



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Suite 500, Boston, MA 02114

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

Tel: 617-973-0800
TTY : 617-973-0988
www.mass.gov/dph/boards

MARYLOU SUDDERS
Secretary
MONICA BHAREL, MD, MPH
Commissioner

September 8, 2015

VIA FIRST CLASS AND CERTIFIED MAIL NO. 7014 2120 0002 1353 7187
RETURN RECEIPT REQUESTED

Jeffrey O'Connor, Esq.
Morrison Mahoney
1500 Main Street
P.O. Box 15387
Springfield, MA 01115

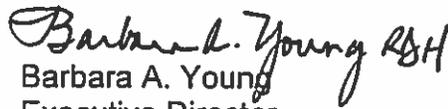
COPY

RE: **In the Matter of Dr. James G. Hunt, DN License No. 15808**
Board of Registration in Dentistry Docket No. DEN-2013-0041

Dear Attorney O'Connor:

Enclosed is the *Final Decision and Order* ("*Final Order*") issued by the Board of Registration in Dentistry (Board) in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 5 of the *Final Order* ("Date Issued"). Your client's appeal rights are noted on page 5 of the *Final Order*.

Sincerely,


Barbara A. Young
Executive Director
Board of Registration in Dentistry

Enc.

cc: Jason Barshak, Chief Administrative Hearings Counsel
Beth Oldmixon, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

)
In the Matter of)
Dr. James G. Hunt)
License No. DN15808)
Expires March 31, 2106)
_____)

Docket No. DEN-2013-0041

FINAL DECISION¹

Procedural Background

On May 14, 2014, the Board of Registration in Dentistry (“Board”) issued an Order to Show Cause to Dr. James G. Hunt (“Respondent”), directing him to appear and demonstrate why the Board should not take action against his dental license pursuant to M.G.L. c. 112, § 61 based on the allegations that he: (a) failed to operate his dental office in compliance with the Centers for Disease Control’s Recommendations on Infection Control in Dental Health-Care Settings (“CDC Recommendations”); (b) failed to comply the Board’s regulations at 234 CMR 6.15 for the administration of anesthesia and sedation; (c) failed to comply with applicable regulatory requirements at 234 CMR 5.04 related to posting of dental licenses and permits and to providing name tags for all providers and staff; and (d) failed to have a written protocol for managing medical and dental emergencies. Respondent seasonably answered.

This matter now comes before the Board after the parties filed stipulations with the Administrative Hearings Counsel (“AHC”), Stephanie Carey, on December 10, 2014 and testimony was taken during a hearing held on January 15, 2015 related to sanction.

Pursuant to 801 CMR 1.01(11)(c), and based on the stipulations and testimony, the AHC issued a Tentative Decision on April 8, 2015. Respondent filed objections on May 7, 2015 and Prosecuting Counsel did not file objections or responses to Respondent's objections.

On July 1, 2015, the Board reviewed the Respondent's two objections and found them without merit. See Board's Ruling on Respondent's Objections at Exhibit B.

On September 2, 2015, the Board reviewed the Tentative Decision and after considering its Ruling on Respondent's Objections, voted to adopt the Tentative Decision in its entirety, and incorporates the Tentative Decision, attached herewith at Exhibit A, into its Final Decision and Order.

In keeping with its duty to promote the public health, welfare, and safety, and consistent with its prior rulings, the Board issues the following order after careful consideration of the facts and information presented in the record.

¹ Pursuant to 801 CMR 1.01(11)(c), the Administrative Hearings Counsel issued a tentative Decision in the first instance.

ORDER

Based on its Final Decision, the Board orders Respondent's license to practice dentistry in the Commonwealth be placed on **probation for one (1) year** ("Probation"), commencing on the Effective Date of the Final Decision and Order ("Probation Period").

