SOAH DOCKET NO. 504-16-1933

TEXAS STATE BOARD OF DENTAL EXAMINERS,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
v.	§	**OF**
	§	
BETHANIEL JEFFERSON, DDS, TEXAS DENTAL LICENSE NO. 21310	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas State Board of Dental Examiners (Board) brought this action seeking revocation of Texas Dental License Number 21310 held by Bethaniel Jefferson, DDS (Respondent). Staff alleged Respondent fell below the minimum standard of care in the treatment of two minor patients and urged that Respondent's license be revoked. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concurs with Staff. Therefore, this Proposal for Decision (PFD) recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing was held May 23, 2016, before ALJ Holly Vandrovec in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Staff attorney Alex Phipps. Respondent appeared and was represented by attorney Jennie M. Roberts. The record closed on June 15, 2016, with the filing of the final written briefs.

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

A. Background

The Board issued Respondent License Number 21310 on May 30, 2003. Respondent has two Board orders. On April 29, 2005, the Board adopted an agreed settlement order issuing Respondent a reprimand for failure to make, maintain, and keep adequate dental records for a patient. On August 10, 2012, the Board adopted an agreed settlement order issuing Respondent a reprimand for failure to meet the standard of care in the sedation of a minor patient.

On January 29, 2016, the Board issued an order temporarily suspending Respondent's license due to allegations that she failed to meet the standard of care and engaged in dishonorable conduct when providing dental care to a minor patient, Patient 2. On February 9, 2016, a probable cause hearing was held to determine whether probable cause existed to continue the temporary license suspension pending a final hearing. The ALJ issued an order on February 12, 2016, finding probable cause to continue the suspension pending a final hearing on the merits. The hearing on the merits was held on May 23, 2016. The subject of the hearing was Respondent's treatment of two minor patients.

In its First Amended Formal Complaint, Staff alleged that Respondent fell below the minimum standard of care in the treatment of two minor patients, failed to uphold the duty of fair dealing when providing care to Patient 1, and engaged in dishonorable conduct when providing dental care to Patient 2. Staff is seeking to revoke the license of Respondent. The allegations are as follows:

> 1. During the time period from June 26, 2012, through August 1, 2014, Respondent violated applicable statutes and Board rules in her treatment of Patient 1. Specifically, Respondent provided excessive treatment for Patient 1's teeth by placing sealants on the minor patient's teeth and then performing pulpotomies and placing stainless steel crowns on the same teeth within a short period of time. Additionally, Respondent's pulpotomies and stainless steel crowns failed a short time later, causing infections requiring extraction of the treated teeth. Staff alleged this conduct violated Texas Occupations Code § 263.002(a)(3), (4), and (10),

and 22 Texas Administrative Code §§ 108.2(d)-(e), 108.7, and 108.9(2)(B), (11).

2. On or about January 7, 2016, Respondent fell below the minimum standard of care and engaged in dishonorable conduct when providing dental care to Patient 2, resulted in serious harm to the patient. Specifically, after Respondent sedated Patient 2, the patient began experiencing seizures or seizure-like symptoms. Respondent attempted to treat Patient 2's seizures or seizure-like symptoms by administering oral medications instead of contacting emergency personnel. Respondent delayed several hours before contacting emergency personnel, allowing Patient 2 to remain in a dangerous hypoxic state. Patient 2 suffered severe brain injury as a result. Staff alleged this conduct violated Texas Occupations Code § 263.002(a)(3), (4), (10), and (12), and 22 Texas Administrative Code §§ 108.7(1) and 108.9(4)(F), (11).

B. Applicable Law

Section 263.002(a) of the Texas Occupations Code provides that the Board may reprimand, issue a warning letter to, impose a fine or administrative penalty on, place on probation with conditions a person whose license has been suspended, or revoke or suspend the license of a licensed dentist if the dentist "(3) practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct; (4) fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene;" "(10) violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists;" or "(12) is negligent in performing dental services and that negligence causes injury or damage to a dental patient."

