

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: Omaima Samain, D.D.S.

License No. 016-0002144

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Docket No. DE01-0903

Appearances:

Petitioner, State of Vermont: Robert H. Backus

Respondent: did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board of Dental Examiners held a hearing on the above matter on November 9, 2005 at the Redstone Building 26 Terrace St. in Montpelier, Vermont. The Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, Chapter 13 of Title 26 and the Administrative Rules of the Board of Dental Examiners and the Office of Professional Regulation.
2. The Respondent was sent notice of the Charges against her post-marked September 20, 2005, 23 counts, by certified mail to her at her last known address.
3. Stamps on the envelope indicate that the certified mail was not claimed. The return date was October 3, 2005.
4. Notice of the default hearing scheduled for November 9, 2005 was mailed to that same address by certified mail on September 26, 2005.
5. On October 1, 2003, during the investigative phase of the case, Kirsten A. Beske, an attorney in Brattleboro, Vermont entered an appearance on behalf of Dr. Samain.
6. On October 13, 2005 Kirsten A. Beske filed a Request for Withdrawal of Appearance. The letter said she was unable to contact Dr. Samain at her last known telephone number, last known cell phone number, last known address, last known employer and through internet searches. The Request was granted on November 1, 2005.
7. The Respondent has not answered the charges against her.
5. Upon hearing the State's presentation and taking notice of its own file, the Board found the Respondent to be in default. The allegations contained in the State's specification of charges dated September 15, 2005 (copy attached) are therefore treated as the facts on which the Board's order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

The Respondent has received constructive notice of the charges against her as indicated by the Board's file and the State's presentation. Because the Respondent has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in the default hearing held pursuant to 3 V.S.A. §809(d), that the Respondent has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

In accordance with the above findings of fact and conclusions of law, the license of the Respondent is hereby **suspended indefinitely**, effective as of the date of the hearing. Should Dr. Samain request reinstatement, the Board will at that time determine what, if any conditions should attend her reinstatement.

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.

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

Date November 9, 2005

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/16/05

IN RE: OMAIMA SAMAIN) Docket No. DE01-0903
License No.:016-0002144)

Board Authority

- STATE OF VERMONT



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Statement of Facts

7. Omaina Samain (the "Respondent") of Brattleboro, Vermont, is a Dentist holding license number 016-0002144 issued by the State of Vermont.
8. Respondent's license was originally issued on September 11, 2002 and is currently set to expire on September 30, 2005.
9. At all times relevant, Respondent's place of employment was at Estey Dental Center in Brattleboro, Vermont.

Charges

Count 1

10. At all times relevant A.A. was eight years old and a client of Estey Dental Center. On June 6, 2003 Respondent treated A.A. Respondent's notes in the client chart show that she filled cavities in tooth **S**.
11. Billing record from Estey Dental Center show that A.A. was billed \$105.00 for the work performed.
12. Radiographs taken February 25, 2003 show that A.A. did not have tooth **S**.
13. By billing for work which was not done Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(1) (Fraudulent ... use of a license). Or, in the alternative, committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 2

14. At all times relevant K.A. was a thirteen year old patient of Estey Dental Center.
15. On November 27, 2002, Respondent treated K.A. by putting composite fillings in teeth numbers 2,3,28, and 31.
16. On January 10, 2003 Respondent treated K.A. by putting composite fillings in teeth numbers 10, 18, and 20.

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17. On April 10, 2003 the first radiographs of K.A. were taken. These radiographs showed that decay was left on teeth 3, 18, and 20.
18. For each of the seven teeth which were filled before radiographs were taken Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
19. For each of the three teeth from which Respondent failed to remove all the decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 3

20. At all relevant times A.B. was a patient at Estey Dental Center.
21. February 4, 2003 a radiograph was taken. This radiograph shows decay on teeth 2, 3, and 4. Tooth 4 was extracted that day.
22. On February 4, 2003 Respondent charted decay on teeth numbers 2 (OL), 3 (OLM), 4 (extracted), 10 (F), 14 (MOL), 15 (OLDF), 17 (extracted), 27 (F), 28 (F), 29 (F), 30 (MOL) and 31 (OB). Except for the extracted teeth the chart shows that a composite filling was the necessary work for each tooth.
23. On March 18, 2003 Respondent performed a large restoration on tooth 3.
24. On March 19, 2003 Respondent performed restorations on teeth 14 and 15.
25. On April 15, 2003 Respondent performed restorations on teeth 27, 28, 29, and 30.
26. The radiograph of February 4, 2003 does not show teeth 14 and 15.
27. On March 19, 2003 Respondent caused A.B. to be billed for a four surface amalgam (FDOL) on tooth 15.
28. On September 25, 2003 radiographs of A.B. were taken. These radiographs revealed that :
 - (a) No work was ever done on tooth 2.

