

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF DENTAL EXAMINERS

IN RE: THOMAS A. GALLIVAN, D.D.S.) Docket No. 2009-328 (DE)
License No.:016-0000583)

STIPULATION AND CONSENT ORDER

STIPULATION

1. The Board of Dental Examiners ("Board") has jurisdiction to investigate and adjudicate complaints of unprofessional conduct against dentists pursuant to 3 V.S.A. §§ 129 and 129a; 26 V.S.A. §§ 767 and 809; the Administrative Rules of the Board of Dental Examiners ("RBDE") and the Rules of the Office of Professional Regulation.
2. Thomas A. Gallivan (the "Respondent") of Chittenden, Vermont was a licensed dentist holding license number 016-0000583, issued by the State of Vermont. The Respondent was initially licensed on or about May 1, 1980 and his license lapsed on or about, September 30, 2009.
3. The Respondent is currently sixty-seven (67) years of age and is retired from the practice of dentistry. The Respondent has no plans to reenter the practice of dentistry in the future.
4. Charges were filed against the Respondent in the above captioned matter on or about April 14, 2010 and are attached hereto (Exhibit A).
5. The parties agree that because the Respondent's license has lapsed and because he does not intend to reenter the practice of dentistry, that Understandings and Order set forth below are fair and sufficient to protect the public and the Respondent.
6. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation. The Respondent's mental capacity is not diminished in anyway at the time he signs this Stipulation.
7. Respondent voluntarily enters into this Stipulation after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation.
8. The Parties agree that, notwithstanding any statutory provision to the contrary, this Stipulation and Consent Order is a matter of public record and may be disclosed pursuant to the procedures outlined under 1 V.S.A. §§ 316 and 317. This includes posting on the internet. The Respondent agrees that this applies to any subsequent order of the Board issued under authority of this Stipulation and Consent Order.

STATE OF VERMONT



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9. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below.
10. Since the Respondent no longer intends to practice as a dentist in the State of Vermont; because the Order below will sufficiently protect the public; and in the interests of justice the State and the Respondent agree as follows:

ORDER

11. The Respondent agrees to **voluntarily inactivate** his license, number 016-0000583, issued by the State of Vermont. The Respondent agrees that as a result of this Stipulation he will no longer have a license to practice as a dentist in the State of Vermont. The Respondent further agrees that the Secretary of State's Office of Professional Regulation, the licensing agency for dentists will indicate on the list of licensed dentists that his license was **voluntarily inactivated**.
12. If the Respondent seeks reactivation, reinstatement or renewal of his dental license in the future, he agrees that reinstatement shall not be automatic. The Respondent further agrees that upon any future request to reactivate, reinstate or renew his license, the Board may review his licensing file and this Stipulation and Consent Order and all attachments attached here to and any other information that the Board deems relevant **and may order the Respondent to complete any and all requirements that the Board feels are necessary and justified both prior to reactivation, reinstatement or renewal and after reactivation, reinstatement or renewal. The Respondent agrees that a refusal to complete any requirement ordered by the Board shall result in his license reactivation, reinstatement or renewal being denied or if said refusal occurs after reactivation, reinstatement or renewal, said refusal shall constitute a basis for a charge of unprofessional conduct pursuant to 3 V.S.A. § 129a(a)(4)(failing to comply with an order of the board or violation any term or condition of a license restricted by the Board).**
13. In consideration for the concessions outlined in paragraphs 10 through 11 above, the State agrees to **dismiss without prejudice** the Specification of Charges in the above captioned case dated April 14, 2010 (Attachment A). This dismissal shall become effective only after the Board of Dental Examiners has agreed to and signed this Stipulation and Consent Order. In addition, if the Respondent were to ever attempt to practice dentistry without a license or refuse to comply with any requirements imposed by the Board in paragraph 11 above, the parties agree that the State would have the option to reinstate the dismissed charges.
14. This Stipulation and Consent Order will remain part of the Respondent's licensing

STATE OF VERMONT



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file and may be used for the purposes as outlined in paragraphs 10-11 above and for any other purpose allowed by law. It is the intent of the parties that although this Stipulation will be published on the Secretary of State's website under the "individual search" for the Respondent and that the full text of this Stipulation will be attached to the link called "Conduct Decisions" it will not constitute a disciplinary finding by this Board, rather it should be construed as a contractual resolution to a disputed matter.

