

**DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
BOARD OF DENTISTRY**

IN THE MATTER OF

RICHARD Y. LEE, DDS

License No. DEN3414

Respondent

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**STIPULATION AND CONSENT ORDER
FOR STAYED SUSPENSION**

Jurisdiction

This matter comes before the District of Columbia Board of Dentistry (the “Board”) pursuant to D.C. Official Code § 3-1201.01 ff. (2012 Repl.), otherwise known as the Health Occupations Revision Act (the “HORA”). Section 210(b) of the HORA, D.C. Official Code § 1202.10(b) (2012 Repl.), 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

A. Complaint and Agreement

On or about October 14, 2009, a complaint was filed with the Board against the Respondent by B.M., a former patient, alleging sub-standard crowns. The complaint also alleged that the Respondent answered his cell phone and ate during while performing dental procedures on him. B.M. also noted that the Respondent would talk to other patients in the same

examination room where he was performing dental work on B.M. thus failing to afford B.M. his privacy.

Based on this complaint, the Board conducted an investigation and invited the Respondent to a meeting to discuss the matter. The Respondent admitted to taking cell phone calls, talking to others, and eating while treating patients. Additionally, the investigation revealed that the Respondent's dental office lacked a clearly demarcated area for infection control processes and photographs taken by Department of Health investigators showed clutters, rusty trays, and various supplies and containers sitting close to dental equipment trays or instruments. In addition, the Board further noted that the Respondent had not taken diagnostic x-rays of the teeth prior to the dental work as the practice standard would require.

On June 14, 2011, the Board offered the Respondent an opportunity to settle the matter if he agreed, among other things, to complete continuing education courses as follows: four (4) hours of diagnostics and radiology; four (4) hours of fixed prosthodontics; and four (4) hours of infection control. These courses were required to be pre-approved by the Board prior to completion. The Respondent was given ninety (90) days to complete the courses as agreed.

B. Violation of Agreement and Disciplinary Action

The Respondent accepted and signed the agreement ("Agreement") on August 8, 2011. Based on the agreement, therefore, he was required to complete the pre-approved courses by November 7, 2011 since the 90th day fell on Sunday, November 6, 2011.

The Respondent sent by facsimile 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”

Following this fax, the Respondent was informed that he needed to provide detail about the courses so that the Board might review and approve or disapprove them. The Respondent nevertheless sent the same information, also by facsimile, on November 15, 2011. At this point, the allotted time had passed.

Consequently, the Board resolved to take a formal disciplinary action and issued a Notice of Intent to Take Disciplinary Action (“NOI”) against the Respondent’s license on May 1, 2012. The NOI charged the Respondent with violating the terms of the Agreement he had with the Board.

Following a hearing on October 24, 2012, the Board issued a Decision and Order on April 17, 2013 (hereafter “April 17, 2013 Order” or “Order”). The Order reprimands the Respondent for his violation and requires the following:

- 1) The Respondent must complete and submit a **fitness-to-practice assessment** 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, to be conducted by one of the health professionals approved by the Board;

- 2) The Respondent must 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;
- 3) The Respondent is placed under monitoring and probation for a period of two (2) years, 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.

C. Compliance and Violation of the Board’s Order

Based on the April 17, 2013 Order, the Respondent was required to submit a fitness-for-practice assessment (“FTP”) within sixty (60) days of the date of the Order. The due date for the FTP was therefore June 17, 2013.¹ The Respondent was given a choice of three (3) physicians to conduct the FTP. According to the FTP report submitted by Dr. Richard Blanks, the Respondent did not contact him to arrange an appointment until a few days before the actual appointment – May 21, 2013. This delay necessitated Dr. Blanks’ request for an extension of time from the Board, which was granted until July 12, 2013.

¹ The 60th day fell on Sunday, June 16, 2013. In accordance with 17 DCMR 4124.1, the actual due date was the next business day.

Accordingly, on or about July 11, 2013, Dr. Blanks submitted to the Board a Fitness for Duty Evaluation, which is also based on a psychological testing performed by Dr. Robert Jenkins, a licensed clinical neuropsychologist and Dr. Blanks' interviews with the Respondent and his adult son. Dr. Blanks concluded in his report that, in his professional opinion, the Respondent does not appear to suffer from mental or psychiatric deficiencies or decline or any substance abuse or dependency and is fit for duty as a dentist. However, in Dr. Blanks' opinion, the Respondent may suffer from a tendency to be disorganized and to not address problems in a systematic way. He also appears to have the tendency toward avoidance and a defense mechanism which includes denial, rationalization, and minimization.

