STATE OF MAINE
BOARD OF DENTAL PRACTICE

In re: David R. Steuer, D.M.D.,
(Adjudicatory Hearing on Complaint) )
DECISION AND ORDER
No. 18-46 )

I. INTRODUCTION

The Maine Board of Dental Practice ("the Board") met in public session at the Board’s offices in Augusta on Friday, November 9, 2018, at 9:15 a.m. for a hearing to consider whether grounds exist to impose discipline against David R. Steuer’s right to practice dentistry in Maine.¹ A quorum of the Board was in attendance during all stages of the proceeding. Participating and voting Board members were Lisa P. Howard, D.D.S., Board Chair (Dentist Member); Tracey Jowett, R.D.H. (Dental Hygiene Member); Glen S. Davis, D.M.D. (Dentist Member); Kathryn A. Young, L.D. (Denturist Member); M. Lourdes Wellington (Public Member); Nancy Foster, R.D.H., E.F.D.A. (Dental Hygiene Member); and Stephen G. Morse, D.M.D. (Board Vice Chair).²

The Applicant appeared and was represented by Robert Hayes, Esq. Assistant Attorney General Andrew Black represented the State. F. Mark Terison, Esq., present under the terms of a contract with the Board, presided as independent administrative hearing officer. Each participating Board member responded negatively on the record concerning the existence of any financial interest in the outcome of the hearing, or any possible bias or prejudice given the subject matter of the hearing and the parties involved, and determined for herself or himself that she or he was capable of making a fair and impartial decision in the matter.

The Licensee’s exhibits admitted in evidence included the following:

1. Medical records of patient JM provided to the Board by Dr. Killian McCarthy on 6/8/2018
2. Letter re: Dr. Steuer’s imaging records of patient JM dated 7/5/2018
3. Copies of Dr. Steuer’s imaging records of patient JM

¹ Dr. Steuer voluntarily surrendered his license to practice dentistry in Maine effective August 13, 2018 as the result of a Consent Agreement reached in another matter.
² Paul P. Dunbar, D.D.S. (Dentist Member) served as complaint officer for the matter and was therefore recused. He sat with the Assistant Attorney General during the hearing and took no part in the Board’s deliberations. At the Licensee’s request, Mark D. Zajkowski, D.D.S., M.D. (Dentist Member), was also recused.
4. Email from Teneale Johnson to Dr. Nathan Oakes dated 8/3/2018, Subject Line: “Patient Inquiry”

Exhibits admitted in evidence on behalf of the State were as follows:

1. Revised Notice of Hearing, dated 10/2/2018
2. ALMS Licensing data for Dr. Steuer
3. Complaint dated 2/20/2018
4. Notice of complaint sent to Dr. Steuer 4/20/2018
5. Request for release from patient JM sent 4/20/2018
6. Request for response sent to Dr. Steuer 5/24/2018
7. Dr. Steuer’s response dated 6/20/2018
8. Records of patient JM attached to Dr. Steuer’s response
9. Records of Dr. David Jacobsen for patient JM received 6/27/2018
10. Records of Dr. Nathan Oakes for patient JM received 9/21/2018
11. Original of letter from Dr. Steuer to Dr. Oakes dated 5/24/2017
12. Consent Agreement in Complaint No. 17-23 dated 7/13/2018
13. Copy of 32 M.R.S. § 18325

II. REVIEW OF FACTS

In April 2017 Nathan Oakes, D.M.D., referred his patient, J.M., to endodontist David R. Steuer, D.M.D., for evaluation and possible root canal retreatment of tooth #14. Dr. Steuer evaluated tooth #14 and treated the root canal on May 24, 2017. The following letter to Dr. Oakes from Dr. Steuer was included in Dr. Oakes’ files, but was not provided to the Board in Dr. Steuer’s response to the Board’s request for all information and documents relating to the treatment he provided to J.M.:

Dear Dr. Oakes,

Thank you for referring [J.M.] to our office. I saw her on 05/24/2017. [J.M.] has pain associated with the tooth and upon probing the distal, which measures 7mm, and given the overall root length of 15 mm, the majority of the root has now exposed...we will monitor this with time. I looked very carefully for any signs of fracture or vertical cracks but none were located. I found some decay under the crown along the palatal side of the tooth, and it was removed, there was no sign of pus or infection after the first visit, so we closed the tooth and she is ready for a perf. restoration. The ongoing cause of her discomfort is unknown, and the hope is that with time and periodontal maintenance she should heal very nicely.