Respondent may petition the Board for termination of the Probation no sooner than 60 days prior to the end of the Probation Period and upon demonstration that he has fulfilled the following terms and conditions:

- (1) Respondent shall successfully pass the Board's *Jurisprudence and Ethics Examination* within **thirty days** after the date of the Board's Order.
- (2) Within thirty days of the Effective Date, Respondent shall provide a copy of this Final Decision and Order to all jurisdictions in which he holds a license to practice dentistry.
 - (i) Respondent shall provide written documentation to the Board demonstrating his compliance with paragraph 2.
 - (ii) If Respondent is not licensed to practice dentistry or another profession in any other jurisdiction, he shall submit an attestation to the Board stating such.

Upon receipt of Respondent's petition for termination of probation the Board may require Respondent to appear before it.

During the Probation Period, the Respondent shall comply with the additional following terms and conditions:

- (3) Respondent shall renew his license to practice dentistry biennially in accordance the M.G.L. c. 112, § 44 and 234 CMR 4.14(1).
- (4) Respondent shall fully and promptly cooperate with any Board conducted unannounced inspections of the Respondent's dental practice, regardless of whether Respondent is given prior notice of the inspection(s).

- (5) Respondent shall notify the Board in writing of any change in his current address of record within seven (7) calendar days of such changes.
- (6) Respondent shall not, during the Probation Period:
 - (a) violate any law or regulation (state or federal) relating to the practice of dentistry;
 - (b) commit any act that constitutes deceit, malpractice, gross misconduct in the practice of dentistry, unprofessional conduct or conduct which undermines public confidence in the integrity of the profession; and
 - (c) violate any regulation promulgated by the Board set forth in 234 CMR 2.00 *et seq.*
- (7) During the Probation Period, Respondent shall fully and promptly cooperate and respond to any inquiry or request made by the Board.

If, during the Probation Period, the Respondent fails to comply with the terms and conditions of paragraphs 1 – 7 above, the Respondent shall be entitled to a hearing as to whether he violated the terms and conditions of Probation. This hearing shall be conducted in accordance with the State Administrative Procedure Act, M.G.L. c. 30A, §§ 10 and 11 and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03 *et seq.* After a hearing, if the Board determines a violation did occur during the Probation Period, it may impose a further sanction, deemed appropriate in its sole discretion. Such sanction may include Suspension or Revocation of Respondent's license to practice dentistry in the Commonwealth.

The Board voted on September 2, 2015, in favor of a motion to adopt the Tentative Decision and issue it as the Board's Final Decision as follows: In favor: Dr. Stephen C. DuLong, Dr. Paul Levy, Dr. David Samuels, Ms. Kathleen Held, M.Ed., Ms. Lois Sobel, RDH and Ward Cromer, Ph.D.; Opposed: none; Abstained: none; Recused: none.

The Board voted on September 2, 2015, in favor of a motion to adopt the Proposed Order, as amended, and issue it as the Board's Order as follows: In favor: Dr. Stephen C. DuLong, Dr. Paul Levy, Dr. David Samuels, Ms. Kathleen Held, M.Ed., Ms. Lois Sobel, RDH and Ward Cromer, Ph.D.; Opposed: none; Abstained: none; Recused: none.

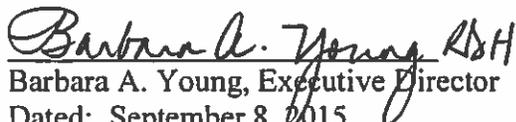
EFFECTIVE DATE

This Final Decision and Order becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

RIGHT OF APPEAL

Respondent is hereby notified of his right to appeal this Final Decision and Order pursuant to M.G.L. c. 30A, § 14 within thirty days of receipt of this Final Decision and Order.

DATE ISSUED: September 8, 2015


Barbara A. Young, Executive Director
Dated: September 8, 2015

Notify:

By First Class and Certified Mail:
Jeffrey O'Connor, Esq.
Morrison Mahoney
1500 Main Street
P.O. Box 15387
Springfield, MA 01115

By Hand:
Beth Oldmixon, Esq.
Prosecutor
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, 4th Floor
Boston, MA 02114

By Hand:
Jason Barshak, Esq.
Chief Administrative Hearings Counsel
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, 5th Floor
Boston, MA 02114

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN DENTISTRY

In the Matter of)
James G. Hunt, D.D.S.)
License No. DN 15808)
License expiration date 3/31/2016)
_____)

