

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
BOARD OF DENTISTRY

-----:  
IN THE MATTER OF :

RICHARD Y. LEE, DDS :

License No. DEN3414 :

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**

On May 1, 2012, the Board issued a Notice of Intent to Take Disciplinary Action against the Respondent's dental license (NOI). The NOI charged the Respondent with the following violation:

You violated a consent decree or negotiated settlement entered into with the Board of Dentistry for which the Board can take the proposed action pursuant to D.C. Official Code § 3-1205.14(a)(27)(2001).

Respondent submitted a timely request for a hearing in this matter and the hearing was held before the Board on October 24, 2012.<sup>1</sup> Assistant Attorney General Christine Gephardt represented the Government. The Respondent represented himself.

### Evidence

The Board entered the following into evidence:

- 1) **Board's Exhibit:** NOI
- 2) **Government's Exhibit 1:** Signed negotiated settlement agreement between the Board and the Respondent
- 3) **Government's Exhibit 2:** Fax from the Respondent.
- 4) **Respondent's Exhibit:** Copy of fax, check, continuing education brochures

The Government called Ms. Thomasine Pointer, Health Licensing Specialist, as its witness.

### Finding of Facts

Based on the hearing and the evidence presented, the Board makes the following finding of facts:

---

<sup>1</sup> Daniel Howard, DDS, presided over the hearing. Other board members in attendance were: Dr. Renee McCoy-Collins, Dr. Bernard McDermott, Dr. Robert Caldwell, and Ms. Annie Ponds. Panravee Vongjaroenrat, Esq. served as legal counsel to the Board.

- 1) At all times relevant, the Respondent was licensed to practice dentistry in the District of Columbia.
- 2) On or about October 14, 2009, the Board received a written complaint alleging, *inter alia*, that the Respondent made crowns of inferior quality and that the Respondent stopped during the dental procedure to answer his cell phone. The Board's investigation revealed that the Respondent did not have a clearly demarcated area for infection control processes and that he did take phone calls and eat while treating patients.
- 3) Based on the complaint and the investigation, the Board offered the Respondent an opportunity to settle the matter through a negotiated settlement agreement ("Agreement") with the following terms:
  - a. Within ninety (90) days from the date of signing the agreement, the Respondent shall complete and submit to the Board proof of completion of four (4) hours of continuing education in diagnostics and radiology; four (4) hours in fixed prosthodontics; and four (4) hours in infection control. These courses shall be pre-approved by the Board; and
  - b. The Board or its designee shall make unannounced visits to the Respondent's office to determine the Respondent's compliance with the Centers for Disease Control and Prevention and Occupational Safety and Health Administration guidelines for dental offices.
- 4) The Respondent signed and accepted the Agreement on August 8, 2011.
- 5) Based on the Agreement, the Respondent was required to submit proof of completion of the courses as indicated in the Agreement by November 7, 2011.

6) On or about October 18, 2011, the Respondent faxed a hand-written note containing the following information:

“Courses Continuing Education

“Infection Control & Osha [sic] Compliance. 4 credit hours 1-800-442-1149

“Radiographic Examination Choosing the right patient & equipment. 1-877-423-2231. 1 hour

“Best Practices in intraoral digital radiography. 3 credits. 216-398-7822

Updates in Digital Restoration Dentistry. 6 credits 1-888-724-5230”

7) Some time in November 2011, Ms. Pointer, the Health Licensing Specialist for the Board, called the Respondent and informed him that the Board needed more information about the courses that he proposed to take.

8) On or about November 15, 2011, the Respondent faxed the same hand-written note to the Board.

9) The Respondent did not submit proof of completion of the courses as required in the Agreement.

### **Conclusion of Law**

D.C. Official Code § 3-1205.14(a)(27) provides that a licensee may be subject to disciplinary action by the Board for a violation of a consent decree or negotiated settlement entered into with the Board.

Pursuant to D.C. Official Code § 301205.14(c), upon determination by the Board that a licensee has committed any of the acts described above, the board may:

- (1) Deny a license to any Respondent;
- (2) Revoke or suspend the license of any licensee;

- (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 Respondent, 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.

