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IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

BRIAN C. PAINTER, D.D.S.

RESPONDENT

ORDER FOR SUMMARY

SUSPENSION OF LICENSE

(99 Den 019)

On November 10, 1999, at noon, a Petition for Summary Suspension of the license of Brian C. Painter, D.D.S. to practice dentistry in the State of Wisconsin, was considered by the Dentistry Examining Board after notice to Respondent on November 5, 1999, pursuant to Wis. Adm. Code sec. RL 6.05. Attorney Pamela Stach, Department of Regulation and Licensing, appeared on behalf of the Division of Enforcement. Respondent appeared through his attorney, Peter J. Hickey.

Based upon the Petition and the accompanying affidavit, the Board hereby makes the following:

FINDINGS OF FACT

1. Brian C. Painter, Respondent herein, whose date of birth is June 21, 1941, is licensed to practice dentistry in the State of Wisconsin, under license number 4993 which was granted on March 16, 1998.

2. The evidence presented and used as the basis for this Summary Suspension Order is: the sworn Petition for Summary Suspension and the sworn affidavit of Gregory Samuels, D.D.S.

PATIENT JP

3. Patient JP, whose date of birth is February 1, 1997, was first seen by Respondent on January 7, 1999 with complaints from the child's mother that his teeth appeared to be "crumbly" and soft.

4. Respondent provided dental treatment for caries in the mandibular left primary 2nd molar and the mandibular right primary 1st molar.

5. Respondent's treatment consisted of removing the decayed portion of the teeth by drilling.

6. At no time prior to or during the care and treatment on January 7, 1999, was the mother of patient JP provided with an option for the administration of anesthesia to the child.

7. At no time during the course of the care and treatment of patient JP on January 7, 1999, did the Respondent provide anesthesia to the patient.

8. Following removal of the decay, Respondent advised the mother that he would not fill the teeth and that she should return with patient JP in six months at which time Respondent would determine whether to restore the teeth.

9. At no time prior to or during the treatment of patient JP on January 7, 1999 was the mother of the patient advised that the drilled out portions of the teeth would not be filled on that date.

10. Patient JP was subsequently seen by another dentist on January 8, 1999, at which time the child received a mesial occlusal alloy on the left 2nd molar and a pulpotomy and stainless steel crown on the right 1st molar.

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PATIENT TH

11. Patient TH, whose date of birth is November 11, 1996, was first seen by the Respondent on January 8, 1999 for examination and treatment of a possible cavity in a front tooth.

12. Respondent provided dental treatment for caries on the maxillary right primary 1st molar – occlusal surface; the maxillary right primary lateral incisor- mesial and lingual surfaces; maxillary right primary central incisor –

incisal, distal and lingual surfaces; maxillary left primary central incisor – incisal, distal and lingual surfaces; maxillary left primary lateral incisor – incisal, mesial and lingual surfaces; and the maxillary left primary 1st molar – occlusal surface.

13. At no time prior to or during the care and treatment on January 8, 1999, was the mother of patient TH provided with an option for the administration of anesthesia to the child.

14. At no time during the course of the care and treatment of patient TH on January 8, 1999, did the Respondent provide anesthesia to patient TH.

15. Respondent's treatment consisted of removing the decayed portion of the teeth by drilling.

16. Following removal of the decay, Respondent advised the mother that he would not fill the teeth and that she should return with patient TH for periodic evaluation and that when the child was three to three and one half years of age fillings would be placed in the evacuated teeth.

17. At no time prior to or during the treatment of patient TH on January 8, 1999, was the mother of the patient advised that the drilled out portions of the teeth would not be filled on that date.

18. In the day immediately following the treatment provided by Respondent, patient TH exhibited signs of being unable to eat because of pain in his mouth.

19. Patient TH was subsequently seen by another dentist on January 12, 1999, at which time an examination and x-rays revealed that there had been incomplete removal of the decay in the teeth identified in paragraph 15 above.

20. Patient TH received further dental treatment under general anesthesia on January 22, 1999 as follows: maxillary right primary 1st molar – occlusal alloy, indirect pulp cap, maxillary right primary lateral incisor – stainless steel crown with resin window, pulpotomy, maxillary right primary central incisor – stainless steel crown with resin window, maxillary left primary incisor – stainless steel crown with resin window, maxillary left primary lateral incisor – stainless steel crown with resin window and maxillary left primary 1st molar – occlusal alloy.

PATIENT CN

21. Patient CN, whose date of birth is July 16, 1996, was first seen by the Respondent on May 20, 1999 for evaluation of teeth which were possibly damaged in a fall.

22. Respondent provided dental treatment for caries in the maxillary primary central and lateral incisors.

23. Although the presence of caries was also noted in the maxillary upper right primary 1st molar, no treatment was provided by Respondent.

24. When Respondent commenced treatment, the mother of patient CN inquired of Respondent as to whether anesthesia would be administered.

25. The Respondent advised the mother of the patient that children of the age of patient CN did not feel pain in their teeth and he would therefore not be administering anesthesia.

