

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

DAVID H. MOORE, D.D.S.            )  
(License No. 5518)                )

CONSENT ORDER

THIS MATTER came on to be heard and was heard before the North Carolina State Board of Dental Examiners (Board) pursuant to N.C. Gen. Stat. § 90-41(b), for consideration of a Consent Order in lieu of a formal administrative hearing. A settlement conference was held before the full Board on March 13, 2009. David H. Moore, D.D.S. (Respondent), was represented by M. Jackson Nichols. Carolin Bakewell represented the Investigative Panel. Based upon the consent of the parties hereto, the Board enters the following:

FINDINGS OF FACT

1. The North Carolina State Board of Dental Examiners is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 90 of the North Carolina General Statutes (the Dental Practice Act) and the Rules and Regulations of the North Carolina State Board of Dental Examiners (Dental Board).
2. Respondent was licensed to practice dentistry in North Carolina on June 2, 1986 and is subject to the Dental Practice Act and the rules promulgated thereunder.
3. At all times relevant hereto, Respondent was engaged in the practice of pediatric dentistry in Charlotte, North Carolina.

4. On April 13, 2004, Marvin Z-J (Marvin), who was then 3 ½ years old, presented to Respondent's office for a new patient exam and cleaning.

5. Following his examination, Respondent diagnosed Marvin with dental caries and recommended a course of restorative treatment.

6. Marvin's parents returned with their son to Respondent's practice on March 5, 2005. At that time, Marvin's parents agreed to proceed with the planned restorations to be performed under IV sedation.

7. On April 6, 2005, Respondent performed pulpectomies of Marvin's teeth # E and # F and restored a total of 14 teeth, including teeth # E and # F. During the pulpectomy of tooth # E, a lentulo spiral separated and a portion of the tip about 5 mm long became lodged in the tooth.

8. Respondent was aware on April 6, 2005 that a portion of the lentulo spiral had separated and remained in tooth # E, but failed to make an entry in the patient record or notify Marvin's parents of the event.

9. Respondent failed to take post-operative radiographs after performing the pulpectomies on teeth # E and # F, knowing that a portion of the lentulo spiral had separated in the tooth.

10. On May 31, 2006, Marvin's mother brought Marvin to the Respondent's office with a chief complaint of pain in the upper anterior teeth. An associate dentist treated Marvin at this appointment.

11. The associate took a radiograph of the area and extracted teeth # E and # F after determining that the teeth had abscessed.

12. Although the radiograph taken on May 31, 2006 revealed the portion of the lentulo spiral protruding from the apices of tooth #E, Respondent's associate did not remove the fragment from tooth #E.

13. On May 29, 2007, Marvin's parents took him to a general dentist in the Charlotte area. The general dentist located and removed the separated spiral from the gingiva in the area of tooth # 8.

14. The presence of the fragment of spiral in Marvin's upper anterior tissue contributed to teeth # E and # F abscessing.

15. On September 14, 2007, in response to an inquiry from his insurance carrier, Respondent provided a narrative account of his treatment of Marvin.

16. In his response, Respondent did not reveal that he was aware on April 6, 2005 that the lentulo spiral had separated and remained lodged in Marvin's tooth # E. Rather, Respondent suggested that his associate negligently failed to remove the lentulo spiral when she extracted tooth # E on May 31, 2006, despite the fact that a radiograph taken that day clearly showed the portion of the lentulo spiral protruding from the apices of tooth # E.

17. The standard of care for dentists licensed to practice dentistry in North Carolina in 2005 required dentists to notify the parents of a minor patient when a portion of an instrument separates and becomes lodged in a tooth.

18. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing inform Marvin's parents that a lentulo spiral separated and a portion of the tip about 5 mm long became lodged in tooth # E during the pulpectomy on April 6, 2005.

19. The standard of care for dentists licensed to practice dentistry in North Carolina in 2005 required dentists to maintain complete dental records that accurately and adequately reflects the treatment rendered.

20. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing to note in Marvin's patient record that the lentulo spiral separated during the pulpectomy on tooth # E.

21. The standard of care for dentists licensed to practice dentistry in North Carolina in 2005 required dentists to take post-operative radiographs following completion of a pulpectomy, knowing that a portion of an instrument separated within the tooth.

22. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing to take a post-operative radiograph of Marvin's tooth #E following the pulpectomy knowing that a portion of an instrument separated within the tooth.