Based on the foregoing findings of fact, the Board hereby concludes as a matter of law that the Respondent did violate the terms of the negotiated settlement agreement entered into with the Board on August 8, 2011 since he did not submit proof of completion of the required continuing education courses by November 7, 2011 – ninety (90) days after the date of his signing the Agreement.

### **Decision**

In formulating its decision as to the appropriate sanction to be imposed, the Board took into consideration the nature of the charge and the Board's paramount duty to protect the public. Here, the charge involves a violation of a negotiated settlement agreement that the Respondent had entered into with the Board. In order to arrive at the correct decision – one that addresses both concerns mentioned above, the Board must not simply ask what are the terms of the Agreement and whether he had violated them, but it must also take into consideration the origin of the Agreement itself.

The Agreement was the result of the Board's effort to address serious concerns posed by a complaint from a patient. The patient had filed a complaint because the temporary crowns that

the Respondent placed on his teeth were of inferior quality and because he was unable to reach the Respondent after the crowns fell out. The resulting investigation conducted by the Department of Health further revealed unsanitary conditions at the Respondent's dental office, such as impression trays, models, and lab materials piled on top of the autoclave restricting its access as well as lack of clearly demarcated area for infection control processes.

These facts pose real and tangible concerns for the health and welfare of the District residents. In an attempt to address the root cause of the complaint and the unsanitary conditions of the dental office, the Board required the Respondent to take continuing education courses that the Board believes would address the Respondent's prosthodontic work and his understanding and implementation of infection control procedures. In addition, the Agreement also stipulated that unannounced visits would be conducted at the Respondent's dental office to determine his compliance with the Centers for Disease Control and Prevention as well as the Occupational Safety and Health Administration guidelines for dental offices.

Thus, the Respondent had the opportunity to avert a formal disciplinary action against him while the Board would also achieve the goal of public protection. However, these objectives have been stifled due to the fact that the Respondent had not complied with the terms of the Agreement. Based on the Agreement, the Respondent had to submit proof of his completion of the three required courses within ninety (90) days, which fell on November 7, 2011. Also based on the Agreement, the courses had to be pre-approved by the Board. Yet the Respondent did not attempt to seek the Board's approval of the courses until on or about October 18, 2011 – more than sixty days after he had signed and accepted the Agreement. Even more astounding is the manner in which he sought the Board's approval of those courses. The faxes<sup>2</sup> he sent to the

---

<sup>2</sup> The two faxes were identical.

Board on October 18, 2011 and again on November 15, 2011<sup>3</sup> did not refer to the Agreement, did not make plain that the Board's approval was being sought for the continuing education courses, and, in fact, did not even make clear that the information listed concerned continuing education courses.

During the hearing, the Respondent repeated again and again that he provided the phone numbers and the Board could check on the courses and other relevant information by calling the numbers provided. However, beyond the fact that the Respondent's attempted communication with the Board failed to be communicative, the Health Licensing Specialist did inform him during a subsequent telephone conversation that the Board required more detail concerning the courses before being able to approve or disapprove them. Despite this information,<sup>4</sup> the Respondent sent the same fax to the Board **after the expiration of the ninety days allotted by the Agreement** and one day before the Board meeting in November 2011.

The Respondent's actions raise a further question for the Board – Does he understand the gravity of the situation, the concerns that his practice poses to the public, and his own professional duty to the public? The fact that the Respondent sent a cryptic fax to the Board a day before the Board meeting<sup>5</sup> and 71 days after he accepted the Agreement implies a lack of concern and full appreciation of the matter at hand. Further, the Respondent's insistence that the phone numbers given should be sufficient to provide the Board with all the information on the proposed courses raises the question as to whether he appreciated the extent of his responsibility and obligation both generally as a licensee as well as under the Agreement. Of equal concern to the Board is his action subsequent to the October attempt. He sought the Board's approval of the

---

<sup>3</sup> By this date, he was supposed to have completed the courses and submitted proof of such completion to the Board.

<sup>4</sup> His testimony during the hearing also indicated that he also had conversations with both the Executive Director and the Counsel for the Board on the same subject.

