

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN
DENTISTRY

)
In the Matter of)
Dr. Anthony J. DiStefano, III)
License No. DN12966)
Expires¹ March 31, 2020)
_____)

Docket No. DEN-2018-0039

FINAL DECISION AND ORDER BY DEFAULT

On September 3, 2020, the Board of Registration in Dentistry (“Board”) issued and duly served on Anthony J. DiStefano, III (“Respondent”) an Order to Show Cause (“Show Cause Order”)² related to a complaint filed regarding Respondent’s license. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order (“Answer”) was to be submitted within 21 days of receipt of the Show Cause Order.³ The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,⁴ and that any hearing request (“Request for Hearing”) was to be submitted within 21 days of receipt of the Show Cause Order.⁵ Respondent was further notified that failure to submit an Answer within 21 days “shall result in the entry of default in the captioned matter” and, if defaulted, “the Board may enter a Final Decision and Order that assumes the truth of the allegations in the [Show Cause Order] and may revoke, suspend, or take other disciplinary action against [Respondent’s] license ... including any right to renew [Respondent’s] license.” A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

¹ See Governor Baker’s Order Extending The Registrations of Certain Licensed Professionals dated March 18, 2020, declaring that licenses in good standing that are set to expire during the state of emergency shall continue to be valid for 90 days following the termination of the state of emergency.

² Pursuant to 801 CMR 1.01(6)(a).

³ In accordance with 801 CMR 1.01(6)(d)(2).

⁴ Pursuant to M.G.L. c. 112, § 61.

⁵ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

On October 2, 2020, Prosecuting Counsel sent a notice to Respondent to file an Answer and a Request for Hearing by October 12, 2020. The notice again advised Respondent that if defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose license discipline, including discipline on any right to renew.

As of the date of this Final Decision and Order by Default, Respondent has failed to file either an Answer or a Request for Hearing.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, § 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, §11(1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, § 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived his right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

ORDER

Based on its Final Decision by Default, the Board **REVOKES** Respondent's license to practice dentistry in Massachusetts, license no. DN12966. The Board further revokes Respondent's right to renew his dental license.

Respondent is hereby ordered to return any dental license or permit issued to him by the Board, whether current or expired, to the Board's office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within ten (10) days of the Effective Date set forth below.

Respondent shall not practice as a dentist in Massachusetts on or after the Effective Date of this Order. "Practice as a dentist" includes, but is not limited to, holding himself out as being able to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or other condition of the human teeth, alveolar process, gums or jaws, and associated parts, intraorally or extraorally, or if he either offers or undertakes by any method to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or other condition of the same. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by M.G.L. c. 112, §§ 52 and 65.

The Board may choose to reinstate Respondent's dental license if the Board determines in its sole discretion that reinstatement is in the best interest of the public health, safety, and welfare. The Board cannot foresee circumstances under which it would reinstate Respondent's dental license.

The Board voted to adopt the within Final Decision by Default at its meeting held on November 4, 2020, by the following vote:

In Favor: Ms. Ailish Wilkie, Dr. Stephen C. DuLong, Dr. Michael A. Scialabba, Dr. Thomas A. Trowbridge, Ms. Jacyn Stultz, RDH, and Dr. Patricia Wu
Opposed: None
Abstained: None
Recused: None
Absent: Ms. Stacy Haluch, RDH, Dr. Paul F. Levy, and Dr. Seema Z. Jacob

The Board voted to adopt the within Final Order by Default at its meeting held on November 4, 2020, by the following vote:

In Favor: Ms. Ailish Wilkie, Dr. Stephen C. DuLong, Dr. Michael A. Scialabba, Dr. Thomas A. Trowbridge, Ms. Jacyn Stultz, RDH, and Dr. Patricia Wu
Opposed: None
Abstained: None
Recused: None
Absent: Ms. Stacy Haluch, RDH, Dr. Paul F. Levy, and Dr. Seema Z. Jacob

EFFECTIVE DATE OF ORDER

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

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court within thirty (30) days of receipt of notice of this Final Decision and Order by Default pursuant to M.G.L. c. 112, § 64.

Board of Registration in Dentistry

11/5/20
Date Issued

Barbara A. Young RDH
Barbara A. Young, RDH
Executive Director

Notified:

*By first-class and certified mail no. 7019 0700 0000 1846 0940,
return receipt requested*

Dr. Anthony J. DiStefano, III

Redacted

By interoffice mail
Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health
250 Washington Street
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

Board of Registration in Dentistry,
Petitioner,

v.

Anthony J. DiStefano, III, D.M.D.,
License No. DN12966
License Expired 3/31/20,
Respondent

Docket No. DEN-2018-0039

ORDER TO SHOW CAUSE

Anthony J. DiStefano, III, D.M.D., you are hereby ordered to show cause why the Massachusetts Board of Registration in Dentistry (the Board) should not suspend, revoke or otherwise take action against your license to practice as a dentist in the Commonwealth of Massachusetts, License No. DN12966, or your right to renew such license, pursuant to Massachusetts General Laws (G.L.) chapter 112, § 61 and Code of Massachusetts Regulations (CMR), Title 234, § 2.00 *et seq.*, based upon the following facts and allegations:

Factual allegations

1. On or about July 21, 1975, you were licensed to practice as a dentist in the Commonwealth of Massachusetts. Your license expired on March 31, 2020.¹
2. Between or about August 16, 2016 and December 31, 2016, you used another dental provider's MassHealth provider ID and NPI numbers to submit claims to MassHealth in order to obtain reimbursement for dental treatment you provided to a patient (Patient A).
3. You failed to perform and document in Patient A's dental record, without limitation, the following:
 - A. Periodontal charting/PSR score;
 - B. An oral cancer screening;
 - C. Preparing and/or having provided Patient A a treatment plan with estimated fees prior to commencing treatment;

¹ See Governor Baker's Order Extending The Registrations of Certain Licensed Professionals dated March 18, 2020, declaring that licenses in good standing that are set to expire during the state of emergency shall continue to be valid for 90 days following the termination of the state of emergency.

