

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

IN RE:)
ROGER S. HIRSCHBERG, D.D.S.) Docket No: 2011-41
License No. 016-0002263)

STIPULATION AND CONSENT ORDER

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney S. Lauren Hibbert and Roger S. Hirschberg, D.D.S., 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. §§767 and 809; the Administrative Rules of the Board of Dental Examiners ("RBDE"); and the Rules of the Office of Professional Regulation.

State's Alleged Facts

2. Respondent, Roger S. Hirschberg, is licensed as a dentist in the State of Vermont holding license number 016-0002263. This license was originally issued on or about November 8, 2007 and is currently set to expire on September 30, 2015.
3. At all times relevant, the Respondent was licensed and worked as a dentist from the offices of the Dental Clinic of the Community Health Centers of the Rutland Region (CHCRR) in Rutland, Vermont.
4. Another dentist for the CHCRR, Dr. J.G. DMD, filed a complaint with the Office of Professional Regulation alleging that the Respondent had provided substandard care to a number of patients at CHCRR.

PATIENT J.H.

5. At times J.H. was a patient of the Respondent.
6. On or about September 10, 2010 the Respondent placed a sedative filling in tooth # 9. The x-ray shows an abcess around the root tip and decay into the pulp chamber Tooth # 9 shows significant loss of tooth structure, a compromised crown root ration, and decay extending below the level of the supporting bone. These conditions create a very poor to very unfavorable prognosis. The sedative filling and root canal are inappropriate in this case. The poor crown root ratio and the fact that decay extends below the crest of the alveolar bone compromises any final restoration. Due to the severe loss of tooth structure for tooth #9 any attempt to save this tooth, without crown lengthening, which was not

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performed, was unacceptable patient care and a failure to conform the essential standards of acceptable and prevailing practice.

PATIENT E.W.

7. At times E.W. was a patient of the Respondent.
8. On or about December 22, 2009, the Respondent performed the final restoration crown on E.W.'s tooth #30. The post treatment radiograph dated May 5, 2010 of this restoration shows that the crown on tooth #30 was clinically sub standard due to significant overhangs on both the mesial and distal surfaces. The Respondent referred E.W. to an endodontist on or about September 15, 2010. It appears from the dental charts that tooth #30 was ultimately extracted on or about December 29, 2010.
9. Treatment for tooth # 30 was initiated without an appropriate clinical history and without a current pre treatment x-ray. This constitutes unacceptable patient care and a failure to conform the essential standards of acceptable and prevailing practice.

PATIENT C.W.

10. Two non-identical clinical notes were submitted by CHCRR for this patient. The printed radiographs were undated. Dr. J.G. alleged that tooth #8 was dark in color and that the Respondent had told C.W. that this was due to endodontic treatment even though endodontic treatment had never been performed and was not evident on the radiographs. The clinical note by the Respondent for October 11, 2010 states "#8—had endo—pt informed this may be difficult to do well".
11. The failure to keep adequate charting and records by CHCRR in respect to patient C.W., prevented an evaluation of Dr. J.G.'s allegations. This incomplete recordkeeping is a failure to conform the essential standards of acceptable and prevailing practice.

PATIENT V.W.

12. Two non-identical clinical and radiographic records were submitted by CHCRR for this patient. One had 24 films attached and the other had 21 films attached. This makes reconstruction of patient treatment and the Respondent's practice more difficult to evaluate.
13. The Respondent had an initial examination with V.W. on November 24, 2010. The treatment plan was based on five radiographs on that date. A complete set of radiographs was not taken. The Respondent noted "multiple carious teeth" at this time. Specifically noting eight incisal caries on teeth #5 - #12 and surface caries on teeth #2 and #3.

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14. Dr. J.G. took a full mouth radiograph on or about December 22, 2010. These radiographs revealed approximately thirty (30) additional carious surfaces not identified by the Respondent on November 24, 2010.
15. The failure of the Respondent to take a complete set of radiographs at the initial examination of a patient who had "multiple carious teeth", resulted in a failure to diagnose and treat the additional carious surfaces later identified by Dr. J.G. This constitutes unacceptable patient care and a failure to conform the essential standards of acceptable and prevailing practice.

ALL PATIENTS

16. State asserts in respect to all patients the Respondent engaged in inconsistent and incomplete record keeping. There was no periodontal charting for any patient. There were no referral slips for any patient. The radiographs were not labeled or identified appropriately or accurately. A comprehensive initial examination should include full mouth radiographs especially when multiple carious lesions are noted clinically. This was not done by the Respondent. This is unacceptable patient care and a failure to conform the essential standards of acceptable and prevailing practice.
17. Respondent denies the allegations, denies that he performed unacceptable patient care to his patients, and maintains that he conformed to the essential standards of acceptable and prevailing practice.

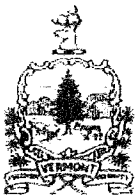
Violations

18. 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. 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); and
 - b. 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).

Understandings

19. 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

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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.

20. The Respondent has read and reviewed this document fully and agrees that it contains the entire agreement between the parties.
21. 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.
22. 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.
23. 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.
24. Respondent agrees that the Order set forth below may be entered by the Board.
25. 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:

1. Re-issue of License: Respondent shall be issued a license labeled "conditioned" for the conditional term specified.
2. Length of Time Conditions Imposed: The conditions shall remain in place for a minimum of eight (8) months.
3. Evaluator: Within sixty (60) days Respondent must obtain a pre-approved evaluator who shall audit 10 patient files for a total of eight (8) months. A total of at least eighty files shall be reviewed during the term of this order. This dentist shall be responsible for clinical evaluation of the patients selected and should review for accuracy, consistency, and completeness. Clinical evaluation criteria shall be substantially similar to those used by the Northeast Regional Board of Dental Examiners including evaluation for clinical competency in the areas of diagnosis and treatment planning, basic fillings, crowns, dentures and dental materials.

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4. Coursework: Within eight (8) months Respondent shall complete didactic course work through Oral Health Enrichment located in Cleveland, Ohio. The following topics are required:

- a. Treatment planning (10 hours):
- b. Record keeping (5 hours):
- c. Crown and Bridge and Restorative Dental Work (15 hours)

Following completion of the coursework, Respondent shall take and pass with a minimal eighty percent success rate written competency examinations in all three topics. The exams shall take place at the Office of Professional Regulation and the exam shall be provided by Oral Health Enrichment.

5. Costs: The Respondent shall bear all costs of complying with this Consent Order.
6. 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.
7. Completion of Conditional License Period. After the conditions are completed Respondent may 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.

B. 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.

C. 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).

D. 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:

5/13/14

STATE OF VERMONT
SECRETARY OF STATE

By:

A handwritten signature in black ink, appearing to read "S. Lauren Hibbert".

S. Lauren Hibbert
State Prosecuting Attorney

ROGER S. HIRSCHBERG, D.D.S..
RESPONDENT

Dated: 5/12/14

By: [Signature]
Roger S. Hirschberg, D.D.S.

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 5/13/14

By: [Signature]
Ralph Suozza, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF DENTAL
EXAMINERS

Dated: 5/14/14

By: [Signature]
Chairperson

Date of Entry: 5/15/14

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