

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: Fred W. Salvatoriello	}	
License No. 016-0001165	}	Docket No.DE15-1203

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Board Members Participating:
Randall Miller, D.D.S.
Gertrude Hodge
Richard Dickinson, D.D.S.
Raymond McCandless
Reena Katz Chernick, R.D.H.
John Langfeldt, 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 November 9, 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.

Background

The State alleges in its specification of charges that Dr. Salvatoriello failed to practice competently in the orthodontic treatment of a patient S.M.

Findings of Fact

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

- 1 This respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. §§ 767 and 809, V.S.A. §§ 129 and 129(a).
2. Among the witnesses who testified at the hearing was Dr. Richard R. Reed, a orthodontist

- practicing Burlington. He testified for the State. He has practiced orthodontics since 1967. He has taught at the University of Vermont School of Medicine and published scholarly articles. The Board found his testimony credible and helpful.
- 3 Dr. Salvatoriello has been in practice for approximately 30 years and has no history of disciplinary action.
- 4 Dr. Salvatoriello, practicing in Woodstock, Vermont treated a patient, S.M. between 1999 and 2002.
- 5 In September 1999 Dr. Salvatoriello's now ex-partner fitted S.M. with braces to correct spacing problems, mis-alignment and cross bite.
- 6 S.M. was Dr. Salvatoriello's patient thereafter.
- 7 In February 2002 Dr. Salvatoriello removed S.M.'s braces.
- 8 Standard competent practice requires some measurement between the time braces are installed and removed, even if only right before the braces are removed.
- 9 During the two years S.M. wore braces, Dr. Salvatoriello had no reliable basis for knowing that the braces were doing what they were intended to do.
- 10 Before removing the braces, Dr. Salvatoriello did not first remove only the bands and create a study model.
- Before removing the braces, Dr. Salvatoriello did not x-ray or otherwise measure S.M. to see if the braces had worked as hoped.
- 12 At no time before removing S.M.'s braces did Dr. Salvatoriello use a model to be sure that the teeth were properly positioned.
- 13 Had he done so, Dr. Salvatoriello would have seen that at the time the braces were removed, S.M. still had a very deep bite, she still had a cross bite, and the mid line alignment was off.
- 14 By mere visual observation Dr. Salvatoriello should have seen that S.M.'s mid-line alignment was "off." S.M. did.
- 15 Because he had no accurate measurements, Dr. Salvatoriello did not know that S.M. was not ready for a retainer, or that her needs would not be satisfied by the appliance he prescribed.
- 16 Had Dr. Salvatoriello measured, he would have seen that three teeth were not in the proper position. Some needed as much as six millimeters movement to be in the proper position.
- 17 He misjudged the alignment of her teeth.
- 18 The braces should not have come off in February 2002.
- 19 S.M.'s teeth #20, 22, and 27 had not been properly positioned by the braces.
- 20 In February 2002 Dr. Salvatoriello prescribed a positioner type retention appliance to be worn by S.M. for a minimum of four hours per day at fifteen minute intervals.
- 21 Dr. Salvatoriello said that he had the retention device made without first taking a study model. Rather than using a model or impression, Dr. Salvatoriello said he took measurements of the patient for the device. That assertion was, to say the least, very surprising. It is at odds with known accepted practice.
- 22 The device used on S.M., as described by Dr. Salvatoriello, is designed only to move teeth about one millimeter. It was insufficient for S.M.'s teeth which needed a minimum of three millimeters of movement.
- 23 S.M. had a job as a human resources director which made wearing the device

- problematic.
24. S.M. did not wear the device according to the directions she received from Dr. Salvatoriello and his staff.
 25. S.M. told Dr. Salvatoriello's staff that she wore the device a total of only fifteen minutes per day, not in fifteen minute increments for a total of four hours per day.
 26. S.M. was not pleased with the treatment she received from Dr. Salvatoriello.
 27. The patient, S.M. complained to Dr. Salvatoriello. She sent him three certified letters.
 28. Dr. Salvatoriello claimed he did not receive the certified letters. The Board finds that assertion less than credible.
 29. S.M. had moved from the area. Her new home was approximately a two hour drive away.
 30. She stopped going to Dr. Salvatoriello for treatment after her December 2002 office visit.
 31. S.M. did not immediately seek additional orthodontic treatment.
 32. The X-rays and a study from two years after the braces were removed showed that her teeth were not near the proper position.
 33. Out of position teeth may be expected to move somewhat with no braces or retainer, but not to the extent seen in the x-rays taken approximately two years after the braces were removed.
 34. Dr. Salvatoriello blamed S.M.'s failure to follow instructions and the period of no treatment for her misaligned and out of proper position teeth.
 35. That position is not credible or consistent with the exhibits.
 36. S.M.'s teeth were out of position and misaligned because the braces she received in 1999 which Dr. Salvatoriello removed in 2002 had not done their job.
 37. While he was still treating S.M., Dr. Salvatoriello should have continued and possibly re-adjusted S.M.'s braces until they made the needed corrections.
 38. S.M.'s teeth, two years after the braces were removed, show at least one tooth in almost the same position it was in before the braces were installed.
 39. S.M.'s buccal cross bite of tooth #2 was never corrected during Dr. Salvatoriello's orthodontic treatment. It appeared worse in 2002 than it was in 1999.
 40. At no time between 1999 and obtaining follow up treatment from another orthodontist were S.M.'s teeth properly positioned.
 41. S.M.'s teeth did not move from a properly aligned position back to almost the original 1999 position. They were not properly aligned when the braces were removed.
 42. The positioner Dr. Salvatoriello used on S.M. is of the variety which has not been commonly used for 25 to 30 years. He testified that he uses it frequently.
 43. The positioner device Dr. Salvatoriello employed did not, and could not, correct the cross bite or the improper tooth positions found in the paragraphs above. It was capable of moving her teeth only one millimeter. The teeth needed more movement to put them in the proper position.
 44. The positioner was not the proper device to correct S.M.'s teeth positioning.