15. Respondent shall not practice dentistry in any other state or territory of the United States before having his Vermont license reinstated by the Vermont Board of Dental Examiners pursuant to paragraph 11 as set forth above. Practicing in another state or territory without becoming reinstated in Vermont first, shall constitute a basis for a charge of unprofessional conduct in Vermont pursuant to 3 V.S.A. § 129a(a)(4)(failing to comply with an order of the board or violation any term or condition of a license restricted by the Board). This section shall not apply to volunteer work preformed by the Respondent in a foreign country or jurisdiction for which no current license is required.

AGREED TO:

Dated: May 27, 2010

Approved as to Form:

THOMAS A. GALLIVAN, D.D.S.
RESPONDENT

By: Thomas A. Gallivan DDS
Thomas A. Gallivan, D.D.S.

William H. Meub
William H. Meub
Attorney for the Respondent

STATE OF VERMONT
SECRETARY OF STATE

Dated: 5/28/10

By: Edward G. Adrian
Edward G. Adrian
State Prosecuting Attorney

APPROVED AND SO ORDERED:

BOARD OF DENTAL EXAMINERS

Dated: 6/9/10

Date of Entry: 6/9/10

By: Jim Lawrence DDS
Chairperson

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SECRETARY OF STATE
BOARD OF DENTAL EXAMINERS

IN RE:)

THOMAS A. GALLIVAN, D.D.S.)
License No. 016-0000583)

Docket No: 2009-328 (DE)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney Edward G. Adrian and hereby makes the following Charges against the Respondent, Thomas A. Gallivan, D.D.S.:

Board Authority

1) The Vermont Board of Dental Examiners ("Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by dentists and dental surgeons pursuant to 3 V.S.A. §§129, 129a and 814; 26 V.S.A. §§767 and 809; the Administrative Rules of the Board of Dental Examiners ("RBDE"); and the Rules of the Office of Professional Regulation.

Facts

- 2) Respondent, Thomas A. Gallivan, was licensed as a dentist in the State of Vermont holding license number 016-0000583. This license was originally issued on or about May 1, 1980 and expired on September 30, 2009. The Respondent's current license status is inactive.
- 3) At all times relevant, the Respondent was licensed and worked as a dentist from his office located in Rutland, Vermont.
- 4) At all relevant times E.P. was a patient of Respondent.
- 5) E.P.'s dental file provided to the Office of Professional Regulation ("OPR") has notes dating back to December 8, 1992. E.P.'s dental file provided to OPR contains radiographs from August, 1988, and May, 1991 that show normal bone levels. E.P.'s radiographs from June, 1996 and September, 1999 show progressive deterioration of E.P.'s bone levels. E.P.'s radiographs from April, 2004 and especially November, 2007, show a distinct change in bone levels and substantial bone loss. When interviewed by OPR Investigator Karl Packer, E.P. indicated that she did not have annual radiographs because she paid for her dental exams out-of-pocket and did not want to pay for annual radiographs. E.P. reported that she would always be asked by the Respondent's practice if she wanted radiographs.
- 6) When interviewed on January 27, 2009, E.P. indicated that she never saw the Respondent as part of her periodic oral exams, only when E.P. needed dental work. Instead E.P. was seen by one of the dental hygienists.

STATE OF VERMONT



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7) Nowhere in the Respondent's notes is there an indication that the Respondent or one of his employees discussed bone loss or periodontal issues with E.P.

8) E.P. was referred to Dr. C.U in May, 2009 for a root canal in respect to tooth #19. Dr. C.U. ultimately determined that she could not perform work on E.P., unless E.P. was seen by a periodontist so E.P. was referred to Dr. T.P. Dr. T.P. was interviewed by Investigator Packer on or about February 5, 2010. At this time Dr. T.P. described E.P.'s periodontal disease as a significant issue effecting E.P.'s back teeth and leading to pain, swelling, bleeding and infection. Dr. T.P. described the Respondent's lack of care in respect to E.P. and others as an embarrassment to the profession and that it involved neglect, a lack of diagnosis, lack of appropriate referral and ultimately harm. Dr. T.P. indicated that E.P. deserved better care and that the Respondent was essentially running his practice *in absentia*.

