

IN THE MATTER OF	*	BEFORE THE MARYLAND
MARVA J. HERRING, D.D.S.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
License Number: 9986	*	Case Number: 2007-091

* * * * *

CONSENT ORDER

On or about January 3, 2007, the Maryland State Board of Dental Examiners (the "Board"), summarily suspended the dental license of MARVA J. HERRING, D.D.S. ("Respondent"), license number 9986, after finding that the public health, safety and welfare imperatively required emergency action under Md. State Gov't ("S.G") Code Ann. § 10-226(c)(2) (2004 & Supp. 2006) and pursuant to the Maryland Dentistry Act (the "Act"), Md. Health Occ. ("H.O.") Code Ann. §§ 4-101 *et seq.* (2005 & Supp. 2006). The pertinent provisions of H.O. § 4-315(a), and those under which the Summary Suspension Order was based, provide:

- (a) License to practice dentistry. – Subject to the hearing provisions of § 4-318 of this subtitle, the Board may deny a general license to practice dentistry...reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the ... licensee:
 - (6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner;
 - (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; and
 - (28) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control's guidelines on universal precautions.

The applicable section of S.G. § 10-226(c)(2) provides:

(c) *Revocation of [sic] suspension.* –

- (2) A unit may order summarily the suspension of a license if the unit:
 - (i) finds that the public health, safety, or welfare imperatively requires emergency action; and
 - (ii) promptly gives the licensee:
 1. written notice of the suspension, the finding and the reasons that support the finding; and
 2. an opportunity to be heard.

The Board offered the Respondent an opportunity to show cause why her license should not continue to be summarily suspended. The Respondent appeared for a Show Cause Hearing held on January 17, 2007. On February 28, 2007, the Board issued an Order Continuing the Summary Suspension.

As a result of negotiations with the Office of the Attorney General, by Kimberly S. Cammarata, Assistant Attorney General and the Respondent, by her attorney, Gerald Smith, and the Board, the parties agreed to enter into this Consent Order, consisting of Introduction, Findings of Fact, Conclusions of Law and Order, and with the terms and conditions set forth herein. This Consent Order resolves the Summary Suspension Order, supersedes the conditions contained in the Order Continuing Summary Suspension and resolves any Charges that may have resulted from the Findings of Fact herein.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was and is a dentist licensed to practice dentistry in the State of Maryland, initially receiving her license on August 25, 1988.

2. The Respondent practiced dentistry in a residential condominium.
3. On or about October 3, 2006, the Board received a complaint alleging facts that, if true, would be violations of CDC guidelines. The complaint came from the management group of the condominium where the Respondent practices dentistry. The complaint alleged, *inter alia*, that no special waste management trucks were seen evidencing bio-hazardous waste pick-up and that a plumber advised them that the office was filthy and emitted a terrible odor. The Board referred the complaint to its investigative unit.

Office Visit, November 27, 2006

4. On or about November 27, 2006, Board investigators presented to the Respondent's office. The investigators did not observe the Respondent provide patient care on this date but a patient did appear at the office for an appointment and the Respondent turned him away. The Respondent indicated that she was seeing patients on an emergency basis.
5. The operatory used for patient care had a wall unit full of dental supplies, instruments and materials that were stored hap-hazardously; some bagged and some un-bagged and open to contamination. Dental supplies and instruments were also stored under the sink in the operatory, again in a haphazard fashion; some bagged and some un-bagged and open to contamination. The area would be impossible to disinfect following patient care due to the extensive clutter on the exposed surfaces. The treatment area was not aseptic.
6. The "sterilization area," which is an area to be used to pre-clean and autoclave instruments, was also used as an x-ray room and the lab. The sink in the room was

overrun with models and impressions that showed no evidence of disinfection. The area evidenced co-mingling of clean and contaminated instruments, materials and armamentarium. The Respondent also had a tile cutter in the room that had apparently been recently used to cut floor tiles.

7. There was a kitchen in the office that was also heavily cluttered and had evidence of cockroach infestation.

8. Bio-hazardous waste was mixed with patient charts, administrative materials and other items that are impossible to disinfect. The sharps container was used as a stand holding a box of patient charts, lab materials and other items which cannot be disinfected.

9. The investigators observed an incubator used to incubate spores for spore testing the autoclave; however, the evidence provided by the Respondent to verify weekly spore testing appeared to be unreliable.

Office Visit, November 28, 2006

10. The investigators returned to the Respondent's office on November 28, 2006 in an effort to observe patient care. The Respondent indicated that she had treated a patient the previous day after the investigators left the premises. The Respondent did not treat any patients while the investigators were present.

Documentation

11. The documentation providing evidence of weekly spore testing is unreliable.

12. The documentation provided by the Respondent to evidence bio-hazardous waste removal was unreadable.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated H.O. § 4-315(a)(6), (16) and (28) which provide:

(6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner;

(16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; and

(28) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control's guidelines on universal precautions.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Maryland State Board of Dental Examiners, hereby:

ORDERED that the Respondent's license to practice dentistry in the State of Maryland is **INDEFINITELY SUSPENDED**; and it is further

ORDERED that the Respondent shall be prohibited from practicing dentistry at 3900 Bel Pre Road, Suite #1, Silver Spring, Maryland 20906 until such time as the Respondent advises the Board that the location is suitable for dental practice and the Board or its agent inspects the premises and approves the office (in writing) for dental use; and it is further

ORDERED that the Respondent may petition for a **STAY** of the **SUSPENSION** when the Respondent can verify completion of the following conditions:

