

IN THE MATTER OF	*	BEFORE THE MARYLAND
FREDRICK D. CLARK, D.D.S.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
License Number: 10125	*	Case No.: 2014-272

* * * * *

PRE-CHARGE CONSENT ORDER

On August 11, 2014, the State Board of Dental Examiners (the "Board") summarily suspended the license of **FREDRICK D. CLARK, D.D.S.** (the "Respondent"), License Number 10125, pursuant to Md. Code Ann., State Gov't ("State Gov't"), § 10-226(c) (2009 Repl. Vol. & 2013 Supp.), concluding that the public health, safety and welfare imperatively required emergency action.¹

In lieu of issuing Charges against the Respondent under the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 4-101 et seq. (2009 Repl. Vol. & 2013 Supp.) pursuant to Health Occ. § 4-315(a), the Board held a Pre-Charge Case Resolution Conference with the Respondent on September 17, 2014. The pertinent provisions of Health Occ. § 4-315(a), and under which the Respondent would have been charged butfor this resolution, are as follows:

(a) *License to practice dentistry.* – Subject to the hearing provisions of § 4-318 of this subtitle, the Board may deny a general license to practice dentistry...reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the ... licensee:

...

- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession;

¹ This Consent Order supersedes the Board's August 11, 2014 Order for Summary Suspension.

- ...
- (28) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control's guidelines on universal precautions[.]

The pertinent regulations provide:

Md. Code Regs. 10.52.11:

.03 Compliance Requirements for an Individual.

An individual who is performing patient care activities shall:

- A. Comply with the principles of universal precautions;
- ...
- C. Comply with current professional standards of patient care with regard to disinfection and sterilization of reusable devices used in patient care procedures; including:

- ...
- (2) Properly disposing of needles and other sharps devices.

.05 Compliance Requirements for Health Care Professional with Private Professional Office.

A. A health care professional who practices in a private professional office shall:

- (1) Ensure that an individual who performs patient care services in the professional's office:

- (a) Complies with the principles of universal precautions, [and]

...

- (c) Complies with current professional standards of patient care with regard to disinfection and sterilization of reusable devices used in patient care procedures;

Following the CRC, the parties agreed to enter into this Pre-Charge Consent Order as a means of resolving this matter.

FINDINGS OF FACT

The Board finds:

1. At all times relevant to this Pre-Charge Consent Order, the Respondent was licensed to practice dentistry in the State of Maryland. The Respondent initially received his license to practice dentistry on December 16, 1987.

2. At all times relevant to this Order, the Respondent operated a general dental practice in Oxon Hill, Maryland. The Respondent is a solo practitioner who practices general dentistry and employs one or more dental assistants.

3. On June 11, 2014, the Board received a complaint alleging various health and safety concerns. Among other things, the complaint alleged unsanitary office conditions.

4. The Department of Health and Mental Hygiene and the Board's regulations pursuant to Md. Code Regs. 9.12.31 require compliance with the Occupational Exposure to Bloodborne Pathogens Standard ("BPS"); and pursuant to Md. Code Regs. 10.52.11, CDC Guidelines for Infection Control in Dental Health Care Settings ("ICDHC") referenced in the Universal Infection Control Precautions Standard.

5. Upon review of the complaint, the Board initiated an investigation. On June 11, 2014, the Board retained an independent infection control expert (the "Board Expert") to conduct an inspection of the Respondent's dental office (the "office"). Two inspections were conducted on separate dates.

6. On June 16, 2014, the Board Expert conducted an unannounced inspection of the Respondent's office to determine whether the Respondent was in

compliance with the Centers for Disease Control and Prevention ("CDC")² guidelines on universal precautions. However, the Respondent was not present and the Board Expert was able to complete only a limited inspection under constrained conditions.

7. The Board Expert issued a report on June 17, 2014, which noted nineteen (19) separate violations of the CDC guidelines. The report concluded that "[c]ontaminated instruments and supplies were noted throughout the office" and recommended a follow-up inspection "to determine the level of compliance with other CDC, OSHA, EPA and MSBDE recommendations and regulations."

8. On June 23, 2014, the Board Expert conducted a second inspection, at which time she noted twenty-seven (27) violations. The Board Expert, who was accompanied by an investigator from the Board (the "Board Investigator"), performed the inspection in the Respondent's presence.

