

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: William J. McDonald, D.M.D.	}	
License No. 016-0000689	}	Docket No. DE 11-1204
	}	

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Board Members Participating:

Thomas Opsahl D.M.D. Vice-Chair
Gertrude M. Hodge
Linda Retchin R.D.H.
Wesley Baker D.M.D.
Richard A. Dickinson D.D.S.
Raymond N. McCandless
Rena Katz Chernick R.D.H.

Appearances:

for Petitioner, State of Vermont: Robert H. Backus, Esq.
for Respondent: Joseph W. Kozlik, Esq.

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 July 13, 2005 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. Dr. McDonald did not contest that he had violated the charge against him herein.

Background

The State alleged in its Specification of Charges that Dr. McDonald's license is currently under conditions pursuant to a Stipulation and Consent Order to which Dr. McDonald agreed and which was accepted by the Board on December 12, 2003. The order required that Dr. McDonald enroll and successfully complete the "Simulated Patient Treatment Clinical Exercise" as offered by NERB (North East Regional Board) "at the next opportunity."

The State further alleged that in July 2004 Dr. McDonald claimed a hardship and

therefore could not take the course. The Board at its August 11, 2004 meeting advised Dr. McDonald that he must take the examination. As of February, 2005 when the charge herein was filed, Dr. McDonald had yet to take the examination. The State alleged that Dr. McDonald failed to comply with the Board's order by not taking the examination. It requested that his license be disciplined.

Dr. McDonald's Answer admitted that he was subject to the Stipulation and Consent Order but denied that he claimed a hardship and could not take the course. He denied that he told a state investigator that he had missed the cut off date of October 31, 2004 by one week. Dr. McDonald's answer dated March 2, 2005 claimed that he was in complete compliance with the Stipulation.

On June 1, 2005 the State Amended its charges to add an allegation that Dr. McDonald had taken the required examination but received a failing score of 34 out of 100, that a passing score is 75 or better, and that Dr. McDonald, therefore had not "successfully" completed that examination.

On June 8, 2005 the parties submitted a Stipulation and Consent Order in which Dr. McDonald admitted he had failed to comply with an order of the Board. The parties agreed that the sanction for the violation would be a \$1,000.00 civil penalty. The Board rejected the Stipulation and Consent Order. The matter was continued for July 13, 2005 at which time Dr. McDonald was to appear with counsel. He did appear. The Board heard his testimony and received exhibits from him and from the State. The Board takes notice of its public records.

Findings of Fact

Based substantial evidence, the Board finds as follows:

1. This respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. § 809, 3 V.S.A. § 129(a).
2. On December 12, 2003 Dr. McDonald entered into an agreement entitled Stipulation and Consent Order in Docket Nos. DE 41-0401, DE15-0202, DE 16-0202, and DE24-0402 in which he admitted Unprofessional Conduct.
3. Dr. McDonald was represented by counsel at that proceeding.
4. Section (C)(d) of the order required Dr. McDonald to "enroll in and successfully complete the 'Simulated Patient Treatment Clinical Exercise' at the next opportunity."
5. The stipulated condition was felt to be reasonable and necessary given Dr. McDonald's stipulated unprofessional conduct. (inserting dentures that did not fit correctly, did not adequately chart treatment, verbally abusive and/or yelled at a patient, performing restorative work on a tooth without taking, reviewing and/or documenting pre-treatment x-rays, [3counts]).

6. In July 2004, seven months after entering the Stipulation and Consent Order, Dr. McDonald asked the Board to exempt him from the requirement of the examination. He argued that it would force him to close his office, cost him a substantial amount, and that because he did much of the work examined on a daily basis, the examination was not necessary.
7. Dr. McDonald came to Montpelier on August 11, 2004 to appear before the Board and ask that it strike the examination requirement. Among other things, he argued that the examination was not necessary because it tested the things he did almost daily in his practice.
8. At that August 11, 2004 meeting the Board determined that Dr. McDonald had not shown good cause to show that the Board should set aside provisions of the Stipulation. The Board denied Dr. McDonald's request. It issued an order to that effect which was mailed to him and his attorney on August 13, 2004.
9. Dr. McDonald mailed another letter dated October 6, 2004 to the Board (received October 11, 2004) again claiming hardship. "To be completely ingenuous, I am frightened by its cost." He contested the relationship between taking the examination and the unprofessional conduct he admitted to in his Stipulation and Consent Order. In the letter Dr. McDonald suggested that the Board review his treatment of patients.

