

Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
Bureau of Health Professions Licensure  
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MARYLOU SUDDERS  
Secretary  
MONICA BHAREL, MD, MPH  
Commissioner

July 10, 2017

VIA FIRST-CLASS AND CERTIFIED MAIL RETURN  
RECEIPT REQUESTED NO. 7015 1730 0000 7974 1325,  
Gerard Butler, Jr., Esq.  
Smith Duggan Buell & Rufo LLP  
55 Old Bedford Road  
Lincoln, MA 01773

**RE: In the matter of Dr. M. Hanif Butt, DN License No. 18051**  
**Board of Registration in Dentistry, Docket No. DEN-2013-0199**

Dear Attorney Butler:

Enclosed is the Final Decision and Order ("Final Order") issued by the Board of Registration in Dentistry ("Board") in connection with the matter referenced above. The effective date of the Board's Final Order is ten (10) days from the date appearing on page 6 of the Final Order ("Date Issued"). Your client's appeal rights are noted on page 6 of the Final Order.

Sincerely,

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

Enc.

Cc: Prosecution (by interoffice mail)  
Administrative Hearing Counsel (by interoffice mail)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN DENTISTRY

\_\_\_\_\_  
In the Matter of )  
Dr. M. Hanif Butt )  
License No. DN18051 )  
Expires March 31, 2018 )  
\_\_\_\_\_ )

Docket No. DEN-2013-0199

FINAL DECISION

On November 23, 2015, the Board of Registration in Dentistry (“Board”) issued the Respondent an Order to Show Cause (“OTSC”) why it should not take disciplinary action against his dental license. The OTSC alleged the Respondent employed an unlicensed individual—who held himself out as possessing a limited license—to practice dentistry in Respondent’s private dental offices in South Yarmouth, Massachusetts. The OTSC set forth various legal grounds for finding that the Respondent’s employment of an unlicensed individual to practice dentistry warranted discipline by the Board.

In December 2016, Prosecuting Counsel and Respondent filed motions for summary decision and oppositions to the other party’s motion that together were reviewed by Administrative Hearings Counsel, Jason Barshak (“AHC Barshak”) on the Board’s behalf. On January 27, 2017, AHC Barshak submitted his recommended ruling for the Board’s review and action.

After review, the Board adopted the AHC Barshak’s reasoning and recommendation and voted to issue its Ruling on the parties’ motions for summary decision, finding as a matter of law that the Respondent violated 234 CMR 9.05(2) (violating a duty or standard in 234 CMR); 234 CMR 9.05(1) (undermining public

confidence); common law relative to undermining public confidence; 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). Thereafter, the Board offered Respondent the opportunity for a hearing limited to sanction, which the Respondent availed himself of. The Board's Ruling on Motions for Summary Decision is appended hereto and incorporated by reference.

The sanction hearing was held on June 7, 2017, and in mitigation, Respondent's counsel averred that Respondent serves and has served low-income patients in a variety of treatment settings. While commendable, the Board does not find this factor mitigates the sanction. Respondent's counsel argued that since Respondent's state of mind as to his violation of Board laws and regulations was not established, the sanction ought to be less than the sanction initially offered to resolve all of the complaint's allegations, including those allegations sounding in deceit and fraud. The Board notes that reasoning as well as the memorandum on sanction filed by Prosecuting Counsel.<sup>1</sup>

After reviewing its Ruling, and considering the information presented by Respondent and Prosecuting Counsel, the Board finds discipline is warranted. The Board's precedent for unlicensed practice generally disciplines by reprimand an individual with an expired license for practicing while not licensed and dismisses the complaint against the employing dentist with an advisory on the employing dentist's obligations under 234 CMR 5.02. This type of complaint involves the basic condition that such individual was initially found by the Board to be qualified for a license, was in fact

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<sup>1</sup> Prosecuting Counsel points to *In the matter of Richard D. Carr, D.M.D.*: DN 00-134, to support discipline of Respondent's license. While not entirely on point as to the underlying violation—delegating dental procedures to untrained (unlicensed) personnel—the rationale of disciplining conduct that undermines public confidence in the integrity of the profession is reasonably related to the promotion of public health, welfare and safety is material to the Board's determination that discipline in this case is warranted.

licensed by the Board, was hired by the employing dentist while licensed and practiced within the scope of the individual's license. Thereafter, for any number of reasons, such licensed individual failed to renew his license and continued to practice on an expired license.