Docket No. DEN-2013-0041

BOARD'S TENTATIVE DECISION¹

On May 14, 2014, the Board of Registration in Dentistry ("Board") issued an Order to Show Cause ("Order") to James G. Hunt, ("Respondent Hunt" or "Dr. Hunt"), a dentist licensed by the Board. On June 11, 2014, Respondent filed an Answer to the Order to Show Cause ("Answer"). Pursuant to the Stipulation of the Parties ("Stipulation") and Request for Sanction Hearing filed on December 10, 2014, this matter was scheduled for a sanction hearing to be held on January 15, 2015.² The Stipulation filed by the parties provided as follows:

STIPULATED FACTS AND REQUEST FOR SANCTION HEARING

Respondent and Prosecution hereby stipulate to the facts (Stipulations) as recited below and further acknowledge that the Stipulations between the parties will be admitted as evidence in the hearing in the above-entitled matter. Respondent states that he waives

¹ Pursuant to 801 CMR 1.01(11)(c), the Board issues a Tentative Decision in the first instance.

² Included in the Stipulations filed on December 10, 2014 were those pertaining to *In the Matter of Eric James Castenson, DEN-2013-0042* ("Castenson matter"), a companion case. Both matters were heard at the joint sanction hearing held on January 15, 2015.

his right to a full adjudicatory hearing on the merits and requests that the matter be set for a sanction hearing.

STIPULATED FACTS

1. Dr. Hunt was issued a license to practice dentistry in the Commonwealth of Massachusetts on May 9, 1984, License No. DN15808.
2. Dr. Hunt is presently a co-owner of Hunt, Castenson & Ivancev Dental, a dental practice located at 148 Amity Street Amherst, Massachusetts 01002 (Dental Practice).
3. On March 12, 2013, the Board conducted a compliance inspection (Inspection) at the Dental Practice.
4. The Inspection revealed the Dental Practice failed to comply with the *Recommended Infection Control in Dental Health Care Settings-2003*, Centers for Disease Control and Prevention(CDC), U.S. Department of Health and Human Services, Atlanta (Recommended Infection Control). Said deficiencies included the following:
 - a. Failure to conduct weekly spore tests on the two sterilizers present in the office;
 - b. Failure to provide and utilize internal chemical indicators in wrapped cassettes;
 - c. Failure to sterilize instruments in wrapped cassettes; and
5. The Inspection revealed the Dental Practice failed to comply with applicable regulatory requirements for the administration of local anesthesia including the following:
 - a. Failure to maintain two (2) ampules of Epinephrine;
 - b. Failure to maintain pre-loaded pediatric Epinephrine syringe;
 - c. Failure to maintain pediatric oxygen mask; and
 - d. Failure to maintain valid pediatric Automated External Defibrillator (AED) pads.
6. The Inspection revealed the Dental Practice failed to comply with applicable regulatory requirements relative to the conduct of a dental practice, including:

- a. Failure to post licenses and permits for all providers employed by office;
and
 - b. Failure to provide name tags for all providers and staff.
7. The Inspection revealed the Dental Practice failed to maintain a written emergency protocol to handle medical or dental emergencies.

STIPULATED FACTS IN MITIGATION

8. With respect to item 4.a above, the office has engaged a new spore testing laboratory and has instituted procedures to ensure weekly testing. The spore test is done on Wednesdays and is referenced in that morning's daily meeting, there are also automatic reminders and confirmatory follow-ups programmed into the office computer software. In the event a holiday falls on Wednesday, the test is done on Tuesday. The office receives its test results in a weekly e-mail from the laboratory
9. With respect to item 4.b above, the Respondent had external indicator tape on all wrapped cassettes.
10. With respect to item 4.c above, instruments were sterilized in all cassettes. On the day of the site inspection, it happened that one cassette had been brought out for use, was determined to be the wrong cassette, and had been replaced. The dental assistant involved now understands that an unwrapped, but unused, cassette, cannot simply be re-wrapped, but must be re-autoclaved.
11. With respect to items 5.a and 5.b above since 2010, the office has used Sav-A-Life for its emergency first aid kit. Believing it was in compliance with the Massachusetts regulations for kit necessities; and the office was on an auto-ship program. Sav-A-Life was contacted subsequent to the site inspection and stated that there is no way they can keep track of all of the states' requirements. The ampules of Epinephrine, and a pre-loaded pediatric Epi-Pen, were immediately ordered.
12. With respect to item 5.c above, pediatric oxygen masks were immediately ordered following the site inspection. The office maintains two or three oxygen tanks on the premises at all times.
13. With respect to item 5.d above, when purchased, the AED was shipped with both the adult and pediatric pads. The date of the adult pad was not expired it was naturally assumed the pediatric one would have the same expiration date since they were shipped together.

