing statement also indicate that on or about November 26, 2001, the Respondent performed a clinical crown lengthening on tooth #14.

9. In Patient B's chart, there is no written request from Patient B's referring dentist for a crown lengthening procedure to be performed on tooth #14.

10. Patient B was billed under CDT Code D4249 for the clinical crown lengthening on tooth #14. However, a clinical crown lengthening as defined under CDT Code D4249 was not performed, as D4249 is indicated for procedures "performed in a healthy periodontal environment, as opposed to osseous surgery which is performed in the presence of periodontal disease." Patient B's treatment record indicates that he had pre-existing periodontal disease, which is not a "healthy periodontal environment." In addition, radiographs do not demonstrate any change to the bone.

Patient C

11. On or about October 1, 2001, the Respondent treated Patient C, who was complaining of pain in tooth #11.

12. Root canal therapy was performed on tooth #11. Patient C's treatment record and billing statement indicate that the Respondent also performed a clinical crown lengthening on tooth #11.

13. In Patient C's chart, there is no written request from Patient C's referring dentist for a crown lengthening procedure to be performed on tooth #11.

14. Patient C was billed under CDT Code D4249 for the clinical crown lengthening on tooth #11. However, a clinical crown lengthening as defined under CDT Code D4249 was not performed, as D4249 is indicated for procedures "performed in a healthy periodontal environment, as opposed to osseous surgery which is performed in the presence of periodontal disease." Patient C's treatment record indicates that he had pre-existing periodontal disease, which is not a "healthy periodontal environment."

Patient D

15. On or about October 8, 2001, the Respondent treated Patient D, who complained of pain and had a history of decay with regard to tooth #31. The Respondent performed root canal therapy on Patient D's tooth #31.

16. Patient D's treatment record and billing statement also indicate that on or about October 8, 2001, the Respondent performed a clinical crown lengthening on tooth #31.

17. In Patient D's chart, there is no written request from Patient D's referring dentist for a crown lengthening procedure to be performed on tooth #31.

18. Patient D was billed under CDT Code D4249 for the clinical crown lengthening on tooth #31. However, radiographs fail to indicate that billing under CDT Code D4249 was justified, as there is no evidence that a clinical crown lengthening procedure was performed.

Patient E

19. On or about November 28, 2001, the Respondent treated Patient E, who complained of a cracked crown on tooth #18. The Respondent performed root canal therapy on Patient E's tooth #18.

20. Patient E's treatment record and billing statement also indicate that on or about November 28, 2001, the Respondent performed a clinical crown lengthening on tooth #18.

21. In Patient E's chart, there is no written request from Patient E's referring dentist for a crown lengthening procedure to be performed on tooth #18.

22. Patient E was billed under CDT Code D4249 for the clinical crown lengthening on tooth #18. However, radiographs fail to indicate that billing under CDT Code D4249 was justified, as there is no evidence that a clinical crown lengthening procedure was performed.

Patient F

23. On or about November 28, 2001, the Respondent treated Patient F, who complained of pain and extensive decay of tooth #29. The Respondent performed root canal therapy on Patient F's tooth #29.

24. Patient F's treatment record and billing statement also indicate that on or about November 28, 2001, the Respondent performed a clinical crown lengthening on tooth #29.

25. In Patient F's chart, there is no written request from Patient F's referring dentist for a crown lengthening procedure to be performed on tooth #29.

26. Patient F was billed under CDT Code D4249 for the clinical crown lengthening on tooth #29. However, radiographs fail to indicate that billing under CDT Code D4249 was justified, as there is no indication that a clinical crown lengthening procedure was performed.

Patient G

27. On or about November 28, 2001, the Respondent treated Patient G, who complained of a fistula on tooth #7. The Respondent performed root canal therapy on Patient G's tooth #7.

28. Patient G's treatment record and billing statement also indicate that on or about November 28, 2001, the Respondent performed a clinical crown lengthening on tooth #7.

29. In Patient G's chart, there is no written request from Patient G's referring dentist for a crown lengthening procedure to be performed on tooth #7.

30. Patient G was billed under CDT Code D4249 for the clinical crown lengthening on tooth #7. However, a clinical crown lengthening under CDT Code D4249 was not performed, as radiographs do not demonstrate any change to the bone.