That is not the case here. Respondent hired and employed between September 2010 and May 2013 an individual who was never licensed by the Board and did not possess the educational qualifiers to be licensed as a dentist in the Commonwealth. The Board finds Respondent's conduct more egregious. This is not a matter where he failed to notice his employee's dental license expired. He never checked whether his employee was licensed at all.

In keeping with its duty to promote the public health, welfare, and safety, the Board issues the following order after careful consideration of its Ruling, the information presented by Respondent related to mitigation of sanction, the information presented by Prosecuting Counsel.

The Board voted to adopt the within Final Decision at its meeting held on July 5, 2017, by the following vote:

In Favor:	Dr. Keith Batchelder, Ward J. Cromer, Ph.D., Dr. Stephen C. DuLong, Dr. Paul F. Levy, Ms. Lois Sobel, RDH, Ms. Jacyn Stultz, RDH and Dr. Patricia Wu.
Opposed:	None
Abstained:	None
Recused:	None
Absent:	Ms. Kathleen Held, M.Ed., Dr. John Hsu, Dr. Cynthia M. Stevens and Ms. Ailish M. Wilkie.

## 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 30 days prior to the end of the Probation Period and upon demonstration that he has fulfilled each of the following conditions:

- (1) Respondent shall successfully pass the Board's *Jurisprudence and Ethics Examination* within **thirty days** after the Effective Date.
- (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 or has held 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 he shall submit a signed attestation to the Board stating such.
- (3) Respondent shall successfully complete six (6) hours of Board pre-approved continuing education in risk management during the Probation Period. Such continuing education shall be taken in person and not as self-study and shall count only toward satisfying the requirements of this Order and not toward renewal of his dental license.

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 conditions:

- (4) Respondent shall timely renew his license to practice dentistry in accordance with 234 CMR 4.14.

- (5) 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.
- (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 not during the Probation Period:
  - (a) violate any state or federal law or regulation relating to the practice of dentistry; and
  - (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.
- (8) Respondent has the burden to prove compliance with the requirements of this Order and his Probation.

If, during the Probation Period, the Respondent fails to comply with any condition in paragraphs 1 – 8 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 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.

On July 5, 2017, 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. Keith Batchelder, Ward J. Cromer, Ph.D., Dr. Stephen C. DuLong, Dr. Paul F. Levy, Ms. Lois Sobel, RDH, Ms. Jacyn Stultz, RDH and Dr. Patricia Wu.  
Opposed: None  
Abstained: None  
Recused: None  
Absent: Ms. Kathleen Held, M.Ed., Dr. John Hsu, Dr. Cynthia M. Stevens and Ms. Ailish M. Wilkie.

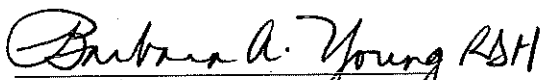
**EFFECTIVE DATE**

This Final Decision and 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 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: July 10, 2017

  
Barbara A. Young, Executive Director

Notify:

*By first-class and certified mail no.  
7015 1730 0000 7974 1325,  
return receipt requested*  
Gerard Butler, Jr., Esq.  
Smith Duggan Buell & Rufo LLP  
55 Old Bedford Road,  
Lincoln, MA 01773.

*By Interoffice mail*  
Eugene Langner, Esq.  
Prosecutor  
Department of Public Health  
Bureau of Health Professions Licensure  
239 Causeway Street, 4th Floor  
Boston, MA 02114

*By Interoffice mail*  
Jason Barshak, Esq.  
Chief Administrative Hearings Counsel  
Department of Public Health  
Bureau of Health Professions Licensure  
250 Washington Street, 8th Floor  
Boston, MA 02108



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN DENTISTRY

In the Matter of  
Dr. M. Hanif Butt  
License No. DN18051  
Expires March 31, 2018

Docket No. DEN-2013-0199

RULING ON MOTIONS FOR SUMMARY DECISION

Procedural History

On November 23, 2015, the Board of Registration in Dentistry (“Board”) issued to the Respondent an Order to Show Cause (“OTSC”) why it should not take disciplinary action against his license. The OTSC alleges the Respondent employed an unlicensed individual—who held himself out as possessing a limited license—to practice dentistry in Respondent’s private dental offices in South Yarmouth, Massachusetts (unlicensed practice issue). In addition, the OTSC alleges that Respondent violated continuing education regulations (continuing education issue). The OTSC sets forth twelve independent legal grounds for finding that the Respondent’s employment of an unlicensed individual to practice dentistry warrants disciplinary action by the Board.

