



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Dentistry
239 Causeway Street, Suite 500, Boston, MA 02114

Tel: 617-973-0971
TTY : 617-973-0988
www.mass.gov/dph/boards/dn

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

November 8, 2018

VIA FIRST CLASS & CERTIFIED MAIL NO. 7017 0530 0000 0551 9984,
RETURN RECEIPT REQUESTED

Joseph Sanchez II, DMD
51 Valiant Way
Salem, MA 01970

VIA FIRST CLASS & CERTIFIED MAIL NO. 7017 0530 0000 0551 9960,
RETURN RECEIPT REQUESTED

John D. Bruce, Esq.
Bruce & Kelly, PC
20 Burlington Mall Rd., Suite 225
Burlington, MA 01803

RE: In the Matter of Joseph Sanchez II, DMD, Docket No. DEN-2015-0014
License No. DN18274 (Expired 3/31/20)

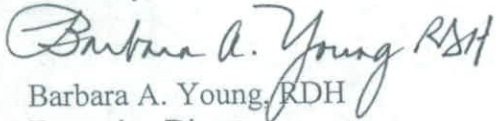
Dear Attorney Bruce:

Please find enclosed the **Final Decision and Order ("Order")** issued by the Board of Registration in Dentistry on November 8, 2018 and effective **November 18, 2018**. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. Dr. Sanchez's appeal rights are noted on **page 7** of the Order.

Please note that as of the effective date, Dr. Sanchez's license status will change to **Suspended**. It will remain in suspended status for at least 30 days. Dr. Sanchez need not petition the Board for termination of the Suspension Period so long as the Board has received evidence that he has fulfilled each of the conditions in accordance with the terms of the order.

Please direct all questions, correspondence and documentation relating to Paragraphs 1, 2 and 3 of the Order to the attention of Samuel Leadholm, Esq. Board Counsel at the address above. You may also contact Attorney Leadholm at (617) 973 - 0950.

Sincerely,

Handwritten signature of Barbara A. Young RDH in cursive script.

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

Encl.

cc: Eugene Langner, Esq., Prosecuting Counsel
Alexandra Rubin, Esq., Administrative Magistrate

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN DENTISTRY

In the Matter of)
Dr. Joseph Sanchez, II)
License No. DN18274)
Expires March 31, 2020)
_____)

Docket No. DEN-2015-0014

FINAL DECISION

On January 13, 2017, 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 take disciplinary action against his dental license. The OTSC alleged the Respondent violated CDC Guidelines in Infection Control by failing to conduct weekly spore tests and by failing to use external biologic indicators when sterilizing dental instruments contrary to 234 CMR 9.05(3) and that the Respondent violated the standard of care by failing to expose radiographs before extracting teeth and by failing to use scalers for procedures Respondent billed as prophylaxes in violation of 234 CMR 9.05(14).

Respondent seasonably answered and requested an adjudicatory hearing on the OTSC's allegations. On April 10 and 12, 2018, Administrative Magistrate Alexandra Rubin ("AM Rubin") presided over two days' evidence and testimony. On July 12, 2018, AM Rubin issued a tentative decision pursuant to 801 CMR 1.01(11)(c) ("Tentative Decision"). Neither party exercised the prerogative to file objections to the Tentative Decision pursuant 801 CMR 1.01(11)(c)(1).

After careful review, the Board adopts the AM Rubin's findings of fact and rulings of law that Respondent failed for over twenty-four years of practicing dentistry to conduct spore testing contrary to the CDC's Guidelines in Infection Control and in violation of 234 CMR 9.05(3), *inter alia*,¹ and that Respondent violated the standard of care by failing to expose radiographs prior to extracting teeth for patients 10, 16, 19, 20, 24, 24, 27, 29, 35, 42, and 43 and that such conduct violated 234 CMR 9.05(14), *inter alia*.² See also, Tentative Decision at fn 9.