Dr. Blanks recommended the following course of action:

- The Respondent should be required to engage in weekly individual psychotherapy to process the recent events (financial losses, lack of urgency about addressing clinical and legal issues, and possible loss of license and resulting loss of income), to help him develop better coping strategies, and to make sure that he does not find himself in similar circumstances again. Breaking down and working through defense mechanisms is a routine part of individual psychotherapy. Should he show any cognitive or psychological decline, a therapist with whom he has a good therapeutic relationship will be able to detect and address such issues in a timely fashion;
- The Respondent should be placed in a long term (2-3 years) monitoring contract with the Board. He should comply with all of the terms of that agreement, including random drug testing, monitoring, ongoing psychiatric treatment as indicated, and abstinence from all substances;

- Neuropsychological testing can be repeated in 1-2 years if indicated since his baseline cognitive function has been established as of 2013 in Dr. Jenkins' Report. Subsequent testing would then reflect any acute cognitive changes from his baseline.

Further, within sixty (60) days of the April 17, 2013, the Respondent was also required to submit to the Board “a report of an infection control inspection with a plan of corrections . . . conducted by a reputable infection control consultant.” The infection control report and plan of corrections was likewise due on June 17, 2013.

On or about June 25, 2013, the Board received from the Respondent a copy of a document, without any cover letter or explanation, which contains the title, “Annual Facility Audit,” conducted on June 24, 2013 by Angela Simmons of Total Medical Compliance. This document was addressed to the Respondent. The document contains various checks and circles under items such as “Documentation/Record completed for,” “HazCom,” “Vaccines/Drugs/Refrigerators/Freezers,” and “Infection Control.” However, the document did not constitute a proper “report of an inspection control inspection” as required by the Order. Further, no Plan of Correction was included. Additionally, no information was submitted to establish that the inspection was conducted by a reputable inspection control consultant.

On July 12, 2013, the Board served on the Respondent a letter informing him that he was not in compliance with the Order. He was required to submit, no later than August 12, 2013, a full report from a reputable infection control consultant, which shall include the following:

- a) Information concerning the infection control consultant, including but not limited to, the nature of his or her business, the length of time he or she has been providing infection control inspection, his or her knowledge and experience providing infection

control inspection involving dental practices, and other information tending to establish that his or her infection control consulting business is reputable and reliable.

- b) A full written report addressed to the Board with the following detail:
 - i) Date(s) and time(s) of the inspection(s); the scope, the purpose
 - ii) The identity and qualifications of the person(s) conducting the inspection
 - iii) Detailed findings based on the inspection(s), including all references and citations to relevant legal and other authority
 - iv) Plan of corrections with timeline, including date(s) and/or frequency of subsequent inspection(s)

On July 1, 2013, the Respondent sent to the Board a hand-written letter containing the following information:

“I have contacted the company that inspected the office and have asked them to come out every 4 months to make sure I am complying. You can call Angela Sims [sic] at 910-322-5282.”

Also included with this letter is another letter dated June 27, 2013, also hand-written, which contains the following:

“I was informed yesterday by the Attorney Generals office that this document should have been mailed to the dental board. I was informed that there should have a plan of action. I called TMC and they told me that they will call me back.”

Also included with these two hand-written letters was the “Annual Facility Audit,” previously received by the Board.

Since the Respondent had apparently failed once again to comply with the Board’s Order and instructions, the Board requested that the Respondent attend a meeting of the Board along with the inspection consultant, Total Medical Compliance. On November 20, 2013, the

Respondent attended the Board meeting but without any representative from Total Medical Compliance. The Respondent claimed that he had arranged for Total Medical Compliance to send a representative and that he did not understand why they did not appear. The Respondent stated that he would like to request that the Board select an inspection control consultant to assist him with compliance.

Resolution

Upon consideration of all facts and circumstances, the District of Columbia Board of Dentistry and the Respondent have elected to resolve this matter via a stipulation and consent order in lieu of issuing charges against the Respondent. Additionally, the parties have agreed that this consent order shall supplement and enhance the prior Order of the Board, dated April 17, 2013. Further, the parties have agreed that this consent order will be deemed a disciplinary matter and a public record that shall be reported to the National Practitioner Data Bank as required by law.