Grounds for discipline alleged in the OTSC include violations of M.G.L. c. 112, §§ 45, 45A, 52, 61<sup>1</sup> and violations of the Board’s regulations at 234 CMR 4.14(4); 234 CMR 5.10(1); 234 CMR 5.10(2); 234 CMR 5.12; 234 CMR 5.20(1); 234 CMR 5.20(3); 234 CMR 8.03(a); 234 CMR 8.03(b); 234 CMR 9.05(1) (misconduct); 234 CMR 9.05(1) (unprofessional conduct); 234 CMR 9.05(1) (undermining public confidence); 234 CMR 9.05(2) (violating Board standard or duty), 234 CMR 9.05(8) (placing health, safety and welfare at risk) and the common law principles related to conduct that undermines public confidence in the integrity of the dental profession.

On December 13 and 14, 2016, Prosecuting Counsel and Respondent filed motions for summary decision, respectively (“Prosecution’s MSD” and “Respondent’s MSD”, together “motions”). Each party filed an opposition and Prosecuting Counsel filed a reply to the Respondent’s opposition. The motions, oppositions and reply were reviewed by Administrative Hearings Counsel, Jason Barshak (“AHC Barshak”) on behalf of the Board. On January 27, 2017, AHC Barshak submitted his recommended ruling for the Board’s review.

<sup>1</sup> M.G.L. c. 112, §61 provides a few separate prongs for discipline: (a) for being guilty of deceit, (b) malpractice, (c) gross misconduct in the practice of the profession, or of (d) any offense against the laws of the Commonwealth relating thereto.

Ruling

The Board has reviewed AHC Barshak's recommended ruling on summary decision ("Recommended Ruling"), attached hereto at Exhibit A. The Board concurs with the findings and recommendation that it deny Respondent's MSD in its entirety, deny Prosecution's MSD as to the continuing education issue and allow Prosecution's MSD relative to the unlicensed practice issue. As set forth more specifically in the Recommended Ruling, incorporated herein by reference, AHC Barshak found as a matter of law the Respondent violated 234 CMR 9.05(2) (violating a duty or standard in 234 CMR); 234 CMR 9.05(1) (undermining public confidence); common law relative to undermining public confidence; 234 CMR 9.05(8) (placing public health, safety or welfare at risk). These four violations sound in strict liability and require no showing of Respondent's intent or knowledge of wrong doing. Each violation provides an independent legal basis to discipline Respondent's license.

In addition, the above violations of board regulations establish as a matter of law that the Respondent violated M.G.L. c. 112, §61 (offenses against the laws of the Commonwealth) providing a fifth basis for discipline.

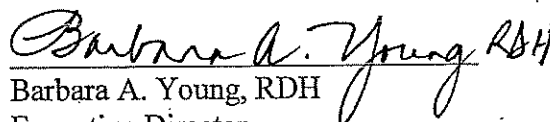
Accordingly, the Board denies Respondent's MSD in its entirety, grants Prosecution's MSD relative to the unlicensed practice issue, and denies Prosecution's MSD as to the continuing education issue. The Board dismisses those allegations related to the continuing education issue, without prejudice. The Respondent may request a hearing on the issue of sanction.

The Board voted to issue this ruling on the motions at its adjudicatory session held on March 1, 2017 by the following vote:

- In Favor: Dr. Stephen C. DuLong, Ms. Ailish M. Wilkie, Ms. Kathleen Held, M.Ed., Dr. Keith Batchelder, Ms. Jacyn Stultz, RDH, Ms. Lois Sobel, RDH, Dr. Cynthia M. Stevens, and Dr. Patricia Wu.
- Opposed: None
- Abstained: None
- Absent: Dr. Paul F. Levy, Ward J. Cromer, Ph.D., and Dr. John Hsu.

Board of Registration in Dentistry,

March 2, 2017  
Date Issued

  
Barbara A. Young, RDH  
Executive Director

Notified:

VIA FIRST-CLASS AND CERTIFIED MAIL RETURN  
RECEIPT REQUESTED NO. 7016 1370 0001 4117 1983

Dr. M. Hanif Butt

redacted

VIA FIRST-CLASS AND CERTIFIED MAIL RETURN  
RECEIPT REQUESTED NO. 7016 1370 0001 4117 1976

Rizwanul Huda, Esq.

