

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF DENTISTRY**

**IN THE MATTER OF:**                                 :  
   :  
**ARTHUR D. STUBBS, DDS**                               :  
   :  
**License No.: DEN3980**                                 :  
   :  
**Respondent**   :

**DECISION AND ORDER**

**Jurisdiction**

This matter comes before the District of Columbia Board of Dentistry (the “Board”) pursuant to D.C. Official Code § 3-1201.01 ff. (2001), otherwise known as the Health Occupations Revision Act (the “HORA”). Section 210(b) of the HORA, D.C. Official Code § 1202.10(b) (2009), authorizes the Board to regulate the practice of dentistry in the District of Columbia and section 519, D.C. Official Code § 3-1205.19, authorizes the Board to conduct hearings and issue final decisions.

**Background**

The Respondent has had a dentistry license in the District of Columbia since 1987. On or about May 1, 2009, a complaint was filed by a patient, M.T., who alleged that the Lumineers which the Respondent had placed over Teeth No. 9 and 10 were defective and of poor quality.

Following an investigation, on October 20, 2010, the Board issued a Notice of Intent to Take Disciplinary Action (“NOI”)<sup>1</sup> against the Respondent citing the following charge:

**Charge I: You failed to conform to standards of acceptable conduct and prevailing practice within the health profession in violation of D.C. Official Code § 3-1205.14(a)(26) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 3-1205.14(c) (2001).**

Respondent submitted a timely request for a hearing in this matter and the hearing was held before the Board on June 20, 2012.<sup>2</sup> Assistant Attorney General Louise Phillips represented the Government. The Respondent was represented by Catherine A. Hanrahan, Esquire.

### **EVIDENCE**

The Government submitted the following document into exhibit:

**Government Exhibit 1:**<sup>3</sup> Curriculum Vitae of Frank Carberry, DDS

The parties agreed to submission of two (2) sets of exhibits,<sup>4</sup> which were then labeled as Join Exhibits:

**Joint Exhibit 1:** Redacted patient records from Neil L. Starr, DDS

**Joint Exhibit 2:** Redacted patient records from the Respondent

In addition, the Government presented the following witnesses:

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<sup>1</sup> The NOI was not introduced into evidence at the hearing; however, the Board takes administrative notice of the document, issued under its legal authority and at its request. Further, the Respondent acknowledged receipt of the NOI. Hearing Transcript in the Matter of Arthur Stubbs (“Transcript”), June 20, 2012 at p. 37 ln. 1-7.

<sup>2</sup> Daniel Howard, DDS, presided over the hearing. Other board members in attendance were: Dr. Renee McCoy-Collins, Dr. Bernard McDermott, Dr. Robert Caldwell, Dr. Jazelle Sonnier, and Ms. Sibyl Gant.

<sup>3</sup> *Id.* at p. 47 ln. 20-22.

<sup>4</sup> *Id.* at p. 131 ln. 12 through p. 135 ln. ln. 6. The transcript showed that three (3) joint exhibits were admitted. However, the discussion included only two (2) sets of materials – Dr. Starr’s and the Respondent’s records. The material labeled as Joint Exhibit 3 is actually Respondent Exhibit 3, which is Dr. Markowitz’ CV.

- a) Dr. Frank Carberry, an expert witness;
- b) M.T., complainant.

The Respondent testified on his own behalf and also presented Sidney S. Markowitz, DDS, as an expert witness. The Respondent also submitted the following exhibits:

**Exhibit 3:** Curriculum Vitae of Dr. Markowitz<sup>5</sup>

Based on the testimony of the witnesses and evidence received into the record, the Board has reached the following finding of facts and conclusion of law.

**FINDING OF FACTS**

1. At all times relevant, the Respondent was and is licensed to practice dentistry in the District of Columbia.
2. M.T. presented to the Respondent's practice, Lake Arbor Dental Associates, P.C., at 411 8<sup>th</sup> Street, S.E., Washington, D.C. 20003, on July 31, 2008. The treatment plan created on that date identified Teeth No. 2, 3, 31, 14, and 18 as requiring composite fillings and Teeth No. 9 and 10 requiring Lumineers.
3. On the same date, four (4) bitewing X-rays were taken. The dentist providing care on the initial visit was Dr. "Pilgrim."<sup>6</sup>
4. By the Respondent's own admission,<sup>7</sup> the X-rays were not fully diagnostic due to the X-ray sensors being too large for small mouths.<sup>8</sup>

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<sup>5</sup> The exhibit was incorrectly labeled as Joint Exhibit 3. However, this document was not admitted into evidence until later. *Id.* at p. 193 ln. 11-14.

