

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN DENTISTRY

\_\_\_\_\_  
In the Matter of )  
Dr. David Satloff )  
License No. DN15101 )  
Expired March 31, 2018 )  
\_\_\_\_\_ )

Docket Nos. DEN-2012-0122  
DEN-2013-0178

FINAL DECISION AND ORDER

Procedural History

On April 17, 2015, the Board of Registration in Dentistry ("Board") issued the Respondent an Order to Show Cause ("OTSC") requiring him to demonstrate why the Board should not suspend, revoke or otherwise take disciplinary action against his dental license or right to renew such license based on allegations that (1) the Respondent's diagnosis and recommended treatment of Patient A using energy testing fell below the accepted standards of care for general dentists, (2) the Respondent failed to provide dental services in compliance with CDC Guidelines for Infection Control in Dental Health-Care Settings (2003) under 234 CMR 5.05(1) in his North Attleboro and Seekonk offices, and (3) the Respondent failed to maintain required equipment and drugs for the safe administration of local anesthesia under 234 CMR 6.15 in his North Attleboro and Seekonk dental offices.

On April 15, 2016, the Board amended its Order to Show Cause and Respondent answered and requested an adjudicatory hearing. The complaints were assigned to Administrative Magistrate, Karen Gray Carruthers ("AM" or "AM Carruthers"), who

over eleven days of hearings held between February and April 2017 received evidence related to the OTSC's allegations. Final arguments were held on August 16, 2017 and the record was closed. On February 15, 2018, AM Carruthers issued her Tentative Decision pursuant to 801 CMR 1.01(11)(c). Both parties filed objections pursuant to 801 CMR 1.1(11)(c)(1) and prosecuting counsel filed responses to Respondent's Objections.

On May 5, 2018, the Board reviewed and carefully considered the Tentative Decision, the Respondent's objections, Prosecutor's single objection and the Prosecutor's responses to Respondent's objections and declined to make any changes to the Tentative Decision apart from a correction in paragraph 12, to now read that "the paining tooth was #30 is summarized as follows."

On June 6, 2018, the Board reviewed the Tentative Decision and after considering its Ruling on Respondent's Objection, voted to adopt the Tentative Decision in its entirety, makes the correction to paragraph 12 noted above and incorporates the Tentative Decision, as corrected, into its Final Decision.

#### Rationale for Sanction

After reviewing the Tentative Decision, the Board finds discipline of Respondent's license is warranted for violations of numerous Board regulations, however in fashioning a sanction, two main areas of focus stand out:

A. Non-Compliance with Infection Control and Emergency Management Requirements at Respondent's Dental Practices

At his North Attleboro practice, Respondent was found to have failed to perform weekly spore testing over multiple weeks, and failed to comply with CDC Guidelines concerning sterilization and sterile storage of equipment, and failure to maintain a written Infection Control Program with annual employee training. Respondent also failed to



maintain a current emergency drug kit, as well as drugs, equipment and supplies required for administration of local anesthesia, and failed to maintain a written protocol for managing medical and dental emergencies.

At his Seekonk practice, Respondent was found to have failed to perform weekly spore testing over multiple weeks, and failed to comply with CDC Guidelines concerning sterilization and sterile storage of equipment, and failure to maintain a written Infection Control Program with annual employee training. Respondent also failed to maintain a current emergency drug kit, as well as drugs, equipment and supplies required for administration of local anesthesia, and failed to maintain a written protocol for managing medical and dental emergencies.

Patients who seek treatment at a dental office should receive such treatment without being placed at undue risk for incurring an infection from exposure to non-sterile equipment. For this reason, the Board's regulations require dentists to not only sterilize their equipment and dental instruments, but to take steps to confirm that sterility has been achieved and maintained, which includes adhering to a regular protocol and training staff to do the same. Dentists should also be prepared to provide life-saving emergency treatment to patients who experience a reaction to treatment or other medical emergency while receiving dental care. For this reason, the Board's regulations require dentists to maintain a current stock of appropriate medications, necessary equipment, emergency protocols, and trained staff for responding to medical and dental emergencies.

The risk of harm from a dentist's failure to adhere to these requirements falls not on the dentist, but the patient. Enforcement of these requirements is necessary to protect the public health, safety and welfare. Accordingly, the sanction for violations of these

requirements should first be sufficient to ensure that the dentist possesses both the knowledge and the will to properly comply with the regulatory requirements, and second, to deter other dentists from non-compliance.