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- (b) Decay was left under the distal part of the restoration on tooth 3.
- (c) Decay was left under the restoration of tooth 14.
- (d) Decay was left under the restoration on tooth 15.
- (e) Despite billing for a four surface amalgam on tooth 15 (FDOL) Respondent never performed the work on the distal surface.
- (f) Decay was left on tooth 30.

29. For each each of the two teeth which were filled before radiographs were taken Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

30. For each of the four teeth from which Respondent failed to remove all the decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

31. By billing for work which was not done on tooth 15 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(1) (Fraudulent ... use of a license).

Count 4

32. At all times relevant K.B. was a patient of Estey Dental Center, about sixteen years old.

33. On February 19, 2003 a full set of radiographs was taken of K.B. at Estey Dental Center.

34. On February 26, 2003 K.B. was examined by Respondent and Respondent reviewed the radiographs. Respondent prepared K.B.'s "Diagnosis and Treatment Plan". In that plan she diagnosed and recommended treatment as follows: tooth #2 (OL), #3 (OL), #4 (O), #8 (DFML), #9 (MLF), #11 (MF), #14 (OL), #15 (OL), #18 (OB), #19 (OB), #29 (O), #30 (OB), #31 (OB), #19 (B), composites for all these teeth; and #13(DO), amalgam; and #1, #16, #17, and 32, extraction.

35. On February 27, 2003 Respondent did restoration on teeth #'s 2, 3, 4, 30, and 31.

36. On March 19, 2003 Respondent did restorations on teeth #'s 8, 9, and 11.

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37. On March 20, 2003 Respondent performed restorations on teeth #'s 14, 15, 18, and 19. This work was all billed for.
38. On April 17, 2003 Respondent performed restorations on teeth #'s 13, 19, and 29. The work on tooth 19 was a partial redoing of the work done on March 20th. This work was billed for.
39. On August 19, 2003 radiographs of K.B. were taken
40. An examination of the radiographs taken on February 19, 2003 shows that there was decay on teeth #'s 6, 7, and 10 which Respondent failed to diagnosis and note.
41. An examination of the radiographs made on August 19, 2003 reveals that respondent left decay under the restoration on tooth #2, under the restoration on #3, under the restoration on #8, under the restoration on #9 (and did not do the mesial portion of the work on that tooth), under the restoration on #14, under the restoration on #15, and on #18 and #19.
42. For each of the seven teeth from which Respondent failed to remove all the decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice
43. By billing a second time for the work which she had to redo on tooth #19 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
44. For each of the three teeth (#'s 6, 7, and 10) for which she failed to diagnose, or, in the alternative, to chart, decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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Count 5

45. At all times relevant C.B. was a patient of Estey Dental Center
46. On February 18, 2003 radiographs of C.B. were taken, including a panoramic xray.

47. On March 13, 2003 Respondent examined C.B. and prepared a "Diagnosis and Treatment Plan" for C.B.
48. That plan made the following diagnoses and recommendations; tooth #2 (O), #3 (O), #6 (ML), #7 (FMDL), #8 (MFDL), #9 (MFDL), #10 (FD), #11 (MF), #14(O), #15 (O), #18 (BO), #19 (DOL), #29 (O), #30 (O), #31 (O); composites were recommended for all teeth.
49. The panoramic xray of February 18, 2003 shows mesial decay on tooth #22 and tooth #23. This was not charted. This finding should have caused Respondent to order periapicals of the lower anterior teeth.
50. On March 13, 2003 Respondent performed restorations on teeth #'s 4, 6, 10, and 11.
51. On March 19, 2003 Respondent performed restorations on teeth #'s 7, 8, and 9.
52. On April 23, 2003 Respondent performed restorations on teeth #'s 14, 15, 18, and 19.
53. On April 29, 2003 Respondent performed restorations on teeth #'s 2, 3, 29, 30, and 31.
54. Radiographs were taken of C.B. on August 19, 2003. Examination of these radiographs reveals that Respondent left decay under the restorations on the following teeth, #7, #8, #10, #11, #19, and #30, and that decay was left on tooth #9.
55. Examination of the radiographs of August 19, 2003 reveals that decay on tooth #9, mesial (which was diagnosed) was missed when Respondent worked on that tooth.
56. For each of the seven teeth from which Respondent failed to remove all the decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
57. For each of the two teeth (#22 and #23) for which Respondent failed to diagnose decay or, in the alternative, to chart decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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58. For each of the two teeth (#22 and #23) for which Respondent failed to take periappicals, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 6