26. The mother of patient CN then allowed the treatment to continue.

27. Respondent's treatment of the caries consisted of removal of the decayed portion of the teeth by drilling.

28. Following completion of the drilling, Respondent did not fill the evacuated teeth and advised the mother that she should return with the patient in three to four months.

29. At no time prior to or during the treatment of patient CN on May 20, 1999 was the mother of the patient advised that the drilled out portions of the teeth would not be filled on that date.

30. Patient CN was subsequently seen by another dentist on July 22, 1999 at which time examination and x-ray revealed that Respondent had removed most, but not all, of the decay from the teeth identified in paragraph 26 above.

31. The subsequent treating dentist also noted decay on several additional teeth.

32. On August 30, 1999, the subsequent treating dentist performed the following dental procedures under general anesthesia on patient CN: Tooth A – occlusal lingual alloy, Tooth B – the placement of a stainless steel crown and pulpotomy, Tooth D – lingual mesial facial composite, Tooth E – stainless steel crown with a resin window and pulpotomy, Tooth F – stainless steel crown with a resin window and pulpotomy, Tooth I – stainless steel crown with a resin window, pulpotomy, Tooth J – occlusal lingual alloy, Tooth K – occlusal alloy, Tooth L –

occlusal alloy, Tooth S – stainless steel crown and pulpotomy, and Tooth T – occlusal alloy.

PATIENT CVV

33. Patient CVV, whose date of birth is July 16, 1997, was first seen by Respondent on August 27, 1999 for evaluation of suspected cavities.
34. Respondent provided dental treatment for caries on teeth D,E, and F on September 3, 1999.
35. Respondent's treatment consisted of removing the decayed portion of the teeth by drilling.
36. At no time prior to providing care and treatment on September 3, 1999, was the mother of patient CVV provided with an option for the administration of anesthesia to the child.
37. As treatment commenced patient CVV appeared to be in pain, and the mother inquired of Respondent as to whether anesthesia would be administered.
38. The Respondent advised the mother of the patient that the procedure he was performing would not cause pain to the child and he would therefore not be administering anesthesia.
39. The mother of patient CVV then allowed the treatment to commence.
40. Following removal of the decay, Respondent advised the mother that he would not fill the teeth and that he would provide restoration of the teeth when patient CVH was four or five years of age.
41. At no time prior to or during the treatment of patient CVH on August 27, 1999 was the mother of the patient advised that the drilled out portions of the teeth would not be filled on that date.
42. Patient CVV was subsequently seen by another dentist on September 29, 1999. He will provide restorative and further treatment as necessary to the child in early December, 1999.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction over this matter pursuant to Wis. Stats. sec. 447.07.
2. The Wisconsin Dentistry Examining Board has the authority to summarily suspend a license to practice dentistry pursuant to Wis. Stats. sec. 227.51(3) and Wis. Adm. Code Ch RL 6.
3. Notice was provided Respondent as required under Wis. Adm. Code Ch RL6.05 by mailing a copy of the Notice of Petition for Summary Suspension to Respondent and providing a copy by facsimile to his attorney, Peter J. Hickey.
4. With regard to each of the patients set forth above, there is probable cause to believe Respondent engaged in unprofessional conduct as defined by Wis. Stats. sec. 453.07 in that Respondent engaged in practice which constitutes a substantial danger to the health, welfare and safety of a patient and public in violation of Wis. Adm., Code Sec. DE 5.02(1).
5. With regard to each of the patients set forth above, there is probable cause to believe that Respondent engaged in unprofessional conduct as defined by Wis. Stats. sec. 453.07 in that Respondent practiced in a manner which substantially departed from the standard of care ordinarily exercised by a dentist which harms or could have harmed a patient contrary to the provisions of Wis. Adm. Code sec. DE 5.02(5).
6. Respondent's conduct as set forth above is such that the public health, welfare and safety imperatively requires emergency suspension of the Respondent's license to practice dentistry in the State of Wisconsin pursuant to Wis. Stats. sec 227.51(3) and Wis. Adm. Code Ch. RL 6.

ORDER

NOW THEREFORE, IT IS ORDERED, that the license of Brian C. Painter to practice dentistry in the State of Wisconsin is hereby summarily suspended, effective immediately.

IT IS FURTHER ORDERED, that the suspension continues until the effective date of a final decision and order in the disciplinary proceedings against Respondent, unless otherwise ordered by the Board.

IT IS FURTHER ORDERED, that Respondent is hereby notified of his right, pursuant to Wis. Adm. Code sec. RL 6.09, to request a hearing to show cause why this summary suspension order should not be continued. Such request should be filed with the Wisconsin Dentistry Examining Board, P.O. Box 8935, Madison, Wisconsin 53708.

IT IS FURTHER ORDERED that in the event Respondent requests a hearing to show cause why the summary

suspension order should not be continued, that hearing shall be scheduled to be heard on a date with twenty(20) days of receipt by the Board of Respondent's request for a hearing, unless Respondent requests or agrees to a later time for the hearing.

Dated at Madison, Wisconsin this 10th day of November, 1999.

M. J. Curran, D.D.S.,

A Member of the Board