SBDE NOS. 2015-00759 and 2016-00891

IN THE MATTER OF § BEFORE THE STATE
THE LICENSE OF §
JOHN M. GARZA, DDS § BOARD OF
TEXAS DENTAL LICENSE § DENTAL EXAMINERS
NUMBER 15983

AGREED SETTLEMENT ORDER

On the 24th day of February, 2016, the State Board of Dental Examiners (Board) met in a regularly scheduled meeting and the above-styled cases were heard.

John M. Garza, DDS, holder of Texas Dental License No. 15983 (Respondent), appeared at an informal settlement conference (ISC) on July 8, 2016, at 333 Guadalupe, Austin, Texas. Respondent was not represented by counsel at the conference, but later retained Edward "Joe" Waller to represent him. At issue were allegations that Respondent violated the laws and rules regulating the practice of dentistry.

Respondent hereby waives a formal adjudicatory hearing and enters into the following Agreed Settlement Order (ASO). Respondent, by signature below, acknowledges that Respondent was advised of the right to legal representation, and that Respondent understands the nature of the alleged violations. Respondent's signature hereon also acknowledges that an adequate opportunity was provided to allow Respondent to respond to the alleged violations.

Secretary of the Board, David Tillman, DDS, and Board member, Bryan Henderson, DDS, represented the Board at the settlement conference held pursuant to Texas Occupations Code § 263.0075, and 22 Texas Administrative Code § 107.63. The Board representatives and a panel of Board employees considered information presented by staff, the Respondent, and the Complainant. The Board representatives and panel members, having carefully considered the Board's disciplinary guidelines, recommend the following ASO contingent on the full Board's approval. The following ASO is proposed, contingent on Board approval.

FINDINGS OF FACT

1. Respondent, John M. Garza, DDS, holds Texas Dental License No. 15983. Respondent's license was initially issued on July 6, 1989, and was in full force and effect at all dates and times material and relevant to this ASO.
2. Respondent does not hold any sedation/anesthesia permits issued by the Board.

3. Respondent's license has the following disciplinary history:

   a. On October 31, 2003, the Board entered an agreed settlement order (2003 Order) based on Respondent's failure to meet the standard of care and failure to timely submit records to the Board. The 2003 Order reprimanded Respondent's license and required payment of a $6,000 fine and completion of four hours of continuing education.

   b. On August 19, 2005, the Board entered an agreed settlement order (2005 Order) based on Respondent's failure to meet the standard of care in endodontic treatment. The 2005 Order reprimanded Respondent's license and required payment of restitution and a $6,000 fine and completion of 38 hours of continuing education.

   c. On April 15th, 2011, the Board entered an agreed settlement order (2011 Order) based on Respondent's failure to comply with the 2005 Order and failure to meet the standard of care in endodontic treatment. The 2011 Order placed Respondent on two years probated suspension and required completion of the continuing education required by the 2005 Order, payment of restitution and a $4,000 fine, and completion of 25 additional hours of continuing education.

   d. On August 14, 2015 the Board entered an agreed settlement order (2015 Order) based on Respondent's failure to meet the standard of care. The 2015 Order placed Respondent on five years probated suspension and required completion of all remediation curriculum recommended by the American Association of Dental Boards' (AADB) Dentist Professional Review and Evaluation Program (D-PREP) within six months of August 14, 2015, and payment of restitution and a $1,000 fine.

4. Respondent failed to comply or timely comply with the terms of the 2015 Order. Specifically, Respondent failed to submit proof of completion of all remediation curriculum recommended by D-PREP within six months of August 14, 2015, as required by the 2015 Order and described above in 3(d). As of November 30, 2016, Respondent has not submitted proof that he has completed all remediation curriculum recommended by D-PREP.
5. During the time period from August 5, 2014, through August 13, 2014, Respondent failed to meet the duty of fair dealing and engaged in dishonorable conduct in the treatment of patient 1 by:
   a. Recording the performance of and charging for interproximal fillings on teeth numbers 4, 5, 12, 13, 14, 18, 20, 29, and 31, when radiographs from the subsequent treating dentist do not show any interproximal fillings were performed on those teeth; and
   b. Administering nitrous oxide without holding the required permit from the Board.