Dr. Steuer also sent a message via email to Dr. Oakes that included pre- and post-operative radiographs, and noted “Retreatment Root Canal #14.” The electronic message stated:

[J.M.] did great. No cracks or fractures found. Please restore crown... we
referred [J.M.] back to your office for continued oral health.

Dr. Steuer testified that he had no recollection of typing the electronic message.

During her visit with Dr. Steuer for treatment of tooth #14, J.M. also mentioned a problem with tooth #30. Following an x-ray of the tooth, J.M. saw what she thought was bone loss and recalled that Dr. Steuer advised her that she needed retreatment of tooth #30. J.M. understood that to mean another root canal. J.M. insisted that Dr. Steuer never mentioned extraction as an alternative to retreatment. Dr. Steuer’s records included the following note:

P[atient] s[aid] she feels like a tooth on the LR is feel[ing] the same way as #14. She feels like . . . tissue [is] pulling away from tooth. Took PA #30 and shows furcation involvement. Per DS tooth #30 is in need of a RETX.

In June 2017 J.M. changed dentists and saw David Jacobson, D.D.S. She asked Dr. Jacobson about tooth #30, and said she did not understand how retreatment would help a tooth with bone loss. Dr. Jacobson referred J.M. to Oak Hill Endodontics for an evaluation of tooth #30. Stephen J. Tangredi, D.D.S., evaluated the tooth on July 28, 2017 and concluded that “[d]ue to radiolucency surrounding previous perforation repair and associated probing, #30 prognosis is poor and recommended tx is extraction.” Dr. Jacobson later referred J.M. to Killian McCarthy, D.M.D., M.D., who evaluated the tooth on November 9, 2017. Dr. McCarthy noted that the “periapical radiograph shows 30 has been root canal treated and is failing.” He performed a surgical extraction of the tooth on December 11, 2017, and endosteal implant on May 31, 2018.

After learning about other complaints concerning Dr. Steuer, J.M. became curious whether Dr. Steuer’s office would schedule her for retreatment of tooth #30. On February 20, 2018 she called his office for the purpose of giving him “a chance to advise extraction instead of retreatment.” She testified that she spoke to Dr. Steuer’s receptionist, but did not speak directly with Dr. Steuer himself. Nevertheless, after retreatment was scheduled, J.M. complained to the Board. In response, Dr. Steuer maintained that he had advised J.M.’s referring dentist, Dr. Oakes, of “a possible retreat,” but that extraction of tooth #30 “may be more prudent.” Dr. Steuer submitted to the Board his purported advisory letter to Dr. Oakes, dated May 24, 2017, that Dr. Steuer provided to the Board with his response to J.M.’s complaint. The letter read:

Dear Dr. Oakes,

Re: [J.M.]

5/24/2017

[J.M.] presented for Retreat of tooth 14, and the procedure went well. No
fractures or limiting issues were noted that would delay or prevent healing. Please restore 14 as you see best.

While [J.M.] was here she asked us to please xray and evaluate a tooth on the lr, upon taking an xray it is noted that tooth 30 has had prior endo, and there is a significant amount of tissue damage/both hard and soft. I have advised her that she needs to address this tooth, either by having it extracted or a possible retreat- however I feel that an EXT may be more prudent as the long term success of this tooth is questionable at best. I have asked her to speak with you regarding her treatment options and to please have this tooth be part of her treatment plan with you. She is aware of the problem and once you have a treatment plan in place, we can be of service if it is indicated.

Both Dr. Oakes and Dr. Jacobson testified that their records pertaining to J.M. did not include the above letter, and that neither had seen the letter until the State’s attorney had shown it to them. Moreover, Dr. Oakes stated that he never receives two letters about the same patient following treatment of his referred patients. Dr. Jacobson added that he relied upon J.M. to provide her treatment records, and that he did not know what other documents concerning J.M. may have been in Dr. Steuer’s records.

Asked why his response to J.M.’s complaint did not include the first letter referenced above, Dr. Steuer testified that he did not know, but that he accepted responsibility for not including it for the Board in his initial response. He said he asked his staff to retrieve J.M.’s records and to forward them to him. He, in turn, sent them along to his attorneys for transmittal to the Board. Dr. Steuer added that whichever staff member gathered the record made a mistake by not including both letters, and stated that he should have reviewed the response more thoroughly. He also posited that the first letter could have been misfiled to explain its absence from J.M.’s records that he provided to the Board. Dr. Steuer further testified that he typed both of the letters the same day, May 24, 2017, and denied that he purposely withheld the first letter from the Board. Asked why two letters were prepared for Dr. Oakes regarding the same patient on the same day, Dr. Steuer replied that he simply wrote a second note to Dr. Oakes, and that providing two notes concerning a patient was not uncommon. He did not recall which note he wrote first, insisted that he did not fabricate the second one, and had no explanation as to why neither Dr. Oakes’ nor Dr. Jacobson’s files contained the second letter. He theorized that the second letter could have been drafted and never sent, or perhaps his staff erred either by failing to send it. He denied any intent to deceive.