In prior matters involving failure to adhere to infection control requirements and emergency management regulations, the Board has imposed discipline against licensees owning dental practices that range from probation to suspension depending on the extent and duration of the failures. See, e.g., *In the matter of Dr. Frank T. Varinos*: DEN-2014-0090 (six month probation for failing to consistently spore test); *In the matter of Dr. Mark Zive*: DEN-2012-0050 & DEN-2012-0103 (one year probation for failing to conduct spore testing, *inter alia*), *In the matter of Dr. Jeffrey Lowenstein*: DEN-2012-0157) (one week suspension followed by one year probation for infection control violations); *In the matter of Dr. Theodore Souliotis*: DEN-2013-0210 & DEN-2014-0002 (six month suspension followed by six month probation for infection control violations, *inter alia*); and *In the matter of Dr. Robert I. Orenstein*: DEN-2016-0047 (indefinite voluntary surrender for infection control violations).

B. Respondent's Treatment of Patient A

As enumerated in the Tentative Decision, Respondent violated numerous regulations with respect to his treatment of Patient A, including several record keeping requirements. However, in fashioning the sanction, the Board's focus is on the Respondent's deviation from the accepted standard of care in his diagnosis and treatment recommendations with respect to Patient A. Specifically, the Respondent failed to utilize recognized and accepted diagnostic tests to assess the symptoms of pain in Patient A's tooth 19. Instead, the Respondent applied energy testing, as detailed in the Tentative



Decision at paragraphs 7 and 8, misdiagnosed Patient A as having an infection in the tooth, of a nature linked with development of cancer, which recommended treatment required a root canal or an extraction. Subsequent radiographs and evaluation showed that Patient A did not have an infection, but rather a hairline fracture, and that a root canal or an extraction of the tooth was inappropriate and not supported by the clinical evidence.

Prior matters before the Board involving allegations of substandard treatment chiefly focus on the inattention or negligence on the part of the dentist in approaching and applying the recognized standard of care. The dispute is not as to the applicable standard of care, but rather, whether or not the dentist in question met that standard. *In the matter of Dr. Paul Virgadamo*: DEN-2011-0114 and DEN-2011-0144 (six month suspension for failing over two years to diagnose decay in three teeth, among other violations); *In the matter of Dr. Italo Lozada*: DEN-2010-0171 (three month suspension followed by probation for failing to diagnose and properly treat severed lingual nerve arising from the licensee's treatment) and *In the matter of Dr. Brian Mangano*: DEN-2012-0027 (four month suspension followed by probation based on failing to expose radiographs for over 24 years, including radiographs before and after licensee's fabrication and placement of a bridge). In these cases, the matter in dispute was not as to the standard of care for examining and diagnosing patients but rather, whether it was met. In other words, the dispute was not *how* the dentist should properly examine and treat patients but *did* the dentist properly examine and treat a particular patient.

The present matter is markedly different. Respondent's position and earnestly held conviction throughout the hearing is that energy testing on a digital image of a tooth

is an appropriate means of diagnosing not only an infection of the tooth, but also the development of cancer. Moreover, the Respondent testified that results obtained by accepted diagnostic testing, i.e., palpation, cold air syringe test and mobility are "frankly meaningless" and have "limited diagnostic value". See Tentative Decision, ¶ 6(f). In other words, this is less a case of whether the Respondent correctly and diligently conducted accepted diagnostic testing, and more a case of whether the Respondent's energy testing diagnostic approach stands alongside accepted diagnostic testing. As detailed in the Tentative Decision at paragraphs 24-37, the Board finds that it does not, and, as detailed in the Tentative Decisions at paragraphs 15-19, that following application of energy testing, the Board finds Respondent made both an incorrect diagnosis and erroneous treatment recommendations.

Since the Board's prior matters more typically involve negligent application of the standard of care rather than frank deviation from the accepted standard of care, it takes guidance from the *Matter of Sara Stalman*, before the Board of Registration in Medicine, 0245-DALA (RM-02-1310)(June 16, 2004). Dr. Stalman was found to have treated patients under a diagnosis and treatment protocol which she developed. She used diagnoses that she invented that are not recognized by her peers in the practice of medicine. She made recognized diagnoses using diagnostic criteria that are not recognized by her peers. The Board of Registration in Medicine, consistent with its own prior decisions to remove physicians from practice for "substantial deviations in medical care and treatment," suspended Dr. Stalman indefinitely, with the possibility of staying the suspension after five years upon proof of completion of a Board approved clinical skills assessment program and a satisfactory psychiatric evaluation.



