

**STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS**

**RHODE ISLAND DEPARTMENT OF HEALTH
HEALTH SERVICES REGULATION
BOARD OF EXAMINERS IN DENTISTRY**

**IN THE MATTER OF:
DAVID A. MARCANTONIO, D.D.S.**

A.H. File No. DEN 21-08

ADMINISTRATIVE DECISION AND ORDER

This matter came to be heard before the Rhode Island Department of Health pursuant to an Order of Summary Suspension dated March 11, 2008 and an Administrative Hearing Notice dated April 1, 2006 that charged the Respondent, David A. Marcantonio, D.D.S. (“Respondent”) with failure to provide the minimal standard of acceptable and prevailing dental care to ten patients, including untreated decay, undiagnosed pathology, inadequate root canals, insufficient removal of decay under restorations, undated radiographs in patients’ charts, missing radiographs, incomplete notations of patient treatment, and fraudulent claims submissions. Pursuant to R.I.G.L. § 5-31.1-10, this conduct constitutes unprofessional conduct and is grounds for discipline.

For the Department of Health, Gregory Madoian, Esq.
For the Respondent, John M. Verdecchia, Esq.

Board of Examiners in Dentistry members present:

Joseph J. Box, DDS
Kathleen J. Gazzola, RDH, MA
Andrew J. Molak, DMD
Michael L. Rubinstein, DDS

Exhibits considered:

State's Exhibits

- S1 (Full) Suspension Order
- S2 (Full) Administrative Hearing Notice
- S3 (Full) October 25 letter to Ms. Rocha
- S3A-3J (Full) Ten patient charts
- S4 (Full) CV of Dr. Balukjian
- S5 (Full) February 22, 2008 letter to Dr. Levin

Respondent's Exhibits

- R1 (Full) Complaints
- R2 (Full) Communications regarding complaints
- R3 (Full) November 23 letter from Dr. Marcantonio
- R4 (Full) October 25 letter from Ms. Girardi
- R5 (Full) October 30 letter from Ms. Girardi
- R6 (Full) September 6 letter from Ms. Rocha
- R7 (Full) September 17 letter from Ms. Rocha
- R8 (Full) Letter to Delta Dental
- R9 (Full) Delta Dental Fee Schedule
- R10 (Full) February 22, 2008 letter to Dr. Levin
- R11 (Full) Delta Dental claim forms, 6/1/07 through 3/18/08
- R12 (Full) Copies of medical histories of ten patients
- R13 (Full) Original ten patient charts
- R14 (Full) Superior Court Order

R15 (Full)

Article – Journal of American Dental Association, “Treatment of Deep Carious Lesions by Complete Excavation or Partial Removal”

BACKGROUND AND TRAVEL OF THE CASE

This case originated with three individual complaints submitted to Delta Dental of Rhode Island (“Delta”). In these complaints, Respondent’s former patients alleged poor quality of care received from Respondent’s dental office. Consequently, Delta audited Respondent’s office. The audit findings exposed issues regarding dental examinations and treatment and care of approximately ninety-five Delta members and revealed a pattern of quality of care issues, including negligence, fraud, and record-keeping violations. Therefore, Dr. James A. Balukjian (“Balukjian”), Dental Director for Delta, filed a complaint letter with the Department of Health (“DOH”) and the Rhode Island Board of Examiners in Dentistry (“Board”).

The DOH reviewed the complaint letter and issued a summary suspension of Respondent’s dental license pursuant to R.I. General Laws 5-31-1-19 on March 11, 2008. Respondent’s attorney then sought judicial relief in the form of a Temporary Restraining Order in the Superior Court. On March 13, 2008, Justice Judith Savage issued a restraining order that vacated part of the suspension. The order allowed Respondent to perform limited specific aspects of dentistry on existing patients and subject to the approval of an independent dentist. The DOH and Respondent mutually selected Dr. Stephen Skoly (“Skoly”) to act as the independent supervisory dentist.

On April 1, 2008, the Board served Respondent and his attorney with an official administrative hearing notice. The administrative hearing addressed two issues regarding Respondent’s and his dental license: (1) whether Respondent constituted an imminent danger to the public as anticipated by the summary suspension order and (2) whether Respondent was guilty of the specific allegations of unprofessional conduct charged against him. The DOH

merged both issues into one administrative hearing and each was addressed accordingly. The hearing commenced on April 3, 2008, with the last session held on June 18, 2008. The Hearing Officer charged the Board with the task of deciding the appropriate remedy based on the evidence presented during the hearings.

SUMMARY OF THE TESTIMONY

Julie Ferrini (“Ferrini”) testified first for the State. She is a dental hygienist licensed in the State of Massachusetts and is currently the Director of Program Integrity at Delta Dental. Her duties involve oversight of all clinical departments, including case management, appeals, fraud and abuse, complaints and grievances, and audits. (Hearing Tr. vol. 1, 12:22-25; 13:1-4, Apr. 2, 2008). Ferrini testified that Delta received three consumer complaints against Respondent within a twelve-month period, being year 2007. *Id.* at 13:15-17. After review of the complaints, Ferrini stated that Delta’s Quality Care Committee found in favor of the complainants, voted to terminate Respondent’s status as participating provider, and decided to conduct a “full clinical audit” of Respondent’s practice. *Id.* at 13:23-24; 14:1-8.

Ferrini explained Delta’s methodology of conducting the audit. This consisted of a “random sampling” of Delta members on whom Respondent performed “major restorative services and endo procedures,” including “crowns, bridges and root canals,” during the years 2004 and 2005. (Hearing Tr. vol. 1, 14:21-25, Apr. 2, 2008). Ninety-five Delta members received such treatment under Respondent’s care for the given time period. *Id.* at 15:1. In addition, Ferrini testified that three clinical auditors went to Respondent’s office to photocopy all relevant treatment and financial records pertaining to these patients. They also obtained relevant X-rays. *Id.* at 15:9-17. Ferrini further testified that Balukjian, Dental Director for Delta Dental, reviewed the findings of the full clinical audit. *Id.* at 16:18.

Additionally, Balukjian, testified as the dental expert for the State. Balukjian's testimony provided a comprehensive review of the ten patients chosen from the audit to constitute the case against Respondent. Balukjian testified that allegations arising out of these ten patient cases, in his opinion, established a general pattern of improper dental care and treatment, improper record keeping, and fraudulent claim submissions to Delta.