Conclusions of Law

The prosecution has proved by a preponderance of the evidence that Dr. Salvatoriello failed to practice competently in the treatment of patient S.M. 3 V.S.A. § 129a(b). This is unprofessional conduct. "A 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 or client care; or
 - (2) failure to conform to the essential standards of acceptable and prevailing practice.
- 3 V.S.A. § 129a(b).

Dr. Salvatoriello did not appropriately monitor S.M. before her braces were removed. He should have known that the positioner he used would not meet S.M.'s needs.

Dr. Salvatoriello's care of patient S.M. did not conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.

The Board concludes that the charge of violating 3 V.S.A. § 129a(a)(3)(Failing to comply with the provisions of state statutes or rules governing the practice of the profession) is merely a repetition of its other charged violation. We do not find a violation of that statute alone.

The State did not charge that the device S.M. was to wear after her braces were removed was improperly made. For that reason, we note only that Dr. Salvatoriello's testimony about how he could fashion the orthodontic device S.M. was to wear without making a study model first was unclear. Questions about this process do not affect these Conclusions or the Order below.

Order

The following conditions are necessary to protect the public health, safety, and welfare. The conditions are designed to assure that the errors seen in this case are corrected. The civil penalty is necessary for the purposes underscoring the seriousness of the failures seen and to deter Dr. Salvatoriello and others from making them in the future.

- Within five (5) days of the date of entry of this Consent Order, Dr. Salvatoriello shall submit his license to the Board of Dental Examiners for a re-issued license labeled "conditioned."

- Dr. Salvatoriello shall have a dentist, pre-approved by the Board, monitor his practice by reviewing 5 files every three months to ensure that he is appropriately treating patients. The reviewing dentist shall acknowledge in writing that he or she has reviewed the Findings of Fact, Conclusions of Law and this Order. The monitoring dentist will determine which case files to review. Of the five files reviewed, one file should be of a patient who has a Class II deep bite. Among other things, the monitor shall review case files to see that the issues presented in this case are satisfactorily addressed. The monitor shall provide a quarterly report to the Board outlining his or her observations. The office may provide the monitor examples of similar reports from other cases for guidance.

This condition shall remain until the Board is satisfied that the reports show that Dr. Salvatoriello is meeting acceptable standards, but in no event for less than one year. At that time Dr. Salvatoriello may petition the Board for removal of this condition.

● Dr. Salvatoriello shall, within one year of the entry date of this order, successfully complete a 2 day course, pre-approved by the Board, on the subject of orthodontic diagnosis and treatment planning.

● Dr. Salvatoriello shall pay through the office, within 90 days, a civil penalty, payable to the State of Vermont in the amount of \$1,000.00.

● All costs of compliance with this order shall be borne by Dr. Salvatoriello.

● If Dr. Salvatoriello violates the terms of this Order in any respect, the Board, after giving him notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against him during the term of this Order, the conditional license period shall be extended until the matter is final.

APPEAL RIGHTS

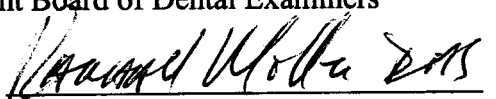
This is a final administrative determination by the Vermont Board of Dental Examiners.

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:


Randall Miller, D.D.S., acting Chair

Dated:

11/24/05

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY:

11/29/05

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

IN RE:)
FRED W. SALVATORIELLO, D.M.D.) **Docket No: DE15-1203**
License No.: 016-0001165)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Fred. W. Salvatoriello, 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.

Statement of Facts

2. The Respondent, Fred W. Salvatoriello, is licensed as a dentist by the State of Vermont under license number 016-0001165. The Respondent was originally licensed on August 14, 1991 and the Respondent's license is currently set to expire on September 30, 2005.

3. The Respondent maintains orthodontic dental practices in Vermont in the towns of Woodstock and Springfield.

4. In February 2002, in completion of the active portion of orthodontic treatment, the Respondent removed braces from patient S.M. He then prescribed S.M. a positioner type retention appliance which was to be worn for a minimum of four hours per day at fifteen minute intervals.

5. A review of S.M.'s dental records indicate that S.M.'s teeth #20, #22, and #27 were not properly positioned, which contributed to the spacing observed following the removal of the braces. There was also a buccal crossbite of tooth #2 that was never corrected during treatment. Neither of these problems would be corrected by wearing the positioner type retention appliance prescribed to S.M. by the Respondent.

Charges

6. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondent violated:

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

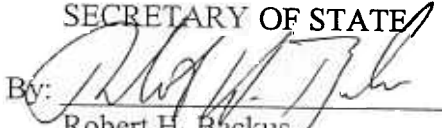
- i. 3 V.S.A. §129a(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession); and
- ii. 3 V.S.A. §129a(b) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct. Failure to practice competently includes performance of unsafe or unacceptable patient or client care, or failure to conform to the essential standards of acceptable and prevailing practice).

Relief Requested

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

Dated at Montpelier, Vermont this 9th day of December 2004.

STATE OF VERMONT
SECRETARY OF STATE

By: 

Robert H. Backus
State Prosecuting Attorney

de.salvatoriello.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
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