STIPULATION

Based on all proceedings, investigation, correspondence, and negotiation to date, the parties have agreed to the following stipulation of facts:

- 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) The Respondent did not submit proof of completion of the courses by November 7, 2011 as required in the Agreement.
- 7) The Respondent violated the terms of the Agreement.
- 8) Based on the April 17, 2013 Order of the Board, the Respondent was required to provide a Fitness-to-Practice Evaluation performed by a Board-approved physician. The Respondent submitted an evaluation and recommendation conducted by Dr. Richard

Blanks, which recommends that the Respondent be placed on a long-term monitoring and probation during which he is required to engage in weekly individual psychotherapy to process stresses, develop better coping strategies, as well as break down and work through defense mechanisms. The recommendation also includes follow-up neuropsychological testing to compare with the baseline obtained in the 2013 tests.

- 9) The April 17, 2013 Order also stipulated that the Board may issue a further order based on the fitness-to-practice assessment report.
- 10) The April 17, 2013 Order also required the Respondent to submit an inspection control inspection report with a plan of corrections, conducted by a reputable inspection control consultant. However, the Respondent failed to submit a proper inspection report with a plan of corrections.
- 11) The failure to submit an inspection control inspection report with a plan of correction constitutes a violation of the April 17, 2013 Order and, consequently, the Respondent is subject to a formal disciplinary action, including a suspension of his license, as stipulated in the April 17, 2013 Order.

CONSENT ORDER

Based upon the foregoing, the Respondent and the Board agree to the following

ORDER:

THAT the April 17, 2013 Order of the Board is hereby **SUPPLEMENTED** and **ENHANCED** by this Consent Order;

THAT the Respondent's license to practice in dentistry in the District of Columbia is hereby **SUSPENDED**.

THAT the suspension is hereby **STAYED** based upon the Respondent's compliance with all of the **CONDITIONS** set forth below.

Conditions of Stayed Suspension

The Respondent shall be subject to the following terms, conditions, and requirements:

A. Individual psychotherapy session. Within ninety (90) days from the date of his signing this Consent Order, the Respondent shall engage in a weekly individual psychotherapy session with a clinical psychologist or psychiatrist (hereafter the "Therapist") to process the recent events (financial losses, lack of urgency about addressing clinical and legal issues, and possible loss of license and resulting loss of income), to help him develop better coping strategies as well as break down and work through defense mechanisms that resulted in a perceived apathy and avoidance particularly with regard to the sanitary condition of the Respondent's dental office and the need for compliance with the Board's orders. The Therapist must be approved in advance by the Board. To obtain pre-approval from the Board, the Respondent must submit in writing the names of one or more psychologists, psychiatrist, or other mental health professional for consideration to the Board for review and approval.

Prior to establishing a psychotherapy services with the Therapist, the Respondent shall provide the Therapist with a copy of this Consent Order, a copy of the April 17, 2013 Order, and a copy of the fitness-to-practice assessment and report submitted by Dr. Richard Blanks. **The Respondent's signature on this Consent Order constitutes an authorization for the Therapist to provide confirmation of the Respondent's attendance in the therapy sessions as well as quarterly reports of the Respondent's progress and needs to the Board and/or an evaluator described in Paragraph B below.** Further, the Respondent's signature on this

Consent Order shall authorize the Board and/or an evaluator described above to communicate with the Therapist about the Respondent's needs and progress with the psychotherapy. The Respondent shall continue the weekly psychotherapy sessions through the Effective Period. At the end of the Effective Period, the Therapist shall submit to the Board an evaluation of the Respondent's progress in psychotherapy and a recommendation as to whether and what level of further psychotherapy sessions may be advisable. The Respondent is responsible for all costs associated with the individual therapy sessions, services, reports, and other related communication.

B. Monitoring / Consultative Services. Within ninety (90) days from the date of his signing this Consent Order, the Respondent shall contract with Affiliated Monitors, Inc. or a comparable monitoring company, or an actively practicing dentist licensed in the District (hereafter the "Evaluator") for one-on-one monitoring and consultative services. The Evaluator must be approved in advance by the Board. To obtain pre-approval from the Board, the Respondent must submit in writing the names of one or more evaluators for consideration to the Board for review and approval. As part of the review and approval of the Evaluator, the Board may require the proposed Evaluator to provide relevant information or attend a meeting with the Board to discuss his or her understanding of this Consent Order and plan for the implementation of the monitoring and compliance with the terms of this Consent Order.

The monitoring shall be random and subject to the following requirements:

- 1) Prior to establishing a contract with the Evaluator, the Respondent shall provide the Evaluator with a copy of this Consent Order. Respondent's signature on this Consent Order constitutes authorization for the Evaluator to obtain reports and other relevant

documents from the Therapist providing individual psychotherapy as described in Paragraph A above as well as to provide the Board with copies of all written monitoring reports.

