IN THE MATTER OF * BEFORE THE MARYLAND

DARRELL A. CLARK, D.D.S. * STATE BOARD OF

Respondent * DENTAL EXAMINERS

License Number: 8308 * Case Numbers: 2017-228
(Non-Renewed) * 2017-229

2017-229 2018-030 2018-042 2018-043 2018-092 2018-156 2018-234

CONSENT ORDER

On March 6, 2019, the Maryland State Board of Dental Examiners (the "Board") summarily suspended the license of **DARRELL A. CLARK**, **D.D.S**. (the "Respondent"). License Number 8308, and charged him with violating the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 4-101 et seq. (2014 Repl. Vol. and 2019 Supp.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act and Md. Code Regs. ("COMAR"):

Health Occ. § 4-315. Denials, reprimands, probations, suspensions, and revocations -- Grounds,

(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:

- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession;
- (20) Violates any rule or regulation adopted by the Board; [and]
- (34) Willfully and without legal justification, fails to cooperate with a lawful investigation conducted by the Board[.]

COMAR 10.44.23.02 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference.

A. Principles of Ethics and Code of Professional Conduct (American Dental Association, with official advisory opinions revised to September 2016).

American Dental Association - Principles of Ethics and Code of Professional Conduct

Section 2 Principle: Nonmaleficence ("do no harm"). The dentist has a duty to refrain from harming the patient.

This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

2.F. Patient Abandonment.

Once a dentist has undertaken a course of treatment, the dentist should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. Care should be taken that the patient's oral health is not jeopardized in the process.

COMAR 10.44.23.03 Unprofessional or Dishonorable Conduct

 A dentist, dental hygienist, or dental radiation technologist may not engage in unprofessional or dishonorable conduct.

- B. The following shall constitute unprofessional or dishonorable conduct in the practice of dentistry, dental hygiene, or dental radiation technology:
 - (2) Engaging in conduct which is unbecoming a member of the dental profession;
 - (7) Willfully and without legal justification, failing to cooperate with a lawful investigation conducted by the Board, which includes, but is not limited to:
 - (a) Furnishing information requested;
 - (b) Complying with a subpoena;
 - (c) Responding to a complaint at the request of the Board;
 and
 - (d) Providing meaningful and timely access to relevant patient records; or
 - (8) Committing any other unprofessional or dishonorable act or omission in the practice of dentistry, dental hygiene, or dental radiation technology.

On June 3, 2020, a Case Resolution Conference was held before a committee of the Board. As a resolution of this matter, the Respondent agreed to enter this public Consent Order consisting of Findings of Fact, Conclusions of Law, Order and Consent.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

I. BACKGROUND

At all times relevant, 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 March 30, 1984, under license number 8308. The Respondent failed to renew his license, which expired on or about June 30, 2018.

- At all times relevant, the Respondent was also licensed to practice dentistry
 in the State of Georgia. The Respondent was initially licensed to practice dentistry in
 Georgia on or about May 10, 1996, under License Number DN011499. The Respondent's
 Georgia dental license is current through December 31, 2019.
 - At all times relevant, the Respondent specialized in orthodontics.
- Prior to 2016/2017, the Respondent owned and operated a dental practice with locations in Waldorf and Clinton, Maryland. According to the Respondent, he closed the Waldorf location in 2016 and the Clinton location in April 2017.
- At various times, the Respondent provided dental services as a contractor at different dental practices in Maryland and Georgia.
- 6. On or about April 10, 2017, the Respondent sent a written statement by facsimile to the Board. The statement, apparently addressed to his patients, indicated that as of May 1, 2017, the practice located in Clinton, Maryland would close due to "sudden circumstances."
- 7. On or about May 26, 2017, the Respondent telephoned the Board and reported to a member of the Board's compliance staff that he had recently closed his practice located in Clinton. Maryland. During the telephone call, the Respondent stated that he had informed some fraction of his patients of the closing but acknowledged he had not informed all of them.

II. COMPLAINTS

A. Case Number 2017-228

8. On or about June 29, 2017, the Board received a complaint from the parent ("Complainant 1")! of a minor patient ("Patient 1"), who alleged that the Respondent suddenly canceled his child's dental appointment scheduled for April 17, 2017, and that he had been unable to get in touch with the Respondent to reschedule the appointment. Complainant I stated that the Respondent had been providing orthodontic care to his child since the summer of 2016. Complainant I stated that he later found out the Respondent had closed his dental office in Clinton, Maryland. Complainant I alleged that the Respondent abandoned Patient 1 and failed to provide all services for which he was paid. Based on the complaint, the Board initiated an investigation of the Respondent under Case Number 2017-228.