14. With respect to item 6.b above, name tags are and have been provided to staff upon hiring. On the day of the site inspection, some staff were not wearing them as requested. The Respondent now insists on their being worn, and this is checked at morning huddle. Office staff always introduce themselves when they enter a treatment room.

Respondent admits that he is subject to Board discipline based on the above facts and violation of the following regulations:

- A. 234 CMR 5.05(1) for to failure operate in compliance with the current Recommended Infection Control.
- B. 234 CMR 6.15 for failure to maintain the required drugs and equipment for administration of local anesthesia.
- C. 234 CMR 5.04(1) for to failure post current licenses in a place where it can be observed by the public.
- D. 234 CMR 5.04(3) for to failure provide name tags for all staff, with the individual's name and professional title and function.
- E. 234 CMR 5.16(1) for failure to have a written protocol for managing medical or dental emergencies.

Sanction Hearing

Although the Board held a joint sanction hearing for both Respondents the Board has issued separate decisions for each Respondent.

Exhibits³

- 1. Curriculum Vitae, James Hunt, D.D.S., Respondent
- 2. Curriculum Vitae, Eric Castenson, D.D.S., Respondent
- 3. Three office spore testing logs and results, conducted by North Bay/Bioscience

³ In addition to the exhibits admitted into evidence, Respondents also submitted the following: individual spore test results conducted by Enviro-Tech between April 2013 and July 2013; an office log of spore tests conducted by Enviro-Tech between March 20, 2013 and July 24, 2013; and individual spore test results conducted by North Bay/Bioscience between August 7, 2013 and January 7, 2015. Those submissions were not offered as exhibits in this matter but remain available for review.

- A. November 5, 2014 – January 14, 2015
 - B. March 19, 2014 – October 29, 2014
 - C. July 31, 2013- March 12, 2014
- 4. Office spore testing log, July 2011 – November 2012
 - 5. Office spore testing log, December 26, 2012 – March 5, 2013
 - 6. Sterilizer Monitoring Report, Steri-Check Systems, Inc, March 12, 2013
 - 7. Sterilizer Monitoring Report, Steri-Check Systems, Inc., November 25, 2014
 - 8. Completed Continuing Education Courses, Respondent Castenson
 - A. CDC Infection Control for the Dental Office, July 23, 2014
 - B. Risk Management for the Dental Office, July 22, 2014
 - 9. Completed Continuing Education Courses, Respondent Hunt
 - A. Risk Management for the Dental Office, July 22, 2014
 - B. CDC Infection Control for the Dental Office, July 23, 2014

Witnesses

- 1. James Hunt, D.D.S., Respondent
- 2. Eric J. Castenson, D.D.S., Respondent
- 3. Kerry Daysh, Office Manager
- 4. Dr. Howard Pactovis, Managing Director, Dynamic Dental Safety

SUMMARY OF ARGUMENTS

James Hunt (“Respondent Hunt”) has been licensed to practice dentistry in the Commonwealth of Massachusetts (“MA”) since 1984. In 1977, Respondent Hunt graduated cum laude from the University of Massachusetts at Amherst (“UMass-Amherst”) with a Bachelor of Science degree in Biology. In 1981, he received a Doctor of Dental Medicine degree from Columbia University School of Dental and Oral Surgery (“Columbia SDOS”). Respondent attended Columbia SDOS on a scholarship awarded to him by the US Public Health Service (USPHS), and while in dental school, Respondent Hunt was commissioned as a lieutenant in the USPHS. Dr. Hunt repaid that scholarship by working in an under-served community in the South Bronx where he was assigned to the South Bronx Community Health Center (“SBCHC”). Respondent Hunt subsequently became the dental director of the SBCHC. During his tenure as director, the SBCHC became an extern site for dental students enrolled at Columbia SDOS. From 1982-1984, Respondent Hunt taught a Prosthetics course while employed at Columbia SDOS as an instructor.

