

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: William J. McDonald
License No. 016-0000689

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Docket No. DE06-0904

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Board Members Participating:

Thomas Opsahl D.M.D., Chair
Gertrude M. Hodge
Linda Retchin, R.D.H.
Raymond N. McCandless
Wesley Baker, D.M.D.
Rena Katz Chernick, R.D.H.
John Lavoie, D.D.S.

Appearances:

for Petitioner, State of Vermont: Robert H. Backus,
for Respondent: Pro se

Presiding Officer: Larry S. Novins

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Board of Dental Examiners held a hearing in the above matter on June 14, 2006 at 26 Terrace Street in Montpelier, Vermont.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Background

The State alleges in its Specification of Charges that Dr. McDonald destroyed dental impressions when he should have retained them for seven years as it says he was required to by 3 V.S.A. § 129a(a)(9). The State alleges that failing to retain the impressions also violates 3 V.S.A. § 129a(a)(3)(violating state rules governing the practice), and 3 V.S.A. § 129a(b)(2)(failing to practice competently on a single occasion [by failing] to conform to the essential practice of the profession).

Findings of Fact

Based upon the evidence presented, the Board finds as follows:

1. Dr. McDonald is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. §§ 767 and 809, 3 V.S.A. §§ 129 and 129(a).
2. In August 2004 Dr. McDonald treated a patient, A.L. by taking dental impressions. From the impressions he created study models.
3. The purpose of the study models was to determine if A.L.'s dental malocclusion problem was severe enough to qualify her for Vermont State insurance benefits for possible orthodontia.
4. Dr. McDonald determined that A.L.'s problem would not qualify her for Vermont insurance benefits.
5. Based on his testimony, it does appear that his evaluation of A.L.'s status was reasonable.
6. Dr. McDonald did not send the model in for a Medicaid eligibility determination. He did not tell A.L.'s family that he had not submitted the study models for eligibility evaluation.
7. A.L.'s father called Dr. McDonald's office about the eligibility claim. He spoke to a staff member. His tone was hostile and verbally aggressive. The father's manner and attitude on the phone upset Dr. McDonald's staff. Dr. McDonald assured his staff that the family would not be returning to his office.
8. Dr. McDonald then told his staff to discard A.L.'s study models. He testified that he made that decision in anger, admitting that it was not the best way to handle the situation. His decision to discard the models was to ensure that the family would not return to his practice. It was an intentional act.
9. Dr. McDonald could have told the family to pursue the Medicaid eligibility claim without his assistance if they did not agree with his personal evaluation. Dr. McDonald did not offer A.L.'s parents the option of preserving the study models in case they wanted them for a Medicaid submission for eligibility.
10. A.L.'s parents later asked Dr. McDonald for the study models. His office informed the family that the study models had been discarded.
11. The study models in this case were taken for the purpose of diagnoses and communication with the patient and possibly for sending to Medicaid for eligibility evaluation. It was part of the treatment planning process. The models may not have been necessary to determine what treatment A.L. would receive. Dr. McDonald testified that after a couple of weeks or a month the models would not have been usable for treatment because A.L.'s mouth could change in that short a period of time.
12. Were another dentist were to treat A.L., even after only a couple of weeks, the study models in this case might not have been usable.
13. When A.L.'s parents asked for the study models, Dr. McDonald, through a staff person offered that he would make another model, and send it to the State. He also proposed that if the State did not extend dental benefits to A.L., he (McDonald) would expect the parents to pay for this second set of models.
14. Dr. McDonald does not keep all the study models created in his office. Ones which are used for specific treatment purposes are retained.
15. Dr. McDonald questions whether these study models, made for a limited purpose, can even be considered "records."

Conclusions of Law

In this case we are reviewing a situation where information which may have been of value to a patient was intentionally discarded. In some circumstances study models may become, depending on the circumstances a client record which must be retained. In others, they might not.

What is troubling in this case is Dr. McDonald's ordering that the study models be discarded because of his reaction to the telephone call from AL's father. Had he simply retained the study models for some "cooling off time," he could have given it to AL's family for whatever purposes they might wish to put it. Those purposes may have included their own attempt at a Medicaid evaluation.

Dr. McDonald effectively terminated his professional relationship with A.L.'s family by his decision to discard the study models. He acted in anger and discarded the recently created study models, which he knew the patient's parents may have wanted for seeking further treatment or to follow up or to submit their own Medicaid eligibility claim. Instead of keeping the study models until cooler minds prevailed, Dr. McDonald prevented A.L.'s family from obtaining the study models they believed they were entitled to. Dr. McDonald's actions in this case do not meet the essential standards of acceptable and prevailing practice.