9. A summary of the findings from both reports is set forth *infra*.

A. Investigative Findings

10. At approximately 9:00 a.m. on June 16, 2014, the Board Expert arrived at the Respondent's office for an unannounced, on-site inspection.

² The CDC is a federal agency dedicated to designing protocols to prevent the spread of disease. The CDC has issued guidelines for dental offices which detail the procedures deemed necessary to minimize the chance of transmitting infection both from one patient to another and from the dentist, dental hygienist and dental staff to and from the patients. These guidelines include some very basic precautions, such as washing one's hands prior to and after treating a patient, and also set forth more involved standards for infection control. Under the Maryland Dentistry Act, Md. Code Ann., Health Occ. § 4-315(28), all dentists are required to comply with the CDC guidelines, which incorporate by reference the Occupational Safety and Health Administration's ("OSHA") final rule on Occupational Exposure to Bloodborne Pathogens (29 CFR 1910.1030). The only exception to this rule arises in an emergency which is: 1) life-threatening; and (2) where it is not feasible or practicable to comply with the guidelines.

11. The Respondent was not present at the office, but the office manager was working at the front desk. When the Board Expert explained the reason for the visit, the office manager contacted the Respondent via telephone and alerted him to the Board Expert's presence.

12. The Board Expert then spoke with the Respondent over the telephone, and he reluctantly agreed to allow the inspection. The Board Expert then handed the telephone back to the office manager, who proceeded to have a hushed conversation with the Respondent while still keeping the Board Expert in the waiting room.

13. Shortly after the office manager ended the telephone call with the Respondent, she quickly went back to the clinical area, still without granting the Board Expert access for the inspection, and after a short period of time, returned to the front desk. The office manager then informed the Board Expert that she had been instructed to prohibit the inspection in the Respondent's absence.

14. The Board Expert then explained that she would be required to notify the Board that she had not been granted access to perform the inspection, after which the office manager permitted the inspection to commence.

15. The Respondent's office housed five (5) operatories, one (1) dental laboratory ("lab"), one (1) lounge area, one (1) waiting room, and one (1) personal office space.

16. The Board Expert noted nineteen (19) separate violations in her report. Among other things, the Board Expert concluded the following:

- (a) Neither surface disinfectant nor hand sanitizer were present in the lab; the sink and countertops in the lab were covered with dental plaster; two pieces of lab equipment were found on the floor; and the sink in the sterilization area of the lab contained contaminated rubber bowls, impression trays, glass slabs, and spatulas;
- (b) The office contained expired medications and dental supplies, including Formo Cresol³ (expiration date of December 20, 2010) and temporary dental cement (expiration year of 2011);
- (c) General safety concerns existed throughout the office, including an expired fire extinguisher (expiration date of October 14, 2008), a lack of posted exit plans, and a lack of safety covers on the electrical outlets;
- (d) Contaminated gloves, x-ray covers, patient bibs, and cotton rolls were noted in the regular trash;
- (e) Non-sterilized equipment and supplies were found throughout the office, including:
 - i. A collection of dental burs⁴ laying in the bottom of a plastic container;
 - ii. Dental burs, dentures, and miscellaneous items mounted on a bur block⁵ with cement and dental material clearly evident;
 - iii. A bur block that was not contained within a closed bag indicating sterility;
 - iv. Several burs crusted with dental material;
 - v. Several syringes with composite material with the tips still attached;
 - vi. A dental handpiece on a tray with no evidence of sterility;
 - vii. Heat sterilizable air/water syringe tips that lacked barriers on the handles and did not show evidence of sterility;

³ A compound consisting of formaldehyde, cresol, glycerin, and water used in the removal of tissues inside of the tooth and during root canal therapy.

⁴ A type of cutter used in a handpiece for cutting hard tissue such as tooth or bone.

⁵ A cube-shaped block with holes in it of varying sizes, designed to store various-sized burs.

- viii. Gross contamination and crusted material on an air/water syringe tip and handle;
- ix. Contaminated instruments and supplies lying in the sink and on countertops in the sterilization area;
- (f) Sharps containers were noted on the floor and accessible to children without any evidence of a sharps security system;
- (g) Unlabeled chemicals were noted in most clinical areas.