B. Case Number 2017-229

9. On the same day that the Board received the complaint in Case Number 2017-228, it received a second complaint against the Respondent from another minor patient's ("Patient 2") parent ("Complainant 2"). In this second complaint, Complainant 2 made similar allegations that the Respondent closed his dental office in Clinton, Maryland without prior notification. Complainant 2 stated that she was unable to get in touch with the Respondent to schedule an appointment and that the Respondent had not completed the

To protect confidentiality, the name of the Complainant, patients, other dentists or dental practices will not be identified by name in this document. The Respondent may obtain the identity of all individuals/entities referenced herein by contacting the assigned administrative prosecutor.

orthodontic work on Patient 2. Based on this complaint, the Board initiated a second investigation of the Respondent under Case Number 2017-229.

C. Case Number 2018-030

the Respondent from a patient ("Complainant/Patient 3") who alleged that the Respondent closed his dental office in Clinton, Maryland in May 2017 without prior notice. Complainant 3 had been seeing the Respondent for orthodontic care for approximately one and one-half years. Complainant 3 stated that she discovered from the internet that the Respondent moved his dental practice to Atlanta. Georgia, and tried to contact him there to retrieve her dental record; however, she was unsuccessful. Based on this complaint, the Board initiated a third investigation of the Respondent under Case Number 2018-030.

D. Case Numbers 2018-042 and 2018-043

member ("Complainant 4") of two patients ("Patient 4A" & "Patient 4B") alleging that she was unable to get in touch with the Respondent to schedule a follow up appointment after the removal of one of the patients' braces. Moreover, Complainant 4 alleged that she made numerous attempts to obtain the patients' orthodontic records from the Respondent without success. Complainant 4 stated that she drove to the Respondent's dental office on July 4, 2017 and found that it was completely empty. Complainant 4 discovered the Respondent's address in Georgia and was seeking assistance to obtain her family members' orthodontic records. Based on the complaint, the Board initiated a fourth and fifth investigation of the

Respondent due to the involvement of two patients under Case Numbers 2018-042 and 2018-043.

E. Case Number 2018-092

12. On or about January 11, 2018, the Board received a sixth complaint against the Respondent from the parent ("Complainant 5") of a minor patient ("Patient 5") alleging that the Respondent closed his dental practice without prior notification and that Complainant 5 was unable to obtain his child's orthodontic record from the Respondent. Complainant 5's child received braces from the Respondent on or about March 3, 2016 and had had routine visits with the Respondent until February 2017. Based on the complaint, the Board initiated a sixth investigation of the Respondent under Case Number 2018-092.

F. Case Number 2018-156

13. On or about February 8, 2018, the Board received a seventh complaint against the Respondent from a patient ("Complainant/Patient 6"), who received braces from the Respondent in October 2016. At the time the Respondent installed the braces, Complainant 6 had made full payment for placement of the braces and follow up visits. Complainant 6 alleged that in late April 2017, he received a letter from the Respondent stating that the Respondent was closing his office. Complainant 6 attempted to contact the Respondent but was unable to reach him. Based on the complaint, the Board initiated a seventh investigation of the Respondent under Case Number 2018-156.

G. Case Number 2018-234

14. On or about May 24, 2018, the Board received an eighth complaint against the Respondent from a patient ("Complainant/Patient 7"), who received braces from the

Respondent in March 2014. At the time the Respondent installed the braces, Complainant 7 had made full payment for placement of the braces and follow up visits through her insurance. Complainant 7 alleged that she had an appointment for April 20, 2017, with the Respondent, which his office staff canceled. Complainant 7 stated that the Respondent's office staff never called her back to reschedule the appointment. Unable to reschedule her appointment, Complainant 7 drove by the Respondent's dental office in Clinton, Maryland on or about July 13, 2017 and found it to be abandoned. Based on the complaint, the Board initiated an eighth investigation of the Respondent under Case Number 2018-234.

III. INVESTIGATION

the Respondent for each of the relevant patients' dental records. For each patient, the Board also requested that the Respondent provide a written narrative of treatment. In addition, the Board also obtained dental records from the patients' subsequent providers, who treated them after Respondent's practice closed.