Respondent's signature also authorizes the Board to communicate with the Evaluator about the Respondent's needs, performance, and progress;

2) The Respondent is responsible for all costs associated with and pursuant to the contract agreement with the Evaluator to perform monitoring of the infection control inspection and review as well as plan of corrections for infection control management and practice, along with the Respondent's clinical practice as described below:

a) On-Site Inspection and Observation. Within forty-five (45) days from the selection of the Evaluator by the Board and continuing thereafter on a quarterly basis throughout the Effective Period, the Evaluator will conduct on site four (4) hours of observation of the Respondent's clinical practice and inspection of his dental office to identify sanitary and infection control management, practice, and procedure.

b) Evaluation of Patient Records. Within forty-five (45) days from the selection of the Evaluator by the Board and continuing thereafter on a quarterly basis throughout the Effective Period, the Evaluator will randomly select five (5) current patient records and conduct a comprehensive clinical evaluation of these patient records. The comprehensive clinical evaluation shall focus on Respondent's clinical competence when providing dental services to patients and a complete review of his recordkeeping.

c) Collection of individual therapy session attendance and progress. Within forty-five (45) days from the selection of the Evaluator by the Board and continuing thereafter on a quarterly basis throughout the Effective Period, the Evaluator will obtain from the Therapist confirmation, reports, or other related communication as necessary. The information

collected pursuant to this Paragraph shall constitute part of the Written Reports as described in Subparagraph B.2.d, below.

d) Written Reports. Within sixty (60) days following the effective date of this Consent Order and on a quarterly basis thereafter throughout the Effective Period, Respondent shall arrange for the Evaluator to submit to the Board a written report of the on-site observations, patient record evaluations, and any compliance recommendations made by the Evaluator. In addition, the report shall include information obtained from the Therapist with regard to the individual psychotherapy sessions which the Respondent has attended as well as reports of his needs and progress as the Therapist is required to provide pursuant to this Consent Order. Within forty-five (45) days of each report received by the Board from the Evaluator, the Respondent shall comply with the Evaluator's recommendations and submit a written report to the Board explaining the changes the Respondent has made in his dental practice. Failure to follow all recommendations made by the Evaluator shall constitute violation of this Consent Order.

C. Effective Period. This Consent Order shall become effective on the date the Respondent executes his signature before a notary public. This Consent Order shall remain effective for one (1) year following the date of the Respondent's signature. At the conclusion of the Effective Period, the Board may renew or extend the effectiveness of this Consent Order annually. Such renewal or extension may be effected by an order of the Board or any other official notice of the Board served on the Respondent with a copy to the Therapist and/or the Evaluator.

D. Modification of Stayed Suspension and Conditions. During the Effective Period, the Board may require a modification of the frequency of the Respondent's individual psychotherapy sessions and the Evaluator's inspections based on the recommendation of the Therapist or the Evaluator or on the Board's own review of the Respondent's progress as a whole. The Board may also require modifications of other requirements and details of the monitoring based on the Evaluator's recommendation or the Board's own review of the Respondent's progress. Any modifications or alterations required by the Board shall be communicated to the Respondent by an official letter (hereafter referred to as "Supplement") from the Board and shall supplement and/or modify this Consent Order.

E. Removal of Stayed Suspension and Conditions. The Respondent may petition to have the stayed suspension and conditions removed from his license at the end of the Effective Period or any date thereafter at any regularly scheduled Board meeting provided that Respondent's petition is received by the Board at least thirty (30) days prior to the Board meeting. Respondent shall have the burden of proving that he has complied with the conditions and that he qualified and able to practice dentistry without conditions. Respondent's compliance with the foregoing requirements set forth in this Consent Order shall not create a presumption that the conditions should be removed. Upon consideration of the evidence submitted by the Respondent or obtained through Board investigation, the Board may remove, amend, or continue the conditions imposed by this Consent Order.

F. Fine for Violation. The Respondent shall promptly cooperate and comply with all reasonable requests and recommendations made by the Therapist or the Evaluator pertaining

to and within the scope of, respectively, the individual psychotherapy sessions or the monitoring and inspection as required by this Consent Order. The Respondent's failure to promptly cooperate or comply with such requests or recommendations for any reason shall constitute a violation of this Consent Order and the Conditions of Stayed Suspension and he shall be assessed a fine of **One Hundred Dollars (\$100) per violation** if the following conditions are met:

- a) The Therapist or the Evaluator provides the Respondent with a written notice and warning of his failure to cooperate or comply, with a copy to the Board;
- b) The Respondent is given thirty (30) days from the date of the notice and warning to remedy, cooperate, and comply; and
- c) The Respondent fails or refuses to remedy, cooperate, or comply within the thirty (30) days. Evidence of such failure to comply shall be based on the Board's own inquiry and investigation into the matter or in the form of an affidavit or sworn statement from the Therapist or the Evaluator, as applicable, attesting to the Respondent's failure or refusal to remedy, cooperate, or comply within the given time.

