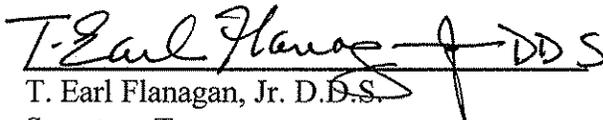


IN THE MATTER OF * BEFORE THE MARYLAND
MAXINE V. CLARK, D.D.S. * STATE BOARD OF
Respondent * DENTAL EXAMINERS
License Number 8300 * Case Number 2004-085

* * * * *

ORDER OF TERMINATION
OF CONSENT ORDER

The Maryland State Board of Dental Examiners hereby acknowledges that Maxine V. Clark, D.D.S., License Number 8300, has fully completed the requirements of the Findings of Fact, Opinion, Conclusions of Law and Order dated June 15, 2005. Effective September 17, 2008, Dr. Clark's license to practice dentistry in the State of Maryland is restored without restrictions or conditions.


T. Earl Flanagan, Jr. D.D.S.
Secretary-Treasurer
Maryland State Board of Dental Examiners



IN THE MATTER OF	*	BEFORE THE
MAXINE CLARK, D.D.S.	*	MARYLAND STATE BOARD OF
RESPONDENT	*	DENTAL EXAMINERS
License Number: 8300		Case No.: 2004-085
* * * * *		* * * * *

FINDINGS OF FACT, OPINION, CONCLUSIONS OF LAW AND ORDER

Pursuant to the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §4-319(a), and Maryland Code of Regulations (COMAR) 10.44.07.16 the Maryland State Board of Dental Examiners (the "Board") hereby renders the following Findings of Fact, Opinion, Conclusions of Law and Order ("Order").

BACKGROUND

On or about September 1, 2004, the Board notified Maxine Clark, D.D.S., ("Respondent"), that, pursuant to H.O. § 4-101 *et seq*, she had been charged with violating the following provisions of H.O. § 4-315:

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

- (11) Permits an unauthorized individual to practice dentistry under the supervision of the applicant or licensee;
- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession;
- (17) Violates any rule or regulation adopted by the Board.

The Respondent was further charged with violating the following provisions of the Board's regulations, Code Md. Regs. ("COMAR") tit. 10, § 44.19 (2001):

10.44.19.02. Certification Required

An individual shall be currently certified by the Board as a dental radiation technologist before the individual may practice dental radiation technology on a human being in this state.

10.44.19.06. Prohibitions.

B. An individual shall be certified by the Board as a dental radiation technologist before a licensed dentist may employ the individual to practice dental radiation technology.

10.44.19.08 Penalties for Violation of these Regulations.

C. A licensed dentist who employs an individual to practice dental radiation technology who is not certified under these regulations is guilty of unprofessional conduct and may be subjected to disciplinary action under Health Occupations Article, § 4-315, Annotated Code of Maryland.

D. A licensed dentist who supervises an individual practicing dental radiation technology who is not certified under these regulations is guilty of permitting an unauthorized individual to practice dentistry under the supervision of that licensed dentist, and may be subject to disciplinary action under Health Occupations Article, § 4-315, Annotated Code of Maryland.

Pursuant to H.O. § 4-318 and the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-226(c)(1)(ii) a hearing on the merits took place on April 20, 2005. Constituting a quorum were the following Board members: Dr. Barry Lyon, President of the Board who presided, Dr. Eric Katkow, Dr. Frank LaParle, Dr. J. Timothy Modic, Jane S. Casper, Zeno W. St. Cyr, II, Dr. W. King Smith, Dr. James P. Goldsmith, Dr. May Nicholas-Holmes, Dr. Sidney Seidman, Dr. David A Williams. Also present were Richard N. Bloom, Assistant Attorney General/Board Counsel, James C. Anagnos, Assistant Attorney General/Administrative Prosecutor, Andrew J. Spence, Esquire, Respondent's attorney, and the Respondent, Dr. Maxine Clark.

EXHIBITS

JOINT EXHIBITS (admitted in the following order)

- | | |
|-------|---|
| No. 6 | Thompson's employment application. |
| 5 | Thompson's curriculum vitae. |
| 24 | Payroll record 4/7/03. |
| 4 | Verification of Thompson's certification as dental assistant qualified in orthodontics. |
| 7 | Thompson's Chairside Dental Academy x-ray certification. |
| 1 | Dental Auxiliary allowed duties. |
| 2 | COMAR 10.44.01. |
| 3 | COMAR 10.44.19. |
| 17 | Employee performance improvement plan 4/7/03. |
| 13 | Patient communications 8/13/03, |
| 19 | Payroll record 5/20/03. |
| 8 | Employee improvement plan 6/10/03. |
| 12 | Payroll record 10/27/00. |
| 25 | Payroll record 7/31/00. |
| 26 | Unemployment benefit determination 11/20/00. |

STATE'S EXHIBITS

- | | |
|-------|-------------------|
| No. 1 | Charging Document |
|-------|-------------------|

SYNOPSIS OF CASE

For the period April 2003 through June 2003 the State alleges Dr. Clark employed Dawn Michelle Thompson as a dental assistant performing the duties of a radiation technologist, performing orthodontic duties and as a dental assistant qualified in general/expanded duties, none of which the State alleges she is qualified to perform.