59. At all times relevant Ch.B. was a patient of Estey Dental Center.
60. On February 19, 2003 radiographs, including bitewings and a pantograph were taken of Ch.B.
61. On March 18, 2003 Respondent meet with Ch.B. and prepared a "Diagnosis and Treatment Plan" for her.
62. This plan made the following diagnoses and treatment recommendations for composites restorations for tooth: #2 (O), #3 (OL), #14 (OL), #15 (OL), #18 (OB), #19 (OB), #30 (OB) and #31 (OB).
63. The radiographs taken on February 19, 2003 show that there was decay on the mesial of tooth #4 and on the distal of tooth #5. This decay was not charted.
64. On March 18, 2003 Respondent performed restorations on teeth #'s 2, 3, 14, 15, 18, 19, 30, and 31.
65. Bitewings taken on August 19, 2003 show that Respondent left decay under the restorations of teeth numbers 3, 14, 19, and 30. In addition, a clinical examination on August 19, 2003 found decay under the restoration on tooth #18.
66. For each of the five teeth from which Respondent failed to remove all the decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
67. For each of the two teeth for which Respondent failed to diagnose decay or, in the alternative, to chart decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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Count 7

68. At all times relevant K.C. was a patient of Estey Dental Center.
69. On February 12, 2003 radiographs of K.C. were taken. These consisted of half of a full mouth series.
70. On February 28, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for K.C.
71. This plan made the following diagnoses and treatment recommendations; amalgam restorations on tooth #2 (O), #3 (O), #15 (DOFL), #31 (O), #28 (DO), #29 (MO); composite restorations on tooth #14 (OL), #12 (OB), #22 (F), #25 (DFL); vitrabond restorations on tooth #27 (FML), #30 (O); root canal therapy on tooth #26; and, extraction of teeth #'s 1,16,17, and 32.
72. On April 9, 2003 Respondent performed root canal therapy on tooth #26.
73. On June 10, 2003 Respondent performed restorations on teeth #'s 28 and 29.
74. Double bite wing radiographs were taken of K.C. on August 25, 2003. These radiographs showed that the root canal on tooth #26 was 4mm short; that the distal restoration on tooth #28 was not large enough; and that the mesial restoration on tooth #29 was too big and overhanging.
75. Respondent never caused a post operative radiograph of the root canal on tooth #26 to be made.
76. The radiographs taken on February 12, 2003 show decay on tooth #11 (D), #5 (D), #23 (D), #25 (MO), and #24 (D), that was not charted on the "Diagnosis and Therapy Plan" by Respondent and that Respondent never worked on.
77. For each tooth (#'s 28 and 29) that Respondent failed to fill properly Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
78. For each of the five teeth for which Respondent failed to diagnose decay or, in the alternative, to chart decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by

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failing) to conform to the essential standards of acceptable and prevailing practice).

79. For each of, failing to take a post operative radiograph of the root canal on tooth #26, and leaving the root canal 4mm short on the same tooth, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 8

80. At all times relevant M.C. was a patient at Estey Dental Center.
81. At all times relevant M.C. was fifteen years old.
82. On March 25, 2003 Respondent had M.C. sign an informed consent form for endodontic treatment. At no time did Respondent discuss informed consent issues with M.C.'s parent/guardian.
83. In presenting the informed consent form to a minor Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 9

84. At all times relevant J.F-P. was a patient of Estey Dental Center.
85. On June 2, 2003 radiographs were taken of J.F-P.
86. On June 19, 2003 Respondent made a comprehensive oral evaluation of J.F-P. and prepared a "Diagnosis and Treatment Plan".
87. In the plan Respondent charted decay on J.F-P's teeth as follows; tooth #2 (O), #3 (O), #15 (O), #31 (BMO), #13 (DO), #19 (MOD), #20, (DO), #29 (DO), and #30 (MODB).
88. A radiographic analysis with a loop shows that Respondent failed to diagnose, or, in the alternative, to chart, decay on tooth #2 (M), #3 (M), #4 (MOD), #5 (DO), #13 (M), #14 (MOD), #15 (MD), #18 (MO), #28 (DO), #29 (M)