Board rule 22 Texas Administrative Code § 108.7(1), regarding the minimum standard of care, requires that dentists conduct their practices "in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances."[1]

Board rule 108.2(d)-(e) includes standards for fair dealing, requiring that: "[n]either the dentist nor his employee(s) shall mislead dental patients as to the gravity or lack thereof of such

[1] This same language appears in 22 Texas Administrative Code § 108.7 as it appeared at the time of Respondent's actions with respect to Patient 1. Although the section was later reorganized, the ALJ will refer to the current version of the rule, Section 108.7(1), with respect to both Patient 1 and Patient 2. Additionally, subsequent references to the Board's rules will be to "Board rule ___" or "Rule."

patient's dental needs," and "[a] dentist shall not flagrantly or persistently overcharge, overdiagnose, or overtreat a patient. For this rule the meaning of the term 'overcharge' includes, but is not limited to, collecting or attempting to collect a fee without reasonable justification for any element of dental services provided to a patient that is in excess of the fee the dentist ordinarily charges to others for the same service."

Board rule 108.9 sets out certain actions that are considered dishonorable conduct. These include engaging in deception or misrepresentation in obtaining a fee;[2] misconduct involving drugs, including prescribing, dispensing, or administering narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose, whether or not the person is a dental patient;[3] and engaging in unprofessional conduct, which includes "conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession."[4]

C. Evidence, Arguments, and ALJ's Analysis

Staff presented the testimony of Jennifer Criss, DDS, an expert witness; Dr. Amy Arrington, who treated Patient 2; and Respondent. Staff also offered 9 exhibits, which were admitted.[5] Respondent testified on her own behalf and also called Dr. Criss as a witness.

1. Patient 2

a. Respondent's treatment of Patient 2

Respondent's treatment of Patient 2, a 4-year-old girl, was the focus of the probable cause hearing and occurred most recently. Prior to the treatment at issue in this case, Patient 2 was seen by Respondent on November 16, 2015, for a number of extractions, pulpotomies, and

[2] Board rule 108.9(2)(B).

[3] Board rule 108.9(4)(F).

[4] Board rule 108.9(11).

[5] Staff Exhibits 2-6 and 8-9 were admitted under seal.

stainless steel crowns.[6] Patient 2 was given 3 milligrams (mg) Valium and 5 mg Atarax on that date for sedation and tolerated it well.[7] Because all of the dental work could not be performed at once, Respondent arranged for Patient 2 to come back at a later date for the remainder of the treatment.[8] On January 7, 2016, Patient 2 appeared for the remainder of her treatment. On this date, Patient 2 was given 6 mg Meperidine and 5 mg Atarax at 8:38 a.m. for sedation.[9] After the procedure began, Patient 2 began screaming, shaking her head, and shaking violently.[10] Respondent administered 0.031 mg Halcion to Patient 2 at 11:35 a.m. and 11:38 a.m.[11] Patient 2's blood oxygen level dropped at 11:44 a.m. and remained at low levels for most of the next 5 hours.

Patient 2's Blood Oxygen Levels from 11:44 a.m. to 4:36 p.m.[12]

Time	O_2
11:44 a.m.	84%
11:51 a.m.	82%
11:55 a.m.	97%
12:07 p.m.	91%
12:11 p.m.	92%
12:16 p.m.	80%
12:17 p.m.	87%
12:31 p.m.	88%
12:35 p.m.	65%
12:41 p.m.	67%
12:45 p.m.	59%
12:52 p.m.	63%
12:55 p.m.	71%
1:00 p.m.	68%
1:01 p.m.	73%

Time	O_2
1:04 p.m.	49%
1:14 p.m.	81%
1:15 p.m.	83%
1:18 p.m.	87%
1:20 p.m.	54%
1:24 p.m.	57%
1:26 p.m.	64%
1:35 p.m.	76%
1:39 p.m.	50%
1:43 p.m.	78%
1:44 p.m.	75%
1:55 p.m.	70%
2:05 p.m.	72%
2:14 p.m.	74%
2:24 p.m.	91%

Time	O_2
2:35 p.m.	93%
2:44 p.m.	85%
2:54 p.m.	99%
3:04 p.m.	99%
3:06 p.m.	98%
3:13 p.m.	99%
3:16 p.m.	99%
3:26 p.m.	97%
3:36 p.m.	91%
3:46 p.m.	91%
3:56 p.m.	77%
4:08 p.m.	82%
4:18 p.m.	80%
4:26 p.m.	82%
4:36 p.m.	87%

Dr. Criss testified that a child's blood oxygen concentration should not drop below 96%. If a child's blood oxygen levels are below 96%, the child is not getting enough oxygen to their

[6] Staff Ex. 5 at 45.