6. During the time period from July 28, 2014, through August 13, 2014, Respondent fell below the minimum standard of care by failing to make, maintain, and keep adequate dental records on patient 1. Specifically, the records did not document:
   a. Vital signs;
   b. Findings and charting of clinical and radiographic oral examination;
   c. Written informed consent for nitrous oxide sedation signed by the patient’s legal guardian;
   d. The confirmable identification of the provider dentist, and the person making record entries, if different from the provider dentist;
   e. Individuals present during the administration of nitrous oxide;
   f. Start and stop times of nitrous oxide administration; or
   g. Any statement as to why items a.-f. above were not recorded.

7. From October 10, 2015, through October 24, 2015, Respondent fell below the minimum standard of care by failing to make, maintain, and keep adequate dental records on patient 2. Specifically the records did not document:
   a. Vital signs taken on October 14 and 19, 2015;
   b. The confirmable identification of the provider dentist, and the person making record entries, if different from the provider dentist; or
   c. Any statement as to why items a. and b. above were not recorded.

8. From November 18, 2015, through December 28, 2015, Respondent engaged in unprofessional conduct by failing to provide patient 2 with complete dental records within 30 days of a valid request.

CONCLUSIONS OF LAW

The references to Statutes and Rules cited below are to the Statutes and Rules in effect at the time of the violations.

2. Respondent's conduct constitutes a violation of Tex. Occ. Code § 263.002(a)(4) & (10); and 22 Tex. Admin. Code §§ 108.2(d), (e), 108.7(1), (6) (Eff. to Sept. 2, 2014), 108.7(2) (Eff. from Sept. 3, 2014), 108.8(a), (b)(4), (5), (c)(2)(C), (8), (11), (12), (g), 108.9(2)(B), (6), (9)(B), (11), 110.2(a)(1), (b), 110.3(c)(2)(A), (C), (5)(A), (B), (D).

ORDER

IT IS THEREFORE AGREED and ORDERED THAT:

1. Respondent's Texas Dental License No. 15983, issued to John M. Garza, DDS, is hereby SUSPENDED. Such suspension SHALL be ENFORCED until Respondent provides the Board with sufficient proof that he has completed the American Association of Dental Board's (AADB) Dentist Professional Review and Evaluation Program (D-PREP), including the completion of all remediation curriculum recommended by AADB as a result of Respondent's participation in D-PREP. The fees for D-PREP and any remediation curriculum SHALL be borne by Respondent.

2. Upon submission of satisfactory proof that Respondent has completed the requirements of ordering paragraph 1, Respondent's Texas Dental License No. 15983, SHALL continue in ENFORCED SUSPENSION status for a period of forty (40) days either following the effective date of this ASO or following Respondent's compliance with ordering paragraph 1 above, whichever occurs later. Respondent's Texas Dental License No. 15983, SHALL go back into ENFORCED SUSPENSION status for a period of forty (40) days following the second anniversary of the effective date of this ASO, and SHALL go back into ENFORCED SUSPENSION status for a period of forty (40) days following the third anniversary of the effective date of this ASO.

3. During the periods of suspension specified in ordering paragraphs 1 and 2, Respondent SHALL NOT practice dentistry as defined under Tex. Occ. Code § 251.003, and is prohibited from performing those acts, procedures, and treatments specified under Tex. Occ. Code § 251.003(a)(1)-(10) in effect at the time of ratification of this ASO and any amendments thereafter. Tex. Occ. Code § 251.003(a)(1) & (4) are excepted from this requirement. During this enforced suspension period, Respondent may perform only administrative tasks limited exclusively to: making future appointments when enforced suspension is over, opening mail, referring patients, and accepting payments on accounts. During this enforced suspension period, Respondent SHALL NOT delegate any clinical tasks to any employee or auxiliary and SHALL NOT allow any employee or auxiliary, if any, to practice outside the scope of their permitted duties as defined by the Dental Practice Act and rules and regulations of the Board.
4. Upon completion of the initial 40-day suspension described in ordering paragraph 2, Respondent's Texas Dental License No. 15983, issued to John M. Garza, SHALL be suspended for a period of five (5) years. Such suspension is PROBATED entirely, aside from the two additional 40-day suspension periods following the second and third anniversaries of the effective date of this ASO.

5. During the period of probation described in ordering paragraph 4, Respondent SHALL be ineligible for any sedation or anesthesia permits.

6. Respondent SHALL pay restitution directly to patient 1 in the amount of two thousand two hundred and fifty-five dollars ($2,255.00). Proof of restitution SHALL be provided to the Board no later than thirty (30) days from the effective date of this ASO.

7. Respondent SHALL pay an administrative monetary fine in the amount of five thousand dollars ($5,000.00) payable to the "Texas State Board of Dental Examiners" located at 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701-3942. The administrative monetary fine SHALL be paid in full no later than six (6) months from the date of ratification of this ASO by the Board.

8. Respondent SHALL complete a total of twelve (12) hours of continuing education (CE) courses, which SHALL be completed within six (6) months of the effective date of this ASO. The twelve (12) hours of CE courses completed SHALL be in the following areas:

<table>
<thead>
<tr>
<th>Ethics</th>
<th>Six (6) hours</th>
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</thead>
<tbody>
<tr>
<td>Diagnosis and Treatment Planning</td>
<td>Six (6) hours</td>
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This CE SHALL be in addition to Respondent's annual CE hours required for licensure by the Board, and in addition to any education required by D-PREP.

All CE courses SHALL be approved in advance by Board Staff. It is the responsibility of Respondent to obtain such approval. Courses taken without prior approval and/or prior to the effective date of this ASO SHALL NOT satisfy the requirements of this ASO. Board Staff SHALL have the authority to reduce the number of CE days or hours based on course availability. Upon the successful completion of each course, Respondent SHALL provide complete documentation of the course completion to the Board.

9. Respondent SHALL successfully complete the Jurisprudence Assessment-Board Order and submit proof of completion to Board Staff within thirty (30) days of the effective date of this ASO. Respondent may not take the Jurisprudence Assessment-Board Order prior to the effective
date of this ASO. Respondent SHALL be responsible for all costs relating to compliance with this requirement.

10. Respondent SHALL abide by the Laws of the State of Texas, the Dental Practice Act, the rules and regulations of the Board, and any reporting requirements imposed to ensure compliance with this ASO.

11. This ASO SHALL supersede all previous disciplinary orders of the Board in effect at the time of this ASO's ratification.

Signature Page Follows
By signing this ASO, Respondent agrees to its terms, acknowledges understanding it, and agrees to satisfactorily comply with the mandates of this ASO in a timely manner or be subject to appropriate disciplinary action by the Board.

Respondent's signature hereon does not constitute either admission or denial of the allegations set forth in this ASO or the underlying complaint, and it does not constitute admission or denial of the findings of fact and the conclusions of law set forth.

Respondent, by signing this ASO, waives any right to a formal hearing and any right to judicial review of this ASO. Failure to comply with the terms and conditions of this ASO SHALL constitute a violation of this ASO and may subject Respondent to further disciplinary action by the Board.

All of the above terms, conditions, and penalties become effective on the effective date of this ASO. The effective date of this ASO SHALL be the date it is executed by the Board.

THIS ASO IS A PUBLIC RECORD THAT WILL BECOME A PERMANENT PART OF RESPONDENT'S TEXAS DENTAL LICENSE DISCIPLINARY HISTORY.

John M. Garza, DDS
Respondent

Linda Jayne Garza, notarized the signature of John M. Garza, DDS, this 1st day of December, 2016

Linda Jayne Garza
NOTARY PUBLIC IN and FOR THE STATE OF TEXAS

STATE BOARD OF DENTAL EXAMINERS
SIGNED this 24th day of February, 2017.

Steven J. Austin, DDS, Presiding Officer

David Tillman, DDS, Board Secretary

John M. Garza, DDS
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