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89. For each of the ten teeth for which Respondent failed to diagnose decay or, in the alternative, to chart decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 10

90. At all times relevant D.H. was a 13 year old patient at Estey Dental Center.
91. On January 8, 2003 bitewings were taken of D.H.
92. On February 2, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for D.H.
93. This plan charted (*inter alia*) decay on tooth #1 (OL) and charted tooth #30 but did not indicate what work, if any, needed to be performed on that tooth. The plan also called for a crown and buildup on tooth #19.
94. Bitewings were also made on September 18, 2003.
95. Examination of the radiographs of January 8, 2003 show that tooth #30 was broken down with active decay. Respondent did not chart this decay nor did she perform the needed work on this tooth. Examination of the radiographs of September 18, 2003 shows that the tooth by then needed root canal therapy.
96. Respondent performed the work for the crown of tooth #19 on February 24, 2003 and placed the crown on March 17, 2003. Examination of the radiographs shows that the crown was not needed on this patient.
97. The work Respondent charted for tooth #1 was actually performed on tooth #2.
98. By failing to properly diagnose, or in the alternative, to chart the decay on tooth #30 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
99. By failing to perform the clearly needed work on tooth #30 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2)

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(Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

100. By setting a crown which was unneeded Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
101. By failing to properly chart the work that was needed on tooth #2, or, in the alternative, performing unneeded work on tooth #2, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 11

102. At all times relevant D.J. was a patient at Estey Dental Center.
103. On January 27, 2003 D.J. presented as an emergency patient with pain.
104. A radiograph was taken and showed decay in tooth #30.
Respondent charted this decay and recommended root canal therapy.
105. Respondent worked on tooth #30 on January 27, 2003 and again on February 20, 2003, on which date a radiograph was taken.
106. The radiograph of February 20, 2003 shows that Respondent perforated the furcation with the dental drill.
107. Respondent did not chart the perforation nor did Respondent inform D.J. of the perforation.
108. Respondent never completed the root canal therapy but billed for the work.
109. On February 20, 2003, when the tooth was perforated, Respondent charted that the roots in the tooth were calcified and that she advised patient that the tooth was hopeless and should be extracted.
110. The roots were not calcified and the tooth could have been saved.

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111. A radiograph of tooth #30 was made on July 2, 2003. This radiograph showed an abscess and decay in the furcation.
112. By perforating tooth #30 during the course of root canal therapy Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
113. By charting roots as calcified which were not Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
114. By failing to chart the perforation to tooth #30 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
115. By failing to inform D.J. that her tooth had been perforated Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
116. By billing for a root canal procedure which was never completed Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
17. Respondent's actions in not informing D.J. of the perforation to her tooth, in not charting the perforation but instead charting calcified roots where none existed, in telling D.J. (after perforating the tooth) that tooth #30 could not be saved but had to be extracted and in billing for the uncompleted root canal constituted unprofessional conduct in violation 3 V.S.A. §129a(7) (willfully making of filing false reports or records in the practice of the profession...) and, 3 V.S.A. §129a(1) (fraudulent or deceptive ... use of a license).
118. Failing to complete the root canal on tooth #30 while not informing D.J. of the problems with the tooth and the need to complete the therapy was an abandonment of the patient, which is unprofessional conduct pursuant to 26 V.S.A. §809(1).

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Count 12

119. At all times relevant M.K. was a patient at Estey Dental Center.
120. On May 27, 2003 radiographs were taken of M.K., these included four bitewings and a panoramic film.
121. On June 10, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for M.K. This plan called for the composite restorations on tooth #2(O), #14(L), #15(O), #18(B), #19(O), #31(B), #30(B). On the same or later date #2 was rediagnosed as needing restoration on surfaces O, L, and M.
122. On June 10, 2003 Respondent did the restorations on teeth #'s 2(O), 30(B), and 31(B) and billed for them.
123. On June 24, 2003 Respondent charted informing patient of an old restoration with recurrent decay and removing decay from tooth #2 and doing a composite restoration on surfaces O, L, and M. She billed for this work.
124. On July 2, 2003 Respondent worked on removing decay and doing composite restorations on teeth #'s 14(L), 15(O), 18(B), and 19(O).
125. On June 9, 2003 M.K. presented to Estey Dental Center with pain. Four bitewings were taken.
126. Examination of the bitewings shows that decay was left on teeth #'s 2, 31, 14 and 15. Subsequent clinical examination showed decay on tooth #30.
127. For each of the five teeth on which she left decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
128. By billing for the work done on tooth #2 on both June 10 and June 24, 2003 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
129. For each of informing her patient, and for charting, on June 24, 2003 that tooth #2 had recurrent decay from an old restoration when she had

