

**BEFORE THE  
MISSOURI DENTAL BOARD  
STATE OF MISSOURI**

<b>MISSOURI DENTAL BOARD</b>	)	
<b>3605 Missouri Boulevard</b>	)	
<b>Jefferson City, MO 65102</b>	)	
<i>Petitioner,</i>	)	
<i>vs.</i>	)	
	)	
<b>MICHAEL H. EDLIN, JR. D.M.D.</b>	)	<b>Case No. 2011-000785</b>
<b>8000 Bonhomme</b>	)	
<b>Clayton, MO 63105</b>	)	
<i>Respondent.</i>	)	

**PROBATION VIOLATION SETTLEMENT AGREEMENT**

Missouri Dental Board, by and through its attorney, Tina M. Crow Halcomb, and Dr. Michael H. Eldin, Jr. D.M.D., reached a settlement of the Probation Violation Complaint filed against him as follows:

**STIPULATIONS OF PROBATION VIOLATION**

1. The Missouri Dental Board (“Board”) is an agency of the State of Missouri created and existing pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332, RSMo, the Dental Practice Act.
2. Respondent, Michael H. Eldin, Jr., (Licensee) is a natural person, licensed by the Board as a dentist, License No. 014966. Licensee’s license was at all times relevant herein on probation, yet current and active.
3. Licensee is subject to a Disciplinary Order issued by the Board, March 11, 2009. A true and accurate copy of the Disciplinary Order is attached hereto as Exhibit A and incorporated as if fully set forth herein. The cause for discipline was based on violations of §332.321.2(5), (6), and

(15) RSMo. The effective date of the Disciplinary Order was December 21, 2009.

4. Jurisdiction and venue are proper before the Missouri Dental Board pursuant to § 332.321.3.(1), RSMo, and 20 CSR 2110-2.160(7), which authorizes the Board to impose additional discipline upon violation of the probation during the disciplinary period.

5. During the disciplinary period, Licensee was entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided that Licensee adhered to all of the terms and conditions of the Disciplinary Order.

6. As part of the Disciplinary Order, Licensee was ordered to perform one hundred sixty (160) hours of dental treatment without pay, as and for community service work, at a dental practice which treats an underserved dental population, within the first twelve (12) months of his disciplinary period.<sup>1</sup> The community service work was to be performed at a dental practice approved by the Board in advance of Licensee performing the community service hours. Exhibit A, pg. 5, paragraph L.

7. During a telephone conversation with a Board investigator, on or about October 4, 2010, Licensee indicated he would not complete the 160 hours of community service because it would be financially impractical and too much of a hardship for him.

8. The Board's inspector followed up this conversation with a certified letter to Licensee which memorialized the conversation with Licensee and set forth the likely consequences should Licensee fail to perform the ordered 160 hours of community service.

9. Licensee made no response to the certified letter and at no time has sought approval from the Board for a dental practice in which to perform his 160 hours of community service.

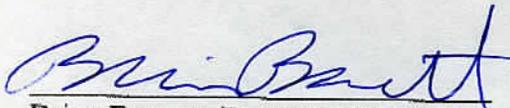
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<sup>1</sup> Licensee's Disciplinary Order became effective December 21, 2009 making December 22, 2010 the deadline for compliance.

from the Board for a dental practice in which to perform his 160 hours of community service.

10. Licensee was ordered to complete the 160 hours of community service no later than December 22, 2010. He failed to do so.

Accordingly, cause exists for the Board to impose further discipline upon Licensee's probated dental license 014966, and to resolve this matter without a hearing, Licensee has agreed to obtain the remaining **160 hours of community service by April 15, 2012**. Should Licensee fail to comply with all provisions of this Probation Violation Settlement Agreement, he understands he will be subject to additional discipline by the Board. Licensee acknowledges and agrees to fulfill the terms of Disciplinary Order, Chapter 332, RSMo., and all rules and regulations of the Board, paying close attention to the requirements in paragraph L on page 6 of the Disciplinary Order regarding approval and reporting of community service hours. All community service hours must be pre-approved by the Board.

  
Brian Barnett, Executive Director  
Missouri Dental Board

Date: 6/15/11

  
Dr. Michael H. Edlin, D.M.D

Date: 6-14-11

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compliance.

BEFORE THE MISSOURI DENTAL BOARD  
STATE OF MISSOURI

MISSOURI DENTAL BOARD,	)	
	)	
Petitioner	)	
	)	No.: 07-0048 DB
v.	)	
	)	
MICHAEL H. EDLIN, D.M.D.	)	
	)	
Respondent	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DISCIPLINARY ORDER**

On November 7, 2008, the Missouri Dental Board held a hearing on the Notice of Disciplinary Hearing in the above-styled cause. The hearing was held at the Oasis Hotel and Convention Center, 2550 North Glenstone, Springfield, Missouri, for the purpose of determining what, if any, disciplinary action should be taken against the certificate of registration and license of Michael H. Edlin, D.M.D. The Missouri Dental Board was represented by Nanci R. Wisdom, outside counsel for the Missouri Dental Board. Loretta Schouten, outside counsel for the Missouri Dental Board, advised the Board on legal matters. Respondent, Michael H. Edlin, D.M.D., appeared with counsel, Kenneth W. Bean. The Board heard evidence on the issue of what, if any, disciplinary action should be taken against the certificate of registration and license of Michael H. Edlin, D.M.D. The Board accepted into evidence Exhibits A and B and incorporated into evidence the record of proceedings before the Administrative Hearing Commission in the case Missouri Dental Board v. Michael H. Edlin, D.M.D., Cause Number: 07-0048 DB. At

the conclusion of the hearing, the Board went into closed session to make its determination.

### **FINDINGS OF FACT**

1. The Missouri Dental Board is created by the provisions of chapter 332 RSMo, and has jurisdiction under the provisions of said chapter and Chapters 536 and 621 RSMo, to hear this case.

2. The Administrative Hearing Commission is an agency of the State of Missouri created and established pursuant to Section 621.105 RSMo for the purposes of conducting hearings and making findings of fact and conclusions of law in cases in which disciplinary action may be taken against the Michael H. Edlin, D.M.D. by certain state agencies including the Missouri Dental Board.

3. Michael H. Edlin, D.M.D., holds a registration and license number 014966. The Administrative Hearing commission issued it's Decision in the matter of Missouri Dental Board vs. Michael H. Edlin, D.M.D., Cause No. 07-0048 DB finding that there exists cause for the Missouri Dental Board to discipline Respondent's certificate of registration and license to practice dentistry under Section 332.321.2 (5), (6) and (15) RSMo.

### **CONCLUSIONS OF LAW**

4. The Missouri Dental Board has jurisdiction to take disciplinary action against the license and certificate of registration of Michael H. Edlin, D.M.D., pursuant to the provisions of Chapter 332, 536, and 621 RSMo.

5. Michael H. Edlin's, D.M.D., certificate of registration and license number 014966 are subject to discipline by the Missouri Dental Board pursuant to Section 332.321.2 and 332.321.3 RSMo.

### **DISCIPLINARY ORDER**

6. It is the Order of the Missouri Dental Board that the license and certificate of registration of Michael H. Edlin, D.M.D. shall be suspended for a period of thirty (30) consecutive days followed by five (5) years probation. (hereinafter "disciplinary period") Said disciplinary period shall be conditioned as follows:

A. Michael H. Edlin, D.M.D. shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. Michael H. Edlin, D.M.D. shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Disciplinary Order by no later than January 1 and July 1 during each year of the disciplinary period.

C. Michael H. Edlin, D.M.D. shall keep the Board apprised of his current home and work addresses and telephone numbers.

Michael H. Edlin, D.M.D. shall inform the Board within ten days of any change of home or work address and home or work telephone number.

D. Michael H. Edlin, D.M.D. shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable

federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

E. During the disciplinary period, Michael H. Edlin, D.M.D. shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Michael H. Edlin, D.M.D.'s license in a current and active state.

F. If at any time during the disciplinary period, Michael H. Edlin, D.M.D. removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.

G. During the disciplinary period, Michael H. Edlin, D.M.D. shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Disciplinary Order.