III. GOVERNING STATUTES AND RULES

Pursuant to 32 M.R.S. § 18325(1), the Board “may suspend, revoke, refuse to issue or renew a license . . .” Statutory authority for such action includes “fraud, deceit or misrepresentation . . . in connection with services within the scope of the license . . .” and “unprofessional conduct.” 32 M.R.S. §§ 18325(1)(A) and (E). Unprofessional conduct is defined as a violation of a standard of professional behavior that has been established in the practice
for which the licensee is licensed.” 32 M.R.S. § 18325 (1)(E). A further ground for disciplinary action is the failure to produce any requested documents in the licensee’s possession or under the licensee’s control relevant to a pending complaint under investigation by the Board. See 32 M.R.S. § 18325(1)(M).

IV. CONCLUSIONS OF LAW

After the presentation of the evidence, the Board discussed the five grounds alleged in support of disciplinary action, and based upon the evidence recounted above and otherwise appearing in the record of the hearing but not specifically mentioned in this decision and order, and finding the complainant’s testimony credible and Dr. Steuer’s testimony unworthy of full belief, reached the following conclusions by a preponderance:

1. By motion made, seconded, and adopted unanimously upon a vote of 7-0, the Board found that Dr. Steuer engaged in fraud, deceit or misrepresentation in connection with services within the scope of his license by fabricating a letter and submitting it to the Board as evidence in defense of a complaint, in violation of 32 M.R.S. § 18325(1)(A);

2. By motion made, seconded, and adopted unanimously upon a vote of 7-0, the Board found that Dr. Steuer engaged in fraud, deceit or misrepresentation in connection with services within the scope of his license by knowingly making written and false statements to the Board that he had sent a particular letter to another dentist, in violation of 32 M.R.S. § 18325(1)(A);

3. By motion made, seconded, and adopted unanimously upon a vote of 7-0, the Board found that Dr. Steuer engaged in unprofessional conduct by fabricating a letter and submitting it to the Board as evidence in defense of a complaint, in violation of 32 M.R.S. § 18325(1)(E);

4. By motion made, seconded, and adopted unanimously upon a vote of 7-0, the Board found that Dr. Steuer engaged in unprofessional conduct by knowingly making written and false statements to the Board that he had sent a particular letter to another dentist, in violation of 32 M.R.S. § 18325(1)(E); and

5. By motion made, seconded, and adopted unanimously upon a vote of 7-0, the Board found that Dr. Steuer failed to produce a requested document in his possession or under his control relevant to a pending complaint, in violation of 32 M.R.S. § 18325(1)(M).

After further discussion, and noting that Dr. Steuer is not currently licensed in Maine, by motion made, seconded, and adopted unanimously upon a vote of 7-0, the Board imposed the following penalties: a REPRIMAND and a civil penalty in the amount of $1,500, and an assessment of the costs of investigation and hearing in an amount not to exceed $3,000. The $1,500 civil penalty and the costs associated with the hearing and investigation shall be paid no later than 180 days after the effective date of this decision and order. Dr. Steuer’s payment of the civil penalty must be by certified check or money order made payable to “Treasurer,
State of Maine” and Dr. Steuer’s payment of the board’s costs must be by certified check or money order and made payable to “Maine Board of Dental Practice.” The payments shall be submitted to Penny Vaillancourt, Executive Director, Maine Board of Dental Practice, 161 Capitol Street, 143 State House Station, Augusta, ME 04333-0143.”

So Ordered.

Dated: 12/7/14

Lisa Howard, D.D.S., Chair
Maine Board of Dental Practice

Appeal Rights

Pursuant to the provisions of 5 M.R.S. §§ 11001-11002 and the general language following 10 M.R.S. § 8003 (5)(G), any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior Court having jurisdiction within 30 days of receipt of this Decision and Order. The petition shall specify the person seeking review, the manner in which the person is aggrieved, and the final agency action which the person seeks reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a demand for relief. Copies of the Petition for review shall be served by Certified Mail, Return Receipt Requested, upon the Maine Board of Dental Practice, all parties to the agency proceedings, and the Maine Attorney General.