<sup>6</sup> Dr. Karl Pilgrim was referred throughout the hearing as "Dr. Pilgrim." According to the Department of Health's licensing database, there is one dentist with that last name, Dr. Karl Pilgrim.

<sup>7</sup> *Id.* at p. 158 ln. 15-18.

<sup>8</sup> *Id.* at p. 157 ln. 20 – p. 158 ln. 3.

5. On September 12, 2008 the Respondent restored Teeth No. 19 and 14 with composite resins and prepared Teeth No. 9 and 10 for Lumineers.<sup>9</sup> There is no record showing that the Respondent took a panoramic X-ray or performed a complete examination on M.T, whether on this date or any other date. Further, the restoration of Teeth No. 19 was done without any notes indicating the condition of the teeth or the diagnosis of the need for restoration. The treatment plan prepared by Dr. Pilgrim on July 31, 2008 included Teeth No. 2, 3, 31, 14, and 18 diagnosed as needing restoration and Teeth No. 9 and 10 needing Lumineers.

6. On September 12, 2008, M.T. and the Respondent chose Shade B1 Lumineers but the Respondent was expected to call the manufacturer, DenMed, to inquire whether there was a brighter shade.<sup>10</sup> DenMed did have a brighter shade, but B1 was the shade that M.T. received.<sup>11</sup>

7. On September 30, 2008 the Respondent placed Lumineers on Teeth No. 9 and 10.<sup>12</sup> No X-rays were taken of the teeth and the Lumineers after the procedure.<sup>13</sup>

8. On October 2, 2008, the patient returned for the polishing of the teeth and expressed unhappiness with the shade and shape of the Lumineers as well as the mesial incisal angle.<sup>14</sup> She also complained that she was having trouble flossing since the floss would shred when she flossed. M.T. was expected to return for a redo of the Lumineers.<sup>15</sup>

9. On October 6, 2008, M.T. consulted Dr. Neil Starr for a second opinion on the Lumineers. On the same date, Dr. Starr took photos of M.T.'s front teeth, including the

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<sup>9</sup> *Id.* at p. 146 ln. 6-13.

<sup>10</sup> *Id.* at p. 165 ln. 9-16.

<sup>11</sup> *Id.* at p. 165 ln. 9 – 22. When asked, “And that was the shade that you chose?”, the Respondent responded, “That was the shade that she wanted, we wanted to choose, but she chose B1. She wanted a brighter shade.”

<sup>12</sup> *Joint Exhibit 2* (Record of Services – i.e. patient progress notes)

<sup>13</sup> The Respondent claimed that he took X-rays, but the progress notes and the billing record do not indicate that X-rays were taken post-procedure. The lack of objective evidence on the record indicates the preponderance that no X-rays were taken.

<sup>14</sup> *Id.* The progress notes also contain a small drawing of two teeth with an arrow pointing at the mesial incisal angle of one of the Lumineers.

<sup>15</sup> *Id.*

Lumineers. The photos showed that the end of a probe sinking into the top edges of the Lumineers.<sup>16</sup> Additionally, the photos also show that the Lumineers are slightly more yellow in shade than the natural teeth surrounding them.

10. On October 8, 2008, M.T. returned to Lake Arbor Dental Associates and requested a refund of the Lumineers and expressed her intention to have them removed by another dentist. The progress notes indicated that she was offered the removal of the Lumineers or a redo but she “declines & wants to go somewhere else because of gaps.”

11. Based on M.T.’s contemporaneous complaint, as recorded in the progress notes, and the photographic evidence, the Lumineers placed by the Respondent were overbulked and had open margins. Additionally, on October 13, 2008, when the Lumineers were removed, caries were found on the teeth under the veneers.<sup>17</sup>

### ANALYSIS

D.C. Official Code § 3-1205.14(a)(26) provides that a licensee may be subject to disciplinary actions for failing to conform to the standards of acceptable conduct and prevailing practice within the health profession. The Respondent was charged with failure to conform to the standards based on the Lumineers placed on M.T.’s Teeth No. 9 and 10, which were found to be overbulked, had open margins, and had improper contour. Additionally, the charge was also based on the lack of adequate notes on the need for the restoration as well as the poor quality of the X-rays.

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<sup>16</sup> The Respondent’s expert attempted to claim that the photographs show the point of the instrument simply “pointing to” something and not getting stuck into something. *Transcript*. at p. 188 ln. 9-11. However, the photographs belie his claim as they show quite clearly that the point of the instrument was hidden behind the veneers, thus indicating open margins. Further, the conclusion of open margins is clearly supported by contemporary evidence in the form of the notes made by Dr. Pilgrim – that the patient wanted to “go somewhere else because of gaps.” *Joint Exhibit 2, supra*.