[7] Staff Ex. 5 at 45.

[8] Staff Ex. 5 at 45.

[9] Staff Ex. 5 at 33.

[10] Staff Ex. 5 at 46.

[11] Staff Ex. 5 at 33.

[12] Staff Ex. 5 at 32. Highlighted portions indicate times when the blood oxygen levels were above 96% (the minimum threshold).

organs, including their brain.[13] A provider should provide 100% oxygen through a mask or a nasal cannula once levels fall below 96% and should use an Ambu bag to force oxygen into the patient's lungs and to breathe for the patient if levels fall below 90%.[14] Respondent testified that she checked the blood oxygen level at 12:31 p.m., but did not check it again until approximately 2:30 p.m.[15] Respondent then did not check the oxygen level again until after a seizure that occurred just before 4:00 p.m.[16] Additionally, Respondent's records indicate that Patient 2's body temperature was 93.6 degrees at 12:30 p.m.[17] Respondent did not realize that Patient 2 was in shock and testified that she thought the patient was cold.[18] Respondent gave Patient 2 water orally using a syringe, but she began having a seizure at 2:30 p.m., at which time Respondent orally gave her 1.25 mg Valium that had been mixed with water. Patient 2 calmed down and took more water, but threw up the water at 3:56 p.m. and began shaking violently. [19] During this period, Respondent called her pastor several times from her cell phone and also called a pharmacy to inquire about drug interactions.[20] The paramedics were called at approximately 4:30 p.m.[21]

Paramedics records indicate that Patient 2 was not receiving oxygen at the time they arrived.[22] Patient 2 had another seizure after the paramedics started an IV, and again after they reached the emergency room of the hospital.

Dr. Amy Arrington, a physician who works at Texas Children's Hospital in the pediatric intensive care unit, testified that she saw Patient 2 on January 8, 2016, the morning after she was taken to the hospital. Dr. Arrington examined Patient 2 and found she had a good pulse and

[13] Tr. at 68-69.

[14] Tr. at 69-70.

[15] Tr. at 127.

[16] Tr. at 128-29.

[17] Staff Ex. 5 at 32, 46.

[18] Tr. at 125-26.

[19] Staff Ex. 5 at 46.

[20] Tr. at 132-35.

[21] Staff Ex. 8 at 6.

[22] Staff Ex. 8 at 6.

blood pressure, but concerning symptoms on her neurologic exam. She found Patient 2 to be in a stuporous state in that she wasn't opening her eyes or responding to any external stimuli, including her family. Although Patient 2 could breathe on her own, she could not control her secretions or swallow.[23] Dr. Arrington determined that Patient 2 had hypoxic ischemic brain injury due to lack of oxygen.[24] Additionally, after the initial brain injury due to lack of oxygen, Dr. Arrington determined that Patient 2's brain produced an inflammatory response that caused a movement disorder, which looked like seizures, but were not.[25] Dr. Arrington testified that Patient 2 remained in a stuporous state throughout her examinations over several days and had a Glasgow Coma Scale score of 8-9, where 8 is considered a coma state. The normal score is 15.[26] Dr. Arrington testified that most patients who do not see improvement over the first week or so, typically do not show any improvement over time.[27] Dr. Arrington did not see any improvement in Patient 2 over the several days she was under her care.

Dr. Arrington reported Respondent to the Board because she felt that Respondent should have called 911 as soon as Patient 2 began seizing.[28]

b. Allegation that Respondent's treatment of Patient 2 fell below the standard of care

Staff alleged that Respondent's care of Patient 2 on January 7, 2016, fell below the standard of care. Staff's expert Dr. Criss has a doctor of dental surgery and has been board-certified by the American Board of Pediatric Dentistry since 2007.[29] Dr. Criss testified that Respondent's actions fell below the standard of care for a number of reasons. First, Respondent's administration of Halcion to Patient 2 was improper because Halcion is not a reversal agent for either Meperidine or Atarax and is not used to treat seizures. Halcion is not

[23] Tr. at 13.

[24] Tr. at 19.