1. The Respondent shall retain a Board-approved consultant to evaluate her practice for compliance with CDC guidelines and to train the Respondent in applying the

guidelines to the dental practice. The consultant shall be provided with a copy of all Orders in this case and all documentation pertinent to the investigation;

2. The Respondent shall undergo a mock patient care inspection with the Board-approved consultant in which the Respondent must demonstrate her working application of the CDC guidelines. The mock inspection shall include observation of room set up, seating of and caring for a mock patient, room turnover, room disinfection process and sterilization process of instruments;

3. After the Respondent has been trained in the CDC guidelines and the consultant is satisfied that the Respondent has properly applied them in the dental practice, the consultant shall submit a detailed written report to the Board. The report must be satisfactory and must be approved by the Board;

4. After the consultant has provided a detailed written report to the Board, in writing, that the Respondent's practice is in full compliance with the CDC guidelines and the Board is satisfied that the Respondent is in full compliance and evidence a working knowledge of the CDC guidelines, the Board shall, in accordance with the terms and conditions of this Order, reinstate the Respondent's license and approve the Respondent to re-open her practice;

5. The Respondent shall consult with the Dental Well-Being Committee ("WBC") and shall, if requested by the WBC, enter into a Monitoring Agreement with the WBC and fully comply with all of the terms and conditions of the Monitoring Agreement; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of two (2) years from the date her license is reinstated, subject to the following conditions:

1. The consultant shall be present in the Respondent's office for two (2) visits of one half (1/2) day each of patient care after her license is reinstated during the Respondent's first thirty (30) days of practice to ensure that the Respondent is complying with the CDC guidelines and the Act;
2. The Respondent shall provide to the Board, on or before the fifth day of each month, a listing of her regularly scheduled days and hours for patient care;
3. The Respondent shall notify the Board of any new practice location and shall have the location evaluated by the Board-approved consultant or other Board-approved agent prior to the Respondent treating patients in any new location. The Board may elect to waive the inspection of the practice location;
4. The Respondent shall be subject to a minimum of three (3) unannounced inspections by the consultant, or other Board-approved agent, during the first year of the probationary period. The consultant or Board-approved agent shall provide reports to the Board within ten (10) days of the date of the inspection and may consult with the Board regarding the findings of the inspections. A finding by the Board indicating that the Respondent or her practice is not in compliance with the CDC guidelines shall constitute a violation of this Order and may, in the Board's discretion, be grounds for immediately suspending the Respondent's license. In the event that the Respondent's license is suspended under this provision, she shall be afforded a Show Cause Hearing before the Board to show cause as to why her license should not be suspended or should not have been suspended;
5. The Respondent shall also be subject to random, unannounced inspections by the Board or its representative(s), at any time during the probationary period. A finding

by the Board indicating that the Respondent or her practice is not in compliance with the CDC guidelines shall constitute a violation of this Order and may, in the Board's discretion, be grounds for immediately suspending the Respondent's license. In the event that the Respondent's license is suspended under this provision, she shall be afforded a Show Cause Hearing before the Board to show cause as to why her license should not be suspended or should not have been suspended;

6. If determined by the WBC that the Respondent enter into a Monitoring Agreement, the Respondent shall fully comply with the terms and conditions of the Monitoring Agreement;

7. The Respondent shall complete all required continuing education courses required for renewal of her license. No part of the training or education she receives in compliance with this Order shall be applied to her required continuing education credits; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with her consultant, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and it is further

ORDERED that if the Respondent does not petition for a Stay of Suspension on or before December 30, 2007, or seek a continuance of this date, or the Respondent otherwise does not meet the conditions for stay and reinstatement as delineated in this Consent Order, the Board may issue an Order Revoking the Respondent's license; said Order shall be a Final Order, and shall not be subject to appeal; and it is further

ORDERED that one (1) year from the effective date of reinstatement of her license, the Respondent may petition the Board for termination of her probationary status without any conditions or restrictions whatsoever. If the Respondent has satisfactorily complied with all conditions of probation, and there are no outstanding complaints or concerns regarding the Respondent, the Board may terminate the probation; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that this Consent Order is PUBLIC DOCUMENT as defined in Md. State Gov't Code Ann. §§ 10-611 *et seq.* (2004 & Supp. 2006).

4-18-07
Date of Consent Order


James P. Goldsmith, D.M.D.
President
Maryland State Board of Dental Examiners

CONSENT

I, MARVA J. HERRING, D.D.S. License No. 9986, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with counsel, Gerald Smith, Esquire, before signing this document.
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 4-318 (2005 & Supp. 2006) and Md. State Gov't. Code Ann. §§10-201 *et seq.* (2004 & Supp. 2006).

3. I acknowledge the validity of this Consent Order as if entered into after a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law.

4. I voluntarily consent to the foregoing Findings of Fact, Conclusions of Law and Order, provided that the Board adopts the foregoing Consent Order in its entirety. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order as set forth in § 4-318 of the Act and Md. State Gov't. Code Ann. §§ 10-201 *et seq.* (2004 & Supp. 2006).

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order I may be subject to disciplinary action, which may include revocation of my license to practice dentistry in the State of Maryland.

6. I sign this Consent Order without reservation as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

29 March 2007

Date

Marva J. Herring
Marva J. Herring, D.D.S.

Reviewed and approved by:

Gerald Smith
Gerald Smith, Esquire

NOTARY

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY THAT on this 27th day of, March 2007, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared Marva J. Herring, D.D.S., and made oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

TUNGIA D. WILLIAMSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires September 21, 2008

Tungia D. Williamson
Notary Public

My Commission Expires: _____