Law Office of Rizwanul Huda

One Constitution Center, Suite 300

Charlestown, MA 02129

BY HAND DELIVERY

Eugene Langner, Prosecuting Counsel

Department of Public Health

Bureau of Health Professions Licensure

239 Causeway Street, Suite 400

Boston, MA 02114

# **Exhibit A**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY BOARD OF REGISTRATION IN DENTISTRY

IN THE MATTER OF  
Hanif Butt, D.M.D.  
License No. 18051; License Expires 3/31/16<sup>1</sup> )  
DEN-2013-0199

**RECOMMENDED RULING ON SUMMARY DECISION**

By an Order to Show Cause (OSC) dated November 23, 2015, the Board of Registration in Dentistry (Board) asked why it should not take action against Respondent's license to practice as a dentist or right to renew such license based upon: (1) unlicensed dental practice by Karthik Ravikumar during approximately September 2010 through May 2013 in a private dental practice owned and operated by Respondent in South Yarmouth, Massachusetts (Ravikumar Issue);<sup>2</sup> and (2) whether Respondent took continuing education courses in Infection Control in dental health care settings (IC) and certification in Cardiopulmonary Resuscitation Automated External Defibrillation or Basic Life Support (CPR) between January 1, 2010 and March 31, 2012 (Continuing Education Issue). (Exhibit B to Prosecuting Counsel's Motion for Summary Decision)

Without referencing to which alleged conduct an alleged ground for discipline applies, the OSC references the following grounds for discipline: G.L. c. 112, § 45A; G.L. c. 112, § 52; G.L. c. 112, § 61 (deceit); G.L. c. 112, § 61 (malpractice); G.L. c. 112, § 61 (gross misconduct); G.L. c. 112, § 61 (offense against Massachusetts law); 234 CMR 4.14(4); 234 CMR 5.10(1); 234 CMR 5.10(2); 234 CMR 5.12; 234 CMR 5.20(1);

<sup>1</sup>Respondent's license expires on March 31, 2018. (Exhibit A to Prosecuting Counsel's Motion for Summary Decision)

<sup>2</sup>Certain exhibits evidence the period commenced in November 2013. Whether it commenced in September or November 2013 is immaterial.

234 CMR 5.20(3); 234 CMR 8.03(a); 234 CMR 8.03(b); 234 CMR 9.05(1) (misconduct); 234 CMR 9.05(1) (unprofessional conduct); 234 CMR 9.05(1) (undermining public confidence); 234 CMR 9.05(2); 234 CMR 9.05(8); and common law principle relative to conduct that undermines public confidence in the profession's integrity.<sup>3</sup>

Prosecuting Counsel and Respondent respectively filed summary decision motions on December 13 and 14, 2016 ("Prosecuting Counsel's motion" and "Respondent's motion"). Each party filed an opposition.<sup>4</sup> Prosecuting Counsel filed a reply to Respondent's opposition.<sup>5 6 7</sup>

For the reasons stated below, I recommend the Board: *(a) deny Respondent's motion in its entirety; (b) deny Prosecuting Counsel's motion as to the Continuing Education Issue; and (c) allow Prosecuting Counsel's motion as to the Ravikumar Issue.*

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<sup>3</sup>The following Board regulations cited in the OSC had a different citation during the applicable period: 234 CMR 5.10(1); 234 CMR 5.10(2); 234 CMR 5.12; 234 CMR 5.20(1); 234 CMR 5.20(3); and 234 CMR 4.14(4). That is immaterial because there is no applicable difference in substance for those regulations. This document will use the citations referenced in the OSC.

<sup>4</sup>"When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense." 801 CMR 1.01(7) (h).

<sup>5</sup>Prosecuting Counsel should have but did not seek leave to file a reply. But, in this officer's discretion, the reply will be accepted for filing because Respondent has not objected to its filing and the reply is solely legal argument. Prosecuting Counsel's opposition and reply contain various requests to strike material filed by Respondent. In light of this recommended ruling, such requests are denied as moot.