[25] Tr. at 16, 19-20.

[26] Tr. at 18.

[27] Tr. at 20.

[28] Tr. at 20-21.

[29] Staff Ex. 7.

recommended for children under the age of 12.[30] Second, Respondent should not have given Patient 2 water or medications orally after the seizures began. The American Academy of Pediatric Dentistry recommends giving Valium intravenously because if a child is in a seizure state, they may not have control of their ability to swallow and could take water into their lungs (aspirate), which could further lead to a decrease in the oxygenation of the blood and present a risk of choking.[31] Third, Respondent should not have waited so long to call 911. The first seizure happened around 11:30 a.m. and paramedics were not called until around 4:30 p.m. In the meantime, Patient 2 suffered an ischemic event, meaning that there was not enough oxygen in the body, which caused brain damage.[32]

Finally, when Patient 2's temperature was taken at 12:30 p.m. and was much lower than normal (93.6 degrees), Respondent should have recognized that Patient 2 was going into shock and should have called paramedics immediately. Dentists do not have the emergency medical training or equipment to appropriately treat shock, a life-threatening condition, so as soon as it begins, a dentist should call 911 immediately. Dentists are required to have some life support training every two years, which teaches dentists how to recognize an emergency situation and to call 911 when faced with an emergency. Respondent failed to recognize and adequately respond to the emergency situation faced by Patient 2.[33] For all these reasons, Dr. Criss testified that Respondent's treatment of Patient 2 on January 7, 2016, was below the standard of care.

Additionally, Dr. Criss testified that Respondent's actions presented a threat to Patient 2's health, led to harm of Patient 2, and showed Respondent's inability to practice safely.

Dr. Jefferson admitted that her treatment of Patient 2 on January 7, 2016, was below the standard of care. If the same thing happened today, Respondent stated that she would call 911 immediately.[34] Respondent also stated that she was in shock when Patient 2 began to have her

[30] Tr. at 64-65.

[31] Tr. at 76-78.

[32] Tr. at 80-81.

[33] Tr. at 81-85.

[34] Tr. at 137.

first seizure.[35] She also stated that the pulse oximeter, which measures blood oxygen levels, was positioned behind her, so she did not know what the patient's levels were at all times.[36]

2. Respondent's Treatment of Patient 1

Patient 1 and her two siblings were treated periodically by Respondent from June 26, 2012, to January 20, 2014.[37] The treatment at issue in this case began in January of 2014, when Patient 1 was 5 years old. On January 13, 2014, she had x-rays, fluoride treatment, an examination, prophylaxis (a cleaning), and fillings (resins) on two surfaces of tooth C.[38] The clinic note states that Patient 1 had tooth decay and needed sealants, but her mother wanted to proceed with the sealants on another date.[39]

Three days later on, Patient 1 had sealants placed on teeth A, B, I, J, and L[40] under nitrous oxide up to 70%.[41] The clinic note states that Patient 1 had a fever blister on that date, moved a lot, was uncooperative with nitrous oxide alone and while papoosed and would be sedated for further treatment.[42] Dr. Criss testified that sealants are used on teeth with deep grooves in order to provide a flatter surface to prevent food, debris, plaque, and bacteria from getting into the grooves of the teeth. Sealants should be placed on non-carious lesions, in other words, on teeth that do not have cavities, which would require a filling or pulpotomy (removal of the crown portion of the nerve).[43] A cavity or cavitated lesion is a hole in the tooth that goes into the dentin and is visible on an x-ray. A sealant should not be placed on a cavity that has broken through the dentin because it cannot reverse the decay or prevent further decay of the tooth.[44]

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[35] Tr. at 152.

[36] Tr. at 153.

[37] Staff Ex. 2 at 33-34.

[38] Staff Ex. 2 at 33.

[39] Staff Ex. 2 at 36.

[40] Staff Ex. 2 at 33-34.

[41] Staff Ex. 2 at 36.

[42] Staff Ex. 2 at 36.

[43] Tr. at 32-33.

[44] Tr. at 33-34.

