

**STATE OF FLORIDA
BOARD OF DENTISTRY**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO: 2019-08096

ALLEN H. ROSENTHAL, D.D.S.,

RESPONDENT.

AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, files this Amended Administrative Complaint before the Board of Dentistry against Respondent, Allen H. Rosenthal, D.D.S., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of dentistry pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 466, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed dentist within the State of Florida, having first been issued license number DN 7953 on or about August 21, 1978.

3. Respondent's address on record with the Department is 7445 Northwest 44th Street, #1113, Lauderhill, Florida 33319.

4. At all times material to this Complaint, Respondent was the owner and sole practitioner of the dental practice located at 3836 North University Drive, Sunrise, Florida 33351.

5. On or about August 29, 2016, Patient V.M. presented to Respondent for an initial oral examination.

6. Respondent's dental records for Patient V.M. do not include the results of any periodontal evaluation.

7. The minimum standards of performance in diagnosis and treatment in the practice of dentistry requires a dentist to perform a periodontal evaluation when performing an initial oral examination.

8. Respondent failed to perform a periodontal evaluation during Patient V.M.'s initial oral exam, or failed to document the results of the periodontal evaluation in the dental records of Patient V.M.

9. On or about January 29, 2019, Respondent performed root canal therapy on Patient V.M.'s tooth 9.

10. Respondent's dental records for Patient V.M. do not include any justification for the root canal therapy of Patient V.M.'s tooth 9.

11. The root canal which Respondent performed on Patient V.M.'s tooth 9 resulted in an improperly under-filled canal.

12. The minimum standards of performance in diagnosis and treatment in the practice of dentistry requires dentists to adequately obturate canals when performing root canal treatment.

13. Respondent failed to adequately obturate the canal of Patient V.M.'s tooth 9 by underfilling the canal approximately 4mm short of the canal's radiographic apex.

14. Respondent's dental records for Patient V.M. do not document the course of treatment with regard to the root canal treatment of Patient V.M.'s tooth 9, including what anesthesia, if any, was administered.

15. On or February 5, 2019, Respondent performed crown preparation on, and ordered a crown for, Patient V.M.'s tooth 15.

16. Respondent's dental records for Patient V.M. do not include a lab prescription for the crown for Patient V.M.'s tooth 15.

17. On or about November 26, 2018, a judgment of eviction was entered against Respondent from the property located at 3836 North University Dr., Sunrise, Florida 33351, in case number CONO-18-012546 in the County Court of the 17th Judicial Circuit in and for Broward County, Florida.

18. On or about February 19, 2019, a writ of possession was posted to remove Respondent from the property located at 3836 North

University Drive, Sunrise, Florida 33351, within 24 hours, in case number CONO-18-012546 in the County Court of the 17th Judicial Circuit in and for Broward County, Florida.

19. As of March 15, 2019, Respondent had vacated the property located at 3836 North University Drive, Sunrise, Florida 33351.

20. As of January 23, 2020, Respondent's address of record with the Department was still 3836 North University Drive, Sunrise, Florida 33351.

21. Respondent failed to publish a notice in the newspaper of greatest general circulation in Broward county advising Respondent's patients of Respondent's termination of practice or relocation and providing a name, address, and telephone number of the person from whom patients may obtain copies of their dental records.

22. Respondent failed to notify the Board in writing within 10 days of Respondent's change of address.

COUNT I- MINIMUM STANDARDS

23. Petitioner re-alleges and incorporates paragraphs one (1) through thirteen (13), as if fully set forth herein.

24. Section 466.028(1)(x), Florida Statutes (2016-2019), states that "[b]eing guilty of incompetence or negligence by failing to meet the

minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance”, shall constitute grounds for disciplinary action by the Board of Dentistry.

25. Respondent departed from the minimum standards in one or more of the following ways:

- A. By failing to perform a periodontal evaluation during Patient V.M.’s initial oral examination on August 29, 2016; and/or
- B. By failing to adequately obturate the canal of Patient V.M.’s tooth 9 by underfilling the canal approximately 4mm short of the canal’s radiographic apex.

26. Based on the foregoing, Respondent violated section 466.028(1)(x).

COUNT II- RECORD KEEPING

27. Petitioner re-alleges and incorporates paragraphs one (1) through sixteen (16) as if fully set forth herein.

28. Section 466.028(1)(m), Florida Statutes (2016-2019), states that “[f]ailing to keep written dental records and medical history records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, test results, and X rays, if taken”, shall constitute grounds for disciplinary action by the Board of Dentistry.

29. Section 466.028(1)(mm), Florida Statutes (2016-2019), states that "[v]iolating any provision of this chapter, of chapter 456, or any rules adopted pursuant thereto", shall constitute grounds for disciplinary action by the Board of Dentistry.

30. Rule 64B5-17.002(1), Florida Administrative Code, provides that: "[t]he dental record shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; X-rays (if taken;) examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultation or referrals; and copies of records or reports or other documentation obtained from health care practitioners at the request of the dentist and relied upon by the dentist in determining the appropriate treatment of the patient."

31. Respondent failed to maintain records in accordance with section 466.028(1)(m), and/or rule 64B5-17.002(1), in one or more of the following ways:

A. In the alternative to Count I, subsection A, by failing to document the results of any periodontal evaluation

performed on Patient V.M., within the dental records of Patient V.M.;

B. By failing to document a justification for the root canal treatment performed on Patient V.M.'s tooth 9, within the dental records of Patient V.M.;

C. By failing to document the course of treatment regarding the root canal treatment performed on Patient V.M.'s tooth 9, within the dental records of Patient V.M.;

D. By failing to document any anesthesia administered for the root canal treatment performed on Patient V.M.'s tooth 9; and/or

E. By failing to maintain Patient V.M.'s dental records to include the lab prescription for the crown for Patient V.M.'s tooth 15.

32. Based on the foregoing, Respondent violated section 466.028(1)(m), and/or Respondent violated section 466.028(1)(mm), through a violation of rule 64B5-17.002(1).

COUNT III- NOTICE

33. Petitioner re-alleges and incorporates paragraphs one (1) through four (4), and nineteen (19) through twenty-two (22), as if fully set forth herein.

34. Section 466.028(1)(mm) states that "[v]iolating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto", shall constitute grounds for disciplinary action by the Board of Dentistry.

35. Rule 64B5-17.001(4), Florida Administrative Code, states, "[w]ithin one month of a dentist's termination of practice...a notice shall be published in the newspaper of greatest general circulation in the county where the dentist practiced which advises patients of the dentist's termination of practice or relocation. The notice shall advise patients that they may obtain copies of their dental records and specify the name, address and telephone number of the person from whom copies of records may be obtained. The notice shall appear at least once a week for four consecutive weeks."

36. Rule 64B5-17.0011, Florida Administrative Code, states, "[a]ll licensees are required to notify the Board in writing within 10 days of any change in their address.

37. Respondent violated Section 466.028(1)(mm), in one or more of the following ways:

- A. By failing to publish a notice in the newspaper of greatest general circulation in Broward, the county of his former practice, notifying patients of the termination of

Respondent's practice and advising patients that they may obtain copies of their dental records and specifying a name, address, and telephone number of the person from whom copies of records may be obtained; and/or

B. By failing to notify the Board of Respondent's change in address within 10 days.

38. Based on the foregoing, Respondent has violated section 466.028(1)(mm), through violation(s) of rule(s) 64B5-17.001(4) and/or 64B5-17.0011.

WHEREFORE, the Petitioner respectfully requests that the Board enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 14th day of September, 2020.

Scott A. Rivkees, M.D.,
State Surgeon General

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PCP: September 11, 2020
PCP Members: Miro, Perdomo, Morgan

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Amended Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code.

If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Amended Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Amended Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.