

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN
DENTISTRY

In the Matter of)
Dr. Randal W. Cole)
License No. DN17021)
Expires March 31, 2020)
_____)

Docket No. DEN-2017-0019

FINAL DECISION AND ORDER BY DEFAULT

On April 23 and June 3, 2019, the Board of Registration in Dentistry ("Board") issued and duly served on Randal W. Cole ("Respondent") an Order to Show Cause ("Show Cause Order")¹ 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.² The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,³ and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.⁴ 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.

On May 20 and June 27, 2019, Prosecuting Counsel sent notices to Respondent to file an Answer and a Request for Hearing by May 31 and July 8, 2019, respectively. The

¹ Pursuant to 801 CMR 1.01(6)(a).

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

³ Pursuant to M.G.L. c. 112, §61.

⁴ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

notices 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. DN17021. 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.

Respondent may petition the Board for reinstatement of his dental license in writing no earlier than one year from the Effective Date of this Order. Respondent's petition for reinstatement shall satisfy the requirements of 234 CMR 4.16 and the Board may request additional documentation prior to acting on Respondent's petition for reinstatement. Respondent's petition for reinstatement must include evidence he has completed to the Board's satisfaction the following requirements:

- a. Thirty (30) days prior to submitting a petition for reinstatement, the Respondent shall successfully pass the *Massachusetts Dental Ethics and Jurisprudence* examination and submit a copy of the completed exam to the Board.
- b. The Respondent shall take and submit verification to the Board that the Licensee has completed each of the following mandatory courses consistent with 234 CMR 8.00:
 - i. Infection control in the Dental Health Care Setting pursuant to 234 CMR 8.03(1)(a);
 - ii. Basic Life Support for the Healthcare Provider (with skills test) pursuant to 234 CMR 8.03(1)(b); and
 - iii. Safe and Effective Opioid Prescribing for Chronic Pain pursuant to 234 CMR 8.03(2).
- c. The Respondent shall take and successfully complete Board pre-approved continuing education courses in the following areas:
 - Ethics (6 hours)
 - Risk management (6 hours)
 - Endodontic treatment for the general practitioner (12 hours)

- i. Board pre-approved continuing education courses shall be taken in addition to the continuing education courses required to maintain his License pursuant to 234 CMR 8.00.
 - ii. Course descriptions shall be submitted to the Board for pre-approval prior to taking the courses, which must be taken in person and not on-line or as self-study.
- d. The Respondent shall complete and submit verification of completing sixty (60) CEUs to make up for the 40 CEU deficiency for the 2014-2016 licensing cycle and for the 20 CEU deficiency for the 2016-2018 licensing cycle, all CEUs shall be completed consistent with the requirements in 234 CMR 8.00.

The Board's approval of Respondent's petition for license reinstatement may be conditioned upon, and immediately followed by, probation of Respondent's dental license for a period of time, as well as other restrictions and requirements that the Board may then determine in its sole discretion are in the best interest of the public health, safety, and welfare.

The Board voted to adopt the within Final Decision by Default at its meeting held on July 17, 2019, by the following vote:

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

The Board voted to adopt the within Final Order by Default at its meeting held on July 17, 2019, by the following vote:

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

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 this Final Decision and Order by Default pursuant to M.G.L. c. 112, §64.

Board of Registration in Dentistry

July 18, 2019
Date Issued

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

Notified:

By first-class and certified mail no. 7015 1520 0001 0968 7284
Dr. Randal W. Cole
18 Shore Garden Road
Hull, MA 02045-3169

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.

Randal W. Cole
License No. 17021
License Expires 3/31/20,
Respondent

Docket No. DEN-2017-0019

ORDER TO SHOW CAUSE

Randal W. Cole, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Dentistry (Board) should not suspend, revoke or otherwise take action against your license to practice as a dentist in the Commonwealth of Massachusetts, License No. 17021, 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 November 30, 1987, the Board issued you a license to practice as a dentist in the Commonwealth of Massachusetts, License No. 17021. Your license is current and expires on March 31, 2020.
2. On or about July 10, 2013, you provided endodontic treatment on tooth # 3 of a pediatric patient (Patient A).
3. During the procedure referenced in the immediately preceding paragraph, a piece of a rotary endodontic file broke off and was left in the mesial buccal canal of Patient A's tooth # 3.
4. You knew or should have known of the breaking of the piece of the rotary endodontic file described in the preceding paragraph.
5. You did not notify Patient A or Patient A's guardian that the file had broken off and been left in Patient A's tooth # 3 as described in Paragraph 3 above.