Four days after she had the sealants, Patient 1 had a pulpotomy and a stainless steel crown put on teeth A, B, I, J, K, L, S, and T and a two-surface filling on tooth C.[45] Dr. Criss explained that a pulpotomy is the removal of the crown portion of the nerve of the tooth, which is replaced with an inert material. This allows a baby tooth to stay in place until the normal time of exfoliation. A pulpotomy is generally performed instead of placing a filling when the decay is significant—when it is deeper and closer to the nerve.[46] A pulpotomy is followed by either a protective liner and filling or a stainless steel crown.[47]

a. Allegation that Respondent's treatment of Patient 1 fell below the standard of care

Dr. Criss testified that Respondent's treatment of Patient 1 fell below the standard of care for a number of reasons. First, she did not believe that teeth A, B, K, L, S, or T needed a pulpotomy and crown based on the x-rays.[48] Second, if pulpotomies were going to be performed 4 days later, it was not reasonable to put sealants on teeth A, B, I, J, and L on January 16, 2014. If decay is so bad that a filling or pulpotomy is necessary, the sealants would be unnecessary and no reasonable dentist would have placed them on the teeth at that time.[49] Third, the American Academy of Pediatric Dentistry recommends that the highest percentage of nitrous oxide for children is 40%, with 30-40% being ideal. Respondent's records indicate that nitrous oxide was administered at 70%.[50]

Respondent testified that it was apparent that only sealants were needed on January 16. She did not see decay to the point that pulpotomies were necessary until Patient 1 returned on January 20.[51] Respondent also argued that sealants were necessary on January 16 because she

[45] Staff Ex. 2 at 34.

[46] Tr. at 34-36.

[47] Tr. at 39.

[48] Tr. at 42.

[49] Tr. at 42-45.

[50] Tr. at 47-48.

[51] Tr. at 112-13.

was unsure if the patient, who had a history of missing appointments, would ever return for the necessary pulpotomies and that, in the meantime, sealants would provide the teeth with some protection.[52]

Dr. Criss testified that Patient 1's teeth could not have decayed so much over the period of 4 days after the sealants were placed that it would only then have been apparent that pulpotomies were necessary.

b. Allegation that Respondent failed to uphold the duty of fair dealing

Staff alleged that Respondent failed to uphold the duty of fair dealing by misleading Patient 1 as to the gravity of the patient's dental needs. Dr. Criss testified that the pulpotomies for 6 of the 8 teeth were not necessary based on the x-rays and constituted overtreatment. Dr. Criss also testified that, if pulpotomies were to be performed 4 days later, no sealants should have been placed on the subject teeth. Placing the sealants on those teeth constituted overtreatment, which also violates the duty of fair dealing.[53]

3. ALJ's Analysis and Recommended Sanction

Based on the credible evidence, Respondent failed to meet the minimum standard of care in her treatment of Patient 1 and Patient 2. With respect to Patient 2, Respondent failed to recognize and respond appropriately to the emergency situation when Patient 2 had her first seizure, when her blood oxygen level dropped, and when she observed that Patient 2's temperature had fallen to 93.6 degrees, which should have alerted Respondent that Patient 2 was experiencing shock. Respondent should have immediately called 911 and should have begun providing oxygen to Patient 2 in a manner that would force the oxygen into the patient's lungs, which may have included using an Ambu bag. In addition, Respondent's treatment fell below the standard of care because she gave Patient 2 Halcion, which was not an appropriate medication for children, not appropriate for stopping a seizure, and not appropriate for

[52] Tr. at 114-17.

[53] Tr. at 51-54.

counteracting the sedatives given. Respondent also should not have given Patient 2 Halcion, Valium, or water orally while she was experiencing seizures. This placed Patient 2 at an increased risk of choking and aspiration. These failures on Respondent's part resulted in serious harm to Patient 2, who suffered brain damage and a movement disorder do to a lack of oxygen in the patient's blood. These failures also constitute negligence and dishonorable conduct, which includes unprofessional conduct likely to disgrace, degrade, or bring discredit upon the licensee or the profession.

With respect to Patient 1, Respondent's treatment was below the standard of care because the sealants were not necessary for teeth that would soon have pulpotomies and crowns placed on them. Further, pulpotomies were unnecessary for teeth A, B, K, L, S, or T. This unnecessary treatment constitutes overtreatment and overcharging of the patient in violation of 22 Texas Administrative Code § 108.2(e). Further, by overtreating the patient, Respondent misled the patient as to the gravity of the patient's dental needs in violation of 22 Texas Administrative Code § 108.2(d).

