

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
BOARD OF DENTISTRY,)
)
Petitioner,)
)
vs.) Case Nos. 96-3563
) 96-3564
JEFFREY BECK, D.D.S.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in these consolidated cases on February 17, 1998, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings. The hearing was held via video teleconference, with the Petitioner and the Respondent appearing at Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Thomas E. Wright, Esquire
Agency for Health Care Administration
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: Jeffrey N. Beck, D.D.S., pro se
350 South State Road 7
Margate, Florida 33068

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the Administrative Complaints dated May 15, 1995, and April 30, 1996, and, if so, the penalty which should be imposed.

PRELIMINARY STATEMENT

In DOAH Case No. 96-3563, the Department of Health¹ filed an Administrative Complaint dated May 15, 1995, in which it charged that Jeffrey Beck, D.D.S., was incompetent or negligent in the practice of dentistry by failing to meet the minimum standards of performance in the diagnosis and treatment of patient G. J. [J. R.], a violation of Section 466.028(1)(x), Florida Statutes, and that Dr. Beck failed to keep proper dental records justifying his treatment of patient G. J., a violation of Section 466.028(1)(m), Florida Statutes. Dr. Beck timely filed a request for an administrative hearing, and the Department transmitted the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

In DOAH Case No. 96-3564, the Department of Health filed an Administrative Complaint dated April 30, 1996, in which it charged that Jeffrey Beck, D.D.S., aided an unlicensed person in the practice of dentistry, a violation of Section 466.028(1)(g), Florida Statutes; delegated professional responsibilities to an unqualified person, a violation of Section 466.028(1)(z), Florida Statutes; operated a dental office in such a manner that dental treatment was provided that was below minimum standards of acceptable performance in the community, a violation of Section 466.028(1)(ff), Florida Statutes; and failed to include the required disclaimer in an advertisement for free dental services, a violation of Rule 59Q-4.003(5), Florida

Administrative Code, and Section 466.028(1)(aa), Florida Statutes. Dr. Beck timely filed a request for an administrative hearing, and the Department transmitted the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

By order dated August 18, 1997, DOAH Case Nos. 96-3563 and 96-3564 were consolidated, and, after several continuances, the formal hearing was held on February 17, 1998.

At the hearing, the Department of Health ("Department") presented the testimony of Paul Danziger, D.D.S., the Department's expert; G. J. J. R., a former patient of Dr. Beck; and Robert Yastrimski, an investigator employed by the Department. Petitioner's Exhibits 1 through 4, 7, 9, 11, and 13 were offered and received into evidence. The deposition transcript of E. B., a former patient of Dr. Beck, was offered in lieu of live testimony in a Motion to Accept Deposition in Lieu of Live Testimony. The deposition transcript was received into evidence as Petitioner's Exhibit 1, pursuant to Rule 1.330(a), Florida Rules of Civil Procedure.

Dr. Beck testified in his own behalf, and Respondent's Exhibits 2, 3, 3a, 7, 9, 12, 15, 17, and 18 were offered and received into evidence.

The transcript of the proceedings was filed with the Division of Administrative Hearings, and both parties submitted proposed findings of facts and conclusions of law, which have been duly considered.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Department of Health is the state agency responsible for regulating the practice of dentistry. Section 20.43, Florida Statutes (1997), and Chapters 455 and 466, Florida Statutes. The Board of Dentistry is responsible for certifying dentists for licensure and for disciplining licensed dentists. Sections 466.011 and .028(2), Florida Statutes.

2. Jeffrey Beck, D.D.S., is, and was at all times material to this action, licensed to practice dentistry in Florida, having been issued license number DN 0005517.

Patient E. B.

3. At the times material to this proceeding, Accent Dental Services, Inc., was a Florida corporation of which Carlos Castaneda owned fifty percent and Dr. Beck owned fifty percent. Accent Dental Services consisted of a dental office and a laboratory for the construction and repair of dentures. At the times material to this proceeding, the business card for Accent Dental Services included the address and telephone number of the

business and bore the following names and designations: Carlos A. Castaneda, D.T., and Jeffrey N. Beck, D.D.S.

4. All of the income of Accent Dental Services was, at the times material to this action, generated by the construction and repair of dentures.

5. At the times material to this proceeding, Mr. Castaneda was not licensed as a dentist, and Accent Dental Services was not registered as a dental laboratory. Mr. Castaneda was trained to construct and repair dentures by his brother, who operates a dental laboratory.

6. Accent Dental Services was open for business at least five days per week, but Dr. Beck was in the Accent Dental Services office only on Wednesdays.

7. E. B. first visited Accent Dental Services on Saturday, April 2, 1994, because she had lost her upper denture and needed to replace it as soon as possible. She called Accent Dental Services because she saw an advertisement in a PennySaver magazine representing that the business specialized in dentures and offered rapid service. She spoke with Carlos Castaneda, who told her she should come to his office an hour later.

8. When she arrived at the Accent Dental Services office, she was seen by Mr. Castaneda. She filled out a dental and medical history form, and Mr. Castaneda took a dental impression and told her that the denture would be ready on the following Monday. Mr. Castaneda advised her that the total cost of the

denture would be \$750, and, at his request, E. B. paid a \$100 deposit by check payable to Accent Dental Services.

9. Although Dr. Beck was identified in the PennySaver advertisement as the dentist affiliated with Accent Dental Services, E. B. did not see him during her visit to Accent Dental Services on April 2. Mr. Castaneda identified himself to her as a dental technician and explained that he took impressions and made dentures and that Dr. Beck took care of fitting the dentures. When she asked when she would see Dr. Beck, Mr. Castaneda told her that Dr. Beck was in the office only on Wednesdays and that she would see him the following Wednesday.

10. When E. B. returned to Accent Dental Services on Monday, April 4, she refused to accept the denture that Mr. Castaneda showed her. He told her to come back on Tuesday. At Mr. Castaneda's insistence, E. B. paid the balance of the \$750 fee, writing a check dated April 4, 1994, in the amount of \$650, payable to Accent Dental Services.

11. E. B. returned on Tuesday, April 5, and Mr. Castaneda had a new denture prepared. When he tried to insert the denture, it did not fit properly, and he made some adjustments so the denture would fit in her mouth. It needed further adjustments, however, and Mr. Castaneda told her that Dr. Beck would fit the denture for her on Wednesday.

12. Mr. Castaneda examined E. B. when she went to Accent Dental Services on Wednesday, April 6. She told Mr. Castaneda

that she could not wear the dentures, that they were very uncomfortable. Dr. Beck then came into the room, looked into her mouth, and stated that the dentures were a "very tight fit." He then turned and walked out of the room, leaving Mr. Castaneda to fit the denture.

13. E. B. returned several times to Accent Dental Services asking that the denture be adjusted to a proper fit. Mr. Castaneda made several adjustments, but they did not correct the problems. E. B. did not see Dr. Beck during any of these visits.

14. E. B. left for New York in late April 1994. She was not able to wear the denture she had purchased from Accent Dental Services because it was so painful; on May 7, 1994, within a week of her arrival in New York, she went to the dentist who had made her original dentures. Dr. Scharoff was not able to adjust the denture Mr. Castaneda made for a proper fit, and E. B. purchased a new upper denture from him for \$1650.

15. E. B. sent a certified letter to Accent Dental Services, listing the problems Dr. Scharoff had found with the denture. She sent the letter registered mail, and Mr. Castaneda signed for it on May 19, 1994.

16. E. B. did not get any response to her letter. When she returned to Florida in November 1994, she went to the Accent Dental Services office and was met in the waiting room by Mr. Castaneda. She told him she wanted a refund of the monies

she had paid for the defective denture. Mr. Castaneda told her to get out, and she did.

Patient G. J. J. R.

17. G. J. J. R. was first seen by Dr. Beck at the Emergency Denture Center in Hollywood, Florida, on July 19, 1993. At that time, Dr. Beck had just recently become associated with the Emergency Dental Center. G. J. J. R. had previously had contact with Herman Castaneda, the dental technician at the Emergency Dental Center, who relined his denture in 1991.

18. After his July 19 visit, dentures were constructed consisting of an upper partial denture and a lower full denture, which had three attachments built into the denture. The dentures were made at the Emergency Dental Center laboratory by Herman Castaneda and were fitted by Dr. Beck.

19. Although G. J. J. R. is satisfied with the upper partial denture he obtained from Dr. Beck, Dr. Beck did not adequately fit the denture. The denture was constructed with rests which were designed to fit into rest seats cut into the teeth adjacent to the denture. Dr. Beck did not prepare the rest seats in G. J. J. R.'s teeth, and the upper denture settled into his gums. An examination performed on October 20, 1994, by a dentist retained by the Department revealed that the tissue under the upper partial denture was very red and swollen and covered with petechiae, or red spots, presenting a potential health problem. This irritation can be only partially attributed to the

fact that G. J. J. R. never removes the denture. The denture settled into the soft tissue as a result of Dr. Beck's failure to prepare G. J. J. R.'s mouth properly to receive the denture, and much of the swelling, redness, and petechiae under the upper partial denture is attributable to this.

20. G. J. J. R. had three implants inserted into the bone of the lower anterior segment of his mouth prior to his first examination by Dr. Beck. These implants were inserted by Kevin Payton, D.D.S., and were to be used to attach a lower full denture. The implants each have a buckle which protrudes through the gum, and ERA female attachments, made of metal, sit on top of the buckles. The denture is attached by snapping male attachments, made of plastic and fixed into the denture, into the female attachments.

21. G. J. J. R.'s lower full denture was not properly fitted by Dr. Beck. The denture was attached to only the most anterior of the female attachments. The two posterior male attachments on the denture did not snap onto the female attachments on the implants because the male attachments were not located at the proper places on the denture. As a result the denture was unstable, rocking back and forth in G. J. J. R.'s mouth with nothing more than manual manipulation. The improper fit caused G. J. J. R. a great deal of pain.

22. G. J. J. R. went back to Dr. Beck several times complaining about the looseness of the lower denture, which

prevented him from chewing. Ultimately, Dr. Beck told him that he could not do anything more for him. G. J. J. R. stopped wearing the lower denture; he did not seek out another dentist or have anything more done to the lower denture.

23. Dr. Beck's records indicate that a course of treatment was provided for G. J. J. R., although the records contain only sketchy details of the treatment and it is difficult to read Dr. Beck's handwriting. The records do not contain a chart of G. J. J. R.'s teeth, which should have been prepared during the initial examination.

Illegal advertisements

24. In the yellow pages of the Delray Beach, Florida, telephone directory dated September 1994-95 an advertisement appeared for All Emergency Denture Service. The advertisement offered a senior citizen discount and free consultation by "J. N. Beck, D.D.S." No disclaimer relating to the discount or the free consultation were included in the advertisement.

25. Accent Dental Services, Inc., advertised its services in the yellow pages of the Delray Beach, Florida, telephone directory dated September 1994-95, in which appeared the names of Zita Narvaez, D.D.S., and Jeffrey N. Beck, D.D.S. This advertisement offered a senior citizen discount, but it did not contain a disclaimer relating to the discount.

26. In the yellow pages of the Boca Raton and Deerfield Beach, Florida, telephone directory dated March 1995-96, an

advertisement appeared for Accent Dental Services in which the name of Jeffrey Beck, D.D.S., appeared. The advertisement offered free consultation and senior citizen discounts, but it did not include a disclaimer relating to the free consultation or the discount.

Summary

27. With respect to Dr. Beck's operation of Accent Dental Services, the evidence is uncontroverted that, at the time that E. B. was doing business with Accent Dental Services, Accent Dental Services provided emergency denture repair and one-day service for the construction of new dentures. Dr. Beck was, however, present in the Accent Dental Services office only on Wednesdays, while, at the same time, he expected Mr. Castaneda, an unlicensed person, to keep the office open for business at least five days per week. By limiting his time in the Accent Dental Services office to one day per week, Dr. Beck was not available to supervise Mr. Castaneda in the operation of the dental office and laboratory during the times at issue.

28. The evidence presented by the Department is sufficient to support the inference that, with respect to patient E. B., Dr. Beck was aware that Carlos Castaneda took an impression of E. B.'s jaw and constructed a denture for her in the laboratory on the premises of the dental office since he first saw E. B. after the denture had been constructed. The evidence is sufficient to support the inference that Dr. Beck did not furnish

a written work order for the construction of E. B.'s denture since he did not see E. B. until after the denture was constructed. The evidence presented by the Department is also sufficient to establish that Dr. Beck delegated to Mr. Castaneda the responsibility for fitting E. B.'s denture, since he observed Mr. Castaneda fitting the denture on April 6, 1994.

29. The evidence is sufficient to establish that, with respect to his treatment of G. J. J. R., Dr. Beck failed to perform the basic procedure of creating rest seats on his existing teeth, which were necessary to fit the upper partial denture properly. The evidence is also sufficient to establish that Dr. Beck did not properly secure the lower full denture constructed for G. J. J. R. because he failed to perform the simple and common procedure necessary to reposition the posterior male attachments on the denture to ensure that they snapped into the posterior female attachments on G. J. J. R.'s implants. The evidence is not sufficient, however, to establish that Dr. Beck failed to keep adequate records of G. J. J. R.'s treatment and medical history.

30. Dr. Beck concedes that he did not include in advertisements of his services any disclaimers related to the free consultations and discounts identified in the advertisements.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Section 120.57(1), Florida Statutes (1997).

32. In its Administrative Complaints, the Department identifies as possible disciplinary sanctions against Dr. Beck revocation or suspension of his license or the imposition of an administrative fine. Consequently, the Department has the burden of proving the allegations in the Administrative Complaints by clear and convincing evidence. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 933-34 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

33. Chapter 466, Florida Statutes, regulates the practice of dentistry, dental hygiene, and dental laboratories. Section 466.028 provides both the grounds for disciplinary action which can be taken pursuant to Chapter 466 and the penalties which can be imposed.

34. Section 466.028(1) provides in pertinent part:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

* * *

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice

dentistry or dental hygiene contrary to this chapter or of the rules of the department or board.

* * *

(m) Failing to keep written dental records and medical history records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, test results, and X rays, if taken.

* * *

(x) Being guilty of incompetence or negligence by failing to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance

* * *

(z) Delegating professional responsibilities to a person who is not qualified by training, experience, or licensure to perform them.

* * *

(aa) The violation or the repeated violation of this chapter, chapter 455, or any rule promulgated pursuant to chapter 355 or this chapter

* * *

(ff) Operating or causing to be operated a dental office in such a manner as to result in dental treatment that is below the minimum acceptable standards of performance for the community. . . .

35. Section 466.028(2) provides as follows:

When the board finds any applicant or licensee guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

- (a) Denial of an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$3,000 for each count or separate offense.
- (d) Issuance of a reprimand.
- (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or demonstrate his competency through a written or practical examination or to work under the supervision of another licensee.
- (f) Restricting the authorized scope of practice.

36. The practice of dentistry is defined in Section 466.003(3)(a) through (d), Florida Statutes, as specifically including taking impressions of a human jaw; constructing or repairing dentures without a written work order from a licensed dentist; placing a denture in the mouth or adjusting a denture in the mouth; and delivering a denture to any person other than the dentist who issued the work order for the denture.

37. Section 466.031(1), Florida Statutes, defines a dental laboratory as a "person, firm, or corporation" who, among other things, constructs or repairs dentures "to be worn in the human mouth." Pursuant to Section 466.032(1), a dental laboratory must be registered with the Department. Accent Dental Services was not a registered dental laboratory but, rather, fell under the provisions of Section 466.031(2), which excludes from the definition of "dental laboratory" "any dental laboratory technician who constructs or repairs dental prosthetic appliances

in the office of a licensed dentist for such dentist only and under his supervision and work order."

38. Based on the findings of fact herein, the Department has proven by clear and convincing evidence that Dr. Beck aided or assisted Carlos Castaneda in the practice of dentistry with regard to the services Mr. Castaneda performed for E. B., in violation of Section 466.028(1)(g); that Dr. Beck operated Accent Dental Services in such a manner that the dental treatment provided to E. B. was "below minimum acceptable standards of performance," in violation of Section 466.028(1)(ff); and that Dr. Beck delegated to Mr. Castaneda the responsibility for fitting E. B.'s denture, in violation of Section 466.028(1)(z).

39. Based on the findings of fact herein, the Department has proven by clear and convincing evidence that Dr. Beck was negligent in the dental services he provided G. J. J. R., in violation of Section 466.028(1)(x). The Department has, however, not met its burden of proving Dr. Beck guilty of failing to keep adequate records of the treatment given to G. J. J. R., and, therefore, has failed to prove a violation of Section 466.028(1)(m).

40. Rule 64B5-4.003(5), Florida Administrative Code, (formerly Rule 59Q-4.003(5)), provides that "[a]ny advertisement for free or discounted services must comply with the requirements of Section 455.24, F.S., and must also clearly identify the dates that free, discounted or reduced fee services will be available."

Section 455.24, Florida Statutes (1993), (now Section 455.664, Florida Statutes (1997)), provides as follows:

In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, or chapter 486, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care provider defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

Based on the facts found herein, Dr. Beck has violated Section 466.028(1)(aa), which provides that one ground for discipline is "the violation . . . of this chapter, chapter 455, or any rule promulgated pursuant to chapter 455 or this chapter." The failure to include the disclaimer required by Section 455.24 is classified as a minor violation, and the penalty prescribed by Rule 64B5-13.0046(7), Florida Administrative Code, for this violation is the imposition of a \$250 fine.

41. Rule 64B5-13.005, Florida Administrative Code, (formerly Rule 59Q-13.005), provides the disciplinary guidelines

which are to be followed by the Board of Dentistry for major violations. Subsection (1) of Rule 64B5-13.005 provides:

Unless relevant mitigating factors are demonstrated the Board shall always impose a reprimand and an administrative fine not to exceed \$3,000.00 per count or offense when disciplining a licensee for any of the disciplinary grounds listed in subsections (2) or (3) of this rule. The reprimand and administrative fine is in addition to the penalties specified in subsections (2) and (3) for each disciplinary ground.

42. The violations committed by Dr. Beck are identified in Rule 64B5-13.005(3), and the disciplinary guidelines for each of the violations of Section 466.028(1)(g), (x), and (ff) range from placing the licensee on probation, restricting his or her practice, and/or suspending his or her license. Pursuant both to Section 466.028(3) and to Rule 64B5-13.005(3)(ee), the violation of Section 466.028(1)(z) carries a mandatory six-month suspension.

43. In determining the penalties recommended herein, the aggravating and mitigating factors identified in Rule 64B5-13.005(4) have been considered.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Dentistry enter a final order finding Jeffrey N. Beck, D.D.S., guilty of violating Section 466.028(1)(g), (x), (z), (aa), and (ff); finding Dr. Beck not guilty of violating Section 466.028(1)(m); and imposing the following penalties:

1. Suspension of Dr. Beck's license to practice dentistry for a period of six (6) months, followed by probation for a period of one (1) year subject to such conditions as the Board may specify;

2. Imposition of an administrative fine in the amount of \$4,250; and

3. Issuance of a reprimand.

DONE AND ENTERED this 26th day of August, 1998, in Tallahassee, Leon County, Florida.

PATRICIA HART MALONO
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
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Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of August 1998.

ENDNOTE

¹ The Department of Health was substituted for the Agency for Health Care Administration as the Petitioner in these consolidated cases by order entered August 18, 1997.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

¹ The Department of Health was substituted for the Agency for Health Care Administration as the Petitioner in this case by order entered August 18, 1997.