

FINDINGS

On or about January 5, 2000, Patient A was treated in Respondent's office for teeth whitening. He made the appointment with Respondent pursuant to an advertisement he had received offering this service for \$195.00. The patient had an ongoing relationship with another dentist, Dr. Rubenstein, with whom he had treated for years. The patient had last seen Dr. Rubenstein in December of 1999 for his six-month check-up, and no problems had been noted. The cost of teeth whitening with Dr. Rubenstein was higher, so the patient decided to pursue the Respondent's advertisement.

On January 5, 2000 the Respondent examined the patient's teeth and advised the patient that he had evidence of decay in 11 or 12 teeth; that there was evidence of his grinding his teeth which required a night guard to correct it; that he needed sealants on approximately 12 teeth; and that he had receding gums. The patient was extremely upset that his dentist of many years had failed to discover and address these problems. The teeth whitening required a second visit, so the patient made an appointment for January 13, 2001. On that date, the whitening was completed and the Respondent discussed the further dental work he was proposing for the patient. The patient took notes of this meeting (Respondent's C). Respondent told the patient that 11 or 12 of his teeth needed filling at \$97.00 each; that attention was needed to clefts in his gums at \$400.00 for that procedure; that he needed a night guard at \$285.00; that his teeth needed bonding at \$1,000-3,000 and that 12 teeth needed sealants at \$35.00 each. If the patient had the work completed, the Respondent would agree to reduce his fee by \$120.00. The Respondent set another appointment with the patient for February 1, 2000. At the January 13th meeting, the patient advised Respondent that he was going to seek another

opinion. Upon learning this, the Respondent advised the patient that another dentist might not find 11 or 12 decayed teeth. He told the patient that his approach was more thorough and geared more toward preventive dentistry than other dentists.

On January 25, 2000 the patient consulted with Dr. Gary Light. Prior to doing so, the patient attempted to get copies of his records from Respondent to present to Dr. Light. The Respondent, after an exchange with the patient, agreed to give the patient a portion of his record, but not all of it.

Upon evaluation, Dr. Light found no tooth decay; that sealants were not recommended as the patient was too old; that there was some grinding but that a night guard was not recommended; and that bonding was not recommended. The patient reported Dr. Light's lack of serious findings to the Respondent on February 1, 2000. The Respondent telephoned Dr. Light while in the presence of the patient to discuss their opposing findings. The Respondent insisted to Dr. Light and the patient that he was correct about the patient having 11 or 12 "caries", and that Dr. Light's exam was not thorough enough, nor was his probe sharp enough.

After speaking with Dr. Light, the Respondent then advised the patient that most dentists do not use probes which are sharp enough to detect decay, whereas his probes were always sharp for the best results. According to the patient, at this meeting the Respondent reiterated the necessity for completing the work he had outlined, and he urged the patient to proceed with treatment. The patient declined and sought yet another opinion. The patient was evaluated by Dr. Paul Applebaum on February 4, 2000. Dr. Applebaum's report is part of the record (State's 2). It provides in pertinent part "No caries was noted and no treatment was recommended, with the possible exception of

tooth #30, which was borderline, and would need to be re-evaluated periodically.” In his testimony, Dr. Applebaum testified that it was his opinion that sealants are not necessary where the patient is an adult without prior decay. He also noted that the “pits and groves” on the patient’s teeth are arrested. They are not progressing and do not require repair.

Dr. Rubinstein also testified about the patient’s pits, groves and fissures. He testified that they are permanent and have existed since the beginning. Where the patient’s fissures are stable over many years with little decay, it would be negligent to perform a fissurotomy, which involves scraping the enamel off the teeth. The teeth should be left alone.

The State then had the patient examined by an independent dentist, Dr. John DeMello. His report was entered on the record (State’s 3). Dr. DeMello’s report states in pertinent part, “Upon examination several teeth presented with moderate staining in deep anatomical fissures. Teeth #5 and #30, in particular, appeared to be carious by sight, but clinical evaluation and subsequent radiograph examination of these areas demonstrated solid non-carious tooth structure. In my opinion, Mr. Stepkow does not have any carious lesions in his dentition.” Dr. DeMello found no decay.

