

IN THE MATTER OF * BEFORE THE MARYLAND
RANDALL YAZHARY, D.D.S. * STATE BOARD OF
RESPONDENT * DENTAL EXAMINERS
License Number: 11517 * Case Number: 2011-261

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On March 21, 2013, the Maryland State Board of Dental Examiners (the "Board") charged **RANDALL YAZHARY, D.D.S.** (the "Respondent") (D.O.B. 05/08/1968), License Number 11517, with violating the Maryland Dentistry Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 4-101 *et seq.* (2005 and 2009 Repl. Vols. and 2012 Supp.).

Specifically, the Board charged the Respondent with violating the following provision of the Act under H.O. § 4-315:

- (a) *License to practice dentistry.* – Subject to the hearing provisions of § 4-318 of this subtitle, the Board may . . . reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the . . . licensee:
 - (6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner[.]

On July 17, 2013, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

The Board finds the following:

BACKGROUND FINDINGS

1. At all times relevant hereto, the Respondent was licensed to practice dentistry in the State of Maryland. The Respondent was initially licensed to practice dentistry in Maryland on or about August 18, 1993, under License Number 11517.

2. At all times relevant hereto, the Respondent maintained a dental practice at the following address: 7508 Wisconsin Avenue, Bethesda, Maryland 20814.

3. The Board initiated an investigation of the Respondent after reviewing a claim against him that was filed before the Health Claims Alternative Dispute Resolution Office in 2011. The claim alleged that in 2008, the Respondent negligently and improperly performed aspects of root canal therapy ("RCT") and crown placement on an adult female patient ("Patient A").¹

4. The Board referred the case involving Patient A and an additional five charts ("Patients B through F") to an endodontist (the "Expert") for a practice review. The Expert concluded as follows:

In summation, the standard of care has not been met either in the case in question nor in any of the other cases reviewed. As far as the quality of actual care provided is concerned, it is extremely difficult if not impossible to judge due to the severe lack of documentation and absent radiographic evidence. With no evidence to the contrary, it must be assumed that multiple steps of the endodontic treatment continuum were not performed including but not limited to tooth isolation, irrigation and proper instrumentation to name but a few. The record-keeping was so poor in all cases that an accurate assessment of the practitioner's clinical skill or diagnostic acumen is simply not possible. The poor radiographic record in particular was egregious. The pattern of poor record-keeping and lack of diagnostic radiographs is clear and unmistakable.

5. The Board finds the following deficiencies in the Respondent's practice:

¹ To ensure confidentiality, the names of all patients referred to in this Consent Order will not be identified by name. The Respondent is aware of the identity of all patients referenced herein.

Patient A

6. Patient A, then a woman in her early 50s, initially sought treatment from the Respondent on or about October 28, 2008 for tooth # 15. On this date, the Respondent performed an initial examination; took a panoramic radiograph; and performed a core build-up, crown temporization and crown lengthening surgery on tooth # 15. On or about November 6, 2008, the Respondent provided RCT on tooth # 15. On or about December 10, 2008, the Respondent placed a crown on tooth # 15.

7. The Expert noted deficiencies in the Respondent's oral clinical examination of Patient A. The Expert found that the Respondent failed to document or perform:

- (a) an adequate preoperative diagnosis;
- (b) soft tissue examination;
- (c) a periodontal assessment;
- (d) an occlusal assessment;
- (e) pulpal diagnostic testing and results of such testing; and
- (f) pre-operative periapical radiographs;

8. The Expert noted deficiencies in the Respondent's performance of RCT on Patient A. The Expert found that the Respondent failed to document or perform:

- (a) an adequate preoperative diagnosis;
- (b) local anesthetics delivered;
- (c) rationale for non-use of a rubber dam;
- (d) the irrigants used;
- (e) the existence of any complications during the procedure;
- (f) the type of coronal restoration placed; and
- (g) diagnostic quality periapical radiographs.

