

FILED DATE - 9-20-13  
Department of Health

By: *Cory L. Carr*  
Deputy Agency Clerk

**STATE OF FLORIDA**  
**THE FLORIDA BOARD OF DENTISTRY**

FILED

DEPARTMENT OF HEALTH  
PETITIONER,

2013 SEP 23 PM 2 18

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

CASE NO.: 2009-08825  
DOAH CASE NO.: 12-4024PL  
LICENSE NO.: DN 9180

STEVEN JOHN COURTEN, D.D.S.,  
RESPONDENT.

**FINAL ORDER**

This cause originally came before the Board of Dentistry (Board), pursuant to sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on May 17, 2013, in Jacksonville, Florida. The purpose of the cause was for consideration of the Honorable Todd P. Resavage's Recommended Order issued on March 26, 2013 (attached hereto as Exhibit "A"). At the first meeting Respondent was present, but counsel of record did not appear. A continuance was granted and a continuance order was issued (attached hereto as Exhibit "B"). The continuance was granted until the next regularly scheduled board meeting to allow Respondent the opportunity to obtain counsel, if he so desired.

Pursuant to the Order of Continuance, the cause came back before the Board, pursuant to sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting held on August 23, 2013, in Orlando, Florida. The purpose of the cause was for consideration of the Recommended Order and any properly filed motions. At this meeting, Respondent did not appear nor did an attorney or a Qualified Representative appear on behalf of Respondent.

## APPEARANCES

For Petitioner: Adrienne Rodgers, Esquire  
Assistant General Counsel  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Steven John Courten, DDS  
9617 NW 43rd Court  
Coral Springs, Florida 33065  
795 Seminole Road  
Babson Park, Florida 33827

Upon review of the Recommended Order, the Exceptions, the Motion and Objection to Costs, and consideration of all oral argument of the parties and after a review of the complete record in this cause, the Board makes the following findings and conclusions:

## RULINGS ON EXCEPTIONS

What is clear is that Respondent did file objections to costs. However, what was not clear, was the Respondent's three-page, hand penned, submission. (attached hereto as Exhibit "C"). The submission appears to be notes that the Respondent took to use as a reference. However, the Department objected to the notes or document being treated as properly filed exceptions. The Board denies these notes or document, if framed as exception, on the following grounds:

1. The notes, if framed as exceptions, were not timely filed. The Recommended Order was filed on March 26, 2013, and the notes were filed with the Board on April 26, 2013. The filed document was not filed within 15 days of rendition of the Recommended Order. Therefore, any exceptions based on this document are **DENIED**, pursuant to Section §120.57(1)(k), Florida Statutes;
2. The notes, if framed as exceptions, were legally insufficient. The document or notes failed to identify a proper legal basis for an exception and do not include proper or appropriate and specific citation to the record. Therefore, under the authority of Section 120.57(1)(k), Florida Statutes, it is **DENIED** that the the notes or document are properly filed exceptions to the Recommended Order;
3. Finally, the notes, if framed as exceptions, are **DENIED** because the Board finds that the Findings of Facts were based on competent substantial evidence and the proceedings complied with the essential requirements of law and that the Conclusions of Law are

reasonable and there are not more reasonable conclusions of law found. Therefore, pursuant to Section 120.57(1)(l), Florida Statutes, it would be improper to grant any exception related to Findings of Fact or Conclusions of Law.

#### FINDINGS OF FACT

1. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order;
2. Accordingly, the Findings of Fact set forth in the Recommended Order are hereby approved, adopted, and incorporated by reference as the Findings of Fact of the Board.

#### CONCLUSIONS OF LAWS

1. The Board has personal and subject matter jurisdiction of this cause pursuant to sections 120.569; 120.57(1); and Chapter 466, Florida Statutes.
2. The Board does not find a more reasonable interpretation of the law then that which was found by the Administrative Law Judge;
3. Accordingly, the Conclusions of Law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

VIOLATION, PENALTY, AND COSTS

*VIOLATION*

Upon a complete review of the record in this case, the Findings of Facts and Conclusions of Law, the Administrative Law Judge's Recommendation is **ACCEPTED**.

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED** that:

1. The Respondent is found in **VIOLATION** of Section 466.028(1)(m), Florida Statutes, as implemented by Rule 64B5-17.002, *Florida Administrative Code*, as alleged in paragraph 47(b) and (c) of the Administrative Complaint. All other subparagraphs related to a violation of Section 466.028(1)(m), Florida Statutes are hereby **DISMISSED**.
2. The Respondent is found in **VIOLATION** of Section 466.028(1)(x), Florida Statutes, as alleged in paragraph 51(d) of the Administrative Complaint. All other subparagraphs relating to a violation of Section 466.028(1)(x), Florida Statutes are hereby **DISMISSED**.

*PENALTY*

Pursuant to Sections 466.028(2) and 456.072(2), Florida Statutes, the violations of section 466.028(1)(m) and 466.028(1)(x), warrant disciplinary action.

**WHEREFORE**, is is hereby **ORDERED** and **ADJUDGED**, that the Respondent shall hereby:

1. Be issued a Letter of Concern as recommended by the Administrative Law Judge.
2. Attend and successfully complete a Record Keeping Course as recommended by the Administrative Law Judge. The Respondent shall take a level II (4 clock hours) Record

Keeping Course through an accredited dental college or university. The Record Keeping Course shall be successfully completed within twelve (12) months of the filing of this Final Order with the Agency Clerk for the Department of Health.

