

LEE J. EIDELBERG
leidelberg@LevinGann.com

DIRECT DIAL
410-321-4679

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-339-5762

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

March 1, 2013

Leslie E. Grant, D.D.S.
Dental Compliance Officer
Maryland State Board of Dental Examiners
55 Wade Avenue - Tulip Drive
Benjamin Rush Building
Catonsville, MD 21228

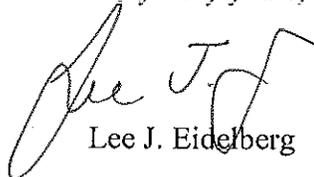
Re: In the Matter of Joel M. Berg, D.D.S.
Case No. 2011-200

Dear Dr. Grant:

At the direction of Assistant Attorney General, Sherrai Hamm, I enclose the executed copy of a Final Consent Order in the referenced matter.

Thank you for your attention in this regard.

Very truly yours,



Lee J. Eidelberg

LJE/ljb

Enclosure

cc: Sherrai Hamm, Assisant Attorney General
Howard Kaplan, D.D.S. (via email only)

RECEIVED

MAR 04 2013

IN THE MATTER OF
JOEL M. BERG, D.D.S.
RESPONDENT

* BEFORE THE MARYLAND
* STATE BOARD OF DENTAL
* EXAMINERS
* CASE NUMBERS: 2011-200

RECEIVED

MAR 04 2013

LICENSE NUMBER: 4664

BOARD OF DENTAL EXAMINERS

* * * * *

FINAL CONSENT ORDER

The State Board of Dental Examiners (the "Board") charged Joel M. Berg, D.D.S. ("Respondent"), DOB: 12/7/1943, license number: 4664, with violations under the Maryland Dentistry Act, Md. Health Occ. ("H.O.") Code Ann. §§ 4-101 *et seq.* (Repl. Vol. 2009). Specifically, the Board charged the Respondent with violating the following provisions:

H.O. § 4-315. Denials, reprimand, probations, suspensions, and revocations – Grounds.

(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, a limited license to practice dentistry, or a teacher's license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the applicant or 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;

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

INTRODUCTION

The Centers for Disease Control and Prevention ("CDC") is a federal agency dedicated to designing protocols to prevent the spread of disease. The CDC has issued guidelines for dental

offices which detail the procedures deemed necessary to minimize the chance of transmitting infection both from one patient to another and from the dentist, dental hygienist and dental staff to and from the patients. These guidelines include some very basic precautions, such as washing one's hands prior to and after treating a patient, and also sets forth more involved standards for infection control. Under the Act, all dentists are required to comply with the CDC guidelines which incorporate by reference Occupational Safety and Health Administration's ("OSHA") final rule on Occupational Exposure to Blood borne Pathogens (29 CFR 1910.1030). The only exception to this rule arises in an emergency which is: 1) life-threatening; and (2) where it is not feasible or practicable to comply with the guidelines. Based on a complaint, the Board conducted CDC inspections of the Respondent's dental office on January 14, 2011 and January 18, 2011. The inspections involved an examination of the office and interviews with the Respondent and the Respondent's staff.

FINDINGS OF FACT

The Board finds that:

1. At all times relevant hereto, the Respondent was and is licensed to practice dentistry in the State of Maryland. The Respondent initially received his license to practice dentistry on or about July 10, 1969.
2. The Respondent owns and operates a dental practice known as Berg Dental Group, located at 2018 Rockspring Road, Forest Hill, Maryland.
3. The Respondent maintains a staff of approximately 37 employees.
4. In or around June, 2010, the Board received a complaint about infectious control practices occurring at the Respondent's practice. As a result of the complaint, the Board's CDC Investigator conducted a 7 ½ hour unannounced inspection of the

Respondent's dental office, to determine compliance with CDC guidelines on universal precautions.

5. On January 14, 2011, the CDC Investigator conducted an unannounced CDC inspection at the Respondent's dental practice. During the CDC inspection of the Respondent's dental practice, the CDC Investigator found numerous CDC violations, as set forth below:

6. The Respondent's practice failed to complete weekly spore testing on sterilizers. In 2008, there were multiple lapses in weekly spore testing over a twelve month period. In 2009, there were multiple lapses in weekly spore testing over a six month period. In 2010, there were multiple lapses weekly spore testing over a four month period.

7. The Respondent's practice failed to maintain an adequate system to verify the sterility of instruments processed through the dry heat sterilizer.

8. Staff failed to wear heavy utility gloves in the sterilization area, when handling contaminated instruments.

9. Staff failed to wash hands after removing gloves, following patient treatment.

10. Hepatitis B vaccination documentation was not available for four dentists that worked in the Respondent's practice.

11. On or about January 18, 2011, the CDC Investigator returned to the Respondent's dental practice and conducted a 3-hour investigation.