6. On or about July 24, 2013, notwithstanding the matters referenced in Paragraphs 3 through 5 above, you placed a post in Patient A's tooth # 3.
7. On or about August 7, 2013, again notwithstanding the matters referenced in Paragraphs 3 through 5 above, you placed a crown on Patient A's tooth # 3.
8. Patient A subsequently developed an infection in his tooth # 3, requiring extensive subsequent dental treatment.
9. On or about July 12, 2016, in connection with the Board's investigation of the matters set forth in Paragraphs 2 through 8 above, you were asked to provide proof of the following for the 2014-2016 license renewal cycle:
 - a. Completion of mandatory continuing education in Infection Control in the Dental Health Care Setting;
 - b. Safe and Effective Opioid Prescribing and Pain Management; and
 - c. Current certification in Basic Life Support for the Health Care Provider.
10. On or about July 10, 2017, you were again asked, in connection with the Board's investigation of the matters set forth in Paragraphs 2 through 8 above, to provide the items referenced in Paragraph 9(a) through (c) above.
11. To date, you have failed to provide the items referenced in Paragraph 9(a) through (c) above.
12. On or about April 6, 2018, in connection with the Board's investigation of the matters set forth in Paragraphs 2 through 8 above, you were asked to provide proof of having completed forty (40) units of continuing education for each of the 2014-2016 and 2016-2018 license renewal cycles.
13. On or about September 6, 2018, you were again asked, in connection with the Board's investigation of the matters set forth in Paragraphs 2 through 8 above, to provide the items referenced in the immediately preceding paragraph.
14. To date, you have failed to provide the items referenced in Paragraph 12 above.
15. At all times relevant to the matters referenced in Paragraphs 2 through 8 above, you advertised yourself as an endodontist.
16. At no time relevant to the matters referenced in Paragraphs 2 through 8 above were you an endodontist.

Legal Basis for Discipline¹

- 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 pursuant to G.L. c. 94C, § 18(e) for failing, as a prerequisite to obtaining or renewing your professional license, to complete appropriate training relative to prescribing controlled substances.
- B. 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 pursuant to G.L. c. 112, § 51A for failing to comply with the system of continuing education adopted by the Board as a requirement and condition precedent to the renewal of your license.
- C. 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 pursuant to G.L. c. 112, § 61 for being guilty of deceit, malpractice, gross misconduct in the practice of the profession, or of any offense against the laws of the Commonwealth relating thereto.
- D. 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 pursuant to 234 CMR 5.03 for:
 - 1. Holding yourself out as a specialist in a particular area of practice without having: (a) completed a specialty education program approved by the American Dental Association (ADA) and the Commission on Dental Accreditation or the Commission on Dental Accreditation of Canada; and (b) being eligible for examination by a national specialty board recognized by the ADA; or (c) being a diplomate of a national specialty board recognized by the ADA; and
 - 2. Holding yourself out in directories, listings or other written or electronic publications as a practitioner in any specialty recognized by the ADA without limiting your practice only to the specialty area that was advertised, listed, or otherwise noted or published.

¹ 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.

- E. 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 pursuant to Board regulation 234 CMR 8.02(1) for failing to complete a minimum of 40 CEUs during the 24 months immediately preceding March 31st in even numbered years.
- F. 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 pursuant to Board regulation then codified as 234 CMR 8.03(a) for failing to complete, as a condition precedent to the biennial renewal of your license, continuing education in the area of Infection Control in the dental health-care setting.
- G. 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 pursuant to Board regulation then codified as 234 CMR 8.03(b) for failing to complete, as a condition precedent to the biennial renewal of your license, continuing education in the area of continuous certification in CPR/AED, or BLS.
- H. 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 pursuant to Board regulation then codified as 234 CMR 9.05(14) for committing an act that violates recognized standards of care.
- I. 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 April 27, 2019

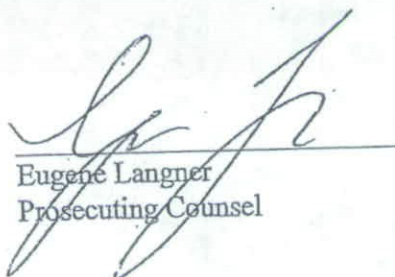
CERTIFICATE OF SERVICE

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

Randal W. Cole
18 Shore Garden Road
Hull, MA 02045-3169

by first class mail, postage prepaid, and by Certified Mail No. 7017 0530 0000 3483 2092.

This 23^d day of April, 2019.



Eugene Langner
Prosecuting Counsel