

By: Amy L. Conway
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF DENTISTRY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH Case No.: 2002-26377
DOAH Case No.: 07-1746PL
License No.: DN 10162

JEFFREY SIEGEL, D.D.S.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the BOARD OF DENTISTRY (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on November 26, 2007, at a properly noticed meeting via telephone conference call, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order, (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Wayne Mitchell, Assistant General Counsel. Respondent was present and represented by Dominick Graziano, Esq. and Erin O'Toole, Esq.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

1. The Board reviewed the Petitioner's exception to paragraph 29 of the Recommended Order and GRANTED the exception based upon the reasons set forth in

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the exceptions. Paragraph 29 of the Recommended Order shall read as follows:

However, Respondent was prepared to remove the "permanently" cemented crowns if the margins proved defective. Dr. Shippee testified that, at some point over his long career, he may have "permanently" set a crown with a defective margin, and it would not have been a departure from the standard of performance to have discovered the open margin as much as two years later - - as long as he then removed the crown and replaced it with a properly fitting one.

2. The Board reviewed the Petitioner's exception to paragraph 30 of the Recommended Order and GRANTED the exception based upon the reasons set forth in the exceptions. Paragraph 30 of the Recommended Order shall read as follows:

On re-direct, Dr. Shippee reversed himself, again, and testified that he would dry seat porcelain-fused-to-metal crowns and, if he found defective margins, he would not permanently cement them until he had replaced the defective crowns. Dr. Fisher testified that a dentist who "permanently" cements porcelain-fused-to-metal crowns, knowing that the margins are defective, does not deviate from the applicable standard of performance, as long as he intends to use the "permanent" crowns as temporaries and replace them with properly fitting crowns at a subsequent visit. Petitioner has shown that Respondent's cementing of the crowns into place, prior to determining clinically or radiographically if the crowns had open margins, failed to meet the applicable standard of performance. The minimal standard of performance requires a dentist to adequately check crown margins prior to permanent cementation of the crowns to determine if open margins exist, and if open crown margins are suspected or found at the appointment when the crowns are to be seated, the standard of care would require the dentist not to permanently cement the crowns, or leave them intact without affirmatively providing for a specific time to replace the defective crowns. The reasonable standard of care also requires a dentist to fully inform and advise the patient of concerns about open margins when found, and to arrange to correct that problem.

3. The Board reviewed the Petitioner's exception to paragraph 36 of the Recommended Order and GRANTED the exception based upon the reasons set forth in the exceptions. Paragraph 36 of the Recommended Order shall read as follows:

The Respondent's work in permanently cementing three defective PFM crowns prior to determining if the crown margins were open constitutes

a departure from the applicable standard of performance, despite Respondent's intent to continue to service these teeth. He should not have permanently cemented the crowns prior to that critical determination. Petitioner has shown that, under the circumstances, the crown restoration work, as of August 15, on teeth numbers 2, 14, and 18, individually, failed to meet the applicable standard of performance due to the presence of the defective open crown margins on the distal surfaces of all three teeth at the time the crowns were permanently cemented.

4. The Board reviewed the Respondent's exception to paragraph 40 of the Recommended Order and GRANTED the exception based upon the reasons set forth in the exceptions. Paragraph 40 of the Recommended Order shall read as follows:

For the reasons set forth above, Petitioner has shown that claim number one as set forth in paragraph 12 of the Administrative Complaint has been proven. Respondent violated Section 466.028(1)(x), Florida Statutes as set forth in paragraph 12, claim (1) only, of the Administrative Complaint against Respondent.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order, as amended by the granting of the exceptions to paragraphs 29, 30 and 36 which pertain to conclusions of law, are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order, as amended by the granting of the exception to paragraph 40, are approved and adopted and incorporated herein by reference.

PENALTY

Upon a complete review of the record in this case, and based upon the granted

exceptions relating to the determination of the standard of care which are conclusions of law, the Board determined that the disposition recommended by the Administrative Law Judge be REJECTED. The Board instead determined that the disposition be the following:

1. A letter of Reprimand.

2. An administrative fine of \$5,000 shall be assessed against the Respondent, to be paid to the Executive Director of the Board of Dentistry, within 6 months of the filing of the Final Order. Please remit payment to: Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, ATTN: Dentistry Compliance Officer.

3. A two (2) year suspension of Respondent's Florida dental license. However, the suspension shall be stayed so long as Respondent complies with all terms of the Final Order and conditions of probation as set forth below.

4. The Respondent's license shall be placed under Probation for two (2) years and six (6) months. During the period of probation, the Respondent shall enroll in and successfully complete the University of Florida or Nova Dental College two year Comprehensive Dentistry Program. The Respondent shall also submit quarterly reports in affidavit form, the contents of which shall include the following:

- a. A brief statement of why Respondent is on probation;
- b. Respondent's practice location(s);
- c. A description of Respondent's current practice;
- d. A brief statement of compliance with all probationary terms;
- e. A brief statement advising the Board of any problems that have

developed in Respondent's practice.

5. Respondent shall refund the patient in the amount of "out of pocket" fees for the treatment that the Respondent provided. Respondent shall refund third-party insurance company, if applicable, in the amount of any fees paid on behalf of the patient for the treatment that the Respondent provided in this cause. Proof of payment must be submitted to the Board of Dentistry Office.

6. Within one year of the Final Order, Respondent shall pass the Laws and Rules Examination governing the practice of dentistry in the State of Florida.

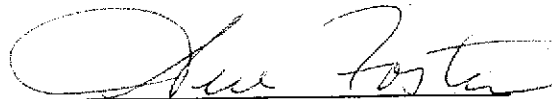
COSTS

The Board reserved jurisdiction on the issue of costs which will be addressed by Petitioner's Motion to Assess Costs with supporting affidavits and itemizations at the next Board meeting. The Board will at that time also entertain any written objections to the Petitioner's Motion to Assess Costs.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 28 day of November, 2007.

BOARD OF DENTISTRY



Sue Foster
Executive Director *on behalf of*
Eva Ackley, D.M.D., CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE FLORIDA APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Dominick J. Graziano, Esq. and Erin O'Toole, Esq., Bush, Graziano & Rice, PA, P.O. Box 3423, Tampa, FL 33601; Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060;** by interoffice mail to Joy A. Tootle, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Wayne Mitchell, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265** this 28th day of November, 2007.


Deputy Agency Clerk