Based upon the foregoing Findings of Fact and the consent of the parties hereto, the Board enters the following:

#### CONCLUSIONS OF LAW

1. The Dental Board has jurisdiction over the subject matter of this proceeding and over the person of the Respondent.

2. Respondent engaged in negligent treatment in violation of N.C. Gen. Stat. 90-41(a)(12) by failing to notify Marvin's parents on April 6, 2005 that a portion of the lentulo spiral had separated and remained in their son's tooth # E after the pulpectomy.

3. Respondent engaged in negligent treatment in violation of N.C. Gen. Stat. 90-41(a)(12) by failing to take post-operative radiographs after completing the pulpectomies on Marvin's teeth # E and # F, knowing that a separated instrument remained in the tooth.

4. Respondent engaged in negligent treatment in violation of N.C. Gen. Stat. 90-41(a)(12) by failing to note in Marvin's patient record that the lentulo spiral had separated and that a portion of the spiral remained in Marvin's tooth # E.

5. By failing to tell his insurance carrier in his September 14, 2007 response that he knew on April 5, 2005 that the lentulo spiral had separated and was lodged in Marvin's tooth # E, and by blaming an associate for the resulting damage, the Respondent engaged in a misleading act in the practice of dentistry in violation of N.C. Gen. Stat. 90-41(a)(17).

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the consent of the parties, the Board enters the following:

#### ORDER OF DISCIPLINE

1. License number 5518 issued to Respondent for the practice of dentistry in North Carolina is suspended for a period of five (5) years. Respondent shall surrender his license and current renewal certificate to the Board at its offices on or before July 10, 2009. During this term of suspension Respondent may, with the Board's prior written approval, lease his dental office and equipment. Any lease approved by the Board must be in writing and must disclose fully all material terms of the transaction. In no event shall any such lease allow operation of the dental practice on behalf of or for the benefit of Respondent.

2. Respondent's license to practice dentistry shall be conditionally restored on the ninety-first (91<sup>st</sup>) business day following surrender, provided that for fifty-seven (57) months he adhere to the following probationary terms and conditions. A business day is defined as any day between Monday and Friday that is not a state or federal holiday.

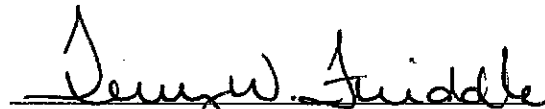
- (a) Respondent shall violate no provision of the Dental Practice Act or the Board's Rules;
- (b) Respondent shall neither direct nor permit any of his employees to violate any provision of the Dental Practice Act or the Board's Rules;
- (c) Respondent shall allow the Board or its authorized agent to inspect and observe his office and patient records, and interview his employees and co-workers at any time during regular office hours;
- (d) Respondent shall, within one (1) year from the date of this Order, complete a continuing education course especially designed for him by Dr. Michael Weisenfield and Dr. Wayne Silverman in conjunction with the North Carolina State Board of Dental Examiners directives. This will be a comprehensive, remedial course in ethics and record-keeping. Respondent shall submit to the Board's Deputy Operations Officer written proof of satisfactory completion of this course before it will be accepted in satisfaction of this requirement. This requirement shall be in addition to the continuing education required by the Board for the renewal of Respondent's dental license.

3. Respondent shall, within one month from the date of this Order, reimburse the Board for the costs associated with this investigation and hearing in the amount of \$200.00.

This the 20 day of July, 2009.

THE NORTH CAROLINA STATE  
BOARD OF DENTAL EXAMINERS

By:



Terry W. Friddle  
Deputy Operations Officer

STATEMENT OF CONSENT

I, DAVID H. MOORE, D.D.S. do hereby certify that I have read the foregoing Consent Order in its entirety and that I do freely and voluntarily admit, exclusively for the purposes of this disciplinary proceeding and any other disciplinary or licensure proceedings before this Board, that there is a factual basis for the allegations set forth therein, that these factual allegations, if proven, are legally sufficient to support findings and conclusions that I am in violation of G.S. Section 90-41(a)(12) and (17), and I will not contest the factual allegations therein should further disciplinary action be warranted in this matter, and that I assent to the terms and conditions set forth therein. I hereby express my understanding that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order shall become a part of the permanent public record of the Board.

This the 17<sup>th</sup> day of July, 2009.



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DAVID H. MOORE, D.D.S.