Respondent, who has operated a private practice in Cranston, Rhode Island since September of 1987, testified on his own behalf. (Hearing Tr. vol. 3, 76:18-19, May 14, 2008). Respondent was a participating dentist with Delta previous to the current charges brought against him. *Id.* at 77:1-7. In addition, Respondent is currently a participating dentist with Blue Cross Dental of Rhode Island ("Blue Cross"), which had not taken any formal administrative action against him regarding his participation as a provider in the dental insurance plan. *Id.* at 78:5. Respondent testified that prior to the current proceedings no patients filed formal "written" or "letter" complaints against him. *Id.* at 80:24-25. At most, he stated he received phone calls from either Delta or Blue Cross regarding specific patient issues that could be resolved over the phone. *Id.* at; 81:1-4.

Dr. James Balukjian's Testimony

Patient JC

Overall, Balukjian testified that the quality of care Respondent provided to Patient JC ("JC") did not meet the minimal standard of dental care in the State of Rhode Island. Furthermore, Balukjian testified that Respondent was negligent in his dental treatment because of incomplete dental procedures such as extractions. Balukjian alleged that he was fraudulent because he billed Delta for incomplete procedures. Balukjian testified that JC had four specific problem teeth. Teeth numbers seven, eight, nine, and ten are part of a four-unit fixed bridge. Of

this unit, tooth number seven showed signs of decay and open margins. (Hearing Tr. vol. 1, 50:23-25, Apr. 2, 2008). Teeth numbers eight and nine showed severe decay with the roots still in place, although Respondent billed for extractions on both teeth. *Id.* at 52:24-25; 53:20-25. Balukjian testified that it “concerned [him] greatly” that Respondent did not perform root canals on these teeth because it could lead to “infection underneath into the bone . . . [which] could get into the brain pretty quickly.” *Id.* at 52:25; 53:1-2, 12-14. Furthermore, Balukjian testified regarding Respondent’s rewritten patient chart because he was concerned that “[Delta] had two different records.” *Id.* at 58:8-10. He stated that he believed Delta requested treatment notes regarding JC and that Respondent rewrote the chart at that time. *Id.* at 55:2-4.

Patient JG

Respondent has treated Patient JG (“JG”) since 2000. (Hearing Tr. vol. 4, 71:9, May 28, 2008). Overall, Balukjian testified that the quality of care given did not meet the minimal standard of care related to the practice of dentistry in the State Rhode Island. In addition, Balukjian also testified that Respondent was negligent because he left significant amounts of decay on teeth despite completion of restorations and X-ray films that showed the presence of decay.

Balukjian testified to four specific problem teeth concerning JG. X-rays showed significant decay “on an annual basis starting in 2004” on tooth number four with “no treatment rendered.” (Hearing Tr. vol. 1, 60:19-22; 62:4-8, Apr. 2, 2008). The patient chart indicated this symptom remained untreated from 2005-2007, which Balukjian stated is dangerous when not treated because “if the cavity isn’t removed, it could go into the pulp.” *Id.* at 61:23-24.

December 2004 X-rays of tooth number eight indicated a significant amount of decay that Respondent did not remove despite completion of a restoration in July of 2004. *Id.* at 62:15-17;

62:20-25. In 2004, Respondent told JG there was a significant amount of decay on tooth number fourteen. *Id.* at 63:24-25; 64:16-17. There is no further mention of treatment or care given to this tooth, however, until October of 2007. *Id.* at 65:6-17. Additionally, Balukjian testified that X-rays of tooth number thirty showed underfilled canals following a root canal procedure. (Hearing Tr. vol. 1, 66:7-9, Apr. 2, 2008). X-rays from 2004, 2005, and 2006 showed significant decay on the tooth number thirty. *Id.* at 66:24-25; 67:1-7. Furthermore, June 2006 X-rays showed existence of peri-apical radiolucency two years after Respondent performed the root canal procedure. *Id.* at 67:21-24.

Patient KG

Respondent has treated Patient KG (“KG”) since 1994. (Hearing Tr. vol. 4, 12:13, May 28, 2008). Overall, Balukjian testified that Respondent was negligent in treating JG’s teeth because of “a lot of untreated decay,” which Balukjian labeled “significant” in some instances, and lack of notations on the patient’s chart acknowledging dental problems and possible solutions. (Hearing Tr. vol. 1, 68:17-23; 69:8-9). Balukjian testified concerning problems related to nine specific teeth.

To start, Balukjian testified that X-rays from 2006 and 2007 showed “significant” decay associated with the mesial and distal aspects of teeth numbers two, three, four, and thirteen. (Hearing Tr. vol.1, 68:20-23; 69:6-11, Apr. 2, 2008). According to the patient chart, however, Respondent did not render treatment to remove the decay from these teeth. *Id.*

In addition, Balukjian testified that the patient chart indicated that Respondent completed treatment on teeth numbers eighteen and nineteen. (Hearing Tr. vol.1, 69:16-25, Apr. 2, 2008). X-rays from June 2006 and June 2007, however, show that no such treatment could have been performed according to Balukjian, because the X-rays “look exactly the same.” *Id.* at 70:3-8, 11-

15, 24. Furthermore, he testified that for tooth number nineteen a 2006 entry on the patient chart indicated that Respondent performed an MOL filling. *Id.* at 71:1-4. The 2007 X-ray, however, does not show any type of restoration on the surface of tooth number nineteen. *Id.* at 71:5-6.

Balukjian also testified concerning decay present in teeth numbers twenty-nine, thirty, and thirty-one. He stated that the 2006 and 2007 X-rays of tooth number twenty-nine showed decay permeated “into the pulp” of the tooth and appropriate treatment would be a root canal or extraction. (Hearing Tr. vol.1, 71:24-25; 72:1-3, 8-10 Apr. 2, 2008). The tooth remained untreated, however, and the decay progressed to a severe situation. *Id.* In addition, Balukjian testified to the presence of decay in tooth number thirty. *Id.* at 72:14-15. Respondent performed a restoration on this tooth in April of 2006. *Id.* at 72:16-17. June 2006 X-rays, however, still showed the presence of decay. *Id.* at 72:19-20. Lastly, Balukjian testified that tooth thirty-one had extensive decay to the point of being harmful to the patient. *Id.* at 74:4-5. The patient chart, however, did not indicate that Respondent ever acknowledged or treated the decay present beneath the crown on this tooth. *Id.* at 73:10-15.

Patient MK

Respondent has treated Patient MK (“MK”) since 1989. (Hearing Tr. vol. 4, 31:2, May 28, 2008). Overall, Balukjian testified that Respondent was negligent regarding the care and treatment rendered to MK’s teeth because of decay still present on a number of the teeth. In addition, he stated Respondent fraudulently billed Delta for numerous procedures that he did not perform on MK. He concluded that the fraudulent billing was disadvantageous for a patient because he/she loses benefit dollars that could potentially be necessary for subsequent treatment. (Hearing Tr. vol. 1. 77:17-20, Apr. 2, 2008). Specifically, Balukjian testified concerning problems associated with the treatment and care rendered to seven of MK’s teeth.