A. Patient Abandonment

- 16. In furtherance of the investigation, the Board investigator conducted interviews with many of the Complainants. The interviews confirmed that the Respondent had abandoned many of his patients in the midst of incomplete orthodontic treatment without making appropriate arrangements for continuity of care.
- 17. In addition, the interviews confirmed that the Respondent failed to respond to numerous attempts by patients or their guardians to reach him, and frequently failed to

provide dental records despite patient requests to do so, thereby complicating patients' efforts to seek continuation of treatment with subsequent providers.

- 18. On or about October 1, 2018, a Board investigator interviewed Complainant/Patient 7. Complainant/Patient 7 was receiving orthodontic treatment from the Respondent when he abruptly became unreachable in the middle of 2017. Complainant/Patient 7 has been unable to reach the Respondent to seek completion of her treatment since. Complainant/Patient 7 stated that as of that date, the braces the Respondent affixed to her teeth in 2014 were still in place as a result of the Respondent's abandonment.
- 19. On or about November 16, 2018, a Board investigator interviewed Complainant 2. Complainant 2's minor child. Patient 2, was receiving orthodontic treatment from the Respondent when he abruptly became unreachable in the middle of 2017. Complainant 2 has been unable to reach the Respondent to seek completion of her Patient 2's treatment. Complainant 2 stated that that as of that date, the braces the Respondent affixed to Patient 2's teeth were still in place as a result of the Respondent's abandonment. Complainant 2 also stated that despite her efforts, she has been unable to find another orthodontist who is willing to complete the treatment.
- 20. On or about November 19, 2018, a Board investigator interviewed Complainant 5. Complainant 5's minor child, Patient 5, was receiving orthodontic treatment from the Respondent when he abruptly became unreachable in the middle of 2017. At the time of the Respondent's abandonment, braces were affixed to Patient 5's teeth. Complainant 5 stated after much searching, she was finally able to find an orthodontist who was willing to complete the treatment. However, the interruption caused by the

Respondent's abandonment complicated the completion of the treatment and caused her additional financial stress.

- 21. On or about November 19, 2018, a Board investigator interviewed Complainant/Patient 6. Complainant/Patient 6 stated that although he paid the Respondent approximately \$1600 to complete the treatment, the Respondent failed to complete his orthodontic treatment. At the time of the Respondent's abandonment, braces were affixed to Complainant/Patient 6's teeth. Complainant/Patient 6 stated that he received his dental records from the Respondent around the time the Respondent closed his office in the middle of 2017.
- 22. On or about November 26, 2018, a Board investigator interviewed Complainant 4. Complainant 4 stated that the Respondent abandoned her minor child, Patient 4A and her husband, Patient 4B, in the middle of orthodontic treatment. Complainant 4 has been unable to reach the Respondent to request the records despite her numerous attempts. Due to the Respondent's failure to provide their dental records, the process of finding continuing care for her two family members has been complicated.
- Complainant 1. Complainant 1 stated that although he paid the Respondent approximately \$1800 to complete the treatment, the Respondent failed to complete orthodontic treatment for his minor child, Patient 1. At the time of the Respondent's abandonment, braces were affixed to Patient 1's teeth. Complainant 1 stated that the process of finding continuing care for Patient 1, who the Respondent abandoned in the middle of orthodontic treatment, has been complicated due to the Respondent's failure to provide dental records. Complainant 1

has been unable to reach the Respondent to request the records despite her numerous attempts.

B. Failure to Cooperate with Board Investigation

24. During the course of the investigation, the Respondent frequently failed without justification to timely respond to the Board's subpoenas for documents. The Respondent also frequently failed without justification to timely respond to Board requests for information, as described below.

Case Number 2017-228

- 25. On July 24, 2017, the Board issued a subpoena for Patient 1's dental records and requested a narrative response from the Respondent with a due date of August 7, 2017. On August 7, 2017, the Board received the dental records and a signed Certification of Records.
 - 26. On or about August 10, 2017, the Respondent provided a narrative response.
- 27. On August 11, 2017, after a review of the dental records submitted by the Respondent, it was determined that there were missing records, and a second request was made for the missing documentation with a due date of Wednesday, August 23, 2017. The Respondent failed to respond.

2. Case Number 2017-229

28. On July 24, 2017, the Board issued a subpoena for Patient 2's dental records and requested a narrative response from the Respondent with a due date of August 7, 2017. On August 7, 2017, the Board received the dental records and a signed Certification of Records.