<sup>17</sup> *Joint Exhibit 1* – Dr. Neil Starr’s progress notes.

The Board found, as indicated above, that, based on M.T.'s contemporaneous complaint of "gaps"<sup>18</sup> and photographic evidence from Dr. Starr, the Lumineers on Teeth No. 9 and 10 were indeed overbulked and had open margins. Indeed, the progress notes from October 2, 2008 and October 8, 2008,<sup>19</sup> indicate that the patient had a legitimate complaint about the quality of the Lumineers from the start. It is true that dental restoration and work sometimes require follow-up refinement and adjustment or even sometimes a complete replacement to "get it right." If the only evidence on the record included only the patient's complaints and dissatisfaction with the work provided as well as the dentist's offer to "re-do,"<sup>20</sup> the Board would likely reach a different conclusion.

However, the Board is troubled by the fact that the Respondent did not ensure that the teeth were properly restored with Lumineers. Dr. Starr's notes dated October 12, 2008 -- "found caries under veneers" -- show that the placement of Lumineers had been done without adequate examination to ensure that the teeth to be covered were healthy. The Respondent claimed that the patient was the patient of Dr. Pilgrim, who, based on the record, performed an oral examination and took X-rays on July 31, 2013. Respondent's counsel argued that the prevailing standards of dental practice do not require that he perform a complete oral examination after Dr. Pilgrim has done so. However, the prevailing standard of practice is that a dentist must perform his or her work with complete care and competence to ensure no harm to the patient. *See 17 DCMR § 4213.9*. The purpose of a complete examination prior to a dental restoration or diagnosis is not simply to perform such an examination. The purpose of the examination is to

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<sup>18</sup> *Joint Exhibit 2* – Respondent's progress notes, entry dated October 8, 2008: "pt. declines & wants to go somewhere else because of gaps."

<sup>19</sup> The Respondent's counsel emphasized the distinction between the Respondent's professional responsibility and the responsibility of "Lake Arbor Dental" on several occasions. The Board appreciates the distinction and does not intend to hold the Respondent responsible for the shortcomings of other dentists. However, the progress notes, whether taken by the Respondent or by Dr. Pilgrim, offer reliable contemporaneous evidence of facts.

<sup>20</sup> Progress notes from October 2, 2008 ended with "NV – Redo."

ensure that the treatment to be diagnosed or performed is the correct treatment that will adequately address the existing dental problems. It is unavailing for the Respondent to claim that another had already performed an oral examination that that should suffice. The important thing is that the Respondent was responsible for the placement of the Lumineers. He failed to ensure that the teeth were healthy before placing the Lumineers by failing to perform his own examination. Further, the poor quality of the X-rays obtained by Dr. Pilgrim – caused, as the Respondent admitted, by the equipment itself -- makes it even more necessary that the Respondent take further, more cautious steps to ensure that the teeth were in the condition appropriate for the restoration.

The Respondent's expert makes the claim that the Lumineer is a cosmetic procedure and not a major restoration.<sup>21</sup> However, the expert made no assertion that the standard does not require, prior to the Lumineer procedure, that the dentist ensure the teeth are in healthy condition without existing caries. The Board's conclusion is not based on the question whether Lumineer is a major procedure requiring a comprehensive oral examination. Rather, the Board's conclusion on this point is that, prior to the placement of Lumineers, standards require that the dentist ensure that the teeth are in healthy condition without caries. Such assurance may be attained by a careful examination, with the support of X-rays of full and effective diagnostic quality. Dr. Markowitz, the Respondent's expert, provided no indication contrary to this view.

During his direct testimony, the Respondent asserted that he took an X-ray of Teeth No. 9 and 10.<sup>22</sup> However, the X-ray could not be found, nor was there any note of it in the progress notes, nor was it noted in the billing record. The Respondent opined that the X-rays may have

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<sup>21</sup> Transcript at p.191 ln. 17-22.

<sup>22</sup> *Id.* at p. 149 ln. 8-12, and p. 160 ln.8-18.

been deleted due to power surge on the server.<sup>23</sup> The Respondent also claimed that photographs were taken although, similar to the X-rays, there were no record of them being taken. It is interesting that the other X-rays were available and not deleted from the server while the X-ray relevant to the teeth in question had been deleted. The Respondent did not provide any conjecture as to what happened to the photographs he claimed to take of the Teeth No. 9 and 10.