In keeping with its duty to promote the public health, welfare, and safety, and consistent with its prior rulings as applicable and the foregoing rationale, the Board issues the following order:

### **ORDER**

The Board orders Respondent's license to practice dentistry in the Commonwealth suspended for no less than eighteen (18) months, commencing on the Effective Date of this Final Decision and Order ("Suspension Period").

Respondent may petition the Board for reinstatement of his license no sooner than 30 days prior to the end of the Suspension Period and upon demonstration that he has fulfilled each of the following conditions to the Board's satisfaction:

- (1) 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 or has held a license to practice dentistry.
  - (i) Respondent shall provide written documentation to the Board demonstrating his compliance with paragraph 1.
  - (ii) If Respondent is not licensed to practice dentistry in another jurisdiction, he shall submit a signed attestation to the Board stating such.
- (2) Respondent shall successfully pass the Board's Jurisprudence and Ethics Examination within thirty days prior of submitting a petition for reinstatement.
- (3) Complete a full day of Board-approved remedial continuing education in each of (a) interpreting radiographs, (b) diagnosis and treatment planning and (c) risk management. Such continuing education shall be pre-approved prior to registering for the courses and shall be attended in person and not taken as self-study or online.
- (4) Respondent shall successfully pass the CDCA's Diagnostic Skills Examination OSCE; and successfully pass the CDCA's two

simulated clinical examinations, i.e., endodontic clinical examination and fixed prosthodontic clinical examination.

Upon receipt of Respondent's petition for reinstatement of his license, the Board shall require Respondent to appear before it.

During the Suspension Period, the Respondent shall comply with the additional conditions:

- (5) Respondent shall not practice dentistry within the meaning of M.G.L. c. 112, §50.
- (6) Respondent shall notify the Board in writing of any change to his address of record within seven (7) calendar days of such change.
- (7) Respondent shall maintain patient records consistent with 234 CMR 5.14 and timely comply with all requests made by patients for their treatment records consistent with M.G.L. c. 112, § 12CC;
- (8) Respondent shall not violate any provision of M.G.L. c. 112, §§43-53, 61 and 234 CMR.
- (9) 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.
- (10) Respondent has the burden to prove compliance with the requirements of this Order and his Suspension.

If, during the Suspension Period, the Respondent fails to comply with any condition in paragraphs 5-10 above, the Respondent shall be entitled to a hearing as to whether he violated such condition. 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 Suspension Period, it may impose a further sanction, deemed appropriate in its sole discretion. Such sanction



may include extension of Respondent's suspension or revocation of Respondent's license to practice dentistry in the Commonwealth.

The Board voted to adopt the Tentative Decision as its Final Decision at its meeting held on June 6, 2018, by the following vote:

In Favor:	Dr. Stephen C. DuLong, Ms. Kathleen Held, M.Ed., Ms. Stacy Haluch, RDH, Dr. Paul F. Levy, Dr. Michael A. Scialabba, Dr. Cynthia M. Stevens, Ms. Jacyn Stultz, RDH, and Dr. Patricia Wu.
Opposed:	None
Abstained:	None
Recused:	Ailish Wilkie
Absent:	Dr. John Hsu

On June 6, 2018, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order, by the following vote:

In Favor:	Dr. Stephen C. DuLong, Ms. Kathleen Held, M.Ed., Ms. Stacy Haluch, RDH, Dr. Paul F. Levy, Dr. Michael A. Scialabba, Dr. Cynthia M. Stevens, Ms. Jacyn Stultz, RDH, and Dr. Patricia Wu.
Opposed:	None
Abstained:	None
Recused:	Ailish Wilkie
Absent:	Dr. John Hsu

#### **EFFECTIVE DATE**

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

#### **RIGHT OF APPEAL**

Respondent is hereby notified of the right to appeal this Final Order to the Supreme Judicial Court within thirty (30) days of receipt of notice of this Final Order pursuant to M.G.L. c. 112, § 64 or by filing a claim for judicial review in Superior Court within thirty (30) days of receipt of notice of this Final Order pursuant to M.G.L. c. 30A, § 14.

DATE ISSUED: June 12, 2018



Barbara A. Young, RDH  
Executive Director  
Board of Registration in Dentistry

Notify:

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