Balukjian stated that a 2004 X-ray showed decay under a filling performed on tooth number two. (Hearing Tr. vol.1, 74:16-22, Apr. 2, 2008). Respondent, however, did not treat the tooth until September 2005, almost a year later. *Id.* at 74:24-25. In addition, 2004 X-rays showed open margins and decay present on tooth number thirty. *Id.* at 82:3-5. The patient's chart indicated treatment for both conditions, however, 2007 X-rays indicated that the open margin and decay remained and therefore, Balukjian testified that Respondent failed to render treatment to remedy the problem. *Id.* at 82:6-8. Balukjian testified that this practice did not conform to the acceptable and prevailing standard of care. *Id.* at 75:4-6.

Additionally, Balukjian stated that Respondent submitted a claim for a full porcelain crown placed on tooth number three in April 2003. (Hearing Tr. vol. 1, 75:10-14, Apr. 2, 2008). He testified, however, that a November 2004 X-ray showed only "some kind of a ceramic or porcelain restoration" present on the tooth, but "not a full crown." *Id.* at 75:15-20. Similarly, the patient chart indicated Respondent placed a full porcelain crown on tooth number twenty-nine and submitted a claim for a full porcelain crown in May 2003. *Id.* at 80:21-24. Balukjian stated, however, that the August 2004 X-ray showed only "some kind of porcelain or ceramic restoration" that did not touch the mesial surface, not a full crown, on tooth number twenty-nine. *Id.* at 81:12-14. Furthermore, in September of 2004 Respondent submitted a claim for a porcelain-fused to metal crown placed on tooth number six. *Id.* at 78:1-4. Balukjian testified that the November 2004 X-ray, however, did not show a crown present on this tooth and the April 2007 X-ray showed peri-apical radiolucency present. *Id.* at 78:9-12. According to Balukjian's testimony, the patient chart indicated that Respondent neither documented nor provided treatment for this condition. *Id.* at 80:8-9. Finally, tooth number thirty-one displayed similar problems similar to tooth number 29. *Id.* at 85:5. The August 2004 X-ray showed that

Respondent performed “an amalgam filling,” but it also showed decay present under the restoration. *Id.* at 85:6-8, 2-21. In addition, a 2007 X-ray showed the decay still present. *Id.* at 85:9-10.

Patient FL

A family member referred Patient FL (“FL”) to Respondent’s practice in 2000 or 2001. (Hearing Tr. vol. 3, 87:20-23, May 14, 2008). Overall, Balukjian testified that the quality of care given to FL’s teeth did not meet the minimal standard of care. In addition, he stated Respondent was negligent in dismissing the prolonged pain present in Patient FL’s tooth number thirty. Similar to claim submissions regarding the other nine patients, Balukjian testified that Respondent submitted claims for dental procedures that did not correspond to FL’s X-rays and are thus fraudulent.

Balukjian testified to problems associated with two of FL’s teeth, numbers thirteen and thirty. Respondent performed a root canal on each of these teeth. He stated an X-ray of tooth number thirteen showed an underfilled canal system with a lot of “open space” that was “way shorter of the end of the root.” (Hearing Tr. vol. 1, 87:13-23, Apr. 2, 2008). In addition, Respondent’s billing sequence for fabrication of a crown and post and core deviated from the normal standard with this particular tooth. *Id.* at 87:8-9. Respondent billed for the crown two months before he separately billed for the post and core. *Id.* Additionally, Balukjian testified that an X-ray showed tooth number thirty had underfilled canals, as well as indicated the possible presence of a broken instrument in one of the canals. *Id.* at 88:21-23, 24-25; 89:1-3. Furthermore, Balukjian testified that the patient chart stated FL should “go on antibiotics if [tooth number thirty] bothers him again.” *Id.* at 89:20-22. Respondent should have referred FL

to a specialist for further investigation of this tooth, however, rather than providing a prescription for the pain. *Id.* at 90:6-12.

Patient JM

Balukjian testified to problems associated with three of Patient JM's ("JM") teeth, numbers twenty, twenty-two, twenty-eight. Overall, he testified to fraudulent billing practices in reference to JM's teeth, as well as incorrect notation of and submission for performance of certain dental procedures. Balukjian stated JM's patient chart indicated Respondent placed a full porcelain crown on tooth number twenty in September 2003. (Hearing Tr. vol. 1, 94:6-7, Apr. 2, 2008). A 2005 X-ray, however, did not indicate a crown present on this tooth. *Id.* at 94:14-15. Furthermore, the X-ray indicated that the "mesial surface had] not been touched" on this tooth, which Balukjian testified eliminated the possibility that the crown fell off the tooth in the period between the first and the second X-ray. *Id.* at 94:20-25.

Similarly, Balukjian stated JM's patient chart indicated Respondent placed a full porcelain crown on tooth number twenty-two in February 2006. (Hearing Tr. vol. 1, 95:14-17, Apr. 2, 2008). Respondent submitted a claim for a crown for tooth number twenty-two and received reimbursement, however, July 2005 and January 2007 X-rays showed no crown on tooth number twenty-two, but instead on tooth number twenty. *Id.* at 95:14-17, 18-20. Balukjian testified that JM's patient chart is not clear as to what tooth number Respondent placed the crown on. *Id.* at 95:12-14. Finally, he stated JM's chart noted Respondent extracted tooth number twenty-eight in 2004. *Id.* at 96:5-6. Again, Respondent submitted a claim and received reimbursement for this extraction in 2004. *Id.* The January 11, 2005 X-ray, however, showed tooth number twenty-eight still present. *Id.* at 96:10-11.

Patient CR

Balukjian testified regarding problems associated to Respondent's treatment of six of Patient CR's ("CR") teeth. Overall, he testified mainly to Respondent's fraudulent billing practices concerning dental treatment claims submitted for CR's teeth. He also noted negligence and a lack of quality care because Respondent repeatedly failed to treat Patient CR's dental problems.

Balukjian stated CR's patient chart indicated Respondent performed crown work on tooth number two and October 11, 2006 X-rays showed a crown present on that tooth. (Hearing Tr. vol.1, 96:22-25, Apr. 2, 2008). He further testified to the presence of a porcelain fused to metal full crown in the X-ray, however, Respondent submitted a claim for an all porcelain full crown, which "brings a higher reimbursement." *Id.* at 97:1-5. Similarly, Balukjian stated that tooth number three had a restoration present, but Respondent submitted a claim for an all porcelain full crown. *Id.* at 97:8-9, 12-13.