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restored that tooth on June 10th Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(7) (willfully making of filing false reports or records in the practice of the profession...) and, 3 V.S.A. §129a(1) (fraudulent or deceptive ... use of a license).

Count 13

- 130 At all times relevant K.K. was a patient at Estey Dental Center.
131. On February 27, 2003 Respondent saw K.K. She charted performing a hard tissue exam. She billed for a comprehensive oral evaluation and prepared a "Diagnosis and Treatment Plan" for K.K. At this time Respondent had no radiographic films.
132. In the plan Respondent called for the following work to be done; root canal therapy, buildup and crown on tooth #2 (decay on surfaces O and L was noted); composite restorations on tooth #3 (OL), #4(O), #6 (DL), #14 (OL), #18 (OB), #19 (O), #20 (O), #30 (O), #5 (M); an amalgam on #15 (DOLF); and extraction of impacted # 1, #16, #17, #32.
133. On February 27, 2003 Respondent performed the plan work on teeth #'s 20 and 30 and billed for it.
134. On March 20, 2003 Respondent performed the plan work on teeth #'s 3 and 4 and billed for it.
135. On June 10, 2003 Respondent performed the plan work on teeth #'s 14 and 15 and billed for it.
136. On June 12, 2003 Respondent performed the work on tooth #19 and billed for it.
137. On June 13, 2003 the first radiograph was taken of K.K. It shows teeth #'s 1 (impacted), 2, 3, 4, and part of 5.
138. On June 25, 2003 Respondent did a composite restoration on tooth #14 (O). This work was billed for with a date of June 24, 2003 on surface L. The plan work on tooth #5 and #6 was also done and billed for.
139. On June 26, 2003 Respondent performed the plan work on tooth #18 and billed for it.
140. On June 27, 2003 a radiograph was taken of K.K. This showed teeth #'s 2, 3, 4, 5, and part of 6. On the same day Respondent performed root canal therapy on tooth #2.

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141. On July 2, 2003 Respondent performed the plan work on tooth #31, and billed for it as redo tooth #30. On the same day she charted removing the temporary restoration from tooth #3 and implanting the cast post. She billed for that work for the same tooth. This work was actually performed on tooth #2.
142. On July 9, 2003 a radiograph of K.K. was taken. This shows teeth #'s 1, 2, 3, and 4. It also shows that Respondent left decay around the core of tooth #2.
143. By conducting a comprehensive oral examination and preparing a "Diagnosis and Treatment Plan" for K.K. without any radiographic films Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
144. For each of the ten teeth (#'s 20, 30, 3, 4, 14, 15, 5, 6, 18, and 31) that Respondent did restorations on without having the radiographs needed for an appropriate evaluation of the work required, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
145. By failing to remove all the decay from tooth #2 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
146. In charting work done on tooth #2 as having been done on tooth #3 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
147. By placing a cast post in a second molar (tooth #2) and also by not putting on a gold crown Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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148. At all times relevant D.H. was a patient at Estey Dental Center.
149. On November 4, 2002 seven radiographs (billed as "intraoral-series w/bitew") were taken of E.M.
150. On November 22, 2002 Respondent prepared a "Diagnosis and Treatment Plan" for E.M. which diagnosed and recommended treatment only for caries on various teeth.
151. On November 22, 2002 Respondent worked on E.M. At that time she noted that E.M.'s blood pressure was taken twice and was high, 172 over 130, and 180 over 142. She administered Septicane.
152. On December 9, 2002 Respondent noted that E.M.'s blood pressure was 220 over 125. She administered Septicane to E.M.
153. On January 29, 2003 respondent again worked on E.M.. E.M.'s blood pressure was again high, 240 over 140. Respondent again administered Septicane.
154. Septicane contains epinephrine which is a vasoconstrictor and can have serious side effects in patients with high blood pressure.
155. The radiographs clearly show that E.M. had periodontal disease. This periodontal disease was never charted or treated.
156. Each of Respondent's failures to diagnose, to treat, or to chart the periodontal disease is unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
157. Each time Respondent administered Septicane to E.M. Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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Count 15

158. At all times relevant D.M. was a patient at Estey Dental Center.
159. On May 21, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for D.M. which outlined work to be performed, including a



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composite restoration on tooth #11 (MLF) and an amalgam restoration on tooth #19 (D).