Patient H

31. On or about December 19, 2001, the Respondent treated Patient H, who complained of pain and decay of tooth #19. The Respondent performed root canal therapy on Patient H's tooth #19.

32. Patient H's treatment record and billing statement also indicate that on or about December 19, 2001, the Respondent performed a clinical crown lengthening on tooth #19.

33. In Patient H's chart, there is no written request from Patient H's referring dentist for a crown lengthening procedure to be performed on tooth #19.

34. ~~Patient H was billed under CDT Code D4249 for the clinical crown lengthening~~
on tooth #19. However, a clinical crown lengthening under CDT Code D4249 was not performed, as radiographs do not demonstrate any change to the bone.

Patient I

35. On or about November 1, 2001, the Respondent treated Patient I, who complained of pain and decay of tooth #14. The Respondent performed root canal therapy on Patient I's tooth #14.

36. Patient I's treatment record and billing statement also indicate that on or about November 1, 2001, the Respondent performed a clinical crown lengthening on tooth #14.

37. In Patient I's chart, there is no written request from Patient I's referring dentist for a crown lengthening procedure to be performed on tooth #14.

38. Patient I was billed under CDT Code D4249 for the clinical crown lengthening on tooth #14. However, a clinical crown lengthening under CDT Code D4249 was not performed, as radiographs do not demonstrate any change to the bone.

Patient J

39. On or about November 14, 2001, the Respondent treated Patient J, who complained of pain associated with tooth #14, which had a filling present in the biting surface. The Respondent performed root canal therapy on Patient J's tooth #14.

40. Patient J's treatment record and billing statement also indicate that on or about November 14, 2001, the Respondent performed a clinical crown lengthening on tooth #14.

41. In Patient J's chart, there is no written request from Patient J's referring dentist for a crown lengthening procedure to be performed on tooth #14.

42. Patient J was billed under CDT Code D4249 for the clinical crown lengthening on tooth #14. However, radiographs fail to indicate that billing under CDT Code D4249 was justified, as there is no indication that a clinical crown lengthening procedure was performed. In addition, tooth #14 was not a viable candidate for a clinical crown lengthening because it was essentially a "virgin" tooth except for an occlusal restoration.

Patient K

43. On or about October 8, 2001, the Respondent treated Patient K, who complained of a history of minor pain associated with tooth #2. The Respondent performed root canal therapy on Patient K's tooth #2.

44. Patient K's treatment record and billing statement also indicate that on or about October 8, 2001, the Respondent performed a clinical crown lengthening on tooth #2.

45. In Patient K's chart, there is no written request from Patient K's referring dentist for a crown lengthening procedure to be performed on tooth #2.

46. Patient K was billed under CDT Code D4249 for the clinical crown lengthening on tooth #2. However, a clinical crown lengthening under CDT Code D4249 was not performed, as radiographs do not demonstrate any change to the bone.

Patient L

47. On or about October 29, 2001, the Respondent treated Patient L, who complained of a history of pain associated with tooth #19. The Respondent performed root canal therapy on Patient L's tooth #19.

48. Patient L's treatment record and billing statement also indicate that on or about October 29, 2001, the Respondent performed a clinical crown lengthening on tooth #19.

49. In Patient L's chart, there is no written request from Patient L's referring dentist for a crown lengthening procedure to be performed on tooth #19.

50. Patient L was billed under CDT Code D4249 for the clinical crown lengthening on tooth #19. However, a clinical crown lengthening under CDT Code D4249 was not performed, as radiographs do not demonstrate any change to the bone.

Patient M

51. On or about November 13, 2001, the Respondent treated Patient M, who complained of pain and decay associated with tooth #4. The Respondent performed root canal therapy on Patient M's tooth #4.

52. Patient M's treatment record and billing statement also indicate that on or about November 13, 2001, the Respondent performed a clinical crown lengthening on tooth #4.

53. In Patient M's chart, there is no written request from Patient M's referring dentist for a crown lengthening procedure to be performed on tooth #4.

54. Patient M was billed under CDT Code D4249 for the clinical crown lengthening on tooth #4. However, a clinical crown lengthening as defined under CDT Code D4249 was not performed, as D4249 is indicated for procedures "performed in a healthy

periodontal environment, as opposed to osseous surgery which is performed in the presence of periodontal disease.” Patient M’s treatment record indicates that she had pre-existing periodontal disease, which is not a “healthy periodontal environment.” In addition, radiographs do not demonstrate any change to the bone.