17. The Board Expert noted that the Respondent's office manager abruptly ended the inspection by saying she had to lock up the office and leave.

18. The Board Expert recommended a follow-up inspection to determine the level of compliance with other CDC, OSHA, EPA, and MSBDE recommendations and guidelines.

19. On June 23, 2014, the Board Expert returned to the office for a second unannounced inspection. The Board Expert, who was accompanied by the Board Investigator, performed the inspection in the Respondent's presence.

20. During the inspection, the Board Expert noted a total of twenty-seven (27) violations. In addition to the violations noted from the previous inspection, the Board Expert noted the following:

- (a) The Respondent failed to wear protective eyewear when treating patients;
- (b) The Respondent failed to wear a mask when treating patients and also wore the same mask when treating different patients;
- (c) The Respondent failed to close his lab coat when treating patients;
- (d) The dental assistant failed to wear a lab coat, protective eyewear, or a mask;
- (e) Patients were not offered protective eyewear;

- (f) The dental chairs were in extremely poor condition, split, punctured, and cracked, with the lining material protruding;
- (g) Water stains, rust stains, dirt, and other soil was noted on clinical floors;
- (h) In one operatory, a sterilizer bag containing a dental handpiece was found torn open (i.e. no longer sterilized);
- (i) The Respondent admitted that spore testing for sterilizers had been conducted monthly and not weekly as required by CDC guidelines;
- (j) The office contained expired Oraqix⁶ (expiration month of May, 2012) and expired Fluoride⁷ (expiration year of 2008);
- (k) The biohazard box in the sterilization area was overflowing with waste materials.

21. On July 14, 2014, the Respondent sent an e-mail to the Board Investigator wherein he provided a host of "personal and real life issues" that "influenced [his] ability to be focused on the many numerous requirements of compliance." The Respondent included a litany of examples, including several health-related issues. He further stated that the Board's investigation presented a "huge obstacle to [his]...mental well-being and simple survival."

22. On July 16, 2014, the Respondent sent a second e-mail to the Board Investigator wherein he provided additional reasons for his inability to "remain in compliance with federal HIPPA, CDC, or State Infection Control regulations, and loss of malpractice insurance." The Respondent stated that "...at this point I am nearly unable to continue to practice due to the destruction of my business...."

⁶ An anesthetic gel that is applied to the treatment site without the use of a needle and anesthetizes the site within approximately 30 seconds.

⁷ Fluoride treatment involves application of Fluoride to the teeth in the form a gel, foam or varnish, with the intention of preventing tooth decay and cavities.

23. The Respondent's continued inability to follow the CDC guidelines on universal precautions, particularly after having been notified via telephone of the Board Expert's investigation and inspection on June 16, 2014, poses an imminent risk of harm to the health, safety and welfare of the public, which imperatively requires the suspension of his license.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent failed to comply with Centers for Disease Control's guidelines on universal precautions, in violation of H.O. § 4-315(a)(16) and (28).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15th day of October, 2014, by a majority of the quorum of the Board, hereby

ORDERED that upon receipt of a favorable CDC inspection report by a Board-approved CDC inspector⁸ retained by the Respondent, the suspension of the Respondent's license to practice dentistry shall be **LIFTED**;

ORDERED that upon reinstatement of the Respondent's license, he shall be placed on a minimum of **ONE (1) YEAR OF PROBATION** under the following terms and conditions:

1. Within **TWO (2) WEEKS** from the date the suspension is lifted, the Respondent shall retain, at his expense, a Board-approved consultant ("the Respondent's Consultant") to evaluate his current dental office for compliance with CDC guidelines during a full day of patient care, consisting of at least two (2) patients;

⁸ The report shall be reviewed by the Board within 14 days of its submission by a Board-approved CDC inspector (different from the inspector who conducted the inspections referenced in the Finding of Facts). The Board shall ensure that the Respondent receives a copy of the report upon its completion.