<sup>6</sup>The following documents are provided to Board Counsel relative to the summary decision motions: Prosecuting Counsel's motion; Respondent's allowed motion to file motion on December 14; Respondent's motion and supporting memorandum; Respondent's opposition; Prosecuting Counsel's opposition; Filing by Prosecuting Counsel in July 2016 referenced in Prosecuting Counsel's motion; Filing by Respondent in September 2016 referenced in Respondent's opposition; and Prosecuting Counsel's reply.

<sup>7</sup>A hearing is not necessary because it would not assist this officer's understanding.

**I. THERE IS NO GENUINE ISSUE OF FACT AS TO THE FOLLOWING**

1. Respondent has a license to practice dentistry in Massachusetts (DN License No. 18051) that was issued in 1992 and will expire unless renewed on March 31, 2018.

(Exhibit A to Prosecuting Counsel's motion)<sup>8</sup>

2. Between approximately November 2010 and May 2013 Respondent owned and operated a private dental practice in South Yarmouth, Massachusetts. ("Office") With Respondent's knowledge and consent, Ravikumar was employed as a dentist at the Office during that period. During that period, Ravikumar did not have a dental license. (Exhibit C to Prosecuting Counsel's motion)

3. During the summer of 2010, Ravikumar applied for a dental position at Respondent's firm. Ravikumar presented his resume which listed under "Dental School", "SRI RAMACHANDRA MEDICAL/DENTAL COLLEGE AND RESEARCH INSTITUTE. INDIA. 2000-2005" and stated under "Qualification", "Eligible for MA Limited License in Dentistry. (ACTIVE)"; and presented to Respondent's hiring manager a document purportedly evidencing his limited dental license. (Exhibits 7, 9, 14 to Respondent's motion)

4. In a January 2013 email, Respondent sought assistance from Ravikumar for a dentist/researcher who wanted "to learn more about the limited license." (Exhibit 25 to Respondent's motion) In April 2013, Respondent's dental assistant informed Respondent Ravikumar was not a limited licensed practitioner because "his name was not [on] the Board's verification website." By May 2013, Respondent changed the locks ending Ravikumar's employment. (Exhibit 9 to Respondent's motion) Until April 2013, Respondent believed Ravikumar had a limited dentistry license.

5. Respondent did not take any continuing education units in IC or CPR between January 1, 2010 and March 31, 2012. (Exhibit C to Prosecuting Counsel's motion)

6. The Board and Respondent entered into a Consent Agreement in September 2013 "to resolve disputed matters arising out of the Complaint pending ... [as] DEN-2009-0061" and pursuant to which the "Board will not conduct any further prosecution of allegations contained in [such] Complaint." (Exhibit 24 to Respondent's motion)

## II. RAVIKUMAR ISSUE: PROSECUTING COUNSEL IS ENTITLED TO SUMMARY DECISION, BUT RESPONDENT IS NOT

First, Respondent has not violated 234 CMR 5.20(1) which prohibits a licensee from associating or cooperating with any person in any manner in an effort to avoid or circumvent the intent or provisions of G.L. c. 112, §§ 43 through 53 and § 61. The phrase "effort to avoid or circumvent" requires intent which requires a showing Respondent knew at the applicable time Ravikumar was unlicensed, which is absent.

Second, Respondent is not subject to discipline under the misconduct prong of 234 CMR 9.05(1). Misconduct "is more than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or lack of concern for one's conduct." Hellman v. Board of Registration in Medicine, 404 Mass. 800, 804 (1989) Respondent did not commit misconduct as he was unaware of Ravikumar's status until April of 2013.

Third, Respondent is not subject to discipline under the gross misconduct prong of G.L. c. 112, § 61 because gross misconduct requires intentional, flagrant and extreme wrongdoing, which is absent. Id. at. 804.

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<sup>8</sup>The Board has jurisdiction. See Wang v. Board of Registration in Medicine, 405 Mass. 15 (1989).



Fourth, Respondent is not subject to discipline under the deceit prong of G.L. c. 112, § 61 because deceit requires a false representation of a material fact with knowledge of its falsity<sup>9</sup> and such conduct is absent.

Fifth-seventh, Respondent has not violated either 234 CMR 5.10(1) (licensed dentist may delegate certain dental duties to a properly educated, trained, and qualified dental auxiliary); 234 CMR 5.10(2) (supervising dentist responsible for delegated acts and procedures performed by dental auxiliary; dentist who delegates a procedure to an auxiliary who does not meet the requirements necessary may be subject to disciplinary action); or 234 CMR 5.12 (non-delegable dental duties). Review of these sections, along with sandwiched 234 CMR 5.11 (entitled "Delegable Procedures" and referencing hygienists and dental assistants), and the definition of dental auxiliary personnel in 234 CMR 2.03 ("dental hygienist or a dental assistant") demonstrates these regulations are intended to apply to issues related to dental hygienists or assistants - not to a situation where a dentist allows a person he believes to be a limited licensed dentist to practice.