Patient B

8. The Respondent performed RCT on tooth # 21 on Patient B, a woman then in her early 40s, on December 19, 2008. The Expert found deficiencies in the

Respondent's treatment of Patient B. The Respondent failed to document or perform the following:

- (a) a clinical examination;
- (b) pulpal diagnostic testing;
- (c) an adequate diagnosis;
- (d) informed consent;
- (e) local anesthetics delivered or additional medications;
- (f) use of a rubber dam;
- (g) measurements of canal lengths or final preparation size;
- (h) the use of irrigants; and
- (i) the type of obturant used.

Patient C

9. The Respondent performed RCT on tooth # 14 on Patient C, then a woman in her mid-60s, on August 6, 2008. A post-operative radiograph was not taken directly after the August 6, 2008, RCT. Patient C returned on October 7, 2008, "because of the pain in # 14." The Respondent did not take a periapical radiograph at that time. Patient C returned on February 25, 2009, complaining that it "hurts to chew." The Respondent reportedly took two periapical radiographs of tooth # 14 at that time. The Expert found deficiencies in the Respondent's treatment of Patient C. The Respondent failed to document or perform the following:

- (a) pulpal diagnostic testing;
- (b) an adequate diagnosis;
- (c) diagnostic quality pre-operative radiographs;
- (d) informed consent;
- (e) use of a rubber dam; and
- (f) diagnostic quality post-operative periapical radiographs

Patient D

10. The Respondent performed RCT on tooth # 29 on Patient D, then a woman in her early-70s, on March 4, 2009. The Expert found deficiencies in the

Respondent's treatment of Patient D. The Respondent failed to document or perform the following:

- (a) pulpal diagnostic testing;
- (b) an adequate diagnosis;
- (c) diagnostic quality pre-operative radiographs;
- (d) informed consent;
- (e) amount of local anesthetics delivered;
- (f) use of a rubber dam; and
- (g) use of irrigants.

Patient E

11. The Respondent performed RCT on tooth # 1 on Patient E, then a man in his mid-50s, on December 15, 2008. The Expert found deficiencies in the Respondent's treatment of Patient E. The Respondent failed to document or perform the following:

- (a) any aspect of the RCT in the patient ledger or treatment plan; and
- (b) post-operative radiographs.

Patient F

12. The Respondent performed RCT on tooth # 12 on Patient F, an adult female, on September 8, 2008. Patient F reportedly underwent a prior RCT on this tooth, which was performed elsewhere. The Expert found deficiencies in the Respondent's treatment of Patient E. The Respondent failed to document or perform the following:

- (a) an adequate diagnosis;
- (b) diagnostic quality pre-operative radiographs;
- (c) informed consent;
- (d) local anesthetics delivered or additional medications; and
- (e) use of a rubber dam.

13. The Respondent's actions, as described above, constitute the following violation of the Act under H.O. § 4-315: practices dentistry in a professionally

incompetent manner or in a grossly incompetent manner, in violation of H.O. § 4-315(a)(6).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provision of the Maryland Dentistry Act: practices dentistry in a professionally incompetent manner or in a grossly incompetent manner, in violation of H.O. § 4-315(a)(6).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by a majority of the quorum of the Board considering this case hereby:

ORDERED that the Respondent's license to practice dentistry in the State of Maryland be and is hereby **SUSPENDED** for a period of period of **ONE (1) YEAR**, and that said **SUSPENSION** shall be immediately **STAYED**; and it is further

ORDERED that the Board shall place the Respondent on **PROBATION** for a minimum period of **THREE (3) YEARS**, to commence on the date the Board executes this Consent Order, and continuing until he successfully completes the following terms and conditions:

1. Prior to performing any endodontic treatment, the Respondent shall enroll in and successfully complete a minimum of thirty-six (36) hours of clinical training in endodontics in a Board-approved training program, with the requirement that he take and pass a simulation examination prior to resuming providing any endodontic therapy in his practice.