Dr. McDonald also wrote in his October 6, 2004 letter, "When I received the stipulation I had but a few days to sign it. There was no possibility to learn of the details of the Simulated Clinical Exam from the Northeast Regional Board. *It was months before I received a packet of materials from them.*" (emphasis added).

11. Dr. McDonald missed the deadline to take the examination in October 2004. At the hearing Dr. McDonald blamed the receipt of the Board's October 26, 2004 response to his October 6 letter for missing the sign-up deadline.

Dr. McDonald offered no explanation of why he disregarded the Board's August 11, 2004 order and did not sign up for the Fall examination before the October deadline. His recitation of the chronology leading up to his missing the deadline to take the examination in October 2004 was less than persuasive.

13. Dr. McDonald did not take the examination at the "next opportunity" after the Stipulation and Consent Order was accepted by the Board.
14. Dr. McDonald has spent a significant amount of time and effort since July 2004 trying to convince the Board that he should not have to comply with the Stipulation to which he earlier agreed.

Dr. McDonald finally took the examination in April, 2005.

16. Dr. McDonald received a score of 34 out of 100, substantially below the line of 75 which is the lowest possible passing score on the examination.
17. Dr. McDonald explained to the Board the reasons he failed the exam, including a claim that he tried to obtain, but did not receive the preparation materials before the exam. (See quote from October 6, 2004 letter, above, indicating receipt of the materials from the examination providers.) Again, the Board finds Dr. McDonald's explanation less than persuasive.
18. Dr. McDonald did comply with the other conditions imposed upon him in the Stipulation and Consent Order.
19. Dr. McDonald testified that he has signed up to re-take the test on August 8, 2005.
20. Dr. McDonald admitted that he violated a Board Order by not taking the examination "at the next opportunity" after the December 2003 Stipulation was accepted by the Board.
21. Before December 2003 Dr. McDonald had two other disciplinary proceedings which resulted in findings of unprofessional conduct. One resulted in a suspension, the other a reprimand.

Conclusions of Law

Dr. McDonald violated the Stipulation and Consent Order of this Board. As of the date of this hearing has not "successfully completed the "Simulated Patient Treatment Clinical Exercise," the examination which tests the skills that Dr. McDonald said he used daily.

The order was adopted by the Board over a year and one half ago.

By his delaying tactics and blaming others Dr. McDonald has demonstrated a disregard for the Order to which he agreed to abide. At the hearing on July 13, 2005 Dr. McDonald still conveyed dismissive attitude about the examination requirement, though he said he would most certainly comply with it.

Compliance with Board orders is necessary for the proper function of the regulatory system. The public and licensees expect compliance. To protect the public health, safety and welfare the Board must require compliance with its orders. This goal must sometimes be achieved by use of the sanction of suspension.

For the Board to impose only a civil penalty in this case would diminish the seriousness of Dr. McDonald's conduct over the last 18 months. It would ignore Dr. McDonald's disciplinary history. A civil penalty alone would undermine the legitimacy and integrity of the Board regulatory process. For these reasons, the Board issues the following order:

Order

Dr. McDonald's license is hereby **Suspended** for 44 days. 30 of those days are held in abeyance as set forth below pending successful completion of the August examination.

14 consecutive days of the suspension shall be occur between the date of this order and September 1, 2005. Dr. McDonald shall inform the Board by August 21, 2005 the dates between which his suspension will occur.

Dr. McDonald shall execute a release so that the examination provider can inform the Prosecuting Attorney or the Board the results of his examination score.

The remaining 30 days of the suspension shall be "suspended" so long as Dr. McDonald passes the examination on August 8, 2005.