H. Michael H. Edlin, D.M.D. shall not allow his license to lapse.

I. The terms of discipline apply even if Michael H. Edlin, D.M.D. places his license on inactive status.

J. Michael H. Edlin, D.M.D. shall notify, within 15 days of the effective date of this Disciplinary Order, all hospitals, nursing homes, outpatient centers, surgical centers, clinics, and all other facilities where Michael H. Edlin, D.M.D. practices or has privileges of Michael H. Edlin, D.M.D.'s disciplinary status. Notification shall be in writing and Michael H. Edlin, D.M.D. shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

K. Michael H. Edlin, D.M.D. shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City. This continuing education shall be in addition to the continuing education required by law for licensure renewal by the Board. This course must be taken within the first twelve (12) months of Michael H. Edlin's D.M.D. disciplinary period. Michael H. Edlin, D.M.D. shall provide the Board with proof of attendance from the sponsor of the program no later than thirty (30) days after attending the course. Failure to obtain the required additional continuing education hours and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

L. Michael H. Edlin, D.M.D. shall perform one hundred sixty (160) hours of dental treatment without pay as and for community service work at a dental practice which treats an underserved dental population within the first twelve (12) months of his disciplinary period. No community

service work performed during Michael H. Edlin, D.M.D.'s suspension shall count toward the community service hours required by this section. The community service work shall be performed at a dental practice approved by the Board in advance of performing the community service hours. No community service hours performed at a location not approved by the Board in advance of performance of the hours shall count toward the community service hours required by this section. To obtain approval for a dental practice in which to perform community service work, Michael H. Edlin, D.M.D. shall request the same in writing to the Board. Michael H. Edlin, D.M.D. shall identify a contact person for the Board at the dental practice treating an underserved population and shall inform the Board of the same in writing prior to beginning community service work hours at that location. Michael H. Edlin, D.M.D. shall require the contact person to submit documentation in writing to the Board no later than April 1, July 1, October 1 and January 1 of the community service work hours performed by Michael H. Edlin, D.M.D. in the preceding quarter. Michael H. Edlin, D.M.D. shall cause the contact person from each dental practice approved by the Board shall submit such until Michael H. Edlin, D.M.D. completes the requirements of this section.

M. Michael H. Edlin, D.M.D. shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. Michael H. Edlin, D.M.D. shall contact the Board office to request a current law packet and permission to sit for the

jurisprudence examination no less than thirty (30) days prior to the date he desires to take the examination. Michael H. Edlin, D.M.D. shall submit the required re-examination fee to the Board prior to taking the examination. Failure to timely take and pass the examination shall constitute a violation of this Disciplinary Order.

7. If the Missouri Dental Board, in its sole discretion, determines upon a proper showing that Michael H. Edlin, D.M.D. violated a term or condition of his discipline as set forth herein, or has otherwise failed to comply with the provisions of Chapter 332 RSMo, which violation would be actionable in a proceeding before the Board as provided by 20 CSR 2110-2.160, before the Administrative Hearing Commission, or in a circuit court, the Missouri Dental Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by the type of, nor the duration of discipline specified in this document in its election of remedies concerning such violation.

8. Pursuant to the provisions of Section 332.321.6 RSMo, if Michael H. Edlin, D.M.D. removes himself from the State of Missouri, ceases to be currently licensed or fails to keep the Missouri Dental Board advised of his current place of residence or business, the time of his absence, or unlicensed status, or unknown whereabouts should not be deemed or taken as a part of the time of discipline so imposed

The provisions of this Order become effective on the fifteen (15) days from the date of this Order.

IT IS SO ORDERED THIS 11<sup>th</sup> DAY OF MARCH, 2009.

MISSOURI DENTAL BOARD

BY:   
Brian Barnett  
Executive Director

**SEPARATOR**

**PAGE**

BEFORE THE MISSOURI DENTAL BOARD  
STATE OF MISSOURI

MISSOURI DENTAL BOARD,                    )  
  )  
                          Petitioner                    )  
  )  
                          v.                                    )  
  )  
MICHAEL H. EDLIN, D.M.D.                    )  
  )  
                          Respondent                    )

No.: 07-0048 DB

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DISCIPLINARY ORDER**

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### **FINDINGS OF FACT**

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### **CONCLUSIONS OF LAW**

4. The Missouri Dental Board has jurisdiction to take disciplinary action against the license and certificate of registration of Michael H. Edlin, D.M.D., pursuant to the provisions of Chapter 332, 536, and 621 RSMo.

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7. If the Missouri Dental Board, in its sole discretion, determines upon a proper showing that Michael H. Edlin, D.M.D. violated a term or condition of his discipline as set forth herein, or has otherwise failed to comply with the provisions of Chapter 332 RSMo, which violation would be actionable in a proceeding before the Board as provided by 20 CSR 2110-2.160, before the Administrative Hearing Commission, or in a circuit court, the Missouri Dental Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by the type of, nor the duration of discipline specified in this document in its election of remedies concerning such violation.

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The provisions of this Order become effective on the fifteen (15) days from the date of this Order.

IT IS SO ORDERED THIS 11<sup>th</sup> DAY OF MARCH, 2009.

MISSOURI DENTAL BOARD

BY:   
Brian Barnett  
Executive Director

Before the  
Administrative Hearing Commission  
State of Missouri



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MISSOURI DENTAL BOARD

MISSOURI DENTAL BOARD, )  
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Petitioner, )  
)  
vs. )  
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MICHAEL H. EDLIN, D.M.D., )  
)  
Respondent. )

No. 07-0048 DB

**DECISION**

Michael H. Edlin, D.M.D. is subject to discipline for: charging a patient for work that was not completed; violating the Missouri Dental Board's ("the Board") regulation requiring him to retain and produce documentation of continuing education ("CE") hours; failing to provide patient records and scheduling documentation to the Board; and fabricating a patient record.

**Procedure**

The Board filed a complaint on January 8, 2007, seeking this Commission's determination that Edlin's license is subject to discipline. We served Edlin with a copy of the complaint and notice of hearing on January 22, 2007.

This Commission convened a hearing on the complaint on August 8, 2007. Nanci R. Wisdom represented the Board. Kenneth W. Bean, with Sandberg, Phoenix & von Gontard, P.C., represented Edlin.

The parties filed written arguments.<sup>1</sup> The record was complete on June 9, 2008, when Edlin filed a copy of Exhibit S.

## Findings of Fact

### Licensure

1. Edlin is licensed by the Board as a dentist. The license was current and active at all relevant times.

### Edlin's Treatment of A.R.<sup>2</sup>

2. A.R. had her first appointment with Edlin on December 9, 2000. As reflected on A.R.'s chart, Edlin did a new patient consultation, full mouth series of X rays and bite wings.<sup>3</sup> Edlin noted that the patient presented with very poor and failing restorative care and needed a full rehabilitation. Edlin noted that all four posterior quadrants and maxillary anterior upper right and left and lower left fixed partial dentures were "mobile" (loose) and showed recurrent decay.<sup>4</sup> Tooth #3 was missing. The existing bridge was across two teeth and the gap where Tooth #3 was missing, and was completely loose. Tooth #4 did not have sufficient tooth structure to support the bridge, but A.R. wanted the bridge reattached. Edlin told her that he needed to incorporate the next tooth, Tooth #5, and replace the existing bridge with a four-unit bridge. Edlin gave her an anesthetic, prepared the upper right quadrant (Teeth #2, 4 and 5) for a

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<sup>1</sup>Edlin complains that he is "prejudiced by the fact that the Petitioner has not filed the required Legal Brief and did not provide citations to the hearing transcript or exhibits in its Proposed Findings of Fact." (Post Hearing Brief at 1.) Although briefing and proposed findings of fact and conclusions of law may be helpful to this Commission, especially if they include accurate citations to the record, we do not require that the parties file briefs or proposed findings of fact and conclusions of law, and we do not require any particular format if they do so.

<sup>2</sup>We use initials to protect the patient's privacy. The Board presented no expert testimony or testimony from other treating dentists. Therefore, our Findings of Fact as to dental terms and procedures are based primarily on Edlin's testimony.

<sup>3</sup>Ex. 1 We attach Exhibit 1 as Appendix 1 to this decision. Because Edlin used abbreviations for many dental terms in his chart, we have translated them, based on his testimony, for purposes of these Findings of Fact. In Count V of its complaint, the Board asserts that Edlin fabricated a duplicate patient record for A.R. For reasons discussed in greater detail *infra*, we find that Exhibit 1 is the original patient chart. Therefore, all references to A.R.'s chart are to Exhibit 1.

<sup>4</sup>"ALL 4 POST QUAD AND MAX ANTERIOR UR & L & LL FPD MOBILE W/ALL SHOWING RECURRENT DECAY." Ex. 1.

new FPD (fixed partial denture), took impressions of bite registration, and temporized.<sup>5</sup> Making an impression is a standard procedure when making a crown, bridge or denture. Edlin noted that Teeth #4 and 5 might need a root canal.<sup>6</sup> Edlin noted: "USE OLD FPD FOR TEMP." Edlin noted that he referred her to Dr. Cohen, a periodontist, and to Dr. Rainey, an endodontist, for consultation. A periodontist specializes in gum disease. An endodontist specializes in root canals. Edlin noted: "BILL CDX ["comprehensive dental exam"] AT PROPHY SENT TO INS CO. DIDN'T CHARGE." "Prophy" is a deep cleaning.

3. Edlin ordered the new bridge from MARS laboratory in St. Louis. It is standard practice for a dentist to bill the patient for a new bridge when he orders it from the laboratory. Once the dentist has done the examination and made impressions for the new bridge, most of his work is completed, and all he needs to do is place the bridge after it is made. On December 11, 2000, Edlin billed A.R. for:

Pontic-Porcelain/High<sup>7</sup> \$800  
Crown-FPD \$800  
Crown-FPD \$800  
Crown-FPD \$800

The pontic and crowns were the bridge work. On the column for "charge" on A.R.'s chart, Edlin noted a charge of \$150 for the examination and \$3,200 (\$800 x 4) for the pontic and crowns.

4. A.R. returned to Edlin on December 15, 2000. At that visit, she had a full mouth debridement,<sup>8</sup> bite wings, and a comprehensive examination. Edlin's chart noted a charge of \$183 for this visit.

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<sup>5</sup>"2 X 4 5 3.6 CC 2 40 [illegible] PREP FOR FPD, IMP, BITE, TEMP." The "X" denotes the missing Tooth #3.

<sup>6</sup>"4 & 5 MAY NEED RCT."

<sup>7</sup>The term "pontic" is not defined anywhere in the record.

<sup>8</sup>The record does not define this term.

5. On December 27, 2000, MARS invoiced Edlin \$380 for the replacement bridge on Teeth #2-5 for A.R.<sup>9</sup>

6. A.R. returned to Edlin on January 30, 2001, for “prophy.”<sup>10</sup> A.R.’s need for deep cleaning was so great that it could not be accomplished on previous visits and required the follow-up visit. Edlin’s chart noted a charge of \$59 for this visit.

7. On February 1, 2001, Dr. Cohen sent a letter to Edlin describing the results of his examination of A.R. Dr. Cohen’s treatment plan included:

Flap & Osseous Surgery in the #2, 4-6, 8-11, 14-15, 18, 21-29, 32 areas including --**Osseous regeneration in the #2, 4-6, 8-11, 14-15, 18, 21-29, 32 area** including bone grafting

(emphasis added). Dr. Cohen noted the “Projected dental care after completion of planned care”:

**Fixed Partial Denture abutted on Maxillary teeth 2-5, 6-9, 10-14-15,**  
Mandibular arch 21-26, 27-28-29-32

(emphasis added). Dr. Cohen concluded:

The periodontal care will take only two appointments to complete, and then you can start your restorative care.

8. A.R. returned to Edlin on February 9, 2001. Vertical dimension is the distance established when the teeth are biting down. A.R. had lost some of her vertical dimension over the years. Edlin added acrylic to the occlusal surface on her temporary bridge on the upper right quadrant to re-establish her vertical dimension.<sup>11</sup>

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<sup>9</sup>Ex. H.

<sup>10</sup>Ex. I.

<sup>11</sup>“ADD ACRYLIC TO OCC TO OPEN BITE ON LEFT.” Ex. 1. The chart appears to refer to Teeth #10 and 11, but is difficult to read. Edlin testified that he worked on the upper right quadrant during this visit. (Tr. at 138-39.) We construe the chart as stating that he worked on the upper right quadrant in order to open the bite on the left.

9. On March 2, 2001, Dr. Cohen performed osseous surgery, including some bone grafting, on Teeth #9-11, 14-15, 18, 21-24.<sup>12</sup> Dr. Cohen summarized the results in a letter to Edlin dated that same day.

10. A.R. returned to Edlin on March 3, 2001. Edlin temporized the anterior left through the posterior left, Teeth #10-11 and 14-15. A.R. was missing Teeth #12 and 13. This is a total of six teeth. Edlin's chart shows a charge of \$4,800 (\$800 for each of the six teeth). His notes on the chart state: "IMP NOT SENT TO LAB."

11. A.R. returned to Edlin on May 4, 2001. Edlin worked on Teeth #10 and 11 and prepared a post space for a post buildup.<sup>13</sup> The chart shows a charge of \$20 for this visit.

12. An entry on A.R.'s chart after May 4, 2001, states: "PT HAS NOT MADE ANY FURTHER APT. NO RESPONSE TO PHONE CALLS. NO IMP TAKEN ON UL. CHARGE FOR TEMP ONLY. PT HAS NOT SEEN DR COHEN FOR ANY FURTHER TX. NO PAYMENTS SINCE 2/01." The notes on the side of the chart state: "-2400 (TEMP CHARGE) @ 400 EACH. DR COHEN OKAYED UR QUAD. WAIT & SEE @ UL." The account records show that Edlin made the adjustment of -\$2,400 to A.R.'s account on January 9, 2002.<sup>14</sup> The charge of \$4,800 on A.R.'s chart for March 3, 2001, is crossed out and \$2,400 is written in. The credit for \$2,400 pertains to the bridge on Teeth # 10-15, not the bridge on Teeth #2-5.<sup>15</sup>

13. A.R.'s insurance company, Guardian, paid Edlin \$857 on May 29, 2001, for the bridge work on Teeth #2-5.

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<sup>12</sup>Ex. 9 at 44 of 104. We have no records of any osseous surgery on Teeth #2, 4-6, as Dr. Cohen had proposed on February 1, 2001.

<sup>13</sup>"1 PA, PREP POST SPACE." Ex. 1.

<sup>14</sup>Ex. 3.

<sup>15</sup>Tr. at 184-86.

14. A.R. visited Edlin again on August 15, 2001. Edlin recemented her temporary bridge and noted that she needed to make an appointment. Edlin did not charge for the visit. The notes on the side of the chart state: "NO RESPONSE FROM PT."

15. On August 21, 2001, Edlin charged A.R. \$800 each for two "Pontic-Porcelain /High" and \$800 each for four "Crown-FPD." This was the charge indicated on A.R.'s chart on May 4, 2001, but the charge was not shown on the billing records until August 21. As of August 21, 2001, A.R.'s account balance was \$7,325.

16. As of January 9, 2002, after the adjustment of -\$2,400 pertaining to the bridge on Teeth #10-15, A.R.'s account balance was \$4,940.29. A.R. made a Mastercard payment of \$4,940.20 to Edlin on January 9, 2002.

17. A.R. never received the bridge on Teeth #2-5,<sup>16</sup> but Edlin did not give her any credit or refund of what she paid for that bridge because it had been fabricated.<sup>17</sup>

18. After the August 15, 2001, visit, A.R.'s next appointment with Edlin was on August 4, 2003. The chart shows a comprehensive examination and consultation, for which Edlin charged \$65. Edlin noted: "PT DOES NOT UNDERSTAND BILLING. TOLD HER SINCE SHE DIDN'T FOLLOW THRU W/ TX, MORE DECAY HAS SET IN. TEETH IF SAVABLE WILL NEED TO BE REPRESSED. RECOMMEND SHE SEE DR COHEN & NEED NEW TX PLAN SINCE SHE STOPPED TX FOR 2 YEARS."

19. A.R.'s insurance company, Humana, paid Edlin \$65 on September 15, 2003.

20. A.R. sought treatment from another dentist, Dr. Blustein. On October 15, 2003, A.R. signed a consent form for Dr. Blustein to obtain her records from Edlin. On October 27, 2003, Dr. Blustein received a bill for \$35 and three poorly developed non-diagnostic X rays from

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<sup>16</sup>Tr. at 187.

<sup>17</sup>Tr. at 186-87. Edlin assumed that the bridge was returned to the lab, but was unable to testify with certainty as to what happened to it.

Edlin. He received no written treatment records from Edlin. Dr. Blustein contacted Edlin's secretary and was told that records would be available later in the week. A.R. had an appointment with Dr. Blustein on October 27, 2003. Dr. Blustein scheduled another appointment with A.R. later in the week, allowing time to obtain the records from Edlin.

21. Edlin fabricated a chart for A.R.<sup>18</sup> and provided it to Dr. Blustein in October 2003. A.R. had another appointment with Dr. Blustein on October 31, 2003, and he showed her the materials he had received from Edlin.

22. A.R.'s original chart does not match the record that Edlin provided to Dr. Blustein.<sup>19</sup> Exhibit 1 was written in different colors of ink and in different handwriting on different visits. Exhibit 2 is all in Edlin's handwriting. Exhibit 2 contains only entries for the date, tooth number, and services rendered. The lines given on the form to write the charge and notes were blocked off and not copied on Exhibit 2. The date of the first appointment on Exhibit 1 is December 9, 2000, and the date of the first appointment on Exhibit 2 is December 11, 2000. The date of December 9, 2000, is consistent with other records. The entry for February 9, 2001, on Exhibit 2 states: "REFINE PREPS 4 & 5 MAX," but Exhibit 1 does not contain this entry. Exhibit 2 indicates work on Teeth #2, 4, and 5 on March 3, 2001, and states: "ADD ACRYLIC TO OCC." Exhibit 1 does not contain that language on the entry for March 3, 2001, and does not show any work on Teeth #2, 4 and 5 on March 3, 2001.

#### The Board's Investigation

23. A.R. filed a complaint with the Board in regard to Edlin's billing. When the Board receives a complaint about a dentist from a patient, it routinely conducts an audit of the dentist's CE hours as part of its investigation.

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<sup>18</sup>Ex. 2.

<sup>19</sup>Ex. 2. We attach a copy of Exhibit 2 as Appendix 2 to this decision.

24. On August 26, 2004, Board investigator Brian Barnett visited Edlin's office to request copies of records. Barnett obtained a copy of the billing record for A.R.<sup>20</sup> from the receptionist. Barnett requested a copy of Edlin's patient records for A.R. The receptionist went back and spoke with Edlin, and he told her that he could not find the patient's record. Barnett waited approximately one hour to speak with Edlin. Edlin came out to the waiting room and stated that he had another appointment, so he would not be able to speak with Barnett that day. Barnett requested a copy of A.R.'s records. Edlin stated that they had been sent to storage. Barnett questioned why the records would be in storage when it had only been a year since Edlin had last seen the patient. Edlin replied that he had a couple of cases that had been bothering him and he took them home to review, but he was not sure where A.R.'s records were. Barnett also requested Edlin's CE records for 1999 through 2002, but Edlin was unable to produce the records. Barnett stated that he would be back in the area on September 16, 2004, and asked that Edlin have the records ready for him to pick up.

25. Barnett called Edlin on September 10, 2004,<sup>21</sup> to see if the records were copied and ready for pickup, and Edlin replied that he had not had an opportunity to look for them yet. Edlin stated that he would not be in the office on September 16, but that he would have the records copied and leave them with the receptionist.

26. On September 16, 2004, on his way to St. Louis, Barnett received a call from the Board's office stating that Edlin's receptionist had called the Board's office and said that Edlin had not had a chance to locate the records, so they were not available for Barnett to pick up.<sup>22</sup> Barnett requested that Edlin have the records ready by September 22, 2004, and that Edlin

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<sup>20</sup>Ex. 3.

<sup>21</sup>The complaint, ¶¶ 48-49, states the date as September 14, but we find this minor difference immaterial.

<sup>22</sup>Tr. at 77-78. The complaint, ¶¶ 50-51, states that Edlin's receptionist called Barnett directly. We find this difference immaterial.

contact him as soon as possible to make arrangements to pick up the records. Barnett did not hear anything from Edlin and did not receive the records.<sup>23</sup>

27. Barnett requested copies of Dr. Blustein's records, which Dr. Blustein provided. Dr. Blustein included a copy of the records for A.R. that he had received from Edlin.

28. Barnett reported to the Board, which met in October 2004. The Board voted to invite Edlin to the next Board meeting in January 2005 to speak with him about A.R.'s complaint and the investigation.

29. On January 7, 2005, Edlin's attorney, Mitchell Jacobs, wrote a letter to the Board, which the Board received on January 10, 2005. Jacobs stated that Edlin was out of the country and that when he returned he would sort through the medical records, "restoring the ones necessary as some were damaged in a flood." Jacobs stated that it would be "difficult" for them to attend the Board meeting scheduled for January 21, 2005. Jacobs attached a copy of a letter from Edlin dated September 27, 2004, responding to A.R.'s allegations. No patient records were included with the letters. Jacobs stated that Edlin had been unable to completely respond to A.R.'s complaint in September because the attachments to the complaint were never provided to him. Jacobs requested that the meeting be rescheduled after the Board had a chance to review Edlin's letter and he had a chance to provide the requested medical records. Edlin's letter dated September 27, 2004, states in part:

[A.R.] was first seen in our office on December 9<sup>th</sup>, 2000. . . . She asked if her FPD (2x4) could be recemented that day. There was not enough sufficient tooth structure on the abutment tooth on #4, so we prepared the upper right quadrant for a new FPD. We added #5 to help support the FPD (2x45) Her old FPD was used in the fabrication of her new temporary. Records (impressions/bite registration) were taken and [A.R.] made another appointment for the start of her periodontal work.

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<sup>23</sup>The complaint, ¶ 52, asserts that "None of Investigator Barnett's telephone calls to Respondent were returned between September 16, 2004 and October 15, 2004." There is nothing in the record as to Barnett's telephone calls to Edlin between September 16 and October 15, 2004.

The impression was held at the lab until after Dr. Cohen stated the abutment teeth in the upper right quadrant were stable.

[A.R.] had several other appointments with our office from 12/00 through 8/01. However, she only came in if there was a problem with her failing bridgework and she seemed uninterested in following through with the treatment plan that Dr. Cohen and I had presented to her. She failed to make follow up appointments with both our office as well as Dr. Cohen's office.<sup>[24]</sup>

30. Edlin wrote to the Board on January 20, 2005, and informed the Board that he would be unable to attend the meeting scheduled that week. Edlin stated that he had just returned from a trip and was experiencing complications from shoulder surgery performed at the end of December. The Board received the letter on January 21, 2005. Edlin attached a copy of A.R.'s chart, which is the same as Exhibit 1.<sup>25</sup> The letter stated that the other records were destroyed in a flood in Edlin's office on August 9, 2004. Edlin stated:

We have been trying to get copies of them but as of this date, we have not received them. This situation was explained to the Dental Board Investigator when he was at my office last fall.<sup>[26]</sup>

Edlin had never told Barnett that the records were destroyed in a flood. The first time a flood was mentioned was in Jacobs' letter to the Board dated January 7, 2005.

31. At its January 2005 meeting, the Board voted to invite Edlin to attend its next meeting, to be held on April 22, 2005.

32. Edlin attended the Board's meeting on April 22, 2005. Edlin first stated that when Dr. Blustein requested A.R.'s records, he had produced a new record for A.R. because the original had been destroyed in the flood in his office. Edlin then acknowledged that the flood occurred after he sent the records to Dr. Blustein. Edlin also stated that he produced a new

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<sup>24</sup>Ex. 11.

<sup>25</sup>We have already noted that Exhibit 1 does not match Exhibit 2, which Edlin provided to Dr. Blustein, who in turn provided it to the Board.

<sup>26</sup>Ex. 10.

record because he could not find the original. Edlin stated that the records he sent to the Board were the same as the records he sent to Dr. Blustein, but then stated that he had “never seen them” and that he “did not send anything to Blustein.”<sup>27</sup> The Board decided to conduct a followup investigation to verify the dates of the flood and attempt to obtain copies of the patient appointment schedule book.

33. On May 10, 2005, Board investigator Hank Harper drove to Edlin’s office in Clayton, Missouri, to try to obtain copies of patient schedules and CE documents. Edlin stated that he would provide copies of the patient schedules, but was unable to do so that day because the information was on his computer and his computer was out of service. Edlin stated that the person who maintained his computer was out of town that week and would be back sometime during the week of May 19. Harper requested copies of patient appointment books.<sup>28</sup> Edlin stated that he had taken them to the April Board meeting, but that no one wanted to see them, and they were still at his attorney’s office. Edlin stated that he would retrieve them and make them available for review and copying. Edlin stated that the original patient file for A.R. had been destroyed in a flood in his office. Edlin showed Harper the area where the flood had occurred.<sup>29</sup> Harper stated that he would return within the next week after Edlin had retrieved the patient appointment books from his attorney. Edlin provided Harper with a copy of his CE reporting form for December 1, 1999, through November 30, 2002. Harper stated that he would also need to see documentation from the course providers, but Edlin stated that he would need to contact the course providers to obtain that documentation. Harper also requested CE documentation for December 1, 2002, through November 2004.

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<sup>27</sup>Ex. 15 at 10.

<sup>28</sup>Harper testified to his understanding that “a patient ledger, patient schedule is all the same thing.” (Tr. at 93.) Harper referred to appointment books as “ledgers.” (Tr. at 98.) Barnett also referred to the appointment books as “ledgers.” (Tr. at 69.)

<sup>29</sup>Harper testified that he did not “recall” seeing any residual damage from the flood. (Tr. at 96, 112.)

34. Harper contacted the landlord and confirmed that there had been water damage or a flood in the building in August 2004 and in September 2004.

35. The Board required that each dentist complete 75 CE hours for the reporting period December 1, 1999, through November 30, 2002. The Board's application for renewal for December 1, 2002, through November 30, 2004, required dentists to attach a CE report form listing the date, course and number of hours for each course completed from December 1, 1999, through November 30, 2002.

36. The CE report form that Edlin provided to Harper for 1999 through 2002 reported 75 hours as the total, but the courses listed on the form add up to 73 hours.

37. The Board changed its CE requirements for the period December 1, 2002, through November 30, 2004, and required 50 CE hours during that period. The Board's application for renewal for December 1, 2004, through November 30, 2006, did not require the dentist to list each CE course completed during the previous two-year period. The application only required the dentist to answer "yes" or "no" to a question asking whether the dentist had obtained 50 hours of CE during the previous two-year period.

38. Harper called two CE providers and obtained written verification of the CE hours Edlin had earned from them.

39. Harper returned to Edlin's office on May 19, 2005, to obtain copies of the previously requested documents. Edlin stated that he had made phone calls to the CE course providers, but was unable to get the information to verify the courses. Edlin stated that the person who maintained his computer was still out of town. Harper stated that Edlin had told him on May 10 that the person was supposed to be back in town, and Edlin replied that the computer technician was not in his office. Edlin showed Harper two appointment books, but stated that they were exhibits in a case and could not leave his office. The appointment books have exhibit

stickers on them from the other case.<sup>30</sup> Edlin stated that he would have his attorney make copies and provide them to the Board. Harper did not look inside the appointment books. Harper told Edlin that he would note the fact that he had seen the appointment books and that he wanted Edlin to make copies of the appointment books, scheduling records, and CE documentation, and he would pick them up on his next visit.

40. Harper returned to Edlin's office on June 1, 2005, and asked to speak to Edlin. The receptionist went to get Edlin, but came back and stated that Edlin was unable to see Harper because he was extremely busy. Harper stated that he was there to pick up documents requested on his previous visit. The receptionist left the room and came back, stating that Edlin said he did not have all of the documents ready. Harper stated that he would take the documents that were available. The receptionist left the room and came back again, stating that Edlin did not have any of the documents available.

41. Harper returned to Edlin's office on June 15, 2005, and spoke with Edlin. Harper stated that he wanted copies of the laboratory work order on A.R., which had not been requested previously. Edlin stated that he would provide that information if he could find it. Edlin stated that the information was in a file, but that he did not know whether it was in his office or at home and he needed to try to find it. Edlin stated that he did not know where A.R.'s patient file was. Harper stated that he still wanted copies of the CE documentation. Edlin stated that he was still unable to gather that information. Harper told Edlin that he had obtained verification from some of the CE providers, and Edlin stated that he appreciated Harper's efforts. Edlin stated that he was unable to obtain copies of the appointment books from his attorneys because they wanted to charge \$350 per hour to copy them, so he decided to copy them himself. Harper asked which

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<sup>30</sup>Exs. I and J.

laboratory the lab work order was made out to, and Edlin gave him a phone number for MARS. Harper called the number, but it was a fax number and he could not reach anyone.

42. Harper never received the lab work order, scheduling documentation or documentation of CE courses, other than the CE reporting form for 1999 through 2002, from Edlin.

43. The Board met again in July 2005. By that time, the Board had not received any scheduling documentation or documentation of CE courses, other than the reporting form for 1999 through 2002, from Edlin.

#### Case No. 05-1532 DB

44. On October 17, 2005, the Board filed a complaint against Edlin with this Commission. We opened the case as Case No. 05-1532 DB. On November 22, 2005, Edlin filed an answer, with a cover letter stating that attached exhibits would follow in the mail. On November 28, 2005, Edlin filed the exhibits, which included copies of documentation supporting his CE hours. The Board voluntarily dismissed the complaint in Case No. 05-1532 DB on November 9, 2006.

#### **Conclusions of Law**

The Board's complaint in the present case states that the Board is re-filing Case No. 05-1532 DB. We have jurisdiction to hear the complaint.<sup>31</sup> The Board has the burden of proof.<sup>32</sup> This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.<sup>33</sup> Where there is a direct conflict in the testimony, we must make a choice between the conflicting testimony.<sup>34</sup>

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<sup>31</sup>Section 332.321.2. Statutory references are to RSMo Supp. 2007, unless otherwise noted.

<sup>32</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>33</sup>*Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

<sup>34</sup>*Id.*

Count I: Insurance Claims

The Board asserts that Edlin submitted a claim to Guardian Insurance for porcelain fused noble crowns on Teeth #2, 4, and 5 and a porcelain fused noble pontic on Tooth #3, with a total fee of \$3,200, but did not complete the work. The Board also asserts that Edlin submitted a claim to Humana for a comprehensive exam on August 4, 2003, but performed a consultation rather than an exam. The Board raises no assertions as to the quality of the treatment Edlin provided to A.R.

A. Fraud, Deception and Misrepresentation

The Board argues that there is cause for discipline under § 332.321.2:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

\* \* \*

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; or increasing charges when a patient utilizes a third-party payment program; or for repeated irregularities in billing a third party for services rendered to a patient. For the purposes of this subdivision, irregularities in billing shall include:

(a) Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered;

(b) Reporting incorrect treatment dates for the purpose of obtaining payment;

(c) Reporting charges for services not rendered;

(d) Incorrectly reporting services rendered for the purpose of obtaining payment that is greater than that to which the person is entitled;

(e) Abrogating the co-payment or deductible provisions of a third-party payment contract. Provided, however, that this paragraph shall not prohibit a discount, credit or reduction of charges provided under an agreement between the licensee and in insurance company, health service corporation or health maintenance organization licensed pursuant to the laws of this state; or governmental third-party payment program; or self-insurance program organized, managed or funded by a business entity for its own employees or labor organization for its members[.]

Fraud is “an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.”<sup>35</sup> Deception means an act designed to cheat someone by inducing their reliance on misrepresentation.<sup>36</sup> Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.<sup>37</sup>

We do not believe that Edlin obtained the fee for the bridge on Teeth #2-5 by fraud, deception, or misrepresentation because we believe that at the time he sent the impression to the lab, he intended to place the bridge in A.R.’s mouth.

The Board also asserts that Edlin submitted a claim to Humana for a comprehensive exam on August 4, 2003, that he consulted with A.R. on August 4, 2003, but that no exam was performed, and that his dental chart does not reflect a comprehensive exam. The Board attempts to paint the August 4, 2003, visit as a mere consult and not an exam. Exhibit 1 reflects a comprehensive exam and consult. Exhibit 2 reflects only a consult. We accept Exhibit 1 as the original patient chart, and Exhibit 2 as the reproduction that Edlin provided to Dr. Blustein. Exhibit 1 is in different colors of ink and is written in different handwritings on different dates because some entries were made by Edlin’s assistants. Exhibit 2 is entirely in Edlin’s handwriting in the same color of ink. The date of the first appointment on Exhibit 1 is

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<sup>35</sup>*State ex rel. Williams v. Purl*, 128 S.W. 196 201 (Mo. banc 1910).

<sup>36</sup>*State ex rel. Nixon v. Telco Directory Publishing*, 863 S.W.2d 596, 600 Mo. banc 1993).

<sup>37</sup>*Missouri Dental Bd. v. Bailey*, 731 S.W.2d 272, 274-75 (Mo. App., W.D. 1987).

December 9, 2000, and the date of the first appointment on Exhibit 2 is December 11, 2000. The date of December 9, 2000, is consistent with other records. A.R. did not testify. The Board's testimony consisted solely of its investigators, Barnett and Harper. The Board presented no expert testimony. The Board has not met its burden to prove that Edlin did not perform a comprehensive exam and consult on A.R. on August 4, 2003. The Board has failed to prove that Edlin obtained or attempted to obtain a fee by fraud, deception or misrepresentation as to the August 4, 2003, visit.

The Board also claims irregularities in Edlin's billing. It is true that Edlin billed A.R. for the bridge on Teeth #2-5 and she never received the bridge. Edlin thus charged for services that were not fully rendered. However, § 332.321.2(4) allows discipline for "repeated" irregularities in billing a third party for services rendered to a patient. Edlin also billed for bridge work on Teeth #10-15, but he gave A.R. a credit for the work that was not performed on that bridge, and the Board's complaint raises no issue as to the bridge work on Teeth #10-15. The Board concedes that the bridge work on Teeth #10-15 is not at issue in this case. As we have already indicated, there were no billing irregularities as to the August 4, 2003, visit because Edlin conducted and properly billed for a comprehensive exam. The Board has not met its burden to prove repeated irregularities in billing. We find no cause for discipline under § 332.321.2(4).

#### B. Dishonesty

The Board asserts cause for discipline under § 332.321.2(5) for:

[i]ncompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter[.]

Once again, we conclude that there was no fraud or misrepresentation because Edlin intended to place the bridge on Teeth #2-5 in A.R. when he made the impressions and ordered the bridge

from the laboratory, and there is no evidence to establish that Edlin did not conduct a comprehensive exam and consult on August 4, 2003, as his original patient chart reflects.

However, Edlin charged A.R. for the work on Teeth #2-5 that was never completed. Dishonesty is a lack of integrity or a disposition to defraud or deceive.<sup>38</sup> Edlin's letter of September 27, 2004, states that the impression was held at the lab until Dr. Cohen stated that the teeth in the upper right quadrant were stable. Dr. Cohen summarized the results of his surgery on March 2, 2001. Edlin's entry on the chart overlapping the March 3, 2001, visit and the May 4, 2001, visit stated that Dr. Cohen okayed the upper right quadrant. Edlin testified that the FPD was never placed on Teeth #2-5 because A.R. always wanted some other area of her mouth worked on.<sup>39</sup> He also argues that she did not return to have the work done. However, A.R. had appointments on March 3, 2001, and May 4, 2001. Edlin's notes on the chart for May 4, 2001, state that the patient had not made any further appointments and had not responded to phone calls, but this does not explain why Edlin did not do the work on March 3 and May 4, 2001, when A.R. was in the office. Edlin took the impressions for the bridge on Teeth #2-5 on December 9, 2000, but A.R. never received it. Edlin presented evidence that it is customary for a dentist to bill for a bridge up front and that most of his work is completed by the time he orders the bridge from the laboratory. However, Edlin allowed a credit for the bridge work that he did not perform on Teeth #10-15, but did not do so for Teeth #2-5. He admitted that A.R. never received the bridge for Teeth #2-5 and that she never received any refund or credit for the money paid for that bridge. Although it may be true that Edlin was entitled to keep some of the money as compensation for the work he performed, the fact remains that he kept A.R.'s money for work that he did not complete, which was dishonest. Edlin testified that his billing personnel were

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<sup>38</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

<sup>39</sup>Tr. at 151.

responsible, but we infer that Edlin must have been aware when he ordered the bridge that A.R. was being charged for it, and he was aware that this was never completed. We find cause for discipline under § 332.321.2(5) for dishonesty.