Dental Practice

In 1984, Dr. Hunt purchased a small dental practice in Amherst, MA and operated that practice as a solo practitioner until 1994. In 1994, Dr. David Piech (“Dr. Piech”) joined Dr. Hunt as an associate and became a partner in the practice in 1996. As partners, Dr. Hunt and Dr. Piech shared various responsibilities for the practice. Dr. Piech has ceased the practice of dentistry and is currently pursuing a partnership buyout from the

practice.⁴ On January 16, 2012, Dr. Castenson became associated with the practice and became a partner on December 31, 2012.

In or about 1999, Kerry Daysh (“Ms. Daysh”) joined the practice as a front desk receptionist. Ms. Daysh, now the office manager for the practice, is ultimately responsible for setting systems in place such that the office runs smoothly and efficiently. Her responsibilities include accounts payable and receivable, taxes, payroll, as well as scheduling office meetings, staffing the front desk, posting staff licenses, and ensuring the completion of weekly spore testing. Ms. Daysh, who reports to Drs. Hunt and Castenson, describes the current practice as a fast-paced practice with very high standards. Ms. Daysh maintains that the staff is encouraged to strictly observe proper practices and procedures. As a result, Ms. Daysh considers Hunt, Castenson & Ivancev as one of the best dental practices in the Amherst area.

2013 Inspection

In March 2013, Board investigators conducted an inspection of the practice and found various violations related to required dental equipment, the posting of staff licenses, and spore testing. The results of the inspection revealed: between July 2011 and March 2013, spore testing was completed 53 weeks out of 88 weeks, and the practice failed to conduct spore testing for the remaining 35 weeks; spore testing on the Pelton-Crane autoclave had never been conducted; the failure of the practice to conduct spore testing occurred most frequently in 2011; spore testing logs reveal that 17 spore testing results were missing in 2012; 1 spore test was missing in February 2013 and 1 spore test

⁴ During the hearing there was testimony to the effect that Dr. Piech resolved his case in this matter through a Consent Agreement with the Board resulting in a non-disciplinary sanction of Stayed Probation.

was missing in March 2013. The inspection also revealed that the practice had no pediatric Automated External Defibrillator (“AED”) pads.

Prior to the inspection, Dr. Hunt believed that he had established proper systems and procedures in the office and he was, therefore, embarrassed and taken aback to find the practice was not in compliance with all required standards. Dr. Hunt immediately called the staff together, discussed the violations, and immediately engaged in a course of remediation.

Remediation

Following the 2013 inspection, Drs. Hunt and Castenson terminated their relationship with Stericycle, the company that had previously monitored spore testing for the practice. They informed Stericycle that quarterly statements provided by the company were inadequate for the practice to properly monitor spore testing procedures and results. Ms. Daysh subsequently hired a Texas firm to monitor spore testing for the practice. In addition, prior to the inspection, one staff member had been responsible for monitoring spore tests. Currently, the entire staff shares responsibility for ensuring that spore testing is conducted in a timely manner. Lastly, the practice now keeps all spore testing logs in a binder located in the sterilization room.

When Drs. Hunt and Castenson learned that pediatric AED pads were required for children, they immediately purchased the required pediatric AED pads. Prior to the inspection, the practice had 2 autoclaves but only one was regularly utilized. The second autoclave, a Pelton-Crane, was considered a spare and had not been used in the 6 months prior to the inspection. The Pelton-Crane autoclave had been retrieved from the basement to facilitate the sterilization of a backlog of instruments that existed

immediately prior to the inspection. To ensure that the practice maintains a sufficient number of autoclaves, Drs. Hunt and Castenson purchased another autoclave to utilize as a spare. Drs. Hunt and Castenson also encouraged the staff to attend off-site trainings such as cardiopulmonary resuscitation (“CPR”). Ms. Daysh was assigned the responsibility for posting staff licenses at the front desk where they are visible to all patients.