Patient N

55. On or about November 13, 2001, the Respondent treated Patient N, who complained of pain associated with tooth #3. The Respondent performed root canal therapy on Patient N’s tooth #3.

56. Patient N’s treatment record and billing statement also indicate that on or about November 13, 2001, the Respondent performed a clinical crown lengthening on tooth #3.

57. In Patient N’s chart, there is no written request from Patient N’s referring dentist for a crown lengthening procedure to be performed on tooth #3.

58. Patient N was billed under CDT Code D4249 for the clinical crown lengthening on tooth #3. However, a clinical crown lengthening as defined under CDT Code D4249 was not performed, as D4249 is indicated for procedures “performed in a healthy periodontal environment, as opposed to osseous surgery which is performed in the presence of periodontal disease.” Patient N’s treatment record indicates that he had pre-existing periodontal disease, which is not a “healthy periodontal environment.” In addition, radiographs do not demonstrate any change to the bone.

Patient O

59. On or about January 29, 2001, the Respondent treated Patient O, who complained of pain associated with tooth #3. The Respondent performed root canal therapy on Patient O's tooth #3.

60. Patient O had been referred to the Respondent by her general dentist, Dr. A.

61. Shortly after the root canal therapy was performed by the Respondent, Patient O began experiencing severe pain in the same area.

62. Patient O presented back to the Respondent, who advised Patient O that she would need two additional root canals to be performed on tooth #2 and tooth #4.

63. On or about December 7, 2001, the Respondent performed root canal therapy on Patient O's tooth #2 and tooth #4. The Respondent performed root canal therapy on these teeth without a referral from Dr. A.

64. Thereafter, Patient O received a summary of dental benefits from her dental insurer that indicated a charge for a clinical crown lengthening on tooth #2 and tooth #4 alleged to have been performed by the Respondent on December 7, 2001.

65. Patient O contacted her general dentist, Dr. A, and asked to see him.

66. Patient O was examined by Dr. A and advised that a crown lengthening procedure was not performed on either tooth #2 or tooth #4.

Case No. 2003-049 Patient Specific Allegations

Patient P

67. On or about July 10, 2001, the Respondent performed root canal therapy on Patient P's teeth #6, 7, 8, 10, 11, and 12, and retreated tooth #9, which had been previously treated endodontically.

68. The Respondent employed electrosurgery to remove tissue and expose bone about teeth ##6, 7, 8, 10, 11, and 12.

69. Prior to commencing with the root canal treatments, the Respondent informed Patient P that he had a periodontal problem that needed correction.

70. Patient P's treatment record and billing statement also indicate that on or about July 10, 2001, the Respondent performed a clinical crown lengthening on teeth ##6, 7, 8, 10, and 11.

71. In Patient P's chart, there is no written request from Patient P's referring dentist for a crown lengthening procedure to be performed on teeth ##6, 7, 8, 10, or 11.

72. Patient P was billed under CDT Code D4249 for the clinical crown lengthening on teeth ##6, 7, 8, 10, and 11. However, a clinical crown lengthening as defined under CDT Code D4249 was not performed, as D4249 is indicated for procedures "performed in a healthy periodontal environment, as opposed to osseous surgery which is performed in the presence of periodontal disease." Patient P's treatment record indicates that he had pre-existing periodontal disease, which is not a "healthy periodontal environment." In addition, radiographs do not demonstrate any change to the bone.

73. On or about July 16, 2001, Patient P presented to the Respondent complaining of pain as a result of the treatment performed by the Respondent on or about July 10, 2001. Without removing the packing to visualize the state of inflammation or infection, the Respondent advised Patient P that things were healing fine.

74. On or about July 19, 2001, the Patient P presented to Dr. B complaining of extreme pain to his gums. An examination by Dr. B revealed that the electrosurgery

performed by the Respondent severely traumatized Patient P's gums, causing excessive pain, inflammation, infection, and delayed healing by involving bone.