Dr. Carlsten presented testimony in defense of his position. He reiterated his findings of dental caries (decay), grinding, periodontal gum gingiva problems and the necessity for bonding or porcelain veneers. He admitted that the X-rays he took did not reveal any decay. He said he was able to locate decay with a sharp probe. He recommended drilling out the decay and using a bonding composite. He testified that with respect to some of the teeth, he would recommend a restoration and a sealant on the same tooth. He indicated that he might or might not charge for both procedures.

Respondent reiterated his position that the work he was proposing was preventative in nature. This contradicts the statements made to the patient and Dr. Light, i.e., that the patient had 11 or 12 carious teeth.

The Respondent's expert, Dr. John Romano, examined the patient, too. Dr. Romano identified decay in teeth #5 and #19. He also recommended sealants.

CONCLUSIONS

In reaching a conclusion in this matter, the panel specifically notes that three of the panel members are members of the dental profession. The panel has relied upon the education and experience of the panel members in conjunction with the testimony and evidence in making a decision in this matter.

During the course of the hearing, the Respondent attempted to make much of the fact that he did not use the term "cavity" in speaking with the patient. He indicated that he used the word "decay", which he maintains is not necessarily the same thing. Further, the Respondent urges the Board to accept his view that the suggested dental work was strictly "preventative". The evidence is clear that Respondent told the patient that he had 11 or 12 teeth with decay. The words "decay", "carious" and "cavity" are synonymous in the dental profession. These terms are interchangeable and all indicate the necessity of "filling" or "restoring" the decayed, or carious, tooth. Fillings and restorations are not preventative measures. They constitute the treatment regimen for decayed teeth. Teeth are either carious or they are not, and if the Respondent indicated to the patient that he had carious teeth, then the fillings he recommended could not be for prevention purposes.

The Board is also concerned with the Respondent's evaluation of the patient. The uncontradicted testimony is that his dental examination of the patient lasted only a few

short minutes. Following that, he was able to diagnose 11 or 12 carious teeth, periodontal disease, grinding requiring a night guard, teeth requiring sealants, and he recommended bonding. The treatment, had the patient undertaken it, would have cost him and his insurance carrier several thousand dollars. That is to say nothing of the fact that the Respondent was recommending drilling into what the Board finds were non-carious teeth. The Respondent's evaluation and findings are not credible. The testimony and/or reports of Drs. Rubenstein, Light, Applebaum and DeMello are indicative of the fact that this patient's teeth were not carious. The Respondent's expert, Dr. Romano, only found 2 carious teeth (Respondent's L).

Respondent's statement to the patient that the other dentists' probes were not sharp enough to detect the tooth decay he had discovered with his probe is likewise not credible.

The Respondent is operating in what the Board concludes is a "fringe" area. His advocacy of drilling into "stained" and "pitted" teeth because they may be carious or are prone to decay without clear radiological or probe evidence of decay is not the standard of care. To do as the Respondent suggests could well result in filling every tooth.

The Board concludes that the Respondent should not have recommended filling and sealing the same teeth. It is redundant, and to charge for both procedures is not the standard of care in the profession.

Finally, from a consumer point-of-view, the Board concludes that the Respondent was indeed promoting a type of "bait and switch" operation. The patient made an appointment with the Respondent for teeth whitening only. The Respondent was advised that the patient had an ongoing relationship with another dentist. In making his findings

to the patient, the Respondent should have discussed referring the patient to his own dentist for further evaluation rather than pressuring him to undertake treatment in his office. The type of marketing engaged in by the Respondent does not meet the minimum standard of duty owed to a patient by a dentist. It is unprofessional.

Based upon the foregoing, the Board finds that Dr. Carlsten has been guilty of unprofessional conduct and hereby issues this **REPRIMAND** which will be maintained in the records of the Board of Examiners in Dentistry within the Department of Health.

Entered this 1st day of May 2001.

BOARD OF EXAMINERS IN DENTISTRY

By:

Gail Giuliano
Gail Giuliano, Administrative Officer
Board of Examiners in Dentistry

CERTIFICATION

I hereby certify that I have mailed a copy of the within Administrative Decision to Dennis McCarten, Esquire, 146 Westminster Street, Providence, RI 02903 on this 2nd day of May 2001.

Carole Allsworth