The Respondent's expert also attempted to discredit the open margins on the Lumineers. While the Board respects his expertise in the area of veneers and Lumineers, Dr. Markowitz's expertise does not extend to the evaluation of photographs. His opinion of the photograph in which the pointed end of a probe appears to sink behind a Lumineer must be taken only as his personal opinion. While in his expert opinion Dr. Markowitz opines that the Lumineers as seen in the photographs appear within normal parameters and standards, such opinion cannot overcome the photographic evidence apparent to naked eyes. The Board can and did see the photographs and its collective opinion is that the pointed end did appear to sink behind the Lumineer, indicating a gap. This is further corroborated by the contemporaneous complaint of the patient as recorded by Dr. Pilgrim – Patient “wants to go somewhere else because of gaps.”<sup>24</sup>

### **CONCLUSIONS OF LAW**

D.C. Official Code § 3-1205.14 (2001) provides, in pertinent part:

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of a quorum of its appointed members may take one (1) or more of the disciplinary actions provided in subsection (c) of this section against any applicant for a license or registration, or a person permitted by this subchapter to practice the health occupation regulated by the board in the District who:

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<sup>23</sup> *Id.* at p. 160 ln. 15-18.

<sup>24</sup> *Joint Exhibit 2*, Respondent's progress notes, October 8, 2008 entry.



(26) Fails to conform to standards of acceptable conduct and prevailing practice within a health profession;

(c) Upon determination by the board that an applicant, licensee, or person permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board may:

- (1) Deny a license to any applicant, licensee, or person permitted by this subchapter to practice;
- (2) Revoke or suspend the license, registration or certification of any licensee, or person permitted by this subchapter to practice in the District;
- (3) Revoke or suspend the privilege to practice in the District of any person permitted by this subchapter to practice in the District;
- (4) Reprimand any licensee or person permitted by this subchapter to practice in the District;
- (5) Impose a civil fine not to exceed \$5,000 for each violation by any applicant, licensee, or person permitted by this subchapter to practice in the District;
- (6) Require a course of remediation, approved by the board, which may include:
  - (A) Therapy or treatment;
  - (B) Retraining; and
  - (C) Reexamination, in the discretion of and in the manner prescribed by the board, after the completion of the course of remediation;
- (7) Require a period of probation; or
- (8) Issue a cease and desist order pursuant to § 3-1205.16.

Accordingly, the Board finds by a preponderance of the evidence that the Respondent did fail to conform to the standards of acceptable conduct and prevailing practice within the dental profession by failing to conduct an examination and obtain diagnostic X-rays to ensure that M.T.'s teeth are in the condition appropriate for the placement of Lumineers thus resulting in the Lumineers being overbulked and having open margins, as well as caries being left underneath the Lumineers.

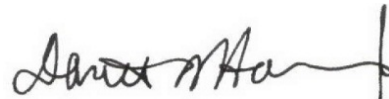
**ORDER**

Based upon the aforementioned it is hereby **ORDERED** that the Respondent, **ARTHUR STUBBS, DDS, DEN3980**, be and is hereby **REPRIMANDED**; and it is further

**ORDERED** that the Respondent be and is hereby assessed **A FINE OF ONE THOUSAND DOLLARS (\$1,000.00)**, which shall be paid, **NO LATER THAN SIX (6) MONTHS** from the date of this Order, by check or money order made payable to **“D.C. Treasurer”** and shall be submitted to Jacqueline Watson, D.O., Interim Executive Director, Board of Occupational Therapy, 899 North Capitol Street, N.E., 2<sup>nd</sup> Floor, Washington, D.C. 20002; and it is further

**ORDERED** that, within six (6) months from the date of this Order, the Respondent complete the online continuing education course, Association of American Dental Boards (AADB) *Guidelines on Dental Patient Records* and submit proof of such completion to the Board.

September 19, 2013  
Date



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Daniel Howard, Jr., DDS  
Chairperson  
Board of Dentistry

**Judicial and Administrative Review**  
**of Actions of Board**

Pursuant to D.C. Official Code § 3-1205.20 (2001):

Any person aggrieved by a final decision of a board or the Mayor may appeal the decision to the **District of Columbia Court of Appeals** pursuant to D.C. Official Code § 2-510 (2001).

Pursuant to D.C. Court of Appeals Rule 15(a):

Review of orders and decision of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty (30) days after the notice is given.

**This Order is the Final Order of the Board in this disciplinary matter and a public record and, as mandated by federal law, 42 USC § 11101 and 45 CFR § 60, “the National Practitioner Data Bank – Health Integrity and Protection Data Bank,” this disciplinary action shall be reported to the U.S. Department of Health and Human Services.**

Copies to:

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