For the violations in this case, Staff seeks revocation of Respondent's license. Due to the serious brain injury and movement disorder resulting from Patient 2's lack of oxygen over a number of hours under Respondent's care, the ALJ concurs with Staff's recommendation.

Revocation is appropriate considering the Board's disciplinary matrix.[54] Pursuant to the Disciplinary Matrix, Respondent's failure to treat Patient 2 according to the standard of care and negligence in treatment constitutes a Third Tier Violation.[55] The sanction for a Third Tier Violation can include denial, suspension of license, revocation of license, or request for voluntary surrender.[56]

To determine which of these sanctions is appropriate, the ALJ considered aggravating and mitigating factors pursuant to 22 Texas Administrative Code § 107.203. Aggravating factors

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[54] *See* http://www.tsbde.texas.gov/documents/laws-rules/Disciplinary%20Matrix.pdf (Disciplinary Matrix).

[55] Disciplinary Matrix at 4.

[56] Disciplinary Matrix at 4.

include: severe harm to Patient 2, more than one violation involving more than one patient as discussed above, increased potential for harm to the public given that Respondent was unable to recognize and respond appropriately to an emergency situation, and prior similar violations given her prior Board order involving the provision of sedatives to minor patients.[57] Applicable mitigating factors included acknowledgment of wrongdoing;[58] however, this was not sufficient to overcome the seriousness of the injury to Patient 2 along with the other aggravating factors.

III. FINDINGS OF FACT

Background and Procedural History

1. Bethaniel Jefferson, DDS (Respondent) holds Texas Dental License Number 21310 issued by the Texas State Board of Dental Examiners (Board) on May 30, 2003.

2. On April 29, 2005, the Board adopted an agreed settlement order issuing Respondent a reprimand for failure to make, maintain, and keep adequate dental records for a patient.

3. On August 10, 2012, the Board adopted an agreed settlement order issuing Respondent a reprimand for failure to meet the standard of care in the sedation of a minor patient.

4. On January 29, 2016, the Board issued an order temporarily suspending Respondent's license due to allegations that she failed to meet the standard of care and engaged in dishonorable conduct when providing dental care to a minor patient, Patient 2.

5. On February 9, 2016, a probable cause hearing was held to determine whether probable cause existed to continue the temporary license suspension pending a final hearing. The Administrative Law Judge (ALJ) issued an order on February 12, 2016, finding probable cause to continue the suspension pending a final hearing on the merits.

6. On March 16, 2016, Staff sent Respondent a Notice of Hearing and a copy of its Second Amended Complaint by certified and regular mail to her address of record.

7. The notice of hearing stated the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.

8. The final hearing was held before ALJ Holly Vandrovec on May 23, 2016, at the State Office of Administrative Hearings (SOAH) in the William P. Clements Building, 300

[57] 22 Tex. Admin. Code § 107.203(a)(1)-(3), (5), (8), (9).

[58] 22 Tex. Admin. Code § 107.203(b)(3).

West 15th Street, Austin, Texas. Staff was represented by Staff attorney Alex Phipps. Respondent appeared and was represented by attorney Jennie M. Roberts. The record closed on June 15, 2016.

Treatment of Patient 2

9. Patient 2, a 4-year-old girl, was seen by Respondent on November 16, 2015, for a number of extractions, pulpotomies, and stainless steel crowns. Because all of the dental work could not be performed at once, Respondent arranged for Patient 2 to come back at a later date for the remainder of the treatment.

10. On January 7, 2016, Patient 2 appeared for the remainder of her treatment. On this date, Patient 2 was given 6 mg Meperidine and 5 mg Atarax at 8:38 a.m. for sedation.

11. After the procedure began, Patient 2 began screaming, shaking her head, and shaking violently. Respondent administered 0.031 mg Halcion mixed with water orally to Patient 2 at 11:35 a.m. and 11:38 a.m.

12. Halcion is not recommended for children under the age of 12, is not a reversal agent for either Meperidine or Atarax, and is not used to treat seizures.

13. No medications or water should be given orally to a patient who is experiencing a seizure due to the risk of aspiration and choking.