Balukjian testified CR's patient chart indicated Respondent should have treated tooth number 14 and placed a crown in August 2004. (*Id.* at 100:17-20. Balukjian stated Respondent recorded no entries on CR's patient chart to indicate placement of the crown and August 17, 2004 X-rays showed no crown placed on tooth number fourteen. *Id.* at 100:23-24. September 13, 2005 X-rays, however, showed a PFM crown present on tooth number fourteen. *Id.* at 101:1-2. In addition, Balukjian stated Respondent submitted a claim to Delta for a porcelain crown placement on tooth number fourteen with a date of service in July 2004. *Id.* at 101:2-7. Furthermore, Balukjian stated CR's patient chart indicated Respondent performed crown work on tooth number nineteen in 2002 and tooth number thirty-one 2004. *Id.* at 99:1-4; 100:5-6. 2004, 2005, 2006, and 2007 X-rays, however, showed no indication of a crown present on either

tooth number nineteen or tooth number thirty-one, but did show continuous presence of decay in tooth number nineteen. *Id.* at 99:14-15; 100:5-6. Delta reimbursed Respondent's claim for tooth number nineteen in 2002 and the claim for tooth number thirty-one in 2004. *Id.* at 99:3-9; 101:1-7. Balukjian testified that over this four-year interval, however, Respondent provided no treatment to remove the decay present on these teeth. *Id.* at 98:14-16.

Patient LT

Balukjian's testimony on Respondent's treatment of Patient LT ("LT") centered on fraudulent claims submitted to Delta concerning five problem teeth. Overall, Balukjian testified that each of the five teeth had issues concerning Respondent's fraudulent claim submission to Delta. Balukjian testified that Respondent never performed certain treatment and procedures that he submitted claims and received reimbursement for, which is supported by X-ray evidence.

Balukjian stated LT's patient chart showed an entry for placement of a full crown on tooth number fifteen. (Hearing Tr. vol. 1, 103:6-8, Apr. 2, 2008). Respondent billed and received reimbursement for a full crown. *Id.* at 103:8-10. June 11, 2007 X-rays, however, showed that this tooth only has a porcelain restoration on it, which Balukjian stated was "clearly not a full crown." *Id.* at 103:3-10. Similarly, Balukjian testified that a 2005 chart entry indicated placement of a full porcelain crown on tooth number eighteen. *Id.* at 103:10-11. He stated that the billing code may have been changed to full porcelain crown, but June 11, 2007 X-rays showed only an amalgam, or silver, filling on tooth number eighteen. *Id.* at 103:15-17. In addition, Balukjian testified that LT's patient chart entries from 2002 indicated placement of porcelain/ceramic substrate crowns on teeth numbers nineteen, twenty-eight, and thirty-one. *Id.* at 102:9-14. Respondent submitted claims to Delta for these procedures on all three teeth,

however, however, 2003, 2004, and 2005 X-rays do not show crowns on any of these teeth. *Id.* at 101:19-25; 102: 12-14; 102:20.

Patient RT

Balukjian testified to problems associated with four of Patient RT's ("RT") teeth. Overall, he testified Respondent's quality of care did not meet the minimal standard of care in the State. Furthermore, he stated Respondent used improper billing codes and failed to treat decay present in many of the patient's teeth. For example, he stated the June 6, 2005 X-ray showed underfilled canals with regards to tooth number five. (Hearing Tr. vol., 104:10-12, Apr. 2, 2008). In addition, Respondent placed a crown on tooth number five in January 2005 and submitted a claim for the crown, followed by placement and submission for a custom post and core in June 2006. *Id.* at 104:20-23. Balukjian testified that this practice was not the normal sequence of treatment, usually placement of the custom post and core occurs first followed by placement of the crown. *Id.* at 23-25. In addition, Balukjian testified to underfilled canals in tooth number six, which was part of a five-unit fixed bridge. *Id.* at 106:2-5. He also stated the margins were wide open and there was no record of treatment for these open margins, which opens the patient to "the risk of reinfection . . . which would either require retreatment . . . and/or [lead to] consequent infections into the bone." *Id.* at 106:7-17.

Additionally, Balukjian testified that RT's patient chart indicated Respondent placed a porcelain-fused crown on tooth number eighteen. (Hearing Tr. vol. 1, 106:22-24, Apr. 2, 2008). He stated the February 17, 2007 X-rays showed a restoration present, "probably semi-precious," on the tooth instead of a full crown. *Id.* at 107:3-5. Respondent, however, submitted a claim to Delta for a full, all-porcelain crown. *Id.* at 107:1-3. Finally, tooth number nineteen had a root canal performed on it. *Id.* at 107:9-10. Balukjian testified to underfilled canals and the presence

of untreated decay underneath the crown, which the February 17, 2007 X-ray indicated. *Id.* at 107:10-13, 21-24.

Patient SV

Balukjian testified to underfilled canals and presence of decay on Patient SV's ("SV") teeth numbers twenty-seven, twenty-eight, and thirty-one. Overall, he testified that to Respondent's negligence in providing proper dental care to SV. He also indicated the quality of care Respondent provided did not meet the minimal standard of care in the State.

Balukjian stated the November 11, 2005 X-ray indicated that root canals associated with teeth numbers twenty-seven and twenty-eight had underfilled canals with a lot of decay remaining on the teeth. *Id.* at 109:3-10. The July 2, 2007 X-ray showed the decay still present in those teeth. *Id.* at 109:10-23. Additionally, Balukjian stated that the March 12, 2003 X-ray also indicated "very short fill on the canals" in tooth number thirty-one. *Id.* at 110:11-13. He testified that Respondent submitted a claim for the root canal with a service date of September 7, 2004. *Id.* at 110:14-18. SV's patient chart, however, did not indicate performance of this procedure. *Id.* at 110:19-20. Furthermore, tooth number thirty-one is mentioned in the patient chart only in reference to minor dental treatments, none of which are root canals. *Id.* at 111:2-8.

Dr. David Marcantonio's Testimony

Patient JC

The main allegation concerning JC pertained to the quality of care regarding the construction of a bridge for teeth eight and nine, as well as alleged fraud on Delta Dental where Respondent submitted two separate sets of records, the second being more detailed and rewritten, regarding teeth numbers eight and nine. (Hearing Tr. vol. 4, 79:3-14, May 28, 2008). Respondent testified that JC's teeth were darkening because of external root resorption and JC

was concerned with only with aesthetics and did not complain of pain. *Id.* at 82:5-12, 18-21.