- 29. On August 9, 2017, after a review of the dental records submitted by the Respondent, it was determined that there were missing records, and a second request was made for the missing documentation with a due date of Wednesday, August 23, 2017. The Respondent failed to respond.
 - On or about August 10, 2017, the Respondent provided a narrative response.
 - 3. Case Number 2018-030
- 31. On or about September 21, 2017, the Board issued a subpoena for Complainant/Patient 3's dental records and requested a narrative response from the Respondent with a due date of October 6, 2017. The Respondent failed to respond.
- 32. On November 21, 2017, the Board issued a second request to the Respondent for the records and a narrative of treatment with a due date of December 1, 2017. The Respondent failed to respond.
- On December 15, 2017, a request was made to the Respondent for a detailed narrative of the treatment, with a due date of December 28, 2017.
- 34. On January 02, 2018, the Board received a hand-written statement from the Respondent referencing the patient involved in this case. However, the statement was a narrative of reasons the Respondent had trouble providing patients with records upon the closure of his office, rather than specific narrative of his patient treatment in this case.

4. Case Numbers 2018-042 & 043

- 35. On or about September 21, 2017, the Board issued a subpoena for the dental records of Patient 4A and Patient 4B and requested a narrative response from the Respondent with a due date of October 6, 2017. The Respondent failed to respond.
- 36. On November 21, 2017, the Board issued a second request to the Respondent for the records and a narrative of treatment with a due date of December 1, 2017. The Respondent failed to respond.
- 37. On December 15, 2017, a request was made to the Respondent a detailed narrative of the treatment, with a due date of December 28, 2017.
- 38. On January 02, 2018, the Board received a hand-written statement from the Respondent referencing the two patients involved in these cases. However, the statement was a narrative of reasons the Respondent had trouble providing patients with records upon the closure of his office, rather than specific narrative of his patient treatment in these cases.

Case Numbers 2018-156

- 39. On or about February 16, 2018, the Board issued a subpoena for Complainant/Patient 6's dental records and requested a narrative response from the Respondent with a due date of March 12, 2018.
- 40. On March 13, 2018, the Board received the dental records and a signed Certification of Records.²

² The Certification of Records is a standard form, supplied by the Board, that is signed by the Respondent signed, and states, in part, "I [the Respondent] certify and solemnly affirm under the penalties of perjury, that to the best of my knowledge, information and belief, the enclosed dental record in response to the attached subpoena are an accurate reproduction of any and all records in my possession or constructive possession..."

- 41. On August 10, 2018, after a review of the dental records submitted by the Respondent, it was determined that there were missing records, and a second request was made for the missing documentation due immediately.
- 42. On or about October 17, 2018, more than two months later, the Respondent submitted the requested information and records.

Case Number 2018-234

- 43. On or about June 25, 2018, the Board issued a subpoena for Complainant/Patient 7's dental records and requested a narrative response from the Respondent with a due date of July 9, 2018. The Respondent failed to respond.
- 44. On July 18, 2018, the Board issued a second request to the Respondent for the records and a narrative of treatment, due immediately.
- 45. On or about August 13, 2018, the Respondent finally submitted the information requested.

7. Case Number 2018-092

- 46. On or about September 26, 2018, the Board issued a subpoena for Patient 5's dental records and requested a narrative response from the Respondent with a due date of October 10, 2018.
- 47. On October 15, 2018, the Board received the dental records and a signed Certification of Records.
- 48. On December 10, 2018, after a review of the dental records submitted by the Respondent, it was determined that there were missing records, and a second request was made for the missing documentation due immediately. The Respondent failed to respond.

8. Ten Additional Records

- 49. On or about October 19, 2018, the Board sent the Respondent a subpoena for complete patient records for ten additional patients ("Patients 8 through 17") with a cover letter requesting that he include narrative summaries of care for the patients. The subpoena indicated a due date of November 2, 2018.
- 50. On or about November 8, 2018, the Respondent submitted to the Board some records pursuant to the subpoena for the patient records, but it was apparent that many documents were missing from the records submitted. The Respondent did not submit narratives of the care he provided for the patients as requested.
- 51. On or about November 16, 2018, the Board sent the Respondent a second subpoena for the missing contents of the patient records and again requested that he produce narrative summaries of care for the patients. The subpoena indicated that the missing records were due immediately.
- 52. On or about December 4, 2018, the Board sent the Respondent another letter reiterating the previous requests for the missing contents of the patient records and narrative summaries of care for the patients. The letter indicated that the records were due immediately.
- Not until January 16, 2019 did the Board receive the requested records and narratives of his care for Patients 8 through 17.

