

**STATE OF VERMONT
SECRETARY OF STATE
BOARD OF DENTAL EXAMINERS**

IN RE:)
ALBERT S. HARDY) **Docket No: 2013-460**
License No. 016.0001123)

STIPULATION AND CONSENT ORDER

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney S. Lauren Hibbert and Albert S. Hardy, who hereby stipulate and agree as follows:

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. §584; the Administrative Rules of the Board of Dental Examiners ("RBDE"); and the Rules of the Office of Professional Regulation.

Stipulated Facts

2. Albert S. Hardy ("Respondent") of Shelburne, VT, is licensed by the State of Vermont as a Dentist under license number 016.0001123. This license was originally issued on or about March 23, 1990 and is currently set to expire on or about September 30, 2017.
3. On or about November 13, 2011, J.W. went to Copley Hospital's Emergency Department and was prescribed Clindamycin. On or about November 15, 2011, Dr. Solomon diagnosed J.W. with probable periapical infection in tooth #31 and/or tooth #32, after a clinical examination and a panorex x-ray. The x-ray taken on November 15, 2011 by Dr. Solomon shows an uncompromised jaw bone. Dr. Solomon referred J.W. to Respondent.
4. On or about December 15, 2011, Respondent extracted tooth #32.
5. On or about December 16, 2011, J.W., in a telephone call to Respondent's office, complained of increased swelling and pain. Respondent prescribed Clindamycin.
6. On or about December 20, 2011, J.W., in a telephone call to Respondent's office, continued to complain of pain and swelling.
7. On or about December 22, 2011, in an office visit, Respondent questioned if tooth #31 was the etiologic factor, prescribed an Azithromycin Pack, and advised planning for extraction of tooth #31 in a few days.

STATE OF VERMONT



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8. On or about December 24, 2011, J.W., in a telephone call to Respondent's office, complained of increased pain and swelling. J.W. was given an appointment on December 27, 2011.
9. On or about December 27, 2011, Respondent extracted tooth #31 and performed intra-oral and extra-oral Incision and Drainages with placement of several drains. Respondent did not submit a specimen for a Culture and Sensitivity ("C&S") testing.
10. On December 30, 2011, J.W. called Respondent's office with the complaint of worsening pain and swelling. Respondent advised J.W. to go to UVM Medical Center's Emergency Department. At the time of admission J.W.'s white blood count was 12+.
11. On or about December 31, 2011, a CT scan showed evidence of abscess and bony changes suggestive of Osteomyelitis or odontogenic infection. There is no indication in the medical record that Respondent acknowledged or considered the possibility of Osteomyelitis.
 - a. Essential standards of practice require that an oral surgeon document, consider, and care plan accordingly with regard to imaging findings suggestive of Osteomyelitis.
12. On or about December 31, 2011, Respondent performed multiple Incision and Drainages in the operating room while J.W. was under general anesthesia.
13. An Infectious Disease consult was requested by Respondent on January 5, 2012. The Infection Disease Physician recommended IV Clindamycin and Flagyl. Additionally, the Infection Disease Physician recommended that penicillin allergy testing be performed with the purpose of seeing if a penicillin antibiotic could be administered.
14. On January 5, 2012, while J.W. was admitted, Respondent ordered a penicillin allergy test as recommended by the Infection Disease Physician. The penicillin allergy test was not performed. Respondent rationale for not pursuing a penicillin allergy test after January 5, 2012, was that J.W. was improving clinically.
15. On January 6, 2012, Respondent elected to discharge J.W. from UVM Medical Center. After the decision to discharge J.W. another white blood count was performed, unbeknownst to Respondent. The white blood count was 11.24. Furthermore, J.W. required Dilaudid for pain management. Respondent did not recognize that J.W.'s condition was deteriorating prior to discharging him from UVM Medical Center. Respondent did not continue to consult with the Infection Control Department.
 - a. Essential standards of care require that a patient's entire condition be reviewed by an oral surgeon prior to discharge, and if areas of concern exist, the areas of concern are appropriately treated prior to discharge.

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16. On January 10, 2012, Respondent saw J.W. in his office. Respondent did not obtain a new panorex x-ray on January 10, 2012. He observed a finger-width oral opening and decreased swelling. Respondent recommended continued use of Clindamycin. Flagyl was not continued.
17. On January 11, 2012, J.W. called Respondent with the complaint of increased pain and swelling that extended across his chin to the opposite side. Respondent recommended the previous course of treatment and scheduled an appointment for January 13, 2012.
- a. Essential standards of practice require that appropriate care be provided when a report of a worsening condition is reported, particularly in complicated clinical cases where infection is a persistent and ongoing concern.
18. J.W. elected not to return to Respondent's office. He obtained a second opinion at the VA Hospital in White River Junction where he was diagnosed with a significant infectious process including severe Osteomyelitis. After he was initially stabilized, J.W. was transferred to the VA Hospital in Boston, Massachusetts where he had a major resection and reconstruction surgery for Osteomyelitis.