The practice performs at least 2 office trainings per year on emergency protocols such as fire, medical/dental emergencies, and evacuations. The office also conducts a mock training on how to handle heart attacks. These trainings were regularly conducted prior to the 2013 inspection and remain a fixture in the practice to date. A written protocol on responding to emergencies is kept in the library/consultation room and emergency numbers and protocols are now posted in every room of the practice. The practice also periodically invites an expert from the Occupational Safety and Health Administration (“OSHA”) to come in and provide information on changes in labeling and nomenclature and/or to conduct training on sterilization. Lastly, the practice now ensures that every company that provides services or products to the practice adheres to standards required in MA. Dr. Hunt has daily morning meetings with the staff to review cases and schedules. Dr. Hunt was both humbled and embarrassed by the lapses revealed during the inspection. In an effort to ensure that the practice adopted the best practices and procedures available, Dr. Hunt and Dr. Castenson retained the services of Howard J. Pactovis, DMD (“Dr. Pactovis”), Managing Director of Safety, Compliance and Training for Dynamic Dental Safety. Dr. Pactovis consults with dental offices and provides

recommendations and training related to regulatory compliance issues. He has consulted with hundreds of dental practices in 20-25 states.

Dr. Pactovis graduated from Tufts University in 1975 and graduated from Boston University School of Graduate Dentistry in 1977 specializing in pediatric dentistry. Although Dr. Pactovis was once suspended from the practice of dentistry in MA, he is currently licensed to practice dentistry in MA as well as in the State of New Jersey. He is a member of the American Dental Association of MA. In the early 1990's, Dr. Pactovis trained at an OSHA training facility in Des Plaines, IL on issues related to regulatory compliance as they apply to dental practices. He has advised various companies on those regulatory compliance issues since 1992. In 2001, Dr. Pactovis started his own company, Dynamic Dental Safety. After Dr. Hunt and Dr. Castenson requested a review of their dental practice, Dr. Pactovis completed an audit and inspection of the office, made recommendations, and assisted the office in developing efficient systems. He met with Dr. Hunt, Dr. Castenson, and the office staff 3 times, observed the infection control practices, and suggested that the office utilize a check list for certain practices and procedures. According to Dr. Pactovis, prior to conducting an audit of the practice, he believed that Drs. Hunt and Castenson operated a very good dental practice. Since the implementation of new systems and procedures suggested by Dr. Pactovis, he now rates the practice as excellent particularly in terms of having proper documentation in place.

Professional and Community Activities

Dr. Hunt has been a member of the Executive Board of the Valley District Dental Society ("VDDS") and served on peer review and continuing education committees of the VDDS. He has also been President and Vice-President of the Hampshire Dental

Society. Since 1984, Dr. Hunt has been a member of the Massachusetts Dental Society and has been a member of the American Dental Association since 1981. Dr. Hunt has also been similarly active in community organizations particularly the UMass-Amherst Foundation ("Foundation"). As a member of the Board of Directors of the Foundation, Dr. Hunt has been actively involved in fund-raising for UMass-Amherst.

Closing

In his closing statement, Dr. Hunt apologized to the Board for the lapses that occurred in his practice. He acknowledged that mistakes were made but asserted that he has learned to delegate office responsibilities to the entire staff and that he no longer assumes sole responsibility for the day to day procedures and activities of the practice.

Counsel for Respondents Hunt and Castenson asserted that each Respondent has demonstrated contrition for the lapses in the practice. According to Counsel, both Respondents acted immediately to rectify the violations. Counsel also maintains that both Respondents have demonstrated a level of responsibility and professionalism in addressing these violations that the Board should consider in arriving at an appropriate sanction. Counsel maintains that both Respondents have excellent reputations as dentists and are well-respected in the Amherst community. Lastly, Counsel for Respondents contends that an appropriate sanction in this matter would be a non-disciplinary sanction such as Stayed Probation.