<sup>5</sup> This refers to the first fax that the Respondent sent on or about October 18, 2011.

courses and yet, after being told by the Health Licensing Specialist that he needed to submit more information about the courses, he still submitted the exact same information that he was told was deficient.

The Board has considered long and carefully on this matter. The Agreement was fashioned to give him an opportunity to remediate his practice. However, his actions concerning the Agreement do not show that he understood the significance of the opportunity that was given to him or of the danger that his practice poses to the public. In formulating this Order, the Board expects that it would have the effect of protecting the public while affording the Respondent another opportunity to determine the causes underlying his prosthodontic deficiency and the unsanitary conditions of his practice in order ultimately to address those underlying causes and move the Respondent's practice toward the professional standards in both clinical practice as well as sanitation.

### **ORDER**

Based upon the aforementioned it is hereby

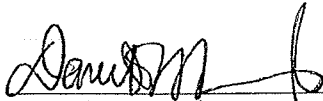
- 1) **ORDERED** that the Respondent be **REPRIMANDED**; and it is further
- 2) **ORDERED** that **within sixty (60) days from the date of the service of this Order upon the Respondent,** he shall complete and submit a **fitness-to-practice assessment** conducted by one of the health professionals on the list attached to as an Addendum to this Order; and it is further
- 3) **ORDERED** that the Board may issue a further order based on the fitness-to-practice assessment report; and it is further



- 4) **ORDERED** that the Respondent shall present this Order to the health professionals he chose from the Addendum and that the fitness-to-practice assessment be conducted with particular emphasis on the Respondent's cognitive ability, his ability to understand his professional duty to the public both with regard to the performance of his profession as well as the sanitary condition of his office; and it is further
- 5) **ORDERED** that within sixty (60) days from the date of the service of this Order upon the Respondent, he shall submit to the Board a report of an infection control inspection with a plan of corrections (hereinafter "the Plan of Correction") conducted by a reputable infection control consultant; and it is further
- 6) **ORDERED** that the Respondent be subject to **MONITORING AND PROBATION** for a period of two (2) years from the date of the service of this Order upon the Respondent, during which time the following shall be required:
- a. The Respondent shall comply fully with the Plan of Correction;
  - b. The Respondent's dental office shall be subject to a quarterly infection control inspection; and
  - c. A report of the quarterly infection control inspection shall be submitted to the Board within thirty (30) days of the date of each inspection detailing the Respondent's compliance and implementation of the remediation and corrections as outlined in the Plan of Correction; and it is further
- 7) **ORDERED** that the period of monitoring and probation may be extended by a subsequent order of the Board as it deems appropriate and necessary; and it is further
- 8) **ORDERED** that if the Respondent fails to satisfactorily comply with any term of this Order, his non-compliance with result in an immediate summary suspension of his

license to practice dentistry in the District of Columbia, subject to his right to a hearing following the notice of the summary suspension pursuant to D.C. Official Code § 3-1205.15 (2001), and the Board may issue a notice to take formal disciplinary action against his license.

4/17/13  
Date

  
Daniel Howard, DDS  
Chairperson  
District of Columbia 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:

Richard Y. Lee, Respondent  
214 2<sup>nd</sup> Street, SE  
Washington, DC 20003

Christine L. Gephardt

Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
Civil Enforcement Division  
441 4<sup>th</sup> Street, N.W., Suite 650 North  
Washington, DC 20001

ADDENDUM  
TO THE ORDER OF THE BOARD  
IN RE RICHARD Y. LEE, DDS, DEN3414

LIST OF ACCEPTED FITNESS-TO-PRACTICE EVALUATORS

**Marc S. Levine, MD**  
1904 R Street, NW  
Washington, DC 20009  
202-265-3456  
[drlevine@drmarclevine.com](mailto:drlevine@drmarclevine.com)

**Martin Chin, MD**  
1755 S Street, NW, #6B  
Washington, DC 20009  
202-234-7738

**Richard Blanks, MD**  
GWU Dept. of Psychiatry & Behavioral Sciences  
2120 L Street. NW, Suite 600  
Washington, DC 20037  
202-741-2869

**Thomas C. Goldman, MD**  
4701 Willard Ave. Suite 212  
Chevy Chase, MD 20815  
301-718-5108 work  
202-285-8869 cell