12. After arriving at the Respondent's dental practice, the CDC Inspector observed that the oral surgeon, an independent contractor, was not wearing sterile gloves while performing surgical procedure on patients.

13. Specifically, the CDC Investigator observed the oral surgeon surgically remove four third molars from a patient without the use of sterile gloves. The oral surgeon's two assistants were also not wearing sterile gloves.

14. The oral surgeon informed the CDC investigator that he only wore sterile gloves when he performed extra-oral surgical procedures.

15. The CDC investigator also observed that the sharps container located in the surgical operatory was not appropriately placed.

16. The sharps container was located on a wall directly behind a computer. The dental assistants were required to reach over the computer to place bloody, contaminated sharps into the sharps container, increasing the risk for injury and/or cross contamination.

19. The conduct as set forth above is a violation of H.O. §§ 4-315(a) (6), (16), and (28).

CONCLUSIONS OF LAW

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

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 20 day of March 2013, by a majority of the Board considering this case:

ORDERED that the Respondent's license to practice dentistry is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent shall fully comply with the following terms and conditions with six months of the effective day of this Consent Order:

1. Within ten (10) days from the date of this Order, the Respondent shall retain a Board-approved consultant to evaluate his current dental office for compliance with CDC guidelines and to train the Respondent and each employee of the office 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. Within thirty (30) days from the effective date of this Consent Order the consultant shall be present in the Respondent's office for at least one (1) full day of patient care and one (1) additional day inspection, which shall be completed within ninety (90) days of the effective date of this Consent Order, to ensure that the Respondent is complying with the CDC guidelines and the Act, and that all employees and practitioners in the office are in compliance;

3. The Respondent shall be subject to two (2) unannounced inspections by the consultant, or other Board-approved agent. The consultant 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 his practice is not in compliance with the CDC guidelines, shall constitute a violation of this Consent 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, he shall be afforded a Show Cause Hearing before the Board to show cause as to why his license should not be suspended;

5. The Respondent shall also be subject to random, unannounced inspections by the Board or its representative(s), at any time during the effective dates of this Order. A finding by the Board indicating that the Respondent or his practice is not in compliance with the CDC guidelines or the conditions outlined by the consultant, 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, he shall be afforded a show cause hearing before the Board to show cause as to why his license should not be suspended;

6. The Respondent shall comply with the CDC guidelines, including Occupational Safety and Health Administration's ("OSHA") guideline for dental healthcare settings; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with his 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

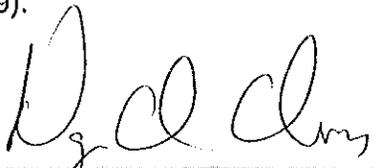
ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that the effective date of this Consent Order is the date that it is signed by the Board; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (Repl. Vol.2009), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (Repl. Vol. 2009).

3/20/2013
Date



Ngoc Q. Chu D.D.S., President
State Board of Dental Examiners

CONSENT OF JOEL M. BERG, D.D.S.

I, Joel M. Berg by affixing my signature hereto, acknowledge that:

1. I am represented by Lee J. Eidelberg, Esquire.
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 (Repl. Vol. 2009) and Md. State Govt. Code Ann. §§ 10-201 *et seq.* (Repl. Vol. 2009).
3. I acknowledge the validity and enforceability of this Consent Order as if entered 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. I am waiving those procedural and substantive protections.
4. I voluntarily enter into and consent to the foregoing findings of fact, conclusions of law, and order and agree to abide by the terms and conditions set forth in this Consent Order, as a resolution of the Board's case, based on the findings set forth herein.
5. I waive my right to contest the findings of fact and conclusions of law, and I waive my right to a full evidentiary hearing, and any right to appeal this Consent Order as set forth in Md. Health Occ. Code Ann. § 4-319 (Rep. Vol. 2009) and Md. State Govt. Code Ann. §§ 10-201 *et seq.* (Rep. Vol. 2009).
6. I acknowledge that by failing to abide by the terms and conditions set forth in this Consent Order, and, following proper procedures, I may be

subject to disciplinary action, which may include revocation of my license to practice dentistry in the State of Maryland.

7. 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 order.

FEB 28, 2013
Date

Joel M. Berg, D.D.S.
Joel M. Berg, D.D.S.

NOTARY

STATE OF MD.

CITY/COUNTY OF Harford

I hereby certify that on this 28th day of Feb, 2013, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared JOEL M. BERG oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

[Signature]
Notary Public

My Commission Expires: 10/28/2015