Based on the Stipulation of the Parties and the arguments presented at the Sanction Hearing, the Board finds that Respondent James Hunt is subject to discipline and appropriate sanction as determined by the Board.⁵

⁵ Pursuant to 801 CMR 1.01(11)(c), the parties have thirty (30) days from the filing of this Tentative Decision to file objections.

Exhibit B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

)
In the Matter of)
Dr. James G. Hunt)
License No. DN15808)
Expires March 31, 2106)
_____)

Docket No. DEN-2013-0041

Ruling on Respondent's Objections to Tentative Decision

This matter comes before the Board of Registration in Dentistry ("Board") after the parties filed stipulations with the Administrative Hearings Counsel ("AHC"), Stephanie Carey, on December 10, 2014 and testimony was taken during a hearing held on January 15, 2015 related to sanction. Based on the stipulations and testimony, the AHC issued a Tentative Decision on April 8, 2015. Respondent filed objections on May 7, 2015 and Prosecuting Counsel did not file objections or responses to Respondent's objections.

The Board has reviewed and carefully considered the Tentative Decision and the Respondent's Objections thereto. The Board finds that Respondent's objections are without merit.

While the Board is not required to address each of Respondent's objections or provide a specific response for rejecting the objections, *see Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 315-316 (1981) and *Weinberg v. Board of Registration in Medicine*, 443 Mass. 679, 687 (2005), the Board responds as follows:

Respondent's first objection addresses sanction. Respondent argues the Board's offer of a consent agreement for stayed probation to a former owner of the practice is inconsistent with its offer of a consent agreement for probation to him. Respondent stipulates he is a co-owner of the dental practice (*see* Tentative Decision at ¶ 2) and, under the Summary of Argument section, argues he founded the dental practice in 1984. He has been an owner of the dental practice at all times relevant to the stipulated violations.

The AHC has made no recommendation in the Tentative Decision for any type of sanction, thus the objection is not directed to a particular stipulation, finding of fact or ruling of law contained in the Tentative Decision and is without merit. Moreover, it is axiomatic that the Board has "broad discretion to determine the proper sanctions for misconduct" by dentists. *See Sugarman v. Board of Registration in Medicine*, 422 Mass.

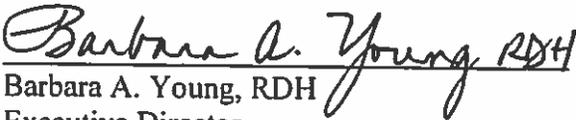
338, 347 (1996). See also *Levy v. Board of Registration and Discipline in Medicine*, 378 Mass. 519, 527-528 (1979).

Respondent's second objection is that to the extent the AHC is making a recommendation to the Board for a sanction disciplining his license, he objects. The Board finds this objection is without merit. Respondent has already stipulated "he is subject to Board discipline based on the above [stipulated] facts and violation of the following regulations."

The Board voted to adopt this Ruling on Respondent's Objections to Tentative Decision at its meeting held on July 1, 2015 by the following vote: In favor: Dr. Stephen DuLong, Dr. Paul Levy, Dr. Cynthia Stevens, Dr. David Samuels, Dr. John Hsu, Ms. Ailish Wilkie, Ms. Jacyn Stultz, RDH, Ms. Kathleen Held, M.Ed., Ward Cromer, Ph.D.; Opposed: none; Abstained: none; Recused: none.

Board of Registration in Dentistry

September 8, 2015
Date Issued


Barbara A. Young, RDH
Executive Director

Notify:

By First Class and Certified Mail:

Jeffrey O'Connor, Esq.
Morrison Mahoney
1500 Main Street
P.O. Box 15387
Springfield, MA 01115

By Hand:

Beth Oldmixon, Esq.
Prosecutor
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, 4th Floor
Boston, MA 02114

By Hand:

Jason Barshak, Esq.
Chief Administrative Hearings Counsel
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, 5th Floor
Boston, MA 02114