However, as a matter of law, Respondent's license is subject to discipline relative to the Ravikumar Issue on five independent grounds. Before addressing such grounds, an argument by Respondent will be considered. Respondent contends discipline based upon summary decision - and not after a full adjudicatory hearing - violates statute (e.g. G.L. c. 112, § 61.) Respondent relies upon Veksler v. Board of Registration in Dentistry, 429 Mass. 650 (1999). This argument errs.

... in Veksler v. Board of Registration in Dentistry, 429 Mass. 650 (1999), the court held that a dentist convicted of Medicaid fraud and who had conceded her guilt had, pursuant to the plain language of G. L. c. 112, §§ 52D and 61, "a right of allocution, 'the right to present mitigating factors prior to sentencing.'" ... However, neither the statute nor due

<sup>9</sup> See Danca v. Taunton Savings Bank, 385 Mass. 1, 8 (1982)

process required the board to hold a hearing to take evidence concerning undisputed facts. Such a hearing would be a meaningless exercise.... Because the magistrate properly could rely on the petitioner's convictions as proof that he engaged in conduct that called into question his ability to practice medicine, there was no issue of material fact for which a hearing was required. The board could, therefore, properly rely on the summary decision for findings of fact. 801 Code Mass. Regs. § 1.01(7)(h)....

Kobrin v. Board of Registration in Medicine, 444 Mass. 837, 846-848 (2005).

The five independent grounds for disciplining Respondent's license as to the Ravikumar Issue follow. Respondent's license is subject to discipline pursuant to: 234 CMR 9.05(2) (violating a duty or standard within 234 CMR); 234 CMR 9.05(1) (undermining public confidence); common law regarding undermining public confidence; 234 CMR 9.05(8) (placing public health, safety or welfare at risk); and pursuant to the "offense[s] against the laws" prong within G.L. c. 112, § 61. None of these grounds requires a showing Respondent knew or should have known Ravikumar was unlicensed. Each speaks only of acts and is grounded in strict liability principles.<sup>10</sup> See Somers v. Converged Access, Inc., 454 Mass. 582, 591 (2009) ("None of the statutory criteria speaks of ... intent; rather all speak of the nature of the service provided. To this extent [the statute] is a strict liability [ground]"); Vitale v. State Racing Commission, 13 Mass. App. Ct. 1025, 1026 (1982) (rescript), review denied in 386 Mass. 1103 (1982) (under applicable rule, the trainer "shall be responsible for and be the absolute insurer of the condition of the horses he enters regardless of the acts of third parties"; "even proof that the trainer was not in fact responsible for the drug (but at most negligent in protecting his horse) would have limited or no relevance") (Parenthesis in original); Fioravanti v. State Racing Commission, 6 Mass. App. Ct. 299, 305 (1978) ("rule may do injustice to [one]

<sup>10</sup>The same principle applies to two statutes addressed later – G.L. c. 112, § 45A (employing purported holder of limited dental license in a private dental office), and G.L. c. 112, § 52 (employing or permitting person who is not properly registered to practice dentistry).

innocent of wrong doing; but it serves to protect the public") Compare Gainsboro v. Boston, 75 Mass. App. Ct. 1105 (2009) (1:28) at 2-3 ("no claim that any law, rule, or regulation was violated"; "It is tantamount to the imposition of strict liability or arbitrary fault.")<sup>11</sup>

First, by regulation 234 CMR 9.05(1) the Board may discipline for conduct that undermines public confidence in the profession's integrity. Second, under the common law, the Board may discipline for conduct which undermines public confidence in the profession's integrity. See Sugarman v. Board of Registration in Medicine, 422 Mass. 338, 342 (1996). By Respondent's conduct, an unlicensed person practiced dentistry for over two years undermining the public's confidence in the profession's integrity. Respondent appears to agree with such effect. See Respondent's opposition at p. 17 ("dentists that referred their patients to [Ravikumar] have undermined the public confidence")