C. Practice without Authorization

54. The Records the Respondent submitted on November 8, 2018, in response to the Board subpoena dated October 19, 2018 indicated that the Respondent continued to

practice dentistry by providing dental care to patients in Maryland after his license expired on June 30, 2018.

- D. Additional Findings
- 55. The Respondent has practiced medicine in Maryland for thirty-six years without any prior Board complaints or discipline.
- 56. The Respondent's inability to properly provide continuing care to his patients or refer the eight patients in issue was caused by his failure to adequately ensure that the agreement with his dental service organization that managed and owned the practice office include needed terms to guarantee all patients were properly notified and referred before practice service could be terminated.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's discontinuation of treatment of Patients 1, 2, 3, 4A, 4B, 5, 6 and 7 without giving these patients adequate notice and the opportunity to obtain services of other dentists constitutes: behaving dishonorably or unprofessionally, or violating a professional code of ethics pertaining to the dentistry profession, *i.e.* Principles of Ethics and Code of Professional Conduct (American Dental Association, With official advisory opinions revised to September 2016), Section 2F, in violation of Health Occ. § 4-315(a)(16); and violating any rule or regulation adopted by the Board. *i.e.* COMAR 10.44.23 *et seq.*, in violation of Health Occ. § 4-315(a)(20).

The Respondent's failure to: furnish information requested by the Board; comply with Board's subpoenas; and provide the Board meaningful and timely access to relevant

patient records, with respect to Patients 1 through 17, constitute: behaving dishonorably or unprofessionally, or violating a professional code of ethics pertaining to the dentistry profession, in violation of Health Occ. § 4-315(a)(16): violating any rule or regulation adopted by the Board, *i.e.* COMAR 10.44.23 *et seq.*, in violation of Health Occ. § 4-315(a)(20); and willfully and without legal justification, failing to cooperate with a lawful investigation conducted by the Board, in violation of Health Occ. § 4-315(a)(34).

The Respondent's practice of dentistry in Maryland after his license expired on June 30, 2018, constitutes: behaving dishonorably or unprofessionally, or violating a professional code of ethics pertaining to the dentistry profession, in violation of Health Occ. § 4-315(a)(16); and violating any rule or regulation adopted by the Board, *i.e.* COMAR 10.44.23 *et seq.*, in violation of Health Occ. § 4-315(a)(20).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the Board considering this case:

ORDERED that the Board's *Order for Summary Suspension* of the Respondent's license to practice dentistry in the State of Maryland, issued on March 6, 2019, is hereby TERMINATED; and it is further

ORDERED that the Respondent shall obtain the requisite number of continuing education units and apply for a reinstatement of his license; and it is further

ORDERED that upon reinstatement of the Respondent's license, the Respondent shall be placed on PROBATION for a minimum period of THREE (3) YEARS, subject to the following terms and conditions:

- Within three (3) years from the date of this Consent Order, the Respondent shall pay a fine in the amount of FIVE THOUSAND DOLLARS (\$5,000) of which THREE THOUSAND DOLLARS (\$3,000) shall be immediately STAYED by bank certified check or money order made payable to the Maryland Board of Dental Examiners.
- Within six (6) months of the date of this Consent Order, the Respondent shall successfully complete a Board-approved six (6) credit hour course(s) in ethics, which may not be applied toward his license renewal.
- The Respondent shall, at all times, practice dentistry in accordance with the Act, and all laws and regulations pertaining to the practice of demistry.

YEAR probationary period, 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, or a designated Board committee. The Board, or designated Board committee, may grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints of similar nature; and it is further

ORDERED that if the Board has reason to believe that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If there is a genuine dispute as to a material fact, the hearing shall be an evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board; and it is further

ORDERED that after the appropriate hearing, if the Board determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice dentistry in Maryland. The Board may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

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

ORDERED that this Consent Order is a PUBLIC DOCUMENT pursuant to Md.

Code Ann., Gen. Provisions §§ 4-101 et seq. (2014).

7/8/2020

Francis X. McLaughlin, Jr.

Executive Director

Maryland State Board of Dental Examiners

CONSENT

I, Darrell A. Clark, D.D.S., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order voluntarily and without reservation, after having an opportunity to consult with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

6/26/20 Date

Darrell A. Clark, D.D.S.

The Respondent

NOTARY

STATE OF Georgia

CITY/COUNTY OF Stockbridge Henry

I HEREBY CERTIFY that on this 20th day of June

2020. before me, a Notary Public of the lovegoing Nate and City/County