Respondent testified he allowed the root tips enclosed in bone to remain and constructed a bridge instead of performing two root canals because the roots were not infected and to remove them he would have had to remove a large portion of the buckle plate, which could have resulted in “the two front teeth . . . look[ing] extremely long.” *Id.* at 84:16-25. Furthermore, Respondent testified he was not concerned that JC would develop future peri-apical radiolucency or infection because the root tips were already largely enclosed in bone and therefore, there was no entryway for infection. *Id.* at 85:6-16.

Respondent said he did not have a problem seating the bridge but JC was not pleased with the appearance of the bridge, which Respondent reworked twice before transferring to Dr. Michael Gooding (“Gooding”), after which Respondent reimbursed JC’s monetary payment. (Hearing Tr. vol. 4, 86:12-21; 87:5-12, May 28, 2008). Respondent testified that he rewrote the treatment record to aid Gooding because “[he is] not the best record-keeper” and it was an accident that the rewritten records were sent to Delta instead of the original records. *Id.* at 79:15-25; 80:2. On cross-examination, Respondent testified that JC assisted him in remembering specific dates of treatment and procedures performed as recorded in the rewritten records. *Id.* at 42:19-24.

Patient JG

Respondent testified in partial agreement with Balukjian’s allegation of mesial decay present in tooth number four. (Hearing Tr. vol. 4, 70:15, May 28, 2008). Respondent disagreed that decay was present in the December 21, 2004 X-ray, however, he agreed that some mesial decay was present in the September 21, 2005 and December 2006 X-rays, but that it had not increased in size from 2005 to 2006. *Id.* at 70:14-18. Additionally, Respondent testified that JG

had “rampant decay” as a new patient and therefore, he had to “pick and choose as to which tooth [to] work on first.” *Id.* at 70:22-25.

In addition, on September 14, 2006 Respondent performed an amalgam restoration to tooth number thirty, followed by a root canal on August 8, 2004. (Hearing Tr. vol. 4, 72:18-19; 73:8, May 28, 2008). Regarding the root canal, Respondent testified in disagreement with Balukjian’s conclusion that the canals were under filled and stated that the fill is “thin,” but “adequate” and also noted that the tooth was asymptomatic from the procedure to the present. *Id.* at 74:1-2, 5.

Patient KG

Respondent testified KG has Chron’s disease, which results in “systemic decay” and “rapid breakdown of the tooth structure” and ultimately causes restorations not to “last as long.” (Hearing Tr. vol. 4, 13:11-17, 23, May 28, 2008). In response to Balukjian’s allegation of existing decay on tooth number eighteen, Respondent testified that KG fractured the tooth, which “appears on X-ray as though there is decay because the density of the tooth is reduced in that one area.” *Id.* at 19:6-8. Consequently, he stated a clinical examination would need to be performed on the patient determine whether or not decay or fracture was present in the X-ray. *Id.* at 20:13-16. In addition, Respondent disagreed with Balukjian’s testimony alleging existing decay beneath the restoration on tooth number nineteen for two reasons: (1) because he performed a clinical exam and did not discover decay and (2) because the area of alleged decay was “close to the area of an X-ray [where] . . . cervical burnout” was possible. *Id.* at 21:2, 4-8.

Although Respondent agreed with Balukjian’s testimony regarding the presence of decay on teeth numbers two, three, four, and thirteen, he testified the teeth remained untreated because the patient did not appear in his office after August of 2007. (Hearing Tr. vol. 4, 21:25; 22:6-12,

May 28, 2008). Conversely, Respondent disagreed with Balukjian's allegation of "massive decay" present under the crown of tooth number thirty-one, however, he testified to the presence of an "open margin" and decay in X-rays dated June of 2006, a year after the root canal procedure. *Id.* at 24:8-9,17-21. Furthermore, Respondent testified that both an open margin and decay can form after a crown is properly placed. *Id.* at 26:5, 9. Additionally, Balukjian testified to the presence of decay in June 2006 and June 2007 X-rays of teeth numbers twenty-nine and thirty. *Id.* at 28:1-3. Respondent testified to performing a "four-surface silver restoration" on tooth twenty-nine in August of 2007. *Id.* at 28:5-10. Furthermore, Respondent testified that he was "going to do a crown in the future . . . but never got to treat it" because KG has not come into the office. (Hearing Tr. vol. 4, 29:15-17, 19).

Patient MK

Respondent agreed with Balukjian's testimony that tooth number two shows extensive decay in X-rays dated November of 2004. (Hearing Tr. vol. 4, 31:20, May 28, 2008). Additionally, Respondent testified tooth number two remained untreated because the main concern was tooth number three because MK fractured a filling between the two teeth, which Respondent removed and replaced. *Id.* at 32:10-13. In addition, Respondent testified that decay could be present in the August 9, 2004 X-ray of tooth number thirty-one, however, it is not a full picture of the tooth and therefore, he could not be "absolutely certain." *Id.* at 67:14-15; 68:6-8. Respondent also testified in disagreement with Balukjian's allegation of decay present in the June 18, 2007 bitewing X-ray of tooth number thirty-one. *Id.* at 68:24. Respondent further testified that in April of 2003 he placed a full all porcelain crown on tooth number three, which is in disagreement with Balukjian's allegations. (Hearing Tr. vol. 4, 33:19-22; 34:8, May 28, 2008).

Regarding allegations on tooth number twenty-nine, Respondent testified that although the crown is missing in the May 2003 X-ray he noted on May 29, 2007 that the crown needed to be replaced, however, failed to make note of when it was replaced because “[he is] not the best record-keeper in the world.” (Hearing Tr. vol. 4, 56:2, 6-7, May 28, 2008). In response to Balukjian’s allegation that August 2004 X-rays showed the presence of an open margin and decay, Respondent testified that it is possible for an open margin or decay to develop two years to thirty months after a crown is properly placed. *Id.* at 63:15. Additionally, Respondent explained his backwards method of claim submission concerning a custom post and core and crown, which he ordered fabricated “all in one piece” and consequently “bill[ed] out for a custom post after the placement of the crown.” *Id.* at 64:5; 18-20.

Patient FL

Respondent testified FL fractured tooth number thirteen, the lingual cusp, and stated he placed FL on antibiotics prior to performing a root canal, which he commenced on January 3, 2002 and completed on January 10, 2002. (Hearing Tr. vol. 3, 90:18; 92:19-21, May 14, 2008). In response to Balukjian’s allegation that the canals of tooth thirteen were underfilled, Respondent testified that the canals “may have been under filled,” either because of “constriction within the canal” or because particles may have fallen while cleaning the canal out and “placed a plug,” either of which can result in a shorter fill. *Id.* at 94:3-12. Post root canal, Respondent testified that FL neither received treatment for any further infection, nor complained of pain in tooth thirteen. *Id.* at 101:14-19. In addition, Respondent disputed Balukjian’s characterization of the term “EPT” as “electronic pulp test.” *Id.* at 99:22-25; 100:1-4. Respondent testified that “EPT” instead stood for “emergency palliative treatment.” *Id.* 100:2-4.