With respect to Respondent's longstanding failure to conduct spore testing, patients, much less nursing home patients more susceptible to infection, who obtain dental care, 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. 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.

The Board's precedent for licensees who fail to conduct spore testing generally factors in the ownership interest in the dental practice, e.g., per diem, associate, or owner,

¹ AM Rubin found that Respondent's failure to conduct spore testing subjects his license to Board discipline on multiple independent grounds, to wit: (i) 234 CMR 9.05(8) (placing the public's health and safety at risk); (ii) 234 CMR 9.05(1) (undermining public confidence); as well as under M.G.L. c. 112, § 61, (iii) (offenses against the laws of the Commonwealth), (iv) (malpractice); and (v) (gross misconduct in the practice of the dental profession).

² AM Rubin found as a matter of law Respondent's failure to expose pre-extraction radiographs subjects his license to Board discipline on the following grounds; namely: (i) 234 CMR 9.05(2) (violating a duty or standard in 234 CMR); (ii) 234 CMR 9.05(1) (undermining public confidence); (iii) common law relative to undermining public confidence; (iv) 234 CMR 9.05(8) (placing public health, safety or welfare at risk) and, based on the foregoing, the Respondent violated M.G.L. c. 112, §61 (offenses against the laws of the Commonwealth).

and the duration of the failure to conduct spore testing. The Board's precedent for associate dentists practicing part-time or for less than a year full-time in a dental practice is non-disciplinary stayed probation. For owners of dental practices failing to consistently spore test, the Board's sanction ranges from probation or a brief period of suspension followed by probation, see *In the matter of Dr. James G. Hunt*: DEN-2013-0041 (FDO eff. November 20, 2015), and *In the matter of Dr. Robin Eliasberg-Lowenstein*: DEN-2012-0119 (FDO eff. June 13, 2016); *In the matter of Jeffrey Louis Lowenstein*: DEN-2012-0157 (Agreement for Suspension followed by Probation, eff. September 21, 2017). For owners of dental practices where there is a long term and absolute failure to conduct spore testing, the Board's precedent is for a greater period of license suspension; see *In the matter of Dr. Ronald Bidinger*: DEN 2012-0140 (suspension for 10 months); *In the matter of Dr. Jeffrey Stiles*: DEN-2012-0139 (suspension for 14 months); *In the matter of Dr. Robert Ornstein*: DEN-2016-0047 (voluntary surrender).

Standards of care establish the minimum competence a patient can expect from her provider. AM Rubin credited Dr. Keith's expert testimony that the standard of care does not change from treatment setting to treatment setting and that taking and exposing pre-extraction radiographs are necessary for a number of reasons; to disclose the condition and associated pathology of the tooth and to show the root and bone anatomy of the tooth as such information will better inform the method of extraction and any concerns that may be anticipated post extraction. See ¶13.

The Board's precedent related to sanctioning conduct that evinces a failure to adhere to the standards of dental practice ranges from non-disciplinary to disciplinary, depending on the severity and persistence of the dentist's divergence from the standard of

care. See, e.g., *In the matter of Dr. Brian Mangano*: DEN-2012-0027 (four month suspension followed by probation based on failing to expose Patient A's radiographs for over 24 years, including radiographs before and after licensee's fabrication and placement of a bridge); *In the matter of Dr. Dieutrang Bui*: DEN-2015-0110 (one year probation for failing to take and expose radiographs prior to recommending treatment, *inter alia*); *In the matter of Dr. Kerry H. Wu*: DEN-2015-0119 (six month probation for failing to expose a current radiograph prior to extracting tooth #5 and documenting a diagnosis of tooth #5 in the patient record, *inter alia*).

The Board has carefully considered the Tentative Decision. For the reasons set forth above, the Board adopts the Tentative Decision in full, including all findings of fact, credibility determinations, conclusions of law and discussion contained therein, as the Board's Final Decision.