75. The Respondent represented to the Board that these irregularities in billing regarding the aforementioned patients were the result of poor office management.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated H.O. § 4-315(a)(6).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 19, day of January, 2005, by a majority of the Board considering this case:

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

ORDERED that the Respondent shall be placed on **PROBATION** for a **PERIOD OF THREE (3) YEARS**, to commence from the date that his license is reinstated, subject to the following terms and conditions:

1. The Respondent shall successfully complete within one-hundred twenty (120) days of the effective date of this Consent Order the Dental Simulated Clinical Exercise ("DSCE") and the Jurisprudence, Ethics, and Risk Management Examination ("JERM"), which include units on: diagnosis, oral medicine and radiology, comprehensive treatment planning, endodontics, and medical considerations, with the following provisions:
 - a. The Respondent shall release the results to the Board, or release to the Board his results upon request;
 - b. The Respondent shall appear before the Board Case Resolution Conference panel to determine what, if any, other remedial course work is necessary based on the result of the DSCE and the JERM;
2. The Respondent shall comply with all course work recommendations made by the Board based on the results of the DSCE and the JERM;

3. The Respondent shall be required to have a Board selected clinical practice reviewer approved by the Board monitor his practice as follows:
 - a. The Respondent shall have the clinical practice reviewer directly review the Respondent's treatment of at least ten (10) patients, five (5) of which shall be within the first sixty (60) days of the probationary period and an additional five (5) patients within the first year of the probationary period;
 - b. The clinical practice reviewer shall review all aspects of care provided by the Respondent including the Respondent's treatment and billing of patients;
 - c. The Respondent shall provide to the clinical practice reviewer the complete record for each patient whose care was observed;
 - d. The Respondent shall ensure that the clinical practice reviewer submits reports to the Board within fifteen (15) days of each visit to the Respondent's practice. The Respondent shall comply with all written recommendations made by the clinical practice reviewer. Failure to comply with the clinical practice reviewer's written recommendations shall be deemed a violation of this Consent Order;
4. The Respondent shall pay a fine in the amount of One Thousand Dollars (\$1,000.00) to the Board within six (6) months from the date this Consent Order is executed;
5. The Respondent shall not engage in any professional or ethical misconduct in the practice of dentistry or commit an act that would be grounds for charging the Respondent with a violation of the Maryland Dentistry Act, Md. Health Occ. Code Ann. §§ 4-101 et seq.; and be it further

ORDERED the above course shall be in addition to any Continuing Education requirements mandated for continuing licensure, and the Continuing Education shall not count toward fulfilling other continuing education requirements that the Respondent must fulfill in order to renew his license to practice dentistry; and be it further

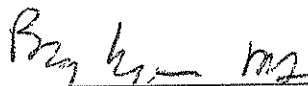
ORDERED after the conclusion of twelve (12) months of the period of **PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, but only if the Respondent

has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the three year period of probation, and if there are no pending complaints regarding the Respondent before the Board; and be it further

ORDERED that should the Respondent violate any of the terms or conditions of this Consent Order, the Board, after notice, opportunity for a hearing and determination of violation, may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, said violation being proven by a preponderance of the evidence; and be it further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and be it further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Govt. Code Ann. §§ 10-611 et seq. (2004 Repl. Vol.).



Barry D. Lyon, D.D.S.
President
State Board of Dental Examiners

CONSENT OF PAYAM HARIRI, D.M.D.

I, **Payam Hariri, D.M.D.**, License No. 11407, by affixing my signature hereto, acknowledge that:

1. I am represented by Steven R. Freeman, Esquire, and I have had the opportunity to consult with counsel before signing this document.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to § 4-318 of the Act, and Md. State Gov't. Code Ann. §§10-201 et seq. (2004 Repl. Vol.).

3. I acknowledge the validity of this Consent Order as if entered 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. By entering into this Consent Order, 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 fully evidentiary hearing, as set forth above, and any right to appeal this Consent Order or as set forth in § 4-318 of the Act and Md. State Gov't. Code Ann. §§ 10-201 et seq. (2004 Repl. Vol.).

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.

1/19/2005
Date


Payam Hariri, D.M.D.

STATE OF MARYLAND

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 19th day of January, 2005,
before me, a Notary Public of the foregoing State and City/County, personally appeared
Payam Hariri, D.M.D., License Number 11407, and made oath in due form of law that
signing the foregoing Consent Order was his voluntary act and deed, and the
statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Sandra A. Kinsey
Notary Public

My Commission Expires: 10/1/07