160. On July 3, 2003 respondent performed the restorations on teeth #'s 11 and 19.
161. On July 28, 2003 D.M. was at Estey Dental Center and tooth #11 was rechecked. The restoration previously performed was failing and had to be redone.
162. On July 28 and November 6, 2003 radiographs of tooth #19 were taken. Examination of them clearly shows that Respondent left decay when she performed the restoration on that tooth.
163. Respondent's work on the restorations on tooth #11 was substandard as demonstrated by the need to redo that work within four weeks; thus, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
164. By failing to remove all the decay from tooth #19 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 16

165. At all times relevant M.H. was a patient at Estey Dental Center.
166. On December 2, 2002 M.H. had a full mouth series (billed as intraoral-series w/bitew) of radiographs taken.
167. According to her chart on December 2, 2002 M.H. mentioned that she had issues around premedication and insurance payments.
168. On January 15, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for M.H.
169. In that treatment plan Respondent charted that tooth #4 should be watched and composite restorations were need on tooth #2 (O), #7 (MFL), # 9 (DFL) and # 10 (DFL).
170. Respondent performed the charted work on teeth #'s 7, 9, and 10 on January 15, 2003.

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171. On January 15, 2003, which was M.H.'s first visit to Estey Dental Center after December 2, 2002, Respondent did not chart any conversation regarding the premedication issues raised at the earlier visit.
172. On September 23, 2003 radiographs were taken of M.H.. Examination of these radiographs reveals that respondent left decay on teeth #'s 7, 9, and 10.
173. Examination of the radiographs taken on December 2, 2002 reveals that Respondent failed to diagnose (and/or chart) decay on tooth #5 (MOD), #13 (MOD), #15 (MO), #11 (D), and #30 (DM).
174. For each of the three teeth (#'s 7, 9, and 10) on which she left decay after performing restorations, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
175. For each of the five teeth (#'s 5, 13, 15, 11, and 30) for which she failed to diagnose (and/or chart) decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
176. By failing, on January 15, 2003, to discuss (and/or chart) D.H.'s issues involving premedication, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 17

177. At all times relevant D.M. was a patient at Estey Dental Center.
178. On January 8, 2003 radiographs were taken of D.M.
179. On January 8, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for D.M., which showed tooth #30 (F) as needing an amalgam restoration.

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180. On January 8, 2003 Respondent performed a restoration on tooth #32 (F), which she charted as tooth #30.
181. On June 12, 2003 D.M. presented at Estey Dental Center with pain. A radiograph was taken which revealed a large area of decay on tooth #32. This decay was clearly visible in the radiograph of January 8, 2003.
182. By failing, on January 8, 2003, to chart, or, in the alternative, to diagnose, the decay on tooth #32, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
183. By incorrectly charting work needed, and performed on tooth #32 as relating to tooth #30, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 18

184. At all times relevant R.M.. was a patient at Estey Dental Center.
185. On May 21, 2003 radiographs were taken of R.M. and billed as "intraoral-series w/bitew".
186. On May 21, 2003 Respondent performed a comprehensive oral examination of R.M. and prepared a "Diagnosis and Treatment Plan" for R.M.. In that treatment plan Respondent noted that work was needed on tooth #12 (extraction), #13 (F), #23 (DF), #32 (O), and #24 (DF). For teeth #'s 13, 23, 32, and 24 she did not note the service needed. For the following teeth Respondent noted that work was needed but noted neither the surface nor the service needed, #'s 18, 20, 21, 22, 27, 28, 29, and 31. Tooth #29 was not then still in R.M.'s mouth.
187. Examination of the radiographs shows clearly that R.M. had periodontal disease. While Respondent's charting for May 21, 2003 notes "perio-charting should be done too", she does not do so then or at R.M.'s subsequent visit on June 12, 2003.
188. Examination of the radiographs shows that tooth #17 was impacted. This should have been charted and discussed with R.M.. It was not.