Violations

19. The acts, omissions and/or circumstances described above, constitute grounds for discipline. Respondent has committed unprofessional conduct because Respondent violated:
- a. 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, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice.

Understandings

20. 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 above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove these charges by a preponderance of the evidence if this matter went to a hearing and agrees to the conditions outlined below.
21. The Respondent has read and reviewed this document fully and agrees that it contains the entire agreement between the parties.

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22. This Stipulation and Consent Order is entered into voluntarily by the Respondent after the opportunity to consult with legal counsel. The Respondent has not been coerced by anyone into signing this Stipulation and Consent Order.
23. The Respondent is voluntarily waiving the right to a contested hearing before the Board and waives any right to appeal from this Stipulation and Consent Order.
24. The Respondent is of sound mind and is not under the influence of drugs or alcohol at the time of signature of this stipulation and consent order.
25. Respondent agrees that the Order set forth below may be entered by the Board.
26. The Respondent agrees to pay any and all costs associated with this Stipulation and Consent Order.

CONSENT ORDER

Based upon the above stipulation, it is **ORDERED AND ADJUDGED** as follows:

- A. The Board of Dental Examiners hereby **CONDITIONS** the Respondent's license to practice as a dentist commencing with the date of entry of this Stipulation and Consent Order. The conditions are as follows:
- i. Re-issue of License: Respondent shall be issued a license labeled "conditioned" for the conditional term specified.
 - ii. Length of Time Conditions Imposed: The conditions shall remain in place for a minimum of two years.
 - iii. Clinical Review:

Within thirty (30) days Respondent must obtain at least one pre-approved Medical Professional, either in infectious disease doctor or an oral surgeon, who shall acknowledge in writing review of this stipulation and consent order and their responsibility as a reviewer.

The Medical Professional(s) shall audit five (5) patient files every two months for a total of twenty four (24) months. A total of at least ~~one hundred twenty (120)~~ ^{sixty (60)} files shall be reviewed during the term of this order. The patient files selected must be clinically complex cases. Clinically complex is defined as the following:

- i. Oral surgery reconstruction with implants and bone grafts; or,
- ii. Post-operative infections whether minor or major including, but not limited to, infections involving significant areas of jawbone, and infections involving soft tissue swelling.

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The Medical Professional(s) shall be responsible for clinical review of the care received by the patients selected. The Medical Professionals must provide a written report, written on appropriate letterhead, stating that Respondent has met the essential standards of acceptable and prevailing practice.

iv. Coursework:

Within one (1) year Respondent shall complete two (2) Continuing Education courses through American Association of Oral and Maxillofacial Surgeons (AAOMS). The required courses are (1) Anatomy and surgery of Oral and Maxillofacial Infections and Microbiology, and (2) Antibiotic Therapy of Oral and Maxillofacial Infections. Respondent is required to show successful completion of these courses.

Within two (2) years Respondent must attend AAOMS's annual meeting.

v. Administrative Penalty: Within ninety (90) days of the date of entry, Respondent is required to pay an administrative penalty in the amount of one thousand five hundred (1500) dollars.

- B. Costs: The Respondent shall bear all costs of complying with this Consent Order.
- C. Violation of this Order: If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.
- D. Completion of Conditional License Period. After the conditions are completed Respondent must petition the Board to remove any and all conditions on the license. The Respondent must present proof that he has fully complied with the terms of this Order.
- E. Notwithstanding any provision above, the Respondent must continue to meet all Board of Dental Examiner requirements for maintaining a license, license renewal and license reinstatement.
- F. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).
- G. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

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AGREED TO:

Dated: 12/8/16

Dated: 12/2/16

APPROVED AS TO FORM:

Dated: 12/8/16

APPROVED AND SO ORDERED:

Dated: 12/14/16

Date of Entry: 12-16-16

STATE OF VERMONT
SECRETARY OF STATE

By: S. Lauren Hibbert
S. Lauren Hibbert
State Prosecuting Attorney

ALBERT S. HARDY
RESPONDENT

By: Albert S. Hardy
Albert S. Hardy

ATTORNEY FOR RESPONDENT

By: Peter B. Joslin, Esq.
Peter B. Joslin, Esq.

VERMONT BOARD OF DENTAL
EXAMINERS

By: Gerald R. Thibault
Vice Chairperson

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