Dr. Clark does not dispute that Ms. Thompson was employed by her during this period, nor does she dispute the fact that Ms. Thompson was not certified as a radiation technologist who performed dental x-rays. This she learned subsequent to the

termination of Ms. Thompson's employment. Relying solely upon Ms. Thompson's resume, Dr. Clark failed to verify her status with the Board and was unaware that Ms. Thompson was not certified as a radiation technologist. Dr. Clark does assert that Ms. Thompson was qualified in orthodontics. (T. 14, 15; 17 18-25; 18 1-5).

Dr. Clark rejected the State's allegations that she instructed Ms. Thompson to use high-speed hand pieces, to place bonding material on a patient's teeth, to adjust orthodontic wires, to polish a patient's teeth, and that she instructed Ms. Thompson to use stain removal on a patient's teeth.

The Board's investigator, Lisa Schafer, testified that during the period in question, the Board's records indicate that Ms. Thompson was not a certified radiation technologist. She did confirm, however, that Ms. Thompson was certified as an orthodontic assistant during the same time frame.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. Respondent is a licensed dentist in Maryland.
2. For the period April 2003 through June 2003 the Respondent employed Dawn Michelle Thompson as a dental assistant.
3. In the course of her employment with the Respondent, Dawn Michelle Thompson performed dental x-rays.
4. Dawn Michelle Thompson was not certified as a dental radiation technologist.
5. Respondent did not verify Ms. Thompson's license status.

(

(

(

6. During the course of her employment Dawn Michelle Thompson performed orthodontic duties for which she was qualified.

OPINION

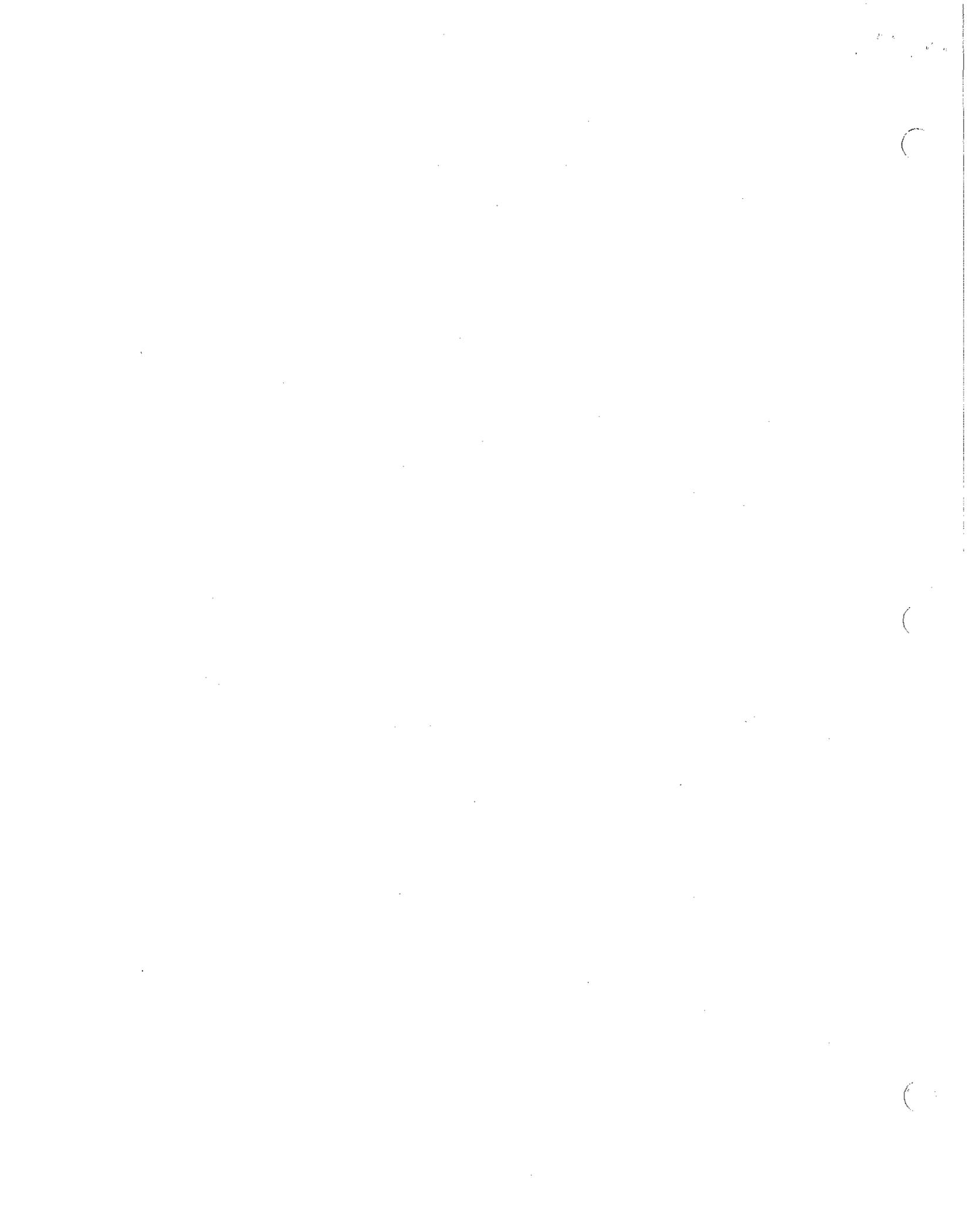
Dr. Clark's failure to verify Ms. Thompson's status with the Board resulted in Ms. Thompson's unauthorized practice of dental radiation technology, which the State has proven by a preponderance of the evidence. Md. Code Ann., Health Occupations Article § 4-505 *et seq.* requires that an individual be certified by the Board in order to practice dental radiation technology. The Board does not believe that Dr. Clark willfully set out to violate the Maryland Dentistry Act. Notwithstanding this, however, Dr. Clark had a responsibility and duty to verify Ms. Thompson's status with the Board. Nor does the Board believe Dr. Clark's failure to verify that which was presented to her by Ms. Thompson rises to the level of dishonorable behavior.