As we have already stated, Edlin billed appropriately for an exam and consult on August 4, 2003, and we find no cause for discipline as to that charge.

### C. Incompetence and Misconduct

When referring to an occupation, incompetence relates to the failure to use “the actual ability of a person to perform in that occupation.”<sup>40</sup> It also refers to a general lack of, or a lack of disposition to use, a professional ability.<sup>41</sup> Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”<sup>42</sup> Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.<sup>43</sup> We have inferred that Edlin was aware that A.R. was charged for a bridge on Teeth #2-5 that she never received. We find cause for discipline for misconduct. Because the mental states for misconduct and gross negligence are mutually exclusive, we find no cause for discipline for gross negligence. Because Edlin lacked a disposition to use his professional abilities, there is cause for discipline for incompetence.

### D. Violation of Professional Trust or Confidence

The Board asserts cause to discipline under § 332.321.2(13) for:

[v]iolation of any professional trust or confidence[.]

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<sup>40</sup>Section 1.020(8), RSMo 2000.

<sup>41</sup>*Johnson v. Missouri Bd. of Nursing Adm’rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004); *Forbes v. Missouri Real Estate Comm’n*, 798 S.W.2d 227, 230 (Mo. App., W.D. 1990).

<sup>42</sup>*Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

<sup>43</sup>744 S.W.2d at 533.

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.<sup>44</sup> It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.<sup>45</sup> Because Edlin charged for services that he did not complete and for which A.R. paid, he violated the professional trust or confidence placed in him. We find cause for discipline under § 332.321.2(13).

Count II: CE for 1999-2002

A. CE Compliance

The Board's complaint asserts that Edlin did not provide documentation of his CE hours for December 1, 1999, through November 30, 2002, though he reported 75 hours on his form. The Board asserted cause to discipline under § 332.321.2(3) for the use of fraud, deception, misrepresentation or bribery in securing a permit or license, and under § 332.321.2(11) for issuance of a license based upon a material mistake of fact. However, in her opening statement, the Board's counsel stated that the Board is not pursuing the portion of the complaint concerning whether Edlin complied with the CE requirements.<sup>46</sup>

B. Violation of Regulation Requiring  
Retention and Production of Documentation

The Board asserts that Edlin violated Regulation 4 CSR 110-2.240,<sup>47</sup> which provides:

Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates,

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<sup>44</sup>*Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

<sup>45</sup>*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

<sup>46</sup>Tr. at 6-7. Therefore, to the extent that the Board's complaint could be construed as suggesting that Edlin made a fraudulent statement that he completed 75 hours when only 73 hours were shown on the reporting form for December 1, 1999, through November 30, 2002, we consider the Board as having withdrawn that allegation. Edlin presented evidence that his assistant made a clerical error and failed to list a course on the form. This becomes irrelevant because the Board has withdrawn its claim that Edlin did not have a sufficient number of CE hours.

<sup>47</sup>Moved to 20 CSR 2110-2.240, effective August 28, 2006.

locations, receipts, course sponsors, agendas and number of hours earned. The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

Edlin argues that the regulation goes beyond the scope of the Board's authority to promulgate regulations and is not valid or enforceable. Section 332.031.1, RSMo 2000, provides:

The board shall administer and enforce the provisions of this chapter, prescribe the duties of its officers and employees, and adopt, publish, and enforce such rules and regulations within the scope and purview of the provisions of this chapter as may be considered by the board to be necessary or proper for the effective administration and interpretation of the provisions of this chapter, and for the conduct of its business and management of its internal affairs.

Section 332.181.4, RSMo 2000, provides:

The board shall not renew any certificate of registration of any dentist unless the licensee shall provide satisfactory evidence that he has completed seventy-five hours of continuing education within a three-year period.

Section 332.181.4 now provides:

Effective with the licensing period beginning on December 1, 2002, a license shall be renewed every two years. To renew a license, each dentist shall submit satisfactory evidence of completion of fifty hours of continuing education during the two-year period immediately preceding the renewal period. Each dentist shall maintain documentation of completion of the required continuing education hours as provided by rule. Failure to obtain the required continuing education hours, submit satisfactory evidence, or maintain documentation is a violation of section 332.321.

Because the Board does not cite § 332.181.4 (either the 2000 or the current version) in its complaint, we cannot find cause for discipline on the basis of that statute.<sup>48</sup> However, we rely on § 332.181.4 to reject Edlin's argument that Regulation 20 CSR 2110-2.240 is outside the Board's

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<sup>48</sup>Regulation 1 CSR 15-3.350(2)(A)4.

authority to promulgate regulations. Regulation 20 CSR 2110-2.240 effectuates the purposes of § 332.181.4 and is authorized by § 332.031.1, RSMo 2000. Further, regulations have the force and effect of law,<sup>49</sup> and we do not have the authority to declare a regulation invalid.<sup>50</sup>

Barnett first requested a copy of Edlin's CE records for 1999 through 2002 on August 26, 2004. On May 10, 2005, Edlin provided a copy of his CE reporting form for that period. However, that would be nothing more than what he had already provided to the Board with his renewal application, and he did not provide documentation of the courses.<sup>51</sup> Edlin never provided documentation of the CE courses until he filed his answer to the Board's complaint in Case No. 05-1532 DB on November 22, 2005. Edlin violated Regulation 20 CSR 2110-2.240 by failing to provide timely and complete responses to the Board's inquiries. Therefore, there is cause to discipline his license under § 332.321.2(6) for violating a regulation adopted pursuant to Chapter 332, RSMo.

### C. Incompetence and Misconduct

The Board also asserts cause to discipline Edlin's license under § 332.321.2(5). Edlin argues that his CE documentation was destroyed in the floods in his office. However, Edlin never told Barnett that the records were destroyed in a flood. The first time a flood was mentioned was in Jacobs' letter to the Board dated January 7, 2005. Edlin was able to provide documentation of CE courses when he filed an answer to the Board's complaint in Case No. 05-1532 DB on November 22, 2005. Edlin's failure to provide timely and complete responses to the Board's inquiries shows incompetence. We also infer that his repeated failure to provide timely and complete responses to the Board's inquiries were deliberate violations of the law and cause for discipline for misconduct. Because the mental states for misconduct and gross

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<sup>49</sup>*Hansen v. Department of Social Services*, 226 S.W.3d 137, 143 (Mo. banc 2007).

<sup>50</sup>*State Tax Comm'n v. Administrative Hearing Comm'n*, 641 S.W.2d 69, 75 (Mo. banc 1982).

<sup>51</sup>In fact, Edlin testified that he got the copy of the form from the Board. (Tr. at 173-74.)

negligence are mutually exclusive, we find no cause for discipline for gross negligence. We find cause for discipline under § 332.321.2(5) for incompetence and misconduct, but not for gross negligence.

The Board's complaint does not allege that Edlin made any false statements or was otherwise dishonest in his responses to the Board's requests for CE documentation. Therefore, we find no cause for discipline under § 332.321.2(5) for fraud, misrepresentation, or dishonesty.

#### D. Violation of Professional Trust or Confidence

The Board also asserts cause to discipline Edlin's license under § 332.321.2(13). Because Edlin failed to cooperate with the Board and attempted to completely obfuscate its investigation by failing to provide timely and complete responses to its inquiries, we conclude there is cause to discipline him under § 332.321.2(13) for violation of a professional trust or confidence.

### Count III: CE for 2002-2004

#### A. CE Compliance

Count III is essentially the same as Count II, but applies to the 2002-2004 reporting period for CE hours. The Board's complaint asserts that Edlin did not provide documentation of his CE hours for December 1, 2002, through November 30, 2004, though he reported 50 hours on his form. The Board asserted cause to discipline under § 332.321.2(3) for the use of fraud, deception, misrepresentation or bribery in securing a permit or license, and under § 332.321.2(11) for issuance of a license based upon a material mistake of fact. However, in her opening statement, the Board's counsel stated that the Board is not pursuing the portion of the complaint concerning whether Edlin complied with the CE requirements.

B. Violation of Regulation Requiring  
Retention and Production of Documentation

The Board again asserts that Edlin violated Regulation 4 CSR 110-2.240.<sup>52</sup> As with the CE documentation for 1999 through 2002, Edlin did not provide timely and complete responses to the Board's inquiries. Harper first requested copies of Edlin's CE course documentation for 2002 through 2004 on May 10, 2005. The Board did not receive documentation of the CE courses until Edlin filed his answer to the Board's complaint in Case No. 05-1532 DB on November 22, 2005. Therefore, there is cause to discipline him under § 332.321.2(6) for violating a regulation adopted pursuant to Chapter 332, RSMo.

C. Incompetence and Misconduct

As in Count II, Edlin's failure to respond to the Board's inquiries shows incompetence. We also infer that his repeated failure to provide timely and complete responses to the Board's inquiries were deliberate violations of the law and cause for discipline for misconduct. Because the mental states for misconduct and gross negligence are mutually exclusive, we find no cause for discipline for gross negligence. We find cause for discipline under § 332.321.2(5) for incompetence and misconduct.

The Board's complaint does not allege that Edlin made any false statements or was otherwise dishonest in his responses to the Board's requests for CE documentation. Therefore, we find no cause for discipline under § 332.321.2(5) for fraud, misrepresentation, or dishonesty.

D. Violation of Professional Trust or Confidence

Because Edlin failed to cooperate with the Board and attempted to completely obfuscate its investigation by failing to provide documents, we also conclude there is cause to discipline him under § 332.321.2(13) for violation of a professional trust or confidence.

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<sup>52</sup>Moved to 20 CSR 2110-2.240, effective August 28, 2006.

#### Count IV: Failure to Produce Records

Though Count IV of the Board's complaint contains numerous assertions, it is difficult to ascertain exactly what the Board is trying to do. The Board asserts Edlin's failure to provide records for A.R. and documentation of CE courses for 1999-2002 and 2002-2004 upon request. The Board also cites provisions of the disciplinary statute that it cited in Counts II and III. We have already addressed Edlin's failure to provide documentation of CE courses in Counts II and III, and we will not find cause to discipline again for the same conduct. Therefore, we address only Edlin's failure to provide records for A.R. when the Board requested them. As stated in our discussion of Counts II and III, the Board withdrew its claims that Edlin did not have adequate CE hours. Further, Edlin's failure to provide records for A.R. when the Board requested them had nothing to do with the issuance of his license. Therefore, we find no cause for discipline under § 332.321.2(3) and (11).

The Board cites § 332.051.2, and argues that Edlin violated this provision. This statute provides:

Investigators employed by the board shall, among other duties, have the power in the name of the board to investigate alleged violations of this chapter including the right to inspect, on order of the board, any person licensed to practice dentistry or entity providing dental services in this state, including all facilities and equipment related to the delivery of dental care or the fabrication or adjustment of dental prostheses and all clinical and administrative records related to the dental care of patients with respect to violations of the provisions of this chapter.

This statute gives the Board's investigators the authority to inspect records, but sets forth no duty that the practitioner may "violate." Because Edlin did not "violate" this statute, there is no cause for discipline on that basis. We find no cause for discipline under § 332.321.2(6).

However, because the statute allows the Board's investigators to obtain records, we agree that the practitioner's cooperation with the Board's investigation, including the obligation to

provide patient records upon request, is part of the functions and duties of the profession. The Board's complaint asserts that the Board requested two types of records regarding A.R.<sup>53</sup> The first type was the patient records. The second type was scheduling documentation. The Board's complaint repeatedly refers to scheduling documentation and "ledgers."<sup>54</sup> Barnett and Harper both testified to their understanding that "ledgers" referred to appointment schedule books. Our common understanding of the term "ledger" would be a financial accounting record,<sup>55</sup> but the Board had no further need of billing records because Edlin provided the billing record on Barnett's first visit on August 26, 2004. Therefore, we understand the term "ledger" as used in Barnett and Harper's testimony and the Board's complaint to mean appointment books, and we have referred to the appointment books throughout this decision. Edlin does not dispute that he understood that Harper was requesting copies of the appointment books.<sup>56</sup>

We first address the Board's request for A.R.'s patient records. Edlin made one excuse after another and completely obfuscated the Board's investigatory process. During Barnett's first visit on August 26, 2004, Edlin first stated that A.R.'s records were in storage, but then stated that he took some records home but was not sure where A.R.'s records were. On September 16, 2004, when Barnett was supposed to pick up the records, Edlin called and stated that they were still not available. Barnett gave an extension until September 22, 2004, but still did not receive the records. Edlin finally provided a copy of A.R.'s patient records<sup>57</sup> to the Board on January 21, 2005. At the Board's meeting on April 22, 2005, Edlin first stated that he produced a new record for A.R. because the original had been destroyed in the flood in his

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<sup>53</sup>Because the complaint does not specifically assert any failure to produce the lab work order, we do not find any cause for discipline on that basis. Regulation 1 CSR 15-3.350(2)(A)3; *Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 538-39 (Mo. App., E.D. 1988).

<sup>54</sup>¶¶ 59-62.

<sup>55</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 709 (11<sup>th</sup> ed. 2004).

<sup>56</sup>Tr. at 179.

<sup>57</sup>Ex. 1.

office, but he then acknowledged that the flood occurred after he sent the records to Dr. Blustein. At the hearing, Edlin testified that A.R.'s file was misplaced, and that he recreated the record for his own information and for the patient's so he could keep track of what he was doing.<sup>58</sup> Though Edlin produced a new record for Dr. Blustein,<sup>59</sup> he produced neither the original nor the new record in response to Barnett's inquiries for nearly five months, when he finally produced Exhibit 1 to the Board.

There may be some circumstances in which losing a patient's records or otherwise being unable to produce them does not rise to the level of a breach of professional duty. However, in this case, Edlin was not forthcoming and gave inconsistent explanations for his failure to produce A.R.'s records over time. He produced a new record for another dentist, but provided nothing for almost five months when the Board requested it. As Board member Dr. McCoy stated at the Board's meeting on April 22, 2005:

Q: Let me stop you there. Do you understand that with the records that we've seen, the conflicts, for us to try to understand her complaint with the help—your help, we don't see that. We cannot see what you're not telling us. Do you understand that in an investigation what we're really trying to find out what's at the bottom of this, and we really can't do that with the information that you've given us.

A: I understand.

Q: And we're not necessarily going after you or anybody else. We need the information, and it's very frustrating when we cannot piece it altogether.<sup>60</sup>

Edlin's failure to cooperate and produce records in response to Barnett's inquiries clearly hindered the Board's investigatory process. We conclude that there is cause to discipline Edlin for incompetence. Given Edlin's inconsistent explanations, we infer that he intentionally

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<sup>58</sup>Tr. at 158-59.

<sup>59</sup>Ex. 2.

<sup>60</sup>Ex. 15 at 37.

withheld information from the Board; thus, we find cause for discipline for misconduct and not gross negligence. His failure to cooperate with the Board's investigation violated the professional trust or confidence placed in him by his profession. We find cause to discipline under § 332.321.2(5) and (13).

Even though Edlin's statements were inconsistent, the Board's complaint does not assert that his explanations for his failure to produce records were fraudulent, misrepresentations, or otherwise dishonest. Therefore, we find no cause for discipline under § 332.321.2(5) for fraud, dishonesty, or misrepresentation.

We next address Edlin's failure to produce scheduling documentation, including the appointment books that the Board refers to as "ledgers." Edlin told Harper that he took the appointment books to the Board meeting on April 22, 2005, but that no one wanted to look at them. We find nothing in the transcript of the Board's meeting indicating that Edlin took the appointment books to the meeting.

Harper admitted that Edlin made the appointment books available for him to look at on May 19, 2005, but Edlin stated that they were exhibits in a case and could not leave his office. Edlin stated that he would have his attorney make copies and provide them to the Board. Harper testified on cross-examination as follows:

Q: And he offered to show them to you?

A: Correct.

Q: Did you look in them?

A: No, sir.

Q: So you're there to figure out whether he actually saw the patient on the days involved and he brings the book out and you don't look in them to see if that's true?

A: I didn't look at them. I was there to get copies of them and deliver them to the Board.<sup>61]</sup>

Edlin argues that he should not be faulted because he made documents available to the investigator, who refused to look at them. Section 332.051.2 gives the investigator the right to inspect "all clinical and administrative records related to the dental care of patients." However, it is also reasonable for the Board to request that the investigator obtain copies of documents and provide them to the Board for its own review. Edlin told Harper on May 10, 2005, that he would provide copies of the patient schedules, but was unable to do so that day because the computer was out of service and the person who maintained it was out of town. On May 19, 2005, Edlin made the appointment books available for inspection, but stated that he would have his attorney make copies because they were exhibits in a case. He also stated that the person who maintained the computer was still out of town. On June 1, Edlin informed Harper, through his receptionist, that he did not have any of the documents available. On June 15, Edlin stated that he was unable to obtain copies of the appointment books from his attorneys because they wanted to charge \$350 per hour to copy them, so he decided to copy them himself. It is possible that Edlin returned the appointment books to his attorney. However, Edlin never provided a copy of the appointment books or other scheduling documentation to the Board in response to Harper's repeated requests. Copies of pages from the appointment books appear as exhibits in the present case,<sup>62</sup> but Edlin never provided copies to Harper in response to his requests. Edlin's failure to produce copies of scheduling documentation is cause for discipline under § 332.321.2(5) for incompetence and misconduct, and under § 332.321.2(13) for violation of a professional trust or confidence.

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<sup>61</sup>Tr. at 111.

<sup>62</sup>Exs. B-F, I-J.