9) The Respondent was asked on or about February 10, 2010 if he or anyone from his practice ever discussed periodontal disease with E.P. and what discussions if any had taken place and if these discussions did take place, why it did not appear in the dental records. The Respondent replied to this inquiry on or about February 16, 2010 in part as follows: "Every one of our re-care patients was given a new toothbrush and floss at their visits and oral hygiene instructions and discussion about dental and periodontal health occurred to some degree as well. Because it was such a common practice often those types of conversations did not get recorded in a patient's chart. That's not to say it's correct but that it did occur in my practice If every word of every conversation was recorded in charts the charts would be extremely large and far fewer patients would be treated. There are, however, a number of written references in [E.P.'s] chart to conversations on periodontally related issues. . . ."

10) In his correspondence of February 16, 2010 the Respondent notes six dates from 1994-2009 where he indicates that there were "chart entries related to perio health". Respondent lists December 2, 1994 as one date. The entry on December 2, 1994 states "pro exam floss eval posterior teeth Take BW next (also PA To check for 1 + 16 (17 +32 have been [unreadable])). Respondent lists September 21, 1999 as another date where the entry states "Proply 4BW 1PA calculus 31-18 tested". March 28, 2001 is listed as another date and it states "Proply gave sensodyne toothpaste". October 30, 2003 is listed as another date and it states "Proply needs to floss Pregnois due 3/04".

11) The Respondent ends his February 16, 2010 correspondence indicating that he was delayed in responding to the Investigator's request because "I'm the co-developer of Orasphere patient education software which includes videos, created and produced by me, on Periodontal Disease, Scaling and Root Planing, Gingival Grafts, Toothbrushing, Flossing, and many other periodontally related themes." E.P. reported in her interview that her belief was that the Respondent was always off doing computer stuff and that his computer stuff was always more important to him than being in the office. When interviewed on or about February 10, 2010, hygienist J.C. indicated that the Respondent sometimes was at home during office hours and that if he was at home he could be called and the radiographs could be examined with him on the computer and if he was needed he could come to the office in few minutes.

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12) The Respondent has engaged in unprofessional conduct based on unsafe and unacceptable patient care. The Respondent's actions were unsafe and unacceptable because he failed to adequately care for and inform E.P. of her periodontal status; he failed to document E.P.'s periodontal status and what was being done to address it in the dental notes; ~~it was unacceptable for the Respondent to delegate diagnostic responsibility to a dental~~ hygienist and that for an unacceptable period of time the Respondent failed to refer E.P. for treatment. Failing to refer E.P.; failing to inform her; failing to adequately document her periodontal status; inappropriately delegating to a dental hygienist; and failing to treat the periodontal disease appropriately, all constitute a failure to conform to the essential standards of acceptable and prevailing practice.

Charges

13) The acts, omissions and/or circumstances described above, constitute grounds for discipline. Respondent he has committed unprofessional conduct because Respondent violated:

- i. 3 V.S.A. §129a(b)(1) and (2) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient care and (2) failure to conform to the essential standards of acceptable and prevailing practice);
- ii. 3 V.S.A. §129a(a)(3) (failure to comply with provisions of federal or state statutes or rules governing the practice of the profession);
- iii. 26 V.S.A. §864(b) (the following tasks may not be assigned to a dental assistant or to any other person not licensed to or approved by the board to practice dentistry: (1) diagnosis, treatment planning and prescription . . .); and
- iv. 3 V.S.A. §129a(a)(6) (delegating professional responsibilities to a person whom the licensed professional knows, or has reason to know is not qualified by training, experience, education or licensing credentials to perform them).

Relief Requested

WHEREFORE, the license of Thomas A. Gallivan, should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 14th day of April 2010.

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SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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