2. Within **FOUR (4) MONTHS** of the date the suspension is lifted, the Respondent's Consultant shall conduct an unannounced inspection to re-evaluate the Respondent's current dental office for compliance with CDC guidelines and to train the Respondent and each employee of the office in applying the CDC guidelines to the dental practice;
3. The Respondent shall notify the Board prior to changing the location of his practice or adding any practice location, in order for the Board to modify or amend this Pre-Charge Consent Order to require any necessary terms or conditions including but not limited to conducting an opening inspection and/or subsequent random inspections;
4. The Respondent's Consultant shall conduct an additional inspection during the Respondent's probationary period. This inspection shall be at one of the offices where the Respondent practices dentistry. The Respondent shall ensure that the Respondent's Consultant provides a report to the Board within ten (10) days of the date of the inspection. The Board may communicate with the Respondent's Consultant regarding the findings of the inspection;
5. Based on unannounced inspections by the Board or the Respondent's Consultant, or future investigations of complaints, if the Board makes a finding that the Respondent is not in compliance with CDC guidelines in any office where the Respondent practices dentistry, it shall constitute a violation of this Pre-Charge Consent Order, and it may, in the Board's discretion, be grounds for immediately suspending the Respondent's license. In the event that the Respondent's license is suspended under this provision, he shall be afforded a Show Cause Hearing before the Board to show cause as to why his license should not have been suspended.
6. During his probationary period, the Respondent shall disclose this Pre-Charge Consent Order to any employers and inform them that the inspections referenced herein shall focus on the Respondent's individual compliance with CDC guidelines and not the entire office of the employer.
7. Within **TWELVE (12) MONTHS** of this Pre-Charge Consent Order, the Respondent shall complete four (4) credit hours of Board-approved infection control courses in addition to the two (2) required hours for a total of six (6) hours. The four (4) hours shall not be applied to his required continuing education credits required for license renewal;
8. The Respondent shall complete all required continuing education courses required for renewal of his license. No part of the training or education that he receives in compliance with this Pre-Charge Consent Order shall be applied to his required continuing education credits;

9. The Respondent shall comply with CDC guidelines, including Occupational Safety and Health Administration's ("OSHA") for dental healthcare settings;

10. The Respondent shall practice according to the Maryland Dentistry Act and in accordance with all applicable laws; and be it further

ORDERED that the Respondent shall be responsible for all costs associated with complying with this Order; and be it further

ORDERED that any violation of the terms or conditions of this Pre-Charge Consent Order shall be deemed a violation of the Order; and be it further

ORDERED that if the Respondent violates any of the terms or conditions of this Pre-Charge Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Board, may impose any sanction which the Board may have imposed in this case under §§ 4-315 and 4-317 of the Dental Practice Act, including additional probationary terms and conditions, reprimand, suspension, revocation and/or a monetary penalty, said violation of probation being proved by a preponderance of the evidence; and be it further

ORDERED that after a minimum of **ONE (1) YEAR OF PROBATION**, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board. The Board will grant the termination if Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and be it further

ORDERED that this Pre-Charge Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-601 *et seq.* (2009 Repl. Vol. & 2013 Supp.).

Maurice Miles DDS

Maurice S. Miles, D.D.S., President
Maryland State Board of Dental Examiners

CONSENT

I, Fredrick Clark, D.D.S., acknowledge that I am represented by counsel and have consulted with counsel before entering this Pre-Charge Consent Order. By this Consent and for the purpose of resolving the issues raised in the Summary Suspension Order of August 11, 2014 by the Board and in anticipation administrative charges related thereto, I agree and accept to be bound by the foregoing Pre-Charge Consent Order and its conditions.

I acknowledge the validity of this Pre-Charge Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations.

I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Pre-Charge Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing.

I sign this Pre-Charge Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Pre-Charge Consent Order.

10/15/2014
Date

Fredrick Clark DDS
Fredrick Clark, D.D.S.
Respondent

Reviewed by:

Kellee Baker
Kellee Baker, Esquire

STATE OF Washington
CITY/COUNTY OF District of Columbia

I HEREBY CERTIFY that on this 15th day of October 2014, before me, a Notary Public of the foregoing State and City/County, Fredrick Clark, D.D.S., personally appeared, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

[Signature]
Notary Public

My Commission expires: 3/14/2018

Subscribed and sworn to before me
this 15th day of October 2014
[Signature]
Notary Public