14. Patient 2's blood oxygen level dropped at 11:44 a.m. and remained at low levels for most of the next 5 hours, as shown on the chart below.

Time	O_2
11:44 a.m.	84%
11:51 a.m.	82%
11:55 a.m.	97%
12:07 p.m.	91%
12:11 p.m.	92%
12:16 p.m.	80%
12:17 p.m.	87%
12:31 p.m.	88%
12:35 p.m.	65%
12:41 p.m.	67%
12:45 p.m.	59%
12:52 p.m.	63%
12:55 p.m.	71%
1:00 p.m.	68%
1:01 p.m.	73%

Time	O_2
1:04 p.m.	49%
1:14 p.m.	81%
1:15 p.m.	83%
1:18 p.m.	87%
1:20 p.m.	54%
1:24 p.m.	57%
1:26 p.m.	64%
1:35 p.m.	76%
1:39 p.m.	50%
1:43 p.m.	78%
1:44 p.m.	75%
1:55 p.m.	70%
2:05 p.m.	72%
2:14 p.m.	74%
2:24 p.m.	91%

Time	O_2
2:35 p.m.	93%
2:44 p.m.	85%
2:54 p.m.	99%
3:04 p.m.	99%
3:06 p.m.	98%
3:13 p.m.	99%
3:16 p.m.	99%
3:26 p.m.	97%
3:36 p.m.	91%
3:46 p.m.	91%
3:56 p.m.	77%
4:08 p.m.	82%
4:18 p.m.	80%
4:26 p.m.	82%
4:36 p.m.	87%

15. If a child's blood oxygen levels are below 96%, the child is not getting enough oxygen to her organs, including her brain.

16. A provider should provide 100% oxygen through a mask or a nasal cannula once blood oxygen levels fall below 96% and should use an Ambu bag to force oxygen into the patient's lungs and breathe for the patient if levels fall below 90%. Respondent did not do this and did not call 911 after Patient 2's blood oxygen level fell to 84% at 11:44 a.m.

17. Respondent was positioned so that she could not read the pulse oximeter, which showed Patient 2's blood oxygen levels.

18. Respondent checked the blood oxygen level at 12:31 p.m., but did not check it again until approximately 2:30 p.m. Respondent did not check the oxygen level again until after Patient 2 had another seizure just before 4:00 p.m.

19. Patient 2's temperature was 93.6 degrees at 12:30 p.m. A temperature this low indicates that Patient 2 was in shock. Respondent did not recognize that Patient 2 was in shock and did not call 911 at that point.

20. Respondent gave water orally to Patient 2 using a syringe.

21. Patient 2 began having a seizure at 2:30 p.m., at which time Respondent gave her 1.25 mg Valium mixed with water. Patient 2 threw up the water at 3:56 p.m. and began shaking violently.

22. Respondent called her pastor several times throughout the day from her cell phone and also called a pharmacy to inquire about drug interactions. The paramedics were called at approximately 4:30 p.m.

23. Patient 2 was not receiving oxygen at the time paramedics arrived. Patient 2 had another seizure after the paramedics started an IV, and again after they reached the emergency room of the hospital.

24. Dr. Amy Arrington, a physician who works at Texas Children's Hospital in the pediatric intensive care unit, saw Patient 2 on January 8, 2016, the morning after she was taken to the hospital.

25. Dr. Arrington examined Patient 2 and found she had a good pulse and blood pressure, but concerning symptoms on her neurologic exam. She found Patient 2 to be in a stuporous state in that she was not opening her eyes or responding to any external stimuli, including her family. Although Patient 2 could breathe on her own, she could not control her secretions or swallow.

26. Patient 2 had hypoxic ischemic brain injury due to lack of oxygen and a movement disorder secondary to the brain injury.

27. Patient 2 remained in a stuporous state over several days after the injury and had a Glasgow Coma Scale score of 8-9, where 8 is considered a coma state. The normal score is 15.

28. Dr. Arrington reported Respondent to the Board for failing to call 911 after Patient 2 began seizing.

Treatment of Patient 1

29. Patient 1 and her two siblings were treated periodically by Respondent from June 26, 2012, to January 20, 2014. Treatment at issue in this case began in January 2014, when Patient 1 was 5 years old.

30. On January 13, 2014, Patient 1 had x-rays, fluoride treatment, an examination, prophylaxis (a cleaning), and fillings (resins) on two surfaces of tooth C.