2. The Respondent understands and agrees that he shall be solely responsible for ordering and/or taking appropriate pre-operative, peri-operative and post-operative radiographs, as applicable, and shall ensure that such radiographs are of diagnostic quality and are maintained in the patient's record.

3. The Respondent shall document in a patient's record the following, as applicable: clinical examination findings; pulpal testing findings; pre-operative diagnoses; full and complete informed consent; local anesthetics delivered or medications administered; use or non-use of a rubber dam; canal lengths/final preparation size; irrigants used; the filling material used; and a notation and interpretation of all radiographs taken.

4. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete, at his expense, at least four (4) hours of coursework in dental recordkeeping that is approved by the Board. The Respondent shall obtain Board-approval of this coursework prior to enrolling in it. The Board will approve the coursework only if it deems the subject matter and curriculum are adequate to satisfy its concerns. The Board reserves the right to require the Respondent to provide further information regarding the coursework he proposes and further reserves the right to reject the course the Respondent proposes and require submission of an alternative proposal. The Respondent shall be responsible for submitting timely written documentation to the Board of his successful completion of this coursework. The Respondent understands and agrees that he may not use this coursework to fulfill any requirements mandated for licensure renewal.

5. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall successfully complete and pass, at his expense, the ADEX examination on dental diagnosis and the formulation of dental treatment plans. The Respondent shall be responsible for submitting timely written documentation to the Board that he successfully passed the ADEX examination.

6. The Respondent shall at all times comply with and practice according to the Maryland Dentistry Act and all laws and regulations pertaining to the practice of dentistry.

AND IT IS FURTHER ORDERED that if the Respondent successfully completes the above conditions, he may apply for termination of his probation after the conclusion of two (2) years. If the Respondent does not successfully complete the above probationary conditions within two (2) years, his probation will remain in full force and effect until the conclusion of the three (3) year period set forth above; and it is further

ORDERED that after the conclusion of two (2) years, if the Respondent has successfully completed the above probationary conditions, or three (3) years, if he has not done so, and provided the Respondent has completed the above probationary conditions, he may file a written petition to the Board requesting termination of his probation. After consideration of his petition, the probation may be terminated through an order of the Board or designated Board committee. The Respondent may be required to appear before the Board or designated Board committee. The Board, or designated Board committee, will grant the termination only if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions of this

Consent Order, and if there are no outstanding complaints about him before the Board; and it is further

ORDERED that if the Respondent violates any of the terms or conditions of this Consent Order or the probationary conditions set forth herein, the Board shall provide him with the opportunity to appear for a show cause hearing before the Board. The Respondent understands and agrees that the Board may impose any other disciplinary sanctions it may have imposed, including a reprimand, probation, suspension, revocation and/or a monetary fine, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that the Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2012 Supp.).

11/06/2013

Date



Ngoc Quang Chu, D.D.S., President
Maryland State Board of Dental Examiners

CONSENT

I, Randall Yazhary, D.D.S., License No. 11517, by affixing my signature hereto, acknowledge that I have consulted with counsel, Catherine A. Hanrahan, Esquire, and knowingly and voluntarily elected to enter into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Health Occ. Code Ann. § 4-318 (2009 Repl. Vol. and 2012 Supp.) and Md. State Gov't Code Ann §§ 10-201 *et seq.* (2009 Repl. Vol. and 2012 Supp.).

I accept the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have 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 as provided by law. I am waiving those procedural and substantive protections.

I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

9/20/2013
Date



Randall Yazhary, D.D.S.

Read and approved:



Catherine A. Hanrahan, Esquire
Counsel for Dr. Yazhary

NOTARY

STATE OF Maryland

CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 20th day of September, 2013,
before me, a Notary Public of the State and County aforesaid, personally appeared
Randall Yazhary, D.D.S., and gave oath in due form of law that the foregoing Consent
Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal



Notary Public

My commission expires: 8/12/2015

**MAIMOUNA A. GBANE
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND**