

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF	)	
DENTISTRY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 00-1517
	)	
MICHAEL JEROME CLAIR, D.D.S.,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

A formal hearing was held before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings, on January 11, 2001, by video conference between Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner:	Michael J. Cohen, Esquire 517 Southwest First Avenue Fort Lauderdale, Florida 33301
For Respondent:	Jeff G. Peters, Esquire Jeff G. Peters & Associates 1266 Paul Russell Road Cedars Woods Office Center Tallahassee, Florida 32301-7103

STATEMENT OF THE ISSUES

Whether Respondent's license as a dentist should be disciplined in Florida as a result of having his license revoked in Maryland. If so, what discipline would be appropriate.

### PRELIMINARY STATEMENT

An Administrative Complaint was filed by the Department of Health, Board of Dentistry, on February 14, 2000, charging Respondent with a violation of Subsection 466.028(1)(b), Florida Statutes, for having his license to practice dentistry in Maryland revoked. Respondent filed an Election of Rights, dated March 20, 2000, and requested an administrative hearing. This matter was referred to the Division of Administrative Hearings on April 6, 2000, and was set for hearing and discovery ensued. Following continuances granted at the request of the parties, a formal hearing was held on January 11, 2001.

Prior to the hearing, the parties filed a Joint Pre-Hearing Stipulation. At the hearing, Petitioner introduced the following Exhibits into evidence:

1. Consent Order from the State Board of Dental Examiners for the State of Maryland, dated August 11, 1999.
2. September 28, 1999, letter from Respondent to the Agency for Health Care Administration, Board of Dentistry.

Respondent testified on his own behalf and introduced the following Exhibits into evidence:

1. Massachusetts action with regard to Maryland revocation.
2. Four letters attesting to Respondent's good character.
3. Florida licensure.
4. September 13, 2000, letter from the Florida Academy of General Dentistry;  
September 20, 2000, letter from the National

Academy of General Dentistry; and renewal of license from the Commonwealth of Massachusetts.

A Transcript of the hearing was prepared and filed on March 1, 2001. Prior to the date set for the parties to file post-hearing submittals, Respondent filed a Motion to Enlarge Time to File Proposed Recommended Orders. The Motion was granted, giving each party until April 2, 2001, in which to file their proposed recommended orders. Both parties filed Proposed Recommended Orders which have been given careful consideration in the preparation of this Recommended Order.

#### FINDINGS OF FACT

The following Findings of Fact are determined:

1. Petitioner is the state agency charged with regulating the practice of dentistry pursuant to Section 20.243, Florida Statutes, Chapter 455, Florida Statutes, and Chapter 466, Florida Statutes.

2. Pursuant to the authority of Subsection 20.43(3)(g), Florida Statutes, Petitioner has contracted with the Agency for Health Care Administration, hereinafter referred to as the "Agency," to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils or board, as appropriate, including the issuance of emergency orders of suspension or restriction.

3. Respondent is, and has been at all times material hereto, a licensed dentist in the State of Florida, having been issued license number DN 10010. Respondent's address is 6112 Raleigh Street, Apartment No. 1506, Orlando, Florida 32835.

4. Respondent was a licensed dentist in the State of Maryland and other states. On or about August 12, 1999, Respondent's license to practice dentistry in the State of Maryland was revoked. A true copy of the Consent Order which revoked Respondent's Maryland dental license was admitted in evidence as Petitioner's Exhibit One. By letter dated September 28, 1999, Respondent advised the Agency for Health Care Administration, Board of Dentistry, of his revocation in Maryland.

5. Based upon the foregoing, Respondent's license to practice dentistry in the State of Florida is subject to discipline for violating Subsection 466.028(1)(b), Florida Statutes, for having a license to practice dentistry revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

6. The State of Maryland revoked Respondent's license based upon findings of fact contained in the Consent Order admitted into evidence. The findings conclude that during the period of 1992 to 1998 Respondent engaged in a scheme of

performing unnecessary procedures on patients, and training and encouraging dentists who worked for him to do the same, including putting pressure on these dentists to perform unnecessary procedures. The other findings parallel this charge, including performing root canal therapies which were unnecessary; replacing amalgam restorations which did not need to be replaced, which caused the need for root canal therapy and crowns; misleading patients in these regards; and billing for services which were not needed. Respondent freely, voluntarily, and knowingly waived his right to a due process hearing and agreed to the entry of the Consent Order.

7. The findings were based upon the materials and evidence available to the authorities in Maryland.

8. Respondent is licensed in the State of Florida to practice dentistry. Respondent's current license expires on February 28, 2002.

9. Respondent is licensed to practice dentistry in the Commonwealth of Massachusetts and the State of West Virginia. Respondent's license to practice dentistry in those States has been renewed.

10. Respondent is an approved continuing education course provider and instructor, authorized by the Florida Academy of General Dentistry and the National Academy of General Dentistry.

11. Respondent has not been previously disciplined by the State of Florida, Board of Dentistry.

12. Respondent has maintained the continuing education requirements for the states where he is licensed. In addition to those requirements, Respondent has maintained the United States Academy of Dentistry continuing education requirements. The Academy requires seventy-five hours every two years.

13. Respondent testified that he and his family moved to Florida in 1998. Respondent was living in Florida in 1999 when he received notice of the Maryland Complaint. Respondent testified that as a result of his move to Florida the previous year, and due to financial constraints, he could not afford the legal fees and costs necessary to pursue a formal hearing and defend himself against the charges contained in the Complaint.

14. Respondent testified that when he consulted with a Maryland attorney regarding the costs of challenging the Administrative Complaint, he had not been aware of the negative impact it could have on his license in Florida.

15. Respondent notified the State of Florida of the action taken by the Board of Dentistry in Maryland as required by Florida law.

16. Respondent testified that the practice of dentistry is important to him and that in his opinion he did not pose a risk to health, safety, and welfare of the citizens of Florida and

that should it be deemed appropriate to place him on probation for a period of time and/or to direct supervision by another dentist be required, he would have no objection to such conditions being placed on his license to practice in Florida.

17. It was Respondent's intention to practice dentistry in a group practice, and he would therefore be in a setting pursuant to which the supervision of another dentist licensed in the State of Florida would be possible.

18. Respondent testified that the Maryland Complaint proceeded directly to a consent agreement, without a full investigation of the charges or the taking of any depositions. Respondent testified that the financial inability to hire an expert witness and proceed to trial with legal counsel led to his decision to enter into a consent agreement.

19. In order to avoid any further litigation, Respondent signed a Consent Order with the State of Maryland, which resulted in the revocation of Respondent's license to practice dentistry. The Consent Order granted Respondent the ability to seek reinstatement in five (5) years.

20. Respondent testified that he has been licensed as a dentist for about fifteen years.

21. The Massachusetts Board of Registration in Dentistry received notice of the revocation proceeding in Maryland and filed their own complaint against Respondent. After reviewing

all the documentation present in the complaint filed against Respondent by the State of Maryland, Massachusetts determined that the Complaint should be dismissed.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties thereto pursuant to Subsection 120.57(1) and Section 120.569, Florida Statutes.

23. Subsection 466.028(1)(b), Florida Statutes, provides that the following shall constitute grounds for which disciplinary action may be taken:

Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

24. Subsection 466.028(2), Florida Statutes, provides for the following range of 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 competency through a written or practical

examination or to work under the supervision or another licensee.

(f) Restricting the authorized scope of practice.

25. Rule 64B5-13.005, Florida Administrative Code, provides Disciplinary Guidelines employed by the Board of Dentistry. Subsection (1) 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 [sic] in addition to the penalties specified in subsections (2) and (3) for each disciplinary ground.

26. Subsection (3)(c) of Rule 64B5-13.005, Florida Administrative Code, is applicable to the violation at issue and provides:

The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension and/or revocation depending upon the conduct involved and penalties imposed by the other jurisdiction.

27. Rule 64B5-13.005(4), Florida Administrative Code, provides that the Board shall consider as aggravating or mitigating factors the following:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses or number of patients involved;
- (d) The length of time since the violation;

- (e) The number of times the licensee has been previously disciplined by the Board;
- (f) The length of time the licensee has practiced;
- (g) The actual damage, physical or otherwise, caused by the violation and the reversibility of the damage;
- (h) The deterrent effect of the penalty imposed;
- (j) Any efforts of rehabilitation by the licensee;
- (k) The actual knowledge of the licensee pertaining to the violation;
- (l) Attempts by the licensee to correct or stop the violation or refusal by the licensee to correct or stop violation;
- (m) Related violations against the licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (n) Penalties imposed for related offenses under subsections (2) and (3) above;
- (o) Any other relevant mitigating or aggravating factor under the circumstances.

28. The Maryland action is a legal action on the merits and must be honored by Florida. There is a good policy reason for honoring actions taken by other states. Only Maryland had the practical opportunity to investigate the charges on the merits. If their findings are not accepted, then all a dentist must do to avoid the consequences of license revocation is tender his or her license and move to another state, claiming that the charges were unfounded. The Florida Board of Dentistry is not in a position to investigate and prosecute actions which took place in Maryland and must accept the Maryland findings as

final. Principles of full faith and credit mandate that Florida give full force and effect to the Maryland action.

29. The Maryland revocation was consensual. As such, a record which would have supported or negated the merits of the charges was avoided. Respondent agreed to the consent order with full advise and assistance of legal counsel.

30. The action taken by the State of Massachusetts consisted of a review of the same materials before this body without an independent de novo investigation. As such, action by Massachusetts has no bearing on the decision to be made by the Florida Board of Dentistry.

31. The following mitigating factors exist: Respondent has not been previously disciplined by the Board; the length of time Respondent has practiced; and the effect of the penalty upon Respondent's livelihood.

32. The following aggravating factors exist: the severity of the offense; the danger to the public; the number of repetitions of offenses or number of patients involved; the actual damage, physical or otherwise, caused by the violation and the reversibility of the damage; the deterrent effect of the penalty imposed; and the actual knowledge of Respondent pertaining to the violation.

33. Respondent states that he plans to go back to work with the Comfortable Care Dental Group in one of their offices

in Longwood, Florida, where he would accept the direct supervision by the other dentist who practices there.

34. It is not possible to tell if Respondent was in fact guilty of the Maryland charges. However, by agreeing to the entry of the Consent Order, Respondent admitted to the allegations contained in the Administrative Complaint. Therefore, they must be taken as established by the Consent Order. As such, Respondent may present a danger to the public.

#### 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 Respondent guilty of violating Subsection 466.028(1)(b), Florida Statutes, and revoking Respondent's license to practice dentistry in the State of Florida.

DONE AND ENTERED this 12th day of April, 2001, in Tallahassee, Leon County, Florida.

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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of April, 2001.

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.