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189. The radiographs taken on May 21 were incomplete and insufficiently clear to be used for the comprehensive oral examination and to prepare the "Diagnosis and Treatment Plan" for R.M..
190. Examination of the radiographs taken on May 21, 2003 shows decay on tooth #6, #11, #7, and #9 and abscesses on tooth #13, #27, and #28. These teeth were not charted and/or diagnosed.
191. For each of the 12 teeth (including the non-existent #29), that Respondent did not properly chart the surface to be worked on and the service necessary, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
192. By failing to properly chart the periodontal disease, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
193. For each tooth that Respondent failed to chart and/or diagnose decay or an abscess, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 19

194. At all times relevant N.M. was a patient at Estey Dental Center.
195. On October 4, 2002 radiographs were taken of N.M. consisting of a panoramic and two bitewings.
196. On March 20, 2003 a radiograph of was taken of tooth 19 and the adjacent teeth.
197. On April 7, 2003 two bitewings were taken.
198. On October 4, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for N.M.
199. On November 20, 2002 Respondent performed a 3 surface composite restoration on tooth #4 (MOD). She left a void under the restoration of two surfaces (DO) and left decay (D). On May 7, 2003 Respondent removed some of the composite filling (OD) and refilled

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with amalgam, placing amalgam on top of composite. Respondent still left decay on tooth #4 (D). Respondent did not note this work and the only record of it is in the billing records which show "Redo fillings (#4 DO)."

200. On November 26, 2002 Respondent performed a composite restoration on tooth #28. She left a void under the filling and never fixed it. This void is visible in the radiographs of April 7, 2003.
201. On November 26, 2002 Respondent worked on tooth #31. When she prepared a "Diagnosis and Treatment Plan" for N.M. Respondent charted this tooth as #30 and diagnosed caries on 2 surfaces (DO). Examination of the radiographs of October 4, 2002 shows that this diagnosis was correct. On November 26, 2002 Respondent worked on only one surface (O) but billed for work on two surfaces (DO).
202. On November 26, 2002 Respondent also performed restorations on teeth #'s 15 (B) and 29 (O).
203. None of the work which Respondent performed on November 26, 2002 was properly charted in that she did not note all the surfaces worked on.
204. Additional radiographs were taken on August 21, 2003. These show decay left under the work Respondent performed on teeth #'s 4, 28, and 31.
205. For each tooth (4, 15, 28, 29, and 30) that Respondent failed to chart work performed, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
206. For each of failing to correct the void on tooth #28, and leaving decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
207. For each of failing to remove the charted decay on tooth #30 and billing for a two surface restoration when only one surface was restored, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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208. By failing to remove the charted decay on tooth #4 (D), Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

209. By mixing composite and amalgam restorations on the same surface of tooth #4, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 20

210. At all times relevant N.M.. was a patient at Estey Dental Center.

211. On March 5, 2003 N.M. had radiographs taken consisting of a panoramic and two bitewings..

212. On March 7, 2003 Respondent prepared a "Diagnosis and Treatment Plan" for N.M.

213. In the plan Respondent charted decay on tooth S (O).

214. On March 7, 2003 Respondent restored S (O).

215. Examination of the radiographs taken March 5, 2003 reveals that tooth S had decay on the distal surfaces as well.

216. For failing to chart and/or diagnose decay, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 21

217. At all times relevant K.P. was a patient at Estey Dental Center.

218. An August 9, 2002 a full series of radiographs was made of K.P.

219. On October 8, 2002 Respondent prepared a "Diagnosis and Treatment Plan" for K.M.. Among other items Respondent charted tooth #1 as needing an amalgam restoration (BO), #16 as need a

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composite restoration (OL) and # 32 as needing an amalgam restoration (O).

220. On October 31, 2002 Respondent worked on tooth #1 performing an indirect pulp cap and amalgam restorations (DOB).
221. On November 13, 2002 Respondent worked on tooth #16 performing an indirect pulp cap and composite restorations (OL).
222. On October 17, 2002 Respondent worked on tooth # 32 performing a composite restoration (O).
223. On November 21, 2002 Respondent extracted teeth #16 and 17. She billed each tooth as "Removal imp. Tooth -soft". Neither tooth was a soft tissue impaction.
224. On January 10, 2003 Respondent extracted teeth #1 and 32. She billed each tooth as "Removal imp. Tooth -soft". Neither tooth was a soft tissue impaction.
225. None of these teeth (#1, 16, 32) should have been restored. Each of them should have been extracted.
226. For each of the three teeth that Respondent restored when she should have extracted them, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
227. For each of the four teeth that Respondent billed as impacted when they were not, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
228. For each of the four teeth that Respondent bill as impacted Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(1) (Fraudulent or deceptive ... use of a license).
229. For each of the four teeth that Respondent bill as impacted Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(7) (Willfully making ... false reports in the practice of the profession).