It is evident from the testimony adduced at the hearing that during the period in question, Ms. Thompson was a dental assistant qualified in orthodontics. There is no evidence in the record to support a finding that Ms. Thompson was not qualified as a dental assistant in general/expanded duties.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Maxine Clark, D.D.S. violated the Maryland Dentistry Act, H.O. § 4-315(a) as follows:

- (11) Permits an unauthorized individual to practice dentistry under the supervision of the applicant or licensee;
- (17) Violates any rule or regulation adopted by the Board.



The charges that Ms. Thompson was not qualified in orthodontics nor in general/expanded duties are hereby dismissed as neither has been proven by a preponderance of the evidence. The Board further concludes that Dr . Clark did not behave in a dishonorable fashion.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 15th day of June, 2005, pursuant to the authority vested in the Maryland State Board of Dental Examiners by Md. Code Ann., Health Occ. Article, § 4-315(a), hereby;

ORDERED that the Respondent, Maxine Clark, D.D.S., shall be and is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent is required to complete the following conditions:

1. *Pro Bono Community Service*

a. The Respondent shall, without remuneration, complete, within twelve (12) months from the date of this Order, one (1) Board approved orthodontic case from commencement to completion. Should the approved patient fail to cooperate, cooperation to be determined by the Board, the Respondent shall submit another case to the Board for approval.

b. Upon completion of the orthodontic case, the Respondent shall file a written report with the Board that verifies that the Respondent performed the *pro bono* orthodontic service without remuneration, and which describes with particularity the professional services performed.

c. If requested by the Board, the Respondent shall make available for the Board, or its designee, all records of treatment for the patient for whom the *pro bono* treatment was performed.

2. Examinations

a. The Respondent shall, within six (6) months from the date of this Order take and pass, with a score of 90%, the Board's closed book jurisprudence examination.

b. The Respondent shall, within six (6) months from the date of this Order take and pass the JERM (Jurisprudence, Ethics and Risk Management) examination; and it is further

ORDERED that the Respondent shall comply with all laws governing the practice of dentistry under the Act, and all rules and regulations promulgated there under; and it is further

ORDERED that if the Respondent fails to follow any of the terms and conditions of this Order, such failure shall be deemed a violation of this Order and the Board may take any action it deems appropriate under the Act, including, but not limited to, immediately suspending the Respondent's license, provided the Respondent is given the opportunity for a show cause hearing at the next regularly scheduled meeting of the Board; and it is further

(

(

(

ORDERED that the Respondent may petition the Board for the termination of this Order without any conditions or restrictions whatsoever when she has completed the each of the conditions described above.

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

ORDERED that this document is a PUBLIC DOCUMENT, as defined in Md. Code Ann., State Gov't Article, § 10-611 *et seq.* (2004).

6/15/05

Date



Barry D. Lyon, D.D.S.
President

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. Article, § 4-319, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Findings of Fact, Conclusion s of Law, Opinion and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Article, §§ 10-201 *et seq.*, and Title 7 Chapter 200 of the Maryland Rules.

()

()

()