In keeping with its duty to promote the public health, welfare, and safety, the Board issues the following order after careful consideration of its Final Decision.

ORDER

The Board orders Respondent's license to practice dentistry in the Commonwealth be **suspended for at least 30 days**, commencing on the Effective Date of this Final Decision and Order ("Suspension Period") and immediately thereafter Respondent's license to practice dentistry will be placed on **probation for one (1) year** ("Probation"), commencing no earlier than thirty days after the Effective Date ("Probation Period").

Respondent need not petition the Board for termination of the Suspension Period so long as the Board has received evidence that the Respondent has fulfilled each of the following conditions:

- (1) Respondent shall successfully pass the Board's *Jurisprudence and Ethics Examination* within **twenty-five days** of the Effective Date.
- (2) Within twenty-five 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.
 - (a) Respondent shall provide written documentation to the Board demonstrating his compliance with paragraph 2.
 - (b) If Respondent is not licensed to practice dentistry or another health care profession in any other jurisdiction he shall submit a signed attestation to the Board stating such.
- (3) Submit weekly spore testing results for the preceding three months within twenty-five (25) days of the Effective Date.

During the Probation Period, the Respondent shall comply with the following requirements:

- (4) Complete Board-approved remedial continuing education in each of the following: (a) infection control for mobile units (3 hours), (b) risk management (3 hours), and (c) radiography (6 hours). 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.

- (5) Every three months, submit to the Board weekly spore testing results for the preceding three months.
- (6) Respondent shall timely renew his license to practice dentistry in accordance with 234 CMR 4.14.
- (7) Respondent shall fully and promptly cooperate with any Board inspection of the Respondent's dental practice, regardless of whether Respondent is given prior notice of the inspection.
- (8) Respondent shall notify the Board in writing of any change to his address of record within seven (7) calendar days of such change.
- (9) Respondent shall not violate any provision of M.G.L. c. 112, §§43-53, 61 and 234 CMR.
- (10) Respondent shall not 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.
- (11) Respondent has the burden to prove compliance with the requirements of this Order and his Probation.

If, during the Suspension or Probation Period, the Respondent fails to comply with any requirement or condition in paragraphs 1 - 10, the Respondent shall be entitled to a hearing as to whether he violated such requirement or 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 or 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 to adopt the Tentative Decision as its Final Decision at its meeting held on November 7, 2018, by the following vote:

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

On November 7, 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. Stacy Haluch, RDH, Ms. Kathleen Held, M.Ed., Dr. Paul F. Levy, Dr. Michael A. Scialabba, Ms. Jacyn Stultz, RDH, Ms. Ailish Wilkie and Dr. Patricia Wu
Opposed: None
Abstained: None
Recused: None
Absent: Dr. John Hsu and Dr. Cynthia M. Stevens

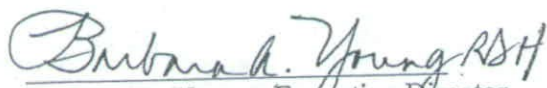
EFFECTIVE DATE

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 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: November 8, 2018


Barbara A. Young, Executive Director

Notify:

By first-class and certified mail no.
7017 0530 0000 0551 9984,
return receipt requested
Joseph Sanchez II, DMD
51 Valiant Way
Salem, MA 01970

By first-class and certified mail no.
7017 0530 0000 0551 9991,
return receipt requested
John D. Bruce, Esq.
Bruce and Kelly, PC
20 Burlington Mall Road, Suite 225
Burlington, MA 01803

By Interoffice mail
Eugene Langner, Esq.
Prosecutor
Department of Public Health
Bureau of Health Professions Licensure
250 Washington Street, 8th Floor
Boston, MA 02108

By Interoffice mail
Alexandra Rubin, Esq.
Administrative Magistrate
Department of Public Health
Bureau of Health Professions Licensure
250 Washington Street, 8th Floor
Boston, MA 02108