31. Three days later on January 16, Respondent placed sealants on teeth A, B, I, J, and L.

32. Four days later on January 20, Respondent performed pulpotomies and placed stainless steel crowns on teeth A, B, I, J, K, L, S, and T and placed a two-surface filling on tooth C.

33. Based on the x-rays, teeth A, B, K, L, S, and T did not need a pulpotomy and crown. Further, if pulpotomies were to be performed on those teeth, it was not reasonable to put sealants on teeth four days before performing the pulpotomy and crown procedures.

34. The multiple procedures resulted in overtreatment and overcharging of Patient 1.

35. The American Academy of Pediatric Dentistry recommends that the highest percentage of nitrous oxide for children is 40%, with 30-40% being ideal. Respondent administered nitrous oxide to Patient 1 at 70%.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Texas Occupations Code chapter 263.

2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003.

3. Respondent received proper notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.

4. Staff bore the burden of proof in this proceeding. 1 Tex. Admin. Code § 155.427.

5. The Board's rule regarding the minimum standard of care requires each dentist to "conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances." 22 Tex. Admin. Code § 108.7(1).

6. The Board's rule regarding dishonorable conduct identifies unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public, but does not require actual injury to a patient. 22 Tex. Admin. Code § 108.9.

7. Dishonorable conduct includes engaging in deception or misrepresentation in obtaining a fee; administering narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose; and engaging in unprofessional conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession. 22 Tex. Admin. Code § 108.9(2)(B), (4)(F), (11).

8. The Board's rule regarding fair dealing prohibits a dentist from misleading patients as to the gravity of a patient's dental needs and from overcharging or overtreating a patient. 22 Tex. Admin. Code § 108.2(d), (e).

9. Section 263.002(a) of the Texas Occupations Code authorizes the Board to take disciplinary action to revoke a dentist's license for a violation of any of the fourteen subsections contained therein. Subsection (a)(3) authorizes action for dishonorable conduct. Subsection (a)(4) authorizes action for failing to treat a patient to the standard of care in the practice of dentistry. Subsection (a)(10) authorizes action if a dentist violates or refuses to comply with a law relating to the regulation of dentists. Subsection (a)(12) authorizes action if a dentist is negligent in performing dental services and that negligence causes injury to a patient.

10. In her treatment of Patient 2, Respondent failed to meet the minimum standard of care, engaged in dishonorable conduct, and was negligent. 22 Tex. Admin. Code §§ 108.7(1), 108.9(11); and Texas Occupations Code § 263.002(a)(3), (4), (10), and (12).

11. Staff failed to show that Respondent violated 22 Texas Administrative Code § 108.9(4)(F) because no evidence was introduced regarding whether any of the drugs administered to Patient 2 were narcotic drugs, dangerous drugs, or controlled substances.

12. Respondent fell below the minimum standard of care, failed to uphold the duty of fair dealing and committed dishonorable conduct when providing dental care to Patient 1. Tex. Occ. Code § 263.002(a)(3), (4), (10); and 22 Tex. Admin. Code §§ 108.2(d)-(e), 108.7(1), 108.9(2)(B), (11).

13. The Board's procedures for determining appropriate disciplinary action include the assessment of aggravating and mitigating factors. 22 Tex. Admin. Code § 107.203.

14. Based upon the serious harm to Patient 2, the aggravating factors identified in 22 Texas Administrative Code § 107.203(a)(1)-(2) apply.

15. Based upon Respondent's prior disciplinary history as shown in the orders identified in Finding of Fact Nos. 2-3 above, the aggravating factors identified in 22 Texas Administrative Code § 107.203(a)(8)-(9) apply.

16. Respondent did acknowledge wrongdoing, which is a mitigating factor identified in 22 Texas Administrative Code § 107.203(b)(3).

17. Respondent is subject to disciplinary action by the Board pursuant to Texas Occupations Code § 263.002(a)(3), (4), (10), and (12).

18. Respondent's license should be revoked. Texas Occupations Code § 263.002(a).

V. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that Dr. Jefferson's license to practice dentistry be revoked.

SIGNED August 12, 2016

Holly Vandrovec

HOLLY VANDROVEC
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS