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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
DANA B. LUBET, D.M.D., : LS0909022DEN
RESPONDENT. :

[Division of Enforcement Case # (05 DEN 65)]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Dana B. Lubet, D.M.D.
6661 University Avenue, Suite 104
Middleton, WI 53562

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Dentistry Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Dentistry Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Dana B. Lubet, D.M.D., (DOB July 9, 1958) is duly licensed as a dentist in the state of Wisconsin (license # 3397). This license was first granted on September 24, 1984.
2. Respondent's most recent address on file with the Wisconsin Dentistry Examining Board is 6661 University Avenue, Suite 104, Middleton, WI 53562.
3. At all times relevant to this action, Respondent was working as a dentist at Dr. Lubet & Associates, S.C. in Middleton, Wisconsin.
4. On September 18, 1998, patient M.S., a woman born on October 11, 1955, presented with temperature sensitivity in the upper left posterior. Respondent recommended a crown for tooth # 14 because it had already been restored with a large amalgam filling and was being watched for possible further treatment. Respondent advised Patient M.S. that tooth

14 may require endodontic therapy if symptoms persisted when she had a temporary crown in place.

5. On October 29, 1998, Respondent prepared tooth # 14 for a crown. An impression and bite registration were taken, and a temporary crown was fabricated and cemented.

6. On November 13, 1998, Patient M.S. returned to have her permanent crown cemented on tooth # 14. The crown fit was not satisfactory, so the crown was returned to the lab to have a new one fabricated, and the temporary crown was recemented.

7. On December 3, 1998, tooth # 14 had abscessed and the patient required endodontic therapy on tooth # 14. Respondent cleaned the canals and did shaping. The canals were dried with paper points and tooth # 14 was temporized with formocresol on a cotton pledget. The patient was scheduled to return to complete the root canal treatment. Respondent did not x-ray the tooth before starting the root canal.

8. On December 7, 1998, the patient returned and Respondent recemented the temporary crown on tooth # 14.

9. On December 29, 1998, Patient M.S. returned to Respondent to have the root canal treatment on tooth # 14 completed. The patient was scheduled to return to cement her permanent crown and to fabricate a bite plate.

10. Patient M.S. had a history of sinus infections. Respondent did not inform the patient that there were any unusual circumstances with the root canal treatment of tooth #14.

11. On January 4, 1999, Patient M.S. returned complaining of discomfort. Respondent said that the bite was off and he adjusted the occlusion of the temporary crown on tooth # 14. Patient M.S. heard the dental assistant comment that "It's really overfilled."

12. On January 5, 1999, Patient M.S. telephoned Respondent, complaining that tooth # 14 was still sore. Respondent prescribed cephalexin, and hydrocodone with aspirin. Patient M.S. asked to be referred to an endodontist. Respondent told the patient that he would consult with an endodontist about any further treatment of the patient.

13. On January 7, 1999, Patient M.S. referred herself to Dr S., an endodontist at Madison Endodontic Associates. Dr S. examined the patient, took radiographs of tooth # 14 and 15, initiated root canal therapy on tooth # 15, and determined that tooth # 14 needed further treatment because one root was missed, one was not completely filled, and one was overfilled by 5mm.; gutta percha going into the sinus cavity.

14. On January 11, 1999, Dr S. diagnosed tooth # 15 with pulpitis and treated tooth # 15 with a root canal.

15. On January 12, 1999, the patient returned to Respondent to recement the temporary crown on tooth # 14. The patient reported that she been seen by an endodontist, and that he had initiated root canal therapy on tooth # 15, and had told her that she may need further treatment on tooth # 14. Respondent instructed the patient to contact him if the problem persisted.

16. On January 14, 1999, Patient M.S. returned to Dr S. complaining of discomfort in tooth # 14. Dr S. noted "...ML probable source of her discomfort, but 0 canal = 1 ½ mm. short – Rec: retreat P..." and "...pain to jaw & ear on & off 2+ wks, RCP + 12/90 by D Lubet." An x-ray showed an incomplete root canal filling. The tooth was retreated.

17. On January 18, 1999, Patient M.S. returned to Dr S. There was still pressure pain and the patient was told that she could need surgery. Two x-rays were taken.

18. On January 22, 1999, Patient M.S. returned to Dr S. complaining of large swelling of palate. Exam showed slight tissue induration on the buccal surface, sensitive to palpation and percussion.

19. On January 29, 1999, Patient M.S. was examined by Dr P., an ENT surgeon at the UW Clinic for Sinus Surgery. Radiographs were taken that showed root canal material extending 4 - 5 mm. beyond the apex, with a questionable

lesion around the apex, and possible sinus involvement.

20. On February 1, 1999, the patient saw Dr P., who performed an apicoectomy removing tissue from the palatal root that was in the maxillary sinus. Dr P. noted on the operative report “root canal material extending 5 mm. past apex. Palatal root in sinus.”

21. On February 2, 1999, a pathology report identified the portions of tissue that Dr P. removed as being “tissue from apex palatal root, upper left molar: benign inflammatory antral polyps.”

22. On February 25, 1999, Dr P. evaluated the patient for persistent left-sided pressure and potential sinus infection. An endoscopic examination showed mild to moderate thickening of both maxillary sinuses, a small amount of thickening of the ethmoid and sphenoid sinuses, and postsurgical changes of small defect in the anterior maxillary sinuses. A Sinus-Waters x-ray showed 2 approximately 3 mm. long linear metallic densities above the left maxillary teeth likely due to the prior root canal.

23. On April 14, 1999, Dr P. performed a revision left anterior ethmoidectomy with removal of a maxillary sinus foreign body material. The surgical notes stated that a grayish soft material was removed from the floor of the maxillary sinus along with a cyst in the medial wall of the maxillary sinus, and a synechia in the anterior ethmoid sinus.

24. Respondent has completed fifteen hours of clinical continuing education in endodontics through a course on June 4 and 5, 2009, and the Board recognizes that course as the remedial education necessary for Respondent’s rehabilitation.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 447.07, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. Respondent’s failure to determine the length of the canals and take appropriate precautions to avoid an overfill constitutes a violation of Wis. Admin. Code § DE 5.02(5).

3. Respondent’s failure to inform the patient of the overfill and her options for corrective treatment constitutes a violation of Wis. Admin. Code § DE 5.02(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Dana B. Lubet, D.M.D., is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

IT IS FURTHER ORDERED that:

2. Respondent shall, within ninety (90) days from the date of this Order, pay costs of this proceeding in the amount of Two Thousand One Hundred Sixty (\$2,160.00) dollars. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Telephone (608) 267-3817

Fax (608) 266-2264

3. In the event Respondent fails to timely pay costs, as ordered, the Respondent's license (# 3397) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has paid them in full, including any accrued interest.

4. This Order is effective on the date of its signing.

Wisconsin Dentistry Examining Board

By: Lori R. Barbeau, D.D.S.
A Member of the Board

9/2/09
Date