Upon receiving documents establishing all the above, the Board will issue an official letter or notice informing the Respondent of his violation(s) and requiring him to pay the relevant fine(s) within thirty (30) days.

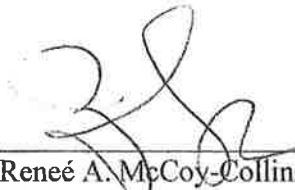
As this Consent Order has been negotiated and agreed upon in lieu of a formal disciplinary hearing relating to the Respondent's violation of the April 17, 2013 Order as enumerated in the Stipulation above, the Respondent's signature on this Consent Order constitute a waiver of the requirement for a hearing in accordance with D.C. Official Code § 3-1205.14(a) and 17 DCMR 4102.1 and an agreement to be subject to fine(s) imposed in accordance with this paragraph.

The Respondent's failure to pay the fine(s) within the allotted time period shall cause the fine(s) to be doubled.

Neither the imposition of fines or correction of the violation shall deprive the Board of the right to impose additional discipline based on the violation.


G. Suspension and Additional Discipline for Violation of Consent Order and Conditions of Stayed Suspension. The Respondent's failure to comply with the Conditions of Stayed Suspension and his failure to take remedial and corrective actions after the imposition of fine(s), including the failure to pay the fine(s), as described in Paragraph F above shall vacate the stay of the suspension and cause the suspension to become immediately effective against his license. In addition, the Board may impose additional discipline in accordance with D.C. Official Code § 3-1205.14(c).





2/26/14
Date


Renee A. McCoy-Collins, DDS
Chairperson
District of Columbia Board of Dentistry

CONSENT OF RESPONDENT

- My signature on the foregoing Stipulation and Consent Order signifies my acceptance of the terms and conditions of the Stipulation and Consent Order and my agreement to be bound by its provisions. _____ (initial)
- I acknowledge the validity of this Stipulation and Consent Order, as if made after a hearing in which I would have had the right to counsel, to confront witnesses, to give

testimony, to call witnesses on my behalf, and to all other substantive and procedural due process protections provided by the laws of the District of Columbia and the United States of America.  (initial)

- I also recognize that I am waiving my right to appeal any adverse ruling of the Board had this matter gone to a hearing.  (initial)
- I expressly acknowledge that by signing this Stipulation and Consent Order, I am voluntarily waiving my right to require the Board to charge me through a notice of intent to take disciplinary action with a violation of this agreement and to require the government to prove such violation by a preponderance of the evidence before suspending my license based upon the failure to satisfactorily fulfill the terms of the Stipulation and Consent Order.  (initial)
- I also expressly acknowledge by signing this Stipulation and Consent Order, I am waiving my right to confront witnesses, give testimony, to call witnesses on my behalf, and to other substantive and procedural due process protections provided by the laws of the District of Columbia and the United States of America.  (initial)
- I further expressly acknowledge that by signing this Stipulation and Consent Order, I am waiving my right to appeal this Stipulation and Consent Order, as well as waiving any and all rights, whatsoever, I would have to challenge or appeal that Board's decision to suspend my license based on the failure to satisfactorily fulfill the terms of the Stipulation and Consent Order.  (initial)
- I acknowledge that in the event that the Board suspends my license based on the failure to satisfactorily fulfill the terms of the Stipulation and Consent Order, my sole remedy and recourse will be to respond within the time period set forth in this Stipulation and

Consent Order with proof of my compliance and that if I fail to do so, my sole remedy and recourse will be to comply with the terms of this Stipulation and Consent Order to the satisfaction of the Board. [Signature] (initial)

- I have had an opportunity to review this document and to consult with my own legal counsel. I choose willingly to sign this Stipulation and Consent Order, and I understand its meaning and effect. [Signature] (initial)

2-18-14

Date

[Signature]
Richard Y. Lee, DDS, DEN3414

Sworn to and subscribed before me this 18th day of February 2014.

[Signature]
Notary Public
BETTY C. WANG
Notary Public, District of Columbia
My Commission Expires Jan 14, 2015

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.