- D. The restorative materials used during Patient A's appointment with you on September 3, 2016, whether local anesthesia was administered during that appointment, and, if so, what was used, its strength and dosage; and
 - E. The local anesthesia used, and the strength and dosage administered, during Patient A's appointments with you on December 3 and 24, 2016.
4. You submitted to MassHealth for reimbursement Code on Dental Procedures and Nomenclature (CDT) codes D0160 without documentation substantiating the services were provided and D0140 during ongoing treatment that included extractions, a mandibular partial denture and a maxillary complete denture.
 5. You failed to take forty (40) hours of continuing education and mandatory continuing education consistent with 234 CMR 8.00 in the twenty-four (24) months immediately preceding March 31, 2018.

Legal Bases for Discipline²

- A. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your license to practice as a dentist, including any right to renew your license, pursuant to G.L. c. 112, §52E for engaging in repeated irregularities in billing an insurance company or other third party payer for services rendered to a patient.
- B. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to G.L. c. 112, §61 for being guilty of deceit, malpractice, gross misconduct in the practice of your profession, or of any offense against the laws of the Commonwealth relating thereto.
- C. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 5.14 for failing to include in a patient's record:
 1. Comprehensive periodontal screening;
 2. Oral cancer screening;
 3. A written treatment plan describing in detail your proposed treatment;

² It is well-settled administrative law that due process requires that "notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case," and does not require Prosecuting Counsel to provide a detailed description of evidence he intends to introduce at a disciplinary hearing. *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 376-377 (1985). See *Lapointe v. License Board of Worcester*, 389 Mass. 454, 458 (1983) ("Due process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds"). Certainly, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Accordingly, where, as here, there exists significant overlap between factual allegations and grounds for discipline contained within the Order to Show Cause, Prosecuting Counsel's matching of factual allegations to grounds for discipline is offered as suggestions, and not as an exhaustive characterization of the evidence to be adduced at a hearing.

4. A specification of the type and quality of materials used; and
 5. The administration of medicines and medicaments including the type, amount, and route of administration.
- D. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 5.20(1) for associating or cooperating with any person, firm or corporation in any manner in an effort to avoid or circumvent the intent or provisions of M.G.L. c. 112, §§ 43 through 53 and § 61.
- E. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 8.02(1) for failing to complete a minimum of forty (40) continuing education units (CEUs) during the twenty-four (24) months immediately preceding March 31st in an even numbered year.
- F. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 8.03 for failing to complete continuing education as a condition precedent to the biennial renewal of your license in the following areas:
1. CDC Guidelines;
 2. Continuous certification in CPR/AED, BLS, or ACLS; and
 3. Training required pursuant to M.G.L. c. 94C, § 18(e).
- G. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 9.05(1) for engaging in misconduct in the practice of dentistry, unprofessional conduct, and/or conduct that undermines public confidence in the integrity of the dental profession.
- H. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 9.05(2) for violating any of the duties and standards set out in 234 CMR or any rule, advisory, or written policy adopted by the Board pursuant to its authority under M.G.L. c. 112, §§ 43 through 53 and 61.
- I. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 9.05(14) for committing an act that violates recognized standards of care.

J. Your conduct as alleged above, and any other evidence that may be adduced at hearing, warrant disciplinary action against your license to practice as a dentist, including any right to renew your license, pursuant to 234 CMR 9.05(22) for charging a patient or third party payor for a service not performed.

K. Your conduct as alleged above, and any other evidence that may be adduced at hearing, also constitute unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing (hearing) on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing; to secure legal counsel or another representative to represent your interests; to call and examine witnesses; to cross-examine witnesses who testify against you; to testify on your own behalf; to introduce evidence; and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 801 CMR 1.01(10)(i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including, but not limited to, the written transcript of the hearing, is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice dentistry in the Commonwealth of Massachusetts, including any right to renew your license.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Eugene Langner, Prosecuting Counsel, at the following address:

Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 624-5263 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN DENTISTRY
Barbara Young, Executive Director

By: _____

Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health

Date: September 5, 2020

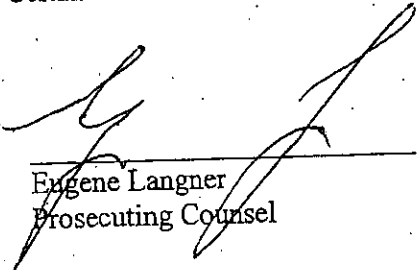
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent:

Anthony J. DiStefano, III, D.M.D.
562 Lincoln Street
Worcester, MA 01605

by first class mail, postage prepaid, and by Certified Mail No. 7019 0700 0000 3091 1208

This 3^d day of September, 2020.



Eugene Langner
Prosecuting Counsel