Third, by Respondent's conduct, an unlicensed person was practicing dentistry for over two years placing the public health, safety and welfare at risk in violation of 234 CMR 9.05(8). Respondent appears to agree with such effect. See Respondent's opposition at p. 17 ("dentists that referred their patients to [Ravikumar] have ... placed the public health, safety, or welfare at risk")

Fourth, in contravention of 234 CMR 5.20(3), Respondent entered into an agreement with an unlicensed person which allowed such person final decision-making

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<sup>11</sup> Respondent devotes *substantial* argument as to whether or not he should have known Ravikumar was unlicensed. But it is immaterial whether or not Respondent should have known. The grounds upon which Respondent's license is subject to discipline relative to the Ravikumar Issue do not require any showing Respondent knew or should have known of the unlicensed status. Respondent's alternative request that under a "should of known" standard the case must be expanded to include various dental community persons as respondents is denied.

authority over selection of a course of treatment and/or professional practice decision-making. By violating 5.20(3), Respondent is subject to discipline under 234 CMR 9.05(2) for violation of a duty or standard set out in 234 CMR.

Fifth, Respondent's violation of 234 CMR 5.20(3), 234 CMR 9.05(1), 234 CMR 9.05(2), 234 CMR 9.05(8), G.L. c. 112, § 45A (employing purported holder of limited license in private dental office) and/or G.L. c. 112, § 52 (employing or permitting person who is not properly registered to practice dentistry) makes Respondent's license subject to discipline pursuant to "offense[s] against the laws of the Commonwealth" prong within c. 112, § 61. See Giroux v. Board of Dental Examiners, 322 Mass 251, 252 (1948)<sup>12 13</sup>

Because the Board needs only one ground upon which to subject Respondent's license to discipline – and has five independent bases - Prosecuting Counsel's motion on the Ravikumar Issue should be allowed, and Respondent's motion on the Ravikumar Issue should be denied.

### **III. SUMMARY DECISION MOTIONS AS TO THE CONTINUING EDUCATION ISSUE MUST BE DENIED**

Pursuant to 234 CMR 4.14(4), no licensee may renew a license unless he has completed all continuing education required for renewal set forth in 234 CMR 8.00. Pursuant to 234 CMR 8.03 (a-b), a licensee seeking to renew a license must complete continuing education in IC and CPR as a condition precedent to the biennial renewal.

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<sup>12</sup>It is not necessary to decide whether the Board has authority to fine Respondent under G.L. c. 112, § 52 under the circumstances.

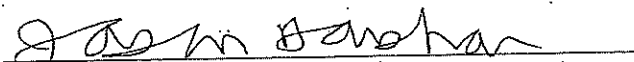
<sup>13</sup>The record is not sufficient to determine whether Respondent is subject to discipline pursuant to the malpractice prong of G.L. c. 112, § 61 or for unprofessional conduct under 234 CMR 9.05(1). There is a relationship between accepted standards of practice and the malpractice prong. See Fitzgerald v. Board of Registration in Veterinary Medicine, 399 Mass. 901, 904-05 (1987). The record is devoid of any accepted standards of practice.

Respondent did not take any continuing education in IC or CPR between January 1, 2010 and March 31, 2012, but renewed his license.<sup>14</sup>

Respondent contends his compliance with a Consent Agreement precludes the Board from disciplining his license on this basis. Respondent entered into a Consent Agreement with the Board effective September 9, 2013. The Consent Agreement stated the "Board agrees that as consideration for the Licensee's entering into this Consent Agreement, the Board will not conduct any further prosecution of allegations contained in the Complaint included in Docket No. DEN-2009-0061...." Respondent contends "the Board is foreclosed from prosecuting [him] for lack of continuing education prior to September 9, 2013." (Respondent's opposition at p. 15)

Before any analysis may commence as to any effect of the Consent Agreement on this case, the allegations in the Complaint in DEN-2009-0061 must be known. Those allegations are not in the record. This requires a denial of both motions as to the Continuing Education Issue.

By:

  
Jason B. Barshak, Chief Administrative Magistrate  
Department of Public Health, Office of General Counsel

Issued:

January 27, 2017

To:

Vita Berg, Esq., Chief Boards Counsel, Department of Public Health, 239  
Causeway Street, 5<sup>th</sup> Floor, Boston, MA 02114

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<sup>14</sup>No party suggests Respondent's license was not renewed during the applicable time.