We conclude that the State has proved by a preponderance of the evidence that Dr. McDonald violated Count III. We conclude that such action constitutes a failure to conform to the essential standards of acceptable and prevailing practice." 3 V.S.A. § 129a(b)(2).

Order

In Court I the State charged that Dr. McDonald failed to retain client records by destroying the study models. Because we conclude that Dr. McDonald's precipitous discarding of the study models violated the essential standards of acceptable and prevailing practice, we decline to determine whether and under what circumstances a study model might be considered a "client record" which must be retained for purposes of 3 V.S.A. § 129a(a)(9). Count I is **dismissed**.

The State's charge in Count II that Dr. McDonald violated 3 V.S.A. § 129a(a)(3) by violating the record retention statute 3 V.S.A. § 129a(a)(9) is redundant. It does not set forth an independent violation. Count II is **dismissed**.

We see Count IV, failing to give A.L.'s parents the option of taking possession of the study models before they were discarded, as a minor variation included implicitly within Count III. Thus, we decline to make a separate finding of unprofessional conduct. Count IV is **dismissed**.

We conclude that Dr. McDonald did violate Count III, as set forth above, 3 V.S.A. § 129a(b)(2). For this violation the Board issues a **warning**. This disciplinary action is to be included in Dr. McDonald's license record.

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Dental Examiners.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 26 Terrace Street, Montpelier, Vermont 05609-1101 within 30 days of the entry of this order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a. To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Dental Examiners

By: Thomas Opsahl DMD
Thomas Opsahl, D.M.D., Chair

Dated: 6/21/06

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6/26/06

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

IN RE:

WILLIAM J. McDONALD, D.M.D.

License No. 016-0000689

Docket No.: DE06-0904

AMENDED SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, William J. McDonald, D.M.D.:

Board Authority

1. The Board of Dental Examiners ("Board") has jurisdiction to investigate and adjudicate complaints of unprofessional conduct against dental assistants 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.

Facts

2. The Respondent, William J. McDonald, is licensed as a dentist by the State of Vermont under license number 016-0000689. The Respondent was originally licensed on May 1, 1980 and the Respondent's license is currently set to expire on September 30, 2007.
3. The Respondent practices as a dentist in Rutland, Vermont.
4. Sometime in August, 2004, Respondent took impressions of patient A.L.'s teeth to ascertain whether her dental problem was severe enough to make her eligible for insurance benefits from the State of Vermont.
5. After deciding that A.L.'s dental problem was not severe enough to qualify for State insurance benefits, Respondent had the impressions of her teeth destroyed.
6. Respondent did not present A.L.'s parents with the option of covering the expenses of the dental care themselves before destroying the impressions. Respondent advised them that he would make a second cast of A.L.'s teeth and send it to the State for a determination, but if the State refused to extend the benefits, they would be expected to pay for the second cast in addition to the first which had been destroyed.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Charges

COUNT I

Respondent has committed unprofessional conduct by destroying the impressions without retaining them for seven years as required by 3 V.S.A. § 129a(a)(9) (Failing to retain client records for a period of seven years, unless laws of the profession allow for a shorter retention period).

COUNT II

By violating 3 V.S.A. §129a(a)(9) Respondent has failed "to comply with state ... rules governing the practice of the profession thus committing unprofessional conduct in violation of 3 V.S.A. §129a(a)(3).

COUNT III

By destroying the impressions without retaining them for seven years as required by 3 V.S.A. § 129a(a)(9) Respondent has failed "to practice competently on a single occasion ... (by failing) ... to conform to the essential practice of the profession", thus committing unprofessional conduct in violation of 3 V.S.A. §129a(b)(2), since an essential practice of the profession is to conform to the rules and statutes of the profession.

COUNT IV

By destroying the impressions without first offering A.L.'s parents the chance to obtain them Respondent has failed "to practice competently on a single occasion ... (by failing) ... to conform to the essential practice of the profession", thus committing unprofessional conduct in violation of 3 V.S.A. §129a(b)(2).

Relief Requested

WHEREFORE, the Respondent's license should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

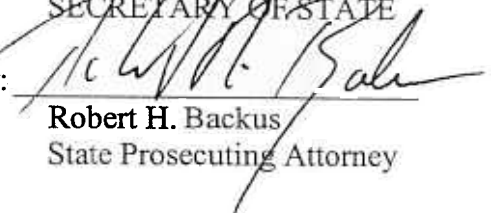
Dated at Montpelier, Vermont this Friday, May 05, 2006

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

STATE OF VERMONT
SECRETARY OF STATE

By: 

Robert H. Backus
State Prosecuting Attorney