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230. At all times relevant C.W. was a patient at Estey Dental Center.
231. On November 14, 2002 Respondent charted the following work as needing to be done; composite restorations on tooth #1 (DOB), #4 (O), #5 (O), #12 (O), #14 (MO), #18 (O); amalgam and composite restorations on #30 (DOI); a root canal and crown on #15, and an extraction on #1.
232. Also on November 14, 2002, as part of a comprehensive evaluation, radiographs were made of C.W. consisting of an intra-oral series with bitewings.
233. Radiographs were made on April 1, 2003. This radiograph shows tooth #15, but shows only the crown of the tooth and part of the root.
234. More radiographs were obtained on September 17, 2003.
235. An examination of the radiographs of November 14, 2002, showed caries on tooth #19 (DO). This was neither charted nor worked on by Respondent. Examination of these radiographs shows that there were uncharted caries on tooth #18 (M) and #30 (M).
236. On February, 10, 2003 Respondent performed restorations on teeth #'s 18 and 30. In each instance she only restored the surfaces previously charted and did not restore the surface (M) on each tooth.
237. On March 5, 2003 Respondent began a root canal on tooth #15. The root canal was not finished. C.W. returned on April 1, 2003. The root canal was not finished and had not been filled. Respondent did not have another date scheduled for C.W. Respondent did not chart the lengths of the roots.
238. On March 5, 2003 Respondent billed C.W.'s account for the root canal on #15. On April 1, 2003 she billed that account for a 4 surface (DOBL) amalgam restoration on the same tooth. This work was not charted. Examination of the radiographs from September 17, 2003 shows that the amalgam was placed over the root canal which remained unfinished.
239. For each tooth of #18, #19, and #30 that Respondent failed to properly chart, or in the alternative to diagnose the necessary work Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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240. For each tooth of #18 and #30 that Respondent performed restorations on but failed to perform the restorations needed, Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
241. By covering tooth #15 with amalgam before the root canal was finished Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
242. By failing to chart the length of the roots on tooth #15 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
243. By not arranging to schedule the needed further work on the root canal Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
244. By failing to take a radiograph of tooth #15 that showed the full root and the extent of the filling of the canals Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

Count 23

245. At all times relevant B.W. was a patient at Estey Dental Center.
246. On October 22, 2002 Respondent prepared a Diagnosis and Treatment Plan for B.W.. This plan chartered work including the following, composite fillings on teeth # 4 (MOD), 5 (DO), 19 (OB), and 20 (DO).
247. Radiographs were made of B.W. on April 24, 2002 consisting of bitewings (4 films) and a panoramic. On April 23, 2003 radiographs consisting of bitewings (4 films) were made.

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248. On November 12, 2002 Respondent performed a composite restoration on tooth #4 (MOD).
249. On or about November 19, 2002 Respondent performed composite restorations on tooth #20 (DO).
250. On January 16, 2003 Respondent performed a composite restoration on tooth 35 (DO).
251. Examination of the radiographs from April 23, 2004 shows that Respondent left decay under the filling on tooth #4, and never got through the enamel.
252. Examination of the radiographs from April 23, 2004 shows that Respondent left decay under the filling on tooth #5 under the distal area.
253. Examination of the radiographs from April 23, 2004 shows that Respondent left decay under the filling on tooth #20.
254. Respondent failed to chart the work on tooth #20 but this work is shown in the billing records as being performed on November 18, 2002.
255. By failing to properly chart the work done on tooth #20 Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).
256. For each tooth of #4, #5, and #20 that Respondent left decay Respondent committed unprofessional conduct in violation of 3 V.S.A. §129(b)(2) (Failure to practice competently by reason or any cause on a single occasion .. (by failing) to conform to the essential standards of acceptable and prevailing practice).

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Relief Requested

WHEREFORE, the Dentist license of Omaina Samain should be revoked, suspended or otherwise disciplined.

Dated at Montpelier, Vermont on September 15, 2005.

State of Vermont

Secretary of State

By: _____

Robert H. Backus

State Prosecuting Attorney

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