However, the Board's complaint does not assert that Edlin's explanations for his failure to produce scheduling documentation were fraudulent, misrepresentations, or otherwise dishonest. Therefore, we find no cause for discipline under § 332.321.2(5) for fraud, dishonesty or misrepresentation.

Count V: Fabricating a Patient Record

The Board asserts cause for discipline under § 332.321.3(5) and (13). The Board asserts that the records for A.R. that Edlin provided to Dr. Blustein were fabricated and misrepresented the care and treatment that Edlin provided to A.R. Edlin argues that there is nothing wrong with making a duplicate record. However, he offered inconsistent, implausible explanations for making the duplicate chart, and this supports our finding that Exhibit 2 was fabricated. At the Board's meeting on April 22, 2005, Edlin first stated that he produced a new record for A.R. in response to Dr. Blustein's request because the original had been destroyed in the flood in his office, but Edlin then acknowledged that the flood occurred after he sent the records to Dr. Blustein. At the hearing, Edlin conceded that the chart was not wet when he found it.<sup>63</sup> At the hearing, Edlin testified that A.R.'s file was misplaced, and that he recreated the record for his own information and for the patient's benefit so he could keep track of what he was doing.<sup>64</sup> The disparities between Exhibit 1 and Exhibit 2, which we have already discussed, also support our finding that Exhibit 2 was fabricated.

Exhibit 2 shows "REFINE PREPS 4 & 5 MAX" on February 9, 2001, but Exhibit 1 does not contain such an entry. Exhibit 2 indicates work on Teeth #2, 4, and 5 on March 3, 2001, and states "ADD ACRYLIC TO OCC" on that date, but Exhibit 1 does not.<sup>65</sup> We have found that

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<sup>63</sup>Tr. at 197-98.

<sup>64</sup>Tr. at 158-59.

<sup>65</sup>In his hearing testimony, Edlin did not address the entry for March 3, 2001, on Exhibit 2. Edlin's counsel stated: "I may have skipped one. I didn't do it intentionally." (Tr. at 156.)

Exhibit 1 is the original patient record, and it is thus the best indicator of the actual work performed. Exhibit 2 misrepresents the care and treatment provided to A.R.

The entry on Exhibit 2 for August 4, 2004, shows a “consult.” Although this is not complete, as Exhibit 1 shows a comprehensive exam and consult, it is not a misstatement.

However, Exhibit 2 also omits the charges, and thus presents an inaccurate picture of what was billed and credited. Exhibit 2 was altered by failing to show that A.R. was charged for a service that she did not receive.

By showing work on Teeth 2, 4, and 5 on March 3, 2001, and omitting all entries for charges, Exhibit 2 misrepresents the care and treatment that A.R. received. We find cause for discipline under § 332.321.2(5) for incompetence, misconduct, fraud, misrepresentation and dishonesty. The fabrication of the chart also violated a professional trust, and is cause for discipline under § 332.321.2(13).

The Board also asserts cause to discipline under § 332.321.2(3), but there is no evidence that Edlin used the fabrication of the records for the purpose of securing a permit or license or obtaining permission to take an examination. There is no cause for discipline under § 332.321.2(3).

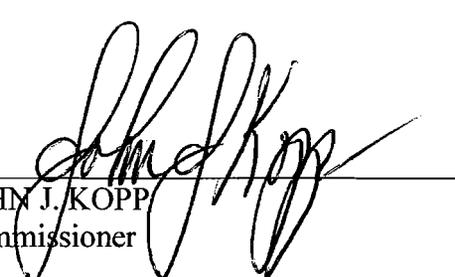
### **Summary**

Edlin’s license is subject to discipline:

- under § 332.321.2(5) for incompetence, misconduct, and dishonesty in charging a patient for work that was not completed (Count I);
- under § 332.321.2(6) for violating the Board’s regulation requiring him to retain and produce documentation of CE hours, under § 332.321.2(5) for incompetence and misconduct, and under § 332.321(13) for violation of a professional trust or confidence, by failing to provide CE documentation to the Board (Counts II and III);

- under § 332.321.2(5) for incompetence and misconduct, and under § 332.321(13) for violation of a professional trust or confidence, by failing to provide patient records and scheduling documentation to the Board (Count IV); and
- under § 332.321.2(5) for incompetence, misconduct, fraud, misrepresentation, and dishonesty, and under § 332.321.2(13) for violation of a professional trust or confidence, by fabricating a patient record (Count V).

SO ORDERED on August 1, 2008.

  
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JOHN J. KOPP  
Commissioner

NAME: A. R. [REDACTED]  
 ADDRESS: 1061 KING HENREY  
 BUSINESS ADDRESS: ST. LOUIS MO 63146  
 SEND BILL TO:  
 REFERRED BY:

APPENDIX 1

AM PHONE 997-4711  
 WK PHONE 821-0219 X 115

BIRTHDAY 03-09-1935

PHYSICIAN: FULL PERMANENT PERIOD RESTORATION CL  
 MEDICAL HISTORY: REF IN PERIOD - DR COHEN  
 ENDS - DR PANTRY

Plus T... 6 MONTH

DATE	TOOTH	SERVICE RENDERED	CHARGE	NOTES
12-9-00		NP CONSULT, FMX (14 PAs) CIX PT PRESENTS w/ VERY POOR + FAILING RESTORATIVE CARE. NEEDS FULL PERMANENT w/ 4 POST GUARD AND WAX ANTIOR UR. - + LL FPD <sup>MOBILE</sup> w/ ALL STABILIZERS RECURRENT DEBRIT.	150	PANEL 6-00 NEED PERIOD CONSULT NEED ENDS CONSULT BULL COX AT PROPHY SENT TO INS CO. TRAIT CHARGE
	2X45	3.6CC X140 w/PT Prep for FPD, IMP, BITE TEMP 4+5 MAY NEED RCT.	3200	USE OLD FPD FOR TEMP REF DR KIMMEL
12-15-00		Full mouth abridement, CIX, Comp Exam	183	
1-30-01		PROPHY BETTER	59	ONE COX TO HELP REFER PERIOD
2-9-01	UR	1 PA, 1011 ADD SERVICE TO DR TO OPEN SITE ON L	22	
3-3-01	10,11	3.6CC X140 w/PT Prep for FPD, TEMP	1000	TEMP NOT SENT TO (INS)
5-4-01	10,11	1 PA, PAST POST SPACE, TEMP PT HAS NOT MADE ANY FURTHER APT. NO RESPONSE TO PHONE CALLS. NO IMP TAKEN ON UL. CHARGE FOR TEMP ONLY, PT HAS NOT SEEN DR COHEN FOR ANY FURTHER TX, NO PAYMENTS SINCE 2/01	75	- 2400 (TEMP CHARGE) 400 EXAM, DR COHEN ORDERED UP GUARD. WAXIT a good UL
8-15-01		RECEIVEMENT TEMP NEEDS TO MAKE APT.	16	No response from Pt.
6-4-03		Comp Exam + CONSULT. PT DOES NOT UNDERSTAND BILLING. TOLD HER SINCE SHE DIDN'T FOLLOW THRU w/ TX, MORE DECAY HAS SET IN. TEETH IF SAVABLE WILL NEED TO BE REPODED. RECOMMEND SHE SEE DR COHEN + NEED NEW TX PLAN SINCE SHE STOPPED TX FOR 2 YEARS.	65	* CHARGE + TAKE WHAT INS ACCEPTS.
10-27-03		COPY X-RAYS FOR PICK-UP	35	DR. BLUSTEIN (CALLER) DENYING ALL OBLIGATIONS X-RAYS COPY BUDG + THREATENING STAFF. (COULD BE PICKED UP).

EXHIBIT

PETITIONER'S EXHIBIT  
 1  
 08-08-07

Edlin 9 of 13

ADDRESS

BUSINESS ADDRESS

SEND BILL TO

REFERRED BY

V [REDACTED] A [REDACTED]  
1061 KING HENRY CT.  
ST. LOUIS, MO 63146

APPENDIX 2

H PHONE 997-4711  
US PHONE 821-0219 EXT 115  
BIRTHDAY 3-9-35

PHYSICIAN

MEDICAL HISTORY

Full Petition + Petio

Bill [unclear]

DATE	TO	SERVICE RENDERED
12-11-00		MD Exam + Consult, Pat. needs full work for complete Petition, FHX
	2x45	D/L Imp's w/Bite for Impaction of FPD 2x45
12-15-00		Full Debride, CxX Int Ex
1-30-01		Prophy
2-9-01	2x45	3.6cc XHU w/Exy Refine Petio 4-5 May Need PCT Consult w/ Dr. [unclear]
2-3-01	2x45	Wid w/Exy to [unclear]
5-4-01	10.11	X.X. 14.15 3.6cc XHU w/Exy Prep for FPD T-TMP
	16.11	IPA Prep Post-Space
5-15-01		Recount T-GMP Pt has not come back to finish TX
8-4-03		Consult

All work provided  
by Dr. [unclear]

Edl  
EXHIBIT

PETITIONER'S EXHIBIT  
2  
08-08-07