

IN THE MATTER OF	*	BEFORE THE MARYLAND
MITCHELL E. WEINER, D.D.S.	*	STATE BOARD OF
RESPONDENT	*	DENTAL EXAMINERS
License Number: 9976	*	Case Number: 2016-010

* * * * *

CONSENT ORDER

On or about September 10, 2015, the Maryland State Board of Dental Examiners (the "Board") issued and served on **Mitchell E. Weiner, D.D.S.** (the "Respondent"), License Number 9976, 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) (2014 Repl. Vol.), concluding that the public health, safety and welfare imperatively required emergency action.

The Board based its action on the following provisions of the Maryland Dentistry Act, codified at Md. Code Ann., Health Occ. §4-101 *et seq.*, specifically §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:

- (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...

On September 16, 2015, 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:

Background

1. At all times relevant to this Order for Summary Suspension (the "Order"), the Respondent was licensed to practice dentistry in the State of Maryland.
2. On or about August 10, 1988, the Respondent was initially licensed to practice dentistry in Maryland under License Number 9976.
3. At all times relevant to this Order, the Respondent practiced dentistry at a private practice location in Laurel, Maryland (the "Laurel Office"). The Respondent is a corporate director and co-owner of the Laurel Office.
4. On or about July 17, 2015, the Board received a complaint from an individual (the "Complainant") who was a patient of the Respondent from April 27, 2015 until May 28, 2015. Among other concerns, the Complainant noted that the Laurel Office had "sanitary issues."
5. Based on the Complaint, the Board initiated an investigation.

Investigation

6. On or about July 29, 2015, in furtherance of its investigation, the Board retained an independent expert in infection control protocols (the "Board Expert") to conduct an inspection of Laurel Office.
7. On August 8, 2015, the Board Expert conducted an unannounced on-site inspection of the Laurel Office to determine whether it was in compliance with the Centers for Disease Control and Prevention guidelines for infection control in dental healthcare settings (the "CDC guidelines").¹

¹ The Centers for Disease Control and Prevention ("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 sets forth more involved standards for infection control. Under the Board's statute, 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 Blood borne 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.

8. The Board Expert directly observed the conditions of the Laurel Office and the procedures employed by staff, including patient treatment and instrument preparation.

9. On August 11, 2015, the Board Expert issued a report of her inspection. Based upon the serious types and number of sterilization violations noted, the Board Expert concluded that the safety of the staff and patients was in jeopardy and that immediate action was required to rectify the situation.

10. In her report, the Board Expert noted seventeen (17) distinct violations of CDC guidelines at the Laurel Office, summarized below:

- a. Missing Continuing Education certificates for completion of mandatory Infection control programs;
- b. Hepatitis B vaccination records missing for 14 clinical operators;
- c. Only 7 Certificates for Radiology submitted for 14 dental assistants;
- d. Fire extinguishers improperly placed and being used for door stops;
- e. No heavy utility gloves for handling contaminated instruments and chemicals;
- f. Hand scrubbing contaminated instruments wearing thin exam gloves prior to placement in the ultrasonic cleaner;
- g. Failure to cover nose, mouth or eyes while handling chemicals;
- h. Staff not wearing safety shields when doing clinical procedures;
- i. Storing opened sterilized instrument cassettes with no protective covers or bags;
- j. Placing multiple surgical instruments in one bag with no separation or placement to insure sterility;
- k. Storing sterile and non-sterile items together;
- l. Removing instruments from the sterilizer prior to completion of the cycle rendering the bags wet and easily torn;
- m. Absence of documented Dental Unit Waterline Policy;

- n. Sharps containers located on the floor, allowing easy access for children or potential injury with contaminated sharps;
- o. Wearing contaminated PPE out of clinical areas;
- p. 214 weekly spore test violations listed for the Laurel Office's four sterilizers over a 3 year period. This number includes simple failures, indeterminate results, as well as missing weekly spore test results which represented the bulk of the violations; and
- q. Repeated failures of the four sterilizers to appropriately sterilize instruments.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that the Respondent's conduct as described above constitutes a violation of Md. Code Ann., Health Occ. § 4-315(a)(30) (2014 Repl. Vol.), failure to comply with Centers for Disease Control's guidelines on universal precautions.

ORDER

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

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

ORDERED that upon the Board's receipt of documentation that the Respondent has formally retained the services of a qualified Board-approved infection control consultant and that the consultant has issued a favorable report substantiating that the Respondent and his office staff are in substantial compliance therewith, the Board shall issue an Order for Reinstatement lifting the summary suspension issued on September 10, 2015; 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 **TWO (2) YEARS** under the following terms and conditions:

1. A Board-assigned inspector who is a licensed dentist 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. The Board-assigned inspector shall be provided with copies of the Board file, this Consent Order, and any other documentation deemed relevant by the Board;
2. The Respondent shall provide to the Board-assigned inspector a schedule of the Laurel Office's regular weekly hours of practice and promptly apprise the consultant of any changes;
3. During the two (2) year probationary period, the Respondent shall be subject to quarterly unannounced onsite inspections by the Board-assigned inspector;
4. The Board-assigned inspector 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. The Respondent shall, at all times, practice dentistry in accordance with the Act, related regulations, and shall comply with CDC and Occupational Safety and Health Administration's ("OSHA") guidelines on infection control for dental healthcare settings; and
6. 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 to confirm that the violation has been remedied.
7. Within six (6) months of the Order for Reinstatement, the Respondent shall successfully complete a Board-approved course equivalent to four (4) hours of continuing education (CE) credit in infection control protocols.

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 the Board-assigned inspector, 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 two (2) 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. In addition, the Respondent shall have the right to petition the Board for termination of probation upon the sale of his ownership interest in the Laurel Office. 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 the Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose 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

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-601 *et seq.* (2009 Repl. Vol.)

Sept. 16, 2011
Date

Ronald F. Moser D.D.S.
Ronald F. Moser, D.D.S., President
Maryland State Board of Dental Examiners

CONSENT

By this Consent, I, Mitchell E. Weiner, 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.

9/16/15
Date

Mitchell E. Weiner, D.D.S.
Respondent

NOTARY

STATE OF Maryland
CITY/COUNTY OF: BALTIMORE