

APPROVED

BOARD OF DENTISTRY

**MINUTES
FORMAL HEARING**

TIME AND PLACE: A meeting of the Virginia Board of Dentistry convened on December 6, 2007, at 9:26 a.m., at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Richmond, VA 23233.

PRESIDING: Paul N. Zimmet, D.D.S.

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Myra Howard
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H.
Edward P. Snyder, D.D.S.
Glenn A. Young, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Cynthia E. Gaines, Adjudication Specialist

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

OTHERS PRESENT: William C. Garrett, Assistant Attorney General
Kimberly L. Krett, Court Reporter, Cavalier Reporting and Videography

QUORUM: With seven members present, a quorum was established.

**MARLIN F. REKOW,
D.D.S. Case Nos.
76085, 77207, 82441,
92336 and 11439** Marlin F. Rekow, D.D.S. appeared with counsel, Joseph P. McMenamin, Esq., to discuss allegations that he may have violated laws and regulations governing the practice of dentistry, in that

1. On August 26, 2003, Patient A presented to his practice for completion of root canal therapy on tooth #13. When Patient A was not seen at the appointed time, she attempted to reschedule her appointment. Without examination or referral by a treatment provider, Dr. Rekow allowed his

office manager to determine that Patient A needed to be referred to a specialist. Further, Dr. Rekow allowed his office manager to dismiss Patient A from the dental practice.

2. From approximately 2000 through September 2002, dental assistants were allowed to provide treatment to patients seen in the orthodontics department, without their work being checked by Dr. Rekow or his staff dentists.
3. He allowed Dentist B, who does not hold a dental license in the Commonwealth of Virginia, to schedule and see patients in Dr. Rekow's practice. Further, Dr. Rekow allowed Dentist B to review patient records and make treatment recommendations for patients seen by Dr. Rekow throughout at least 2005.
4. He filed fraudulent insurance claims. Specifically:
 - a. Dr. Rekow billed Patient C's dental insurer for root canal therapy on tooth #14, identifying the date of service as January 5, 1999. Dental records for Patient C reflect that the root canal therapy was actually performed on October 26, 1998. Further, Dr. Rekow billed Patient C's dental insurer for a core build-up for tooth #14 identifying the date of service as January 10, 1999. Patient C's dental records reflect that the procedure was rendered on November 11, 1998.
 - b. Dr. Rekow's office filed an insurance claim with Patient D's carrier for a crown seated on tooth #19 by a staff dentist in his practice on August 22, 2000. Subsequently, on September 17, 2001, Patient D presented to Dr. Rekow's office for an emergency visit related to tooth #19. Dr. Rekow documented that the crown needed to be re-done

- and billed Patient D's new insurance carrier for a new crown on tooth #19. Despite overpayments by insurance, the patient was not timely refunded nor was the insurance company reimbursed.
- c. Dr. Rekow filed a claim for a service provided to Patient E on April 15, 2001, under the name of Employee F as the provider, when in fact, Employee F left Dr. Rekow's practice in January 2000.
5. On August 18, 2004, an unannounced inspection was conducted on Dr. Rekow's practice, which found the following deficiencies:
- a. His display board with the names of dentists working in his practice was not current, and was not located at the entrance of the practice.
 - b. Framed copies of licenses were not current and the expiration dates not visible. Further, the copies were not notarized and were not placed in an area visible to the public.
 - c. Radiation certificates were not posted in view of the public.
 - d. He failed to take a biennial inventory of Schedule II-V controlled substances. Specifically, he failed to maintain a biennial inventory for Midazolam (C-IV).
6. He failed to obtain continuing education credit hours required for license renewal for the periods April 1, 2003 through March 31, 2004, April 1, 2004 through March 31, 2005, and April 1, 2005 through March 31, 2006.
7. He certified on his renewal forms, for the renewal periods of April 1, 2003 through March 31, 2004, April 1, 2004 through March 31, 2005, and April 1, 2005 through March 31, 2006, that he met all continuing education requirements to renew an active license. By signing the renewal forms, Dr.

Rekow affirmed that he had not made any misrepresentations with regard to his continuing educational requirements.

The Board admitted into evidence Commonwealth's exhibits 1 through 8.

The Board admitted into evidence Respondent's exhibit A.

Dr. Rekow testified on his own behalf.

Closed Meeting:

Dr. Snyder moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(28) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Marlin F. Rekow, D.D.S. Additionally, Dr. Snyder moved that Board Staff, Sandra Reen, and Board Counsel, Howard Casway, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Committee in its deliberations. The motion was seconded and passed.

Reconvene:

Dr. Snyder moved to certify that only matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Decision:

Mr. Casway read the Findings of Facts and Conclusions of Law as adopted by the Board as follows:

1. Dr. Rekow currently holds a Virginia dental license.
2. Dr. Rekow violated §§ 54.1-2706(5) and (9) of the Code, and 18 VAC 60-20-170(4) and (5) of the Regulations, in that on August 26, 2003, Patient A presented to Dr. Rekow's

practice for completion of root canal therapy on tooth #13. When Patient A was not seen at the appointed time, she attempted to reschedule her appointment. The purpose of the August 26, 2003 visit was to complete the root canal therapy on #13 and the starting of root canal therapy on #14. Without examination on August 26, 2003, Dr. Rekow allowed Patient A to be improperly dismissed from the dental practice while undergoing treatment.