3. Attend and successfully complete an Endodontic course as recommended by the Administrative Law Judge. The course shall be a Level I (3 to 6 clock hours) in Endodontics, with verified competency achieved during the 3 to 6 hours, at or through an accredited dental college or university. The course must be complete within twelve (12) months of the filing of this Final Order with the Agency Clerk for the Department of Health.
4. Attend and successfully complete an Ethics course as recommended by the Administrative Law Judge. The course shall be taken at any accredited college or university. The course shall be Three (3) semester credit hours. The course shall be completed within twelve (12) months of the filing of this Final Order with the Agency Clerk for the Department of Health;.
5. Pay an administrative fine as recommended by the Administrative Law Judge. However, the Board, after a complete review of the record, rejects the recommendation of paying a fine in the specific amount of \$2,500.00. The Respondent shall pay an increased administrative fine in the amount of \$10,000.00 within twelve (12) months of the filing of this Final Order with the Agency Clerk for the Department of Health. The Board states with particularity that the basis for the increased penalty is that the factual findings in the Recommended Order on page 15 and 16, and paragraphs 34 and 35 finds that the standard of care when performing a root canal requires the use of a rubber dam 1) "to

prevent any objects from entering the airway or being aspirated or swallowed; 2) to protect the tissue surrounding the subject tooth from the adverse materials used such as hypochlorite; and 3) to keep the operating field as sterile as possible.” Rec. Order. Page 16, Para. 35; Rec. Order Page 15, Para. 34.

The record reflects that Respondent failed to isolate and use a rubber dam four or five times. Rec. Order. Page 16, Paragraph 35. The administrative fine of \$ 2,500, fails to reflect the severity of the violation found by the Administrative Law Judge. The danger and severity of failing to utilize a rubber dam when performing a root canal, is innately intertwined with the Findings of Fact found and accepted by the Administrative Law Judge, in that use of the rubber dam is used to keep the operating field sterile, i.e. aseptic, and to prevent aspiration or swallowing of objects, which is to prevent infection, infection and loss of the tooth, or even death from swallowing or aspirating foreign objects. Therefore, the Board imposes a fine of \$10,000.00 in total for both violations (Count I and Count II), which more appropriately reflects the severity and danger of deviating from the prevailing minimum standard of care when performing root canal procedures, a point that may be easily overlooked by any Trier of Fact and Law who specializes in the law, but not the practice of the profession.

#### *MOTION TO ASSESS COSTS*

The following documents and submission were reviewed by the Board for consideration of imposition of costs in this cause:

1. Petitioner’s Amended Motion to Assess Costs: Requesting a total of \$16,229.73 in costs to be imposed against Respondent.

2. Petitioner's Exhibit A: Affidavit, with attachments, of Shane Walters, Operations and Management Consultant Manager, for the Consumer Services and Compliance Management Unit attesting the total costs expended in this cause to be \$16,229.73. The summary of costs was reflected as: a) \$ 37.37 for the Complaint; b) \$ 3,922.12 for Investigations; c) \$ 9,884.74 for legal; and d) \$2,385.50 in direct expenses.
3. Petitioner's Exhibit B: Affidavit of Supervising Attorney Adrienne C. Rodgers In Support of An Assessment of Costs for Attorney Time.
4. Petitioner's Exhibit C: Expenditure Invoices.
5. Petitioner's Exhibit D: Affidavit of Charles F. Tunnicliff, Esquire, Outside Attorney Regarding Costs.
6. Respondent's Exhibit A: Objection to Costs.

Section 456.072(4), Florida Statutes, provides in part,

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. ...”

Based on the Petitioner's and Respondent's written pleadings, to include the affidavits and attachments, and Respondent's written objections, and pursuant to Section 456.072(4), Florida Statutes, the Board finds that the Respondent shall be assessed \$16,229.73 in total costs.


**WHEREFORE**, It is hereby **ORDERED** and **ADJUDGED** that:

Petitioner's Motion to Assess Costs is **GRANTED** and Respondent's Objection to Costs is **DENIED**. Respondent shall pay costs in the amount of \$16,229.73 to the Board within twelve (12) months from the date this final order is filed with the Clerk for the Department of Health. Said costs shall be paid by money order or cashier's check. Please remit Payment to: Department of Health, Division of MQA, Compliance Management Unit, Post Office Box 6320, Tallahassee, Florida 32314-6320.

**DONE AND ORDERED** this 20th day of SEPTEMBER, 2013.

THIS FINAL ORDER shall become effective upon being filed with the Clerk for the Florida Department of Health.

BOARD OF DENTISTRY

  
\_\_\_\_\_  
Sue Foster  
Executive Director *on behalf of*  
Dan Gesek , DDS, 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 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 **Steven J. Courten, DDS**, 9617 NW 43<sup>rd</sup> Court, Coral Springs, Florida 33065 and 795 Seminole Road, Babson Park, Florida; Honorable Todd R. Resavage, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to **Adrienne Rodgers**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265; and by electronic mail to **David D. Flynn**, Assistant Attorney General, [david.flynn@myfloridalegal.com](mailto:david.flynn@myfloridalegal.com) this 20 day of September, 2013.



**Deputy Agency Clerk**