Examination Failure: If Dr. McDonald fails the August examination, the remaining 30 days of the suspension will go into effect 21 days from the date the scores are received by the prosecution, the Board or Dr. McDonald, which ever comes first. Dr. McDonald must within 48 hours of the beginning of the suspension surrender his license to the Board. If notice of a failing score comes to the prosecution or the Board first, the Board will convey notice of that fact to Doctor McDonald as soon as practicable.

If Dr. McDonald does not pass the August examination, The Board will reconvene this matter to determine what, if any, additional conditions may be necessary to protect the public health, safety, and welfare.

This decision does not preclude further disciplinary action on notice and opportunity to be heard for failure to comply with the Board's order.

Dr. McDonald is further ordered to pay to the State of Vermont a \$1,000.00 civil penalty. Payment shall be made within 90 days of this Order.

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. If a party wishes to request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Dental Examiners

By: Thomas Opsahl
Thomas Opsahl, Acting, Chair

Dated: 7/14/05

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 7/15/05

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

IN RE:)
WILLIAM J. MCDONALD, D.M.D.) **Docket No: DE11-1204**
Registration No.: 016-0000689)

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 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; and the Rules of the Office of Professional Regulation.

Facts

2. The Respondent, William J. McDonald, is licensed in the State of Vermont as a dentist under license number 016-0000689, which is currently set to expire on September 30, 2005.

3. The Respondent's license is currently conditioned pursuant to a Stipulation and Consent Order entered by the Board of Dental Examiners on December 12, 2003. The Order requires, among other things, that the Respondent enroll in and successfully complete the "Simulated Patient Treatment Clinical Exercise" as offered by NERB (North East Regional Board) at the next opportunity. (See Attachment A).

4. In July 2004, the Respondent advised the Board that he had a hardship and could not take the course. The Board advised the Respondent on August 11, 2004 that he must take the course at the next session. The Respondent did not take the course.

5. On January 18, 2005, the Respondent advised State Investigator Brenda Tetrault that he applied to take the course and he missed the cut off date of October 31, 2004 by one week.

Charges

6. The above acts, omissions and/or circumstances constitute grounds for discipline because Respondent has committed unprofessional conduct

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

pursuant to:

- (i) 3 V.S.A. §129a(a)(4) (Failing to comply with an order of the board or violating any term or condition of a license restricted by the board).

Relief Requested

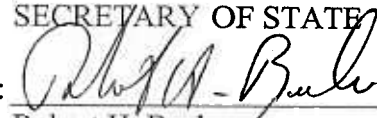
WHEREFORE, the Respondent's license should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 3rd day of February 2005

STATE OF VERMONT

SECRETARY OF STATE

By:


Robert H. Backus

State Prosecuting Attorney

de.mcdonald.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

STATE OF VERMONT
BOARD OF DENTAL EXAMINERS

IN RE:	)	Docket Nos. DE41-0401
William J. McDonald	)	DE15-0202
License No.: 16-0689	)	DE16-0202
	)	DE24-0402

STIPULATION AND CONSENT ORDER

AUTHORITY OF THE BOARD

- 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 Board's Administrative Rules and the Office of Professional Regulation's Rules.

STIPULATION AS TO FACTS

- 2) Respondent enters a plea of no contest. In so doing, he agrees that if this case were to proceed to hearing, the Board could find, based on the evidence, the following facts.
- 3) Respondent William J. McDonald, who has offices in Rutland and/or Woodstock, Vermont, is a dentist holding license number 16-0689, issued by the State of Vermont. By way of history, Respondent's license was originally issued on about May 1, 1980;
- 4) On about April 12, 2002, Respondent was treating patient "J.R." when she bit his finger and he reacted. Respondent did not adequately document the incident. J.R. has special needs.
- 5) On about October 17, 2000, Respondent treated patient "J.L.", including inserting upper dentures that J.L. complained did not fit correctly.
- 6) On about October 17, 2000, Respondent did not adequately chart the treatment described in the preceding paragraph.
- 7) At a time, or times, including about November 9, 2000, Respondent was verbally abusive to and/or yelled at patient "J.L."
- 8) On about August 30, 2000, Respondent performed restorative work on tooth #4

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Attachment A

of patient "M.W." Respondent did so without taking, reviewing and/or documenting pre-treatment x-rays.