3. Dr. Rekow violated §§ 54.1-2706(5), (9), and (11) of the Code, and 18 VAC 60-20-190(1) and (10), 18 VAC 60-20-210.A and 18 VAC 60-20-230 of the Regulations, in that from approximately 2000 through September 2002, at least one dental assistant provided treatment to patients seen in the orthodontics department, without their work being checked by Dr. Rekow or his staff dentists.
4. Dr. Rekow violated § 54.1-2706(6) of the Code, in that he allowed Dentist B, who does not hold a dental license in the Commonwealth of Virginia, to engage in the practice of dentistry by diagnosing, treatment planning and directing treatment at chair-side for patients undergoing orthodontic treatment.
5. Dr. Rekow violated §§ 54.1-2706(4) and (9) of the Code, and 18 VAC 60-20-170(1) and (4) of the Regulations, in that he filed inaccurate insurance claims. Specifically:
 - a. Dr. Rekow billed Patient C's dental insurer for root canal therapy on tooth #14, identifying the date of service as January 5, 1999. Dental records for Patient C reflect that the root canal therapy was actually performed in stages on a series of dates beginning October 26, 1998. Further, Dr. Rekow billed Patient C's dental insurer for a core build-up for tooth #14 identifying the date of service as January 10, 1999.

Patient C's dental records reflect that the procedure was rendered on November 11, 1998.

- b. Dr. Rekow's office filed an insurance claim with Patient D's carrier for a crown seated on tooth #19 by a staff dentist in his practice on August 23, 2000. Subsequently, on September 17, 2001, Patient D presented to Dr. Rekow's office for an emergency visit related to tooth #19. Dr. Rekow documented that the crown needed to be re-done, and his staff mistakenly billed Patient D's new insurance carrier for a new crown on tooth #19. Despite overpayments by insurance, the patient was not timely refunded nor was the insurance company reimbursed.
6. On August 18, 2004, an unannounced inspection was conducted on his practice, which found the following deficiencies:
- a. Dr. Rekow violated § 54.1-2720 of the Code, in that the display board with names of dentist working in his practice was not current, and was not located at the entrance of the practice.
 - b. Dr. Rekow violated §§ 54.1-2706(9) and 54.1-2721 of the Code, and 18 VAC 60-20-30.D of the Regulations, in that framed copies of licenses were not current and the expiration dates not visible. Further, the copies were not notarized and were not placed in an area visible to the public.
 - c. Dr. Rekow violated § 54.1-2706(9) of the Code, and 18 VAC 60-20-195 of the Regulations, in that radiation certificates were not posted in view of the public. Instead they were housed in personnel files not visible to the public. When these files were provided after the inspection,

several staff assistants lacked certification.

- d. Dr. Rekow violated §§ 54.1-2706(15) and 54.1-3404(A),(B),(C), and (D) of the Code, in that he failed to take a biennial inventory of Schedule II-V controlled substances. Specifically, he failed to maintain a biennial inventory for Midazolam (C-IV). Subsequent to the inspection, Dr. Rekow produced a tracking log for Midazolam but had not reconciled balances on a biennial basis.
7. Dr. Rekow violated § 54.1-2706.A(9) of the Code, and 18 VAC 60-20-50(A) of the Regulations, in that he failed to obtain continuing education credit hours required for license renewal for the periods of April 1, 2003 through March 31, 2004, April 1, 2004 through March 31, 2005, and April 1, 2005 through March 31, 2006.
8. Dr. Rekow violated §§ 54.1-2706.A(1) and (4) of the Code, in that he certified on his renewal forms, for the renewal periods of April 1, 2003 through March 31, 2004, April 1, 2004 through March 31, 2005, and April 1, 2005 through March 31, 2006, that he met all continuing education requirements to renew an active license. By signing the renewal forms, Dr. Rekow affirmed that he had not made any misrepresentations with regard to his continuing educational requirements. By letter of April 10, 2007 to the Board, Dr. Rekow acknowledged that in his reckoning of credits earned he had misunderstood the applicable law and as a result had miscalculated and misreported the credits he had earned. In his testimony, Dr. Rekow admitted that with respect to completion of his continuing education requirements, it would be more accurate to have stated that while he believed he had completed the required CE courses, he is unable to provide proof of completion.

9. Despite Dr. Rekow's contention that he did not engage in dishonest or fraudulent conduct, on November 21, 2007, Dr. Rekow presented a written list of remedial measures he had taken, including (a) the removal of his previous office manager; (b) employment of both a fulltime personnel manager and a new office manager with training as a dental consultant; (c) hiring of new bookkeepers with supplemental training related to reimbursements of patient refunds from overpayments; (d) implementation of a new computerized patient record system that coordinates co-pays, insurance billing, and allows direct input of the patient treatment note in the clinical areas; (e) placement of all required licenses and certificates at proper locations within the office; and (f) additional training for staff in documentation and other legal requirements and in handling difficult patients. Dr. Rekow testified that his practice currently utilizes one dentist to oversee the work of four hygienists but he was unaware that such arrangement fails to comply with the hygiene supervision requirements.

The sanctions reported by Mr. Casway were that Dr. Rekow's license be placed on indefinite stayed suspension, be assessed a monetary penalty of thirty thousand dollars (\$30,000), be subjected to not less than two (2) inspections; complete forty-five (45) hours of continuing education with a minimum of six (6) hours in ethics; and proof of passing the Boards dental law exam.

Dr. Gokli moved to adopt the Findings of Fact and Conclusions of Law as read by Mr. Casway. The motion was seconded and passed.

Ms. Pace moved to adopt the Sanctions as read by Mr. Casway and issuing an Order

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stating such. The motion was seconded and passed.

ADJOURNMENT: With all business concluded, the Committee adjourned at 1:25 p.m.

Paul N. Zimmet, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date