Respondent also performed dental work on FL's tooth number thirty, including placement of a sedative filling and subsequent performance of a root canal in March of 2003. (Hearing Tr. vol. 3, 102:23; 103:11, May 14, 2008). In response to further quality of care allegations, Respondent testified he did not recall breaking an instrument in tooth thirty and did not see anything present in the X-rays flagged by Balukjian. *Id.* at 103:21-24; 104:12-15. In addition, Respondent testified the canals in tooth number thirty were "within the standard" and disputed Balukjian's testimony that the canals were under filled. *Id.* at 105:18, 20. Furthermore, Respondent agreed with Balukjian's testimony that post operative X-rays showed peri-apical radiolucency present a year and a half after the root canal procedure. *Id.* at 107:10. Respondent testified, however, that the peri-apical radiolucency was not increasing in size and therefore, he concluded an apicoectomy was not necessary because no infection was present. *Id.* at 112:2-11). Balukjian did not agree with this conclusion and recommended FL's referral to a specialist, Dr. Albert Carlotti, who performed the apicoectomy. (Hearing Tr. vol. 3, 115:6, May 14, 2008). Respondent testified that during the apicoectomy, FL's existing crown on tooth number thirty broke. *Id.* at 116:14-15.

Patient JM

Respondent testified on cross-examination regarding Balukjian's allegation of fraud regarding the submission of a claim for the extraction of Patient JM's tooth number twenty-eight. Balukjian testified that Respondent recorded the extraction of this tooth on February 11, 2004, however, January 19, 2005 X-rays showed tooth number twenty-eight still present. (Hearing Tr. vol. 5, 54:9-25, June 8, 2008). In his defense, Respondent testified that "it's quite possible that I may have written down [twenty-eight] and [twenty-nine] [was the tooth that I extracted]." *Id.* at 55:8-14.

Additionally, Respondent testified on cross-examination in defense of Balukjian's allegation of fraud for submission of a claim for a full all porcelain crown placed on tooth number twenty on September 4, 2003. (Hearing Tr. vol. 5, 58:5-7, June 8, 2008). Respondent testified that the January 19, 2005 X-ray did not show a crown present on tooth number twenty because he removed the crown to perform a root canal on the tooth on September 27, 2004. *Id.* at 59:7-10.

Patient CR

Respondent testified on cross-examination that he performed an all porcelain Cerec machine restoration on tooth number nineteen as recorded in his September 12, 2002 chart entry. (Hearing Tr. vol. 5, 60:13-17; 62:4-5, June 8, 2008). In addition, Respondent disagreed with Balukjian's allegation that bitewing X-ray's dated August 8, 2004, September 13, 2005, October 11, 2006, and October 4, 2007 all showed no crown present on tooth number nineteen and testified that the October 11, 2006 X-rays did show an all porcelain restoration present on the tooth in question. *Id.* at 62:9-10.

Patient LT

Regarding tooth number twenty-eight, Respondent testified that he performed an MOD onlay, "which covers the entire tooth, leaving parts of the front and back part of the tooth present" and is "more than a filling, but not as much as a crown." (Hearing Tr. vol. 5, 17:8, 12-14, 20-21, June 8, 2008). Balukjian alleged fraud because Respondent billed for an all porcelain crown instead of an MOD onlay, which Respondent testified was a "billing error." *Id.* at 18:1. In addition, Respondent testified that he performed an MOD onlay on teeth numbers fifteen, eighteen, and nineteen, which were also billed as full porcelain crowns. *Id.* at 21:16-18. Respondent also placed and billed for an all porcelain crown on tooth number 31. *Id.* at 20:19-

21. In his defense, Respondent testified that he used the all porcelain crown billing code, 2740, for all of these claim submissions because he was going by his 1989 handbook, which did not have a code for a porcelain restoration that was not a full crown and therefore, he used the code for all porcelain crown. *Id.* at 22:13-19.

Patient RT

Respondent testified that Patient RT's ("RT") previous dentist, not he, treated tooth number six. (Hearing Tr. vol. 5, 6:14-16, June 5, 2008). Concerning the root canal performed on July 8, 2004 and July 14, 2004 with the crown placed on tooth number five in January of 2005, Respondent testified that he did not believe the canals to be under filled, as Balukjian alleged, nor had the patient complained of any problems post-procedure. *Id.* at 6:24-25; 7:3, 18-21.

In addition, Respondent testified that the fill in the canals of teeth numbers eighteen and nineteen "look solid" and "fall within a millimeter of the apex." (Hearing Tr. vol. 5, 10:5-7, June 8, 2008). Respondent testified he placed full, porcelain fused to metal crowns on both teeth and disagreed with Balukjian's allegation that the crowns were not full crowns. *Id.* at 10:25; 11:1-2. Furthermore, Respondent testified that there was no decay present and the margins were sealed on each tooth at the time of crown placement, however, four years after the procedure, the margins were open and decay was present so he "removed the crowns, removed any [recurrent] decay that was present . . . [T]ook new impressions and placed new crowns" in February of 2008. *Id.* at 12:6-7, 10-11, 15; 13:5-8, 12. Respondent testified RT had no further complaints regarding teeth numbers eighteen and nineteen. *Id.* at 13:12-18.

Patient SV

Respondent testified the canals in tooth number twenty-seven may not be considered appropriately filled in comparison to an “ideal situation” because there was calcification present, which made the canals “extremely difficult to negotiate.” (Hearing Tr. vol. 5, 24:18; 25:3-4, 18, June 8, 2008). In addition, the root of tooth number twenty-eight had a “severe curve to it,” as well as calcification present, both of which made the canal difficult to negotiate. *Id.* at 25:22-25. Respondent also testified regarding the root canal performed on SV’s tooth number thirty-one. He disagreed with Balukjian’s allegation of under-filled canals and testified to the presence of calcification, which resulted in difficulty in negotiating the canals. *Id.* at 26:15-19. Additionally, Respondent testified that he “worked the canal as much as [he] could” in each tooth and stated the patient remained asymptomatic to date in each of the three teeth. *Id.* at 25:9-10, 25, 16; 26:1, 22, 25.

Dr. Stephen Skoly’s Testimony

In addition, Dr. Stephen Skoly (“Skoly”) testified as an expert witness on behalf of the Respondent. Skoly has been a licensed dentist in the State of Rhode Island since 1988. (Hearing Tr. vol. 6, 5:23-24, June 18, 2008). He held licenses in the State of Illinois and the State of Connecticut, which are currently inactive. *Id.* at 6:1-3, 8-10. Currently, Skoly operates a specialty practice “dedicated to the practice of oral and maxillofacial surgery.” *Id.* at 6:16-18. Although Skoly specializes in oral and maxillofacial surgery, he felt his education and years of experience allow him to have a thorough understanding of general dentistry. *Id.* at 6:21-23; 7:2-14. Skoly served as an independent supervisor for Respondent on all of his existing patients. *Id.* at 13:11-13.

Skoly dedicated a significant part of his testimony to the concept of partial removal of “caries,” a dental term used to describe tooth decay. (Hearing Tr. vol. 6, 15:8-10; 21:14, June 18, 2008). In a June 2008 issue, the *Journal of American Dental Association* recently published a review of controlled trials and several studies concerning leaving behind infected dentin. *Id.* at 20:15-17. Skoly explained specific portions of the article, focusing on the process of partially removing carious lesions. *Id.* at 22:14-15. Skoly testified that partial removal of a carious lesion translates to leaving some decay behind in the tooth when performing dental procedures. *Id.* at 22:22-25. The studies in the article indicated that partial caries removal in about 312 teeth showed no significant difference than full caries removal in conjunction with three types of treatments—sealed conservative, sealed amalgam, and unsealed amalgam—at any period. *Id.* at 32:5-17. Skoly stated that the conclusion of the article was consistent with his own conclusion: that there is substantial evidence to show that “the removal of all infected dentin in deep carious lesions is not required for successful carious treatment provided that the restoration can seal the lesion from the oral environment effectively.” *Id.* at 24:11-18. In addition, Skoly testified that the studies conducted showed there were restorations placed on teeth with decay present. *Id.* at 33:16-20. He also stated the review showed the decay ceased to progress in these problem teeth over the next ten years. *Id.* at 10-15.

Skoly testified that he reviewed the patient files and conducted an interview with the Respondent. *Id.* at 61:13-16. Skoly qualified his comments by saying he did not do “general dentistry,” but said he was familiar with the procedures. *Id.* Skoly only specifically addressed three of the ten patients during the hearing. *Id.* at 60:22-25; 61:13. He testified regarding Patient KG (“KG”), Patient JG (“JG”), and Patient FL (“FL”). *Id.* at 60:22-25. Skoly was not satisfied with the quality and quantity of x-rays available for each patient. *Id.* 42:22-24; 44:7-8; 46:7-11.

However, he did indicate that generally, root canal therapy is successful only 80%-90% of the time. *Id.* at 45:6-7. With regards to KG, Skoly only made an overall assessment and did not go into any details regarding the quality of care for the multiple teeth in question. *Id.* at 65:7-12. For JG, Skoly testified he had trouble actually reading the patient chart. *Id.* at 22-24. In addition, he stated he had never seen JG, so his responses were, at best, summaries of the patient's chart he could decipher and the x-rays he could read. *Id.* at 62:7-12. Finally, with FL, Skoly made a specific finding with regards to tooth thirty. *Id.* at 65:13-17. This testimony is distinguished from his testimony regarding other patients because he made specific findings, and instead chose only to make overall assessments of the other nine patients. *Id.* at 65:18-23. Skoly testified that the article regarding partial caries removal does not conflict with the more prevalent practice of conducting numerous extractions on teeth spotted with decay. *Id.* at 66:24-25; 67; 68:1-12.

Additionally, Skoly testified that Respondent should be able to continue to practice dentistry, however, he expressed his concern regarding Respondent's record keeping. *Id.* at 70:3-16. In fact, he stated Respondent's records were so poor in some cases he had difficulty reading them to determine exactly what procedures were performed on specific teeth. *Id.* at 70:20-24. Skoly also testified that he relied on the records to form his opinions because he was never able to personally examine the ten patients. *Id.* at 71:7-11. If the Respondent's charts themselves were incomplete, Skoly admitted to the possibility that his observation and review could also be incomplete. *Id.* at 16-18.

As an expert witness, Skoly identified and explained general dental procedures and their consequences. Skoly answered only a few questions, however, when asked specific questions about the ten patients. *Id.* at 78:15-17. He did not feel he could answer specific questions

appropriately without examining the patients or considering multiple other factors that play a role in determining the condition of one's teeth. *Id.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The administrative record of the care rendered to the ten patients that were the subject of this hearing reveals a pattern of poor dentistry that falls well below the minimum standard of acceptable care. The testimony of the Respondent, the records of patients and x-rays provided by the Respondent, and the testimony of experts for the state and the Respondent demonstrate the following:

- a. A pattern of a failure to refer to oral surgeons, endodontists and periodontists when indicated;
- b. Poor documentation, office management and fraudulent claim submissions;
- c. Untreated decay, undiagnosed pathology, inadequate root canals, and insufficient removal of decay under restorations;
- d. Testimony by the Respondent that lacked the veracity that is expected of a licensed dentist in the State of Rhode Island;
- e. Documentation fails to note the patient's chief complaint, diagnostic radiographs and required treatment plan;
- f. There is an absence of current diagnostic radiographs for procedures

The Hearing Committee's reviewed the charges specifically by each patient and complaint.¹

¹ The Hearing Committee refers to the patient's by initials so as to protect the confidentiality of health care information and communication as required by RIGL 5-37.3-4

2. Patient JC – The Respondent’s treatment plan for Patient JC was flawed from the start.

The Respondent made a decision to extract the roots on teeth #s 8 and 9 at the time of the insertion of the 4-unit bridge. This fails to meet the minimum standard of acceptable care due to the fact that roots need to be extracted before the insertion of the bridge because gums change shape after root extraction. The Respondent then re-wrote the record, failed to note in the original chart that the record was re-written from memory. The Respondent testified that the patient assisted him in re-writing the record. The Hearing Panel finds that the Respondent re-wrote the record in order to deceive Delta Dental. His testimony regarding this issue was bereft of candor.

Additionally, the Hearing Panel finds that this patient should have been referred to an oral surgeon. The Panel finds that the billing for treatment to JC to Delta Dental was fraudulent because he billed for a procedure that was incomplete. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).

3. Patient JG – The Respondent failed to document that he informed the patient of his dental

needs. His lack of a documented diagnosis for teeth #s 4,8,12,13,and 14, lack of a documented treatment plan, lack of a documented examination constitute a failure to meet minimum standards of acceptable care. Chart notations are not initialed by the providers for the services rendered. The Respondent billed Delta Dental for an examination. Tooth number 14 was initially treated on 7/13/00 and repaired again on 7/1/04. The patient returned three months later with complaints of sensitivity.

Radiographs demonstrated the presence of distal decay and a leaky open margin. There is no documentation of the treatment through 10/13/07. Regarding tooth number 30, the

completed root canal therapy is unacceptably shy of the root apex. There is no documentation of the inadequate filling or a referral to an endodontists. A subsequent periapical radiograph in June of 2006 shows periapical pathology on the root of # 30. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).

4. Patient KG – The Hearing Panel adopts the findings of Delta Dental through the testimony of Dr. Balukjian. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).
5. Patient MK – The Hearing Panel adopts the testimony of Dr. Balukjian with the exception of his findings regarding tooth # 3. After reviewing the original x-rays it finds that there appears to be a full crown on tooth number 3. Perio probing is not documented as required and there was no evidence of working x-rays throughout the endodontic procedures. Respondent failed to meet the acceptable minimum standard of care in violation of RIGL § 5-31.1-10(19).
6. Patient FL – The Hearing Panel adopts the findings of Dr. Balukjian. In addition, it notes that the Respondent neglected to document FL’s chief complaint of prolonged pain in FL’s tooth # 30. It finds also that the standard of care for root canal therapy was not followed due to the under-filled canals in #30 and a broken instrument was left in one canal. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).
7. Patient JM - The Hearing Panel adopts the findings and testimony of Dr. Balukjian with the following note: There is a suspected clerical error in the charting that notes an extraction of tooth # 28 when an extraction was done on tooth # 29 that is also a bicuspid.

The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).

8. Patient CR - The Hearing Panel adopts the findings and testimony of Dr. Balukjian and finds that Respondent failed to meet the minimum standard of acceptable care in his treatment of Patient CR in violation of RIGL § 5-31.1-10(19).
9. Patient LT – The Respondent billed for crowns on teeth #s 15,19, 28 and 31 when only inlays or filling are present. This is clearly demonstrated by orthodontic photographs taken later in 2008. The June 11, 2007 radiographs available to Delta Dental demonstrated Delta Dental’s findings. The Hearing Panel accepts and adopts the testimony of Dr. Balukjian. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).
10. Patient RT – The Hearing Panel accepts and adopts the testimony of Dr. Balukjian with the following exception. Evidence in the records and radiographs demonstrate that the Respondent was not responsible for the under-filled canal in tooth #6. However, the Respondent is responsible for the margins of tooth # 6 which were wide open and caused recurrent decay. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).
11. Patient SV – The Hearing Panel adopts Dr. Balukjian’s testimony with regard to teeth #s 27 and 28. It declines to accept his testimony regarding tooth # 31 after a review of the original film and patient chart. The Hearing Panel finds that the Respondent failed to meet the minimum standards of acceptable care in violation of RIGL § 5-31.1-10(19).
12. Stephen Skoly, an oral surgeon in Rhode Island, has held licenses in three states. He currently practices in Rhode Island. Skoly pointed to a dental journal article that

theorized that leaving deep carious lesions in place underneath a crown met acceptable standards. The Hearing Panel recognizes that there is some debate on this limited issue. However, the Respondent's pattern of leaving carious lesions in teeth were of a type not covered by the article. The Hearing Panel recognizes another one of Skoly's defenses that notes that some types of 3rd party and regulatory review of records and radiographs may not reflect the entire scope of the clinic picture (such as when a crack in a tooth fails to register in an x-ray). However, Respondent's radiographs support the findings of both Delta Dental and this panel indicating a pattern of a failure to adhere to the minimum standards of acceptable practice.

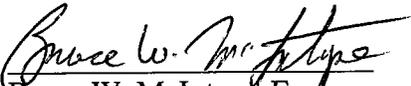
13. The Summary Suspension issued by the Director of Health is hereby upheld by more than a preponderance of the evidence in accordance with RIGL § 5-31.1-16.
14. The Hearing Panel upholds the charges in the Administrative Hearing Notice with the limited exceptions noted above. Therefore, the Department of Health has met the standard of proof of RIGL § 5-31.1-16. Respondent is guilty of Unprofessional Conduct as described in § 5-31.1-10

ORDER

Respondent is hereby suspended from the practice of dentistry in Rhode Island for a minimum of Two (2) Years. Respondent may not be reinstated unless he enrolls in and completes an ADA approved "Advanced Standing Program" in a School of Dentistry such as those offered at Boston University School of Dentistry, Tufts University School of Dental Medicine or a similar program at an ADA approved school. Additionally, Respondent must complete a course in proper documentation of a clinical record. The Board must approve all remedial courses in advance and in writing before enrollment.

Respondent is assessed a Ten Thousand (\$10,000.00) Dollar Administrative Fee in accordance with RIGL § 5-31.1-17(8).

Prepared for the Hearing Panel by:

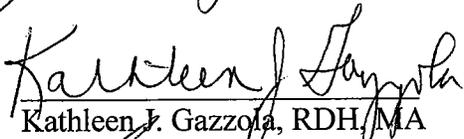

Bruce W. McIntyre, Esq.
Hearing Officer

October 23, 2008
Date

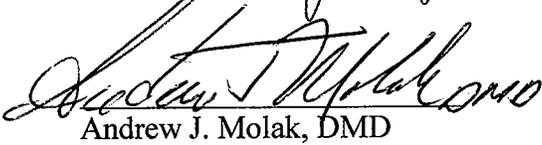
The Hearing Panel hereby represents that it read the transcripts of the hearing, reviewed the evidence in the administrative record and adopts the Summary of Testimony and Findings of Fact and Conclusions of Law as its own.


Joseph J. Box, DDS

10/23/08
Date


Kathleen J. Gazzola, RDH, MA

October 23, 2008
Date


Andrew J. Molak, DMD

10/23/08
Date


Michael L. Rubinstein, DDS

10/23/08
Date

This Administrative Decision and Order has been transmitted to the Director of Health in accordance with RIGL § 5-31.1-6. The Administrative Decision and Order is adopted and is an Order of the Department of Health


David R. Gifford, M.D., MPH
Director of Health

10/23/08
Date

Notice of Right to Appeal to the Superior Court

Pursuant to RIGL § 5-31.1-18 anyone aggrieved by this order has the right to appeal to the Superior Court within 30 days of the date of this Order by serving on the Director a notice of appeal and filing a notice of appeal and complaint in the Superior Court in accordance with the Rules of Civil Procedure and the Administrative Procedures Act.

CERTIFICATION

I Hereby certify that a copy of this Administrative Decision and Order was sent to the following on this 23rd day of October 2008.

John M. Verdecchia, Esq.
1206 Westminster St.
Providence, RI 02909

Gregory Madoian, Esq.
Department of Health
Legal Services
3 Capitol Hill
Providence, RI 02908

A handwritten signature in cursive script, appearing to read "Bruce M. Feltz", is written over a horizontal line.