- 9) On about September 6, 2000, Respondent performed restorative work on M.W.'s tooth #5. Respondent did so without taking, reviewing and or documenting pre-treatment x-rays.
- 10) On about July 20, 2001, Respondent performed a reconstruction on tooth #10 of patient "J.W." Respondent did so without taking, reviewing and or documenting pre-treatment x-rays.

UNDERSTANDINGS

- 11) Respondent understands that the Board must review and accept the terms of the Consent Order. If the Board rejects any portion the entire Stipulation and Consent Order shall be void.
- 12) Respondent has reviewed the entire document and agrees that it sets out the entire agreement of the parties, freely and voluntarily entered into.
- 13) Respondent waives any notification period and agrees to have this document reviewed by the Board during its next meeting. Respondent specifically waives any claim that presentation of this stipulation to the Board has prejudiced his right to a fair and impartial hearing should the Board reject this stipulation.
- 14) Respondent voluntarily waives his right to a contested hearing before the Board.
- 15) Respondent voluntarily waives his right to appeal the decision and order of the Board entered under this stipulation.

ORDER

- A) The Board adopts the facts as set out above and based on them it finds that Respondent has committed unprofessional conduct in violation of 26 V.S.A. §809(a)(12) (consistent use of unaccepted procedures which have a consistent detrimental effect upon patients).
- B) The Respondent's license is reprimanded.
- C) The Respondent's license is conditioned until the following conditions have been fulfilled:

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

- a. Respondent has sixty days from the entry of this order to write letters of apology to J.R. and J.L. apologizing for making them feel uncomfortable while in his care.
- b. Respondent has sixty days from the entry of this order to submit to the Board the title of a course of at least three hours which addresses issues around dealing with special needs patients. The Board may approve or disapprove the course. If it disapproves that course it may either specify a course or give Respondent a second sixty days to find a course it approves of. If Respondent is unable to find an appropriate course within the sixty he may submit to the board the name of a course dealing in general with appropriate patient interaction along with details of his efforts to find a course. The Board will respond within sixty days either approving of the course or naming a specific course for Respondent to take.
- c. The course set out in paragraph b. must be completed within one year from the entry of this order.
- d. Respondent must enroll in and successfully complete the "Simulated Patient Treatment Clinical Exercise" as offered by NERB (North East Regional Board) at the next opportunity.
- e. Respondent is to make a treatment plan for all new patients and all existing patients without one. Treatment plans for existing patients shall be completed as needed for those patients and in conformity with the standards of the profession.
- f. All patients eligible for medicaid and medicare will be shown clearly what portion of the treatment plan will be paid by medicare or medicaid and what portion the patient will be liable for.
- g. Respondent shall, within sixty days of the entry of this order, submit to the Board the name of a dentist for the Board's approval. That dentist will review Respondent's records and practice as follows.
- h. Beginning ninety days from the entry of this order, but no less than thirty days after the Board approves a dentist under paragraph g., the Respondent shall supply to the dentist the files of ten new patients. The dentist will review the files to assure that proper treatment plans have been drawn up and patients have properly been informed of what medicare and medicaid will and will not cover in those plans. The dentist will make a report which shall be submitted to Respondent and to the Board. The dentist will include in the report recommendations (as needed) to assure that the treatment plans meet the standards of the profession and Respondent shall implement those recommendations.
- i. These reports shall continue to be made until eight reports have been made. The reports shall be made every quarter. Each report is due to the board no less than eighty days and no more than one hundred days after the previous report.
- j. Following the final report the Board has thirty days to review that report at which time, if all other requirements of this order have been met, the Board shall remove the conditions from the Respondent's license.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Robert H. Backus
Prosecuting Attorney

12/10/03

William McDonald
Respondent

Larry Myer
Attorney for Respondent

APPROVED AND SO ORDERED:

Board of Dental Examiners

Dated: 12-10-03

by: John Wright
Chairperson

Date of entry: 12/12/03