BEFORE THE DENTAL BOARD
OF THE STATE OF IOWA

IN THE MATTER OF	)	Case No. 18-0142
	)	
THOMAS EVANS, D.D.S.	)	**FINDINGS OF FACT, CONCLUSIONS**
	)	**OF LAW, DECISION and ORDER**
	)	
	)	

On August 5, 2021, a hearing in this case was held before the Iowa Dental Board ("Board"), and Thomas Evans, D.D.S., ("Dr. Evans") did not appear. He was represented by Thomas Evans. Laura Steffensmeier appeared on behalf of the State, as did Investigator David Schultz ("Investigator Schultz") who testified. The entire administrative file, including the parties' exhibits, was admitted into the record, and the matter is now fully submitted.

FINDINGS OF FACT

Dr. Evans is a licensed dentist in the State of Iowa and has been since 1978. Ex. 13. He is a solo practitioner located in the Ottumwa, Iowa area. Id. On October 16, 2018, Investigator Schultz conducted an inspection of Dr. Evans' dental office and found eight instances of failing to follow governing CDC requirements or recommendations for the practice of dentistry. See Ex. 3, Attachment D. As summarized by the Investigator to Dr. Evans the day after the inspection, the deficiencies were the failure to:

1. Maintain employee immunization records in their personnel file
2. Develop or obtain written exposure prevention and post exposure management program
3. Develop or obtain written policy for work related illnesses and work restrictions
4. Provide utility gloves for operatory cleaning and instrument cleaning tasks involving contact with blood or OPIM. (No utility gloves were noted on site)
5. Ensure packages are allowed to dry in sterilizer before being handled
6. [H]ave an EPA registered hospital disinfectant with a low (i.e. HIV and HBV label claims) to intermediate-level (i.e. tuberculocidal claim) after each patient and use an intermediate-level disinfectant if visibly contaminated with blood. NOTE: No product in your office meeting this criteria was located.
7. For cold sterilization use a sporicidal chemical (e.g. glutaraldehyde, peracetic acid and hydrogen peroxide)
8. Use a color coded or labeled container that prevents leakage (e.g. bio-hazard bag) to contain non-sharp regulated medical waste

Ex. 3, at p. 33 (bullet points altered into numbering and emphasis in the original removed). The Investigator identified numbers six and seven—the failure to have an appropriate EPA-registered disinfectant and the cold sterilization chemicals—as a danger that must "be corrected immediately." Id.

Dr. Evans then moved to correct the deficiencies. He promptly purchased an appropriate EPA-registered disinfectant in the form of CaviWipes and stated in an October 17, 2018 email to Investigator Schultz: "Effective today October 17, 2018, we have discontinued use of cold sterilization in our office. All items will be autoclaved or disposed of." Ex. 3, at p. 35. Dr. Evans also: drafted a policy for work-related illnesses and restrictions; articulated an exposure prevention and management program; secured his staff's immunization records for his office; bought utility gloves and color coded medical waste containers; and implemented a policy to let instruments dry including by providing a notice. Id., Attachment E. Of note, he also stated to the Investigator in an October 18, 2018 email: "To reiterate, we have discontinued use of cold sterilization in our office[.]" Id.

On June 7, 2019, the Board issued a Notice of Hearing and Statement of Charges, charging Dr. Evans with violating Iowa Code section 153.34(4) and 650 Iowa Administrative Code ("I.A.C.") section 30.4(35) for "failing to comply with the standard precautions for preventing and controlling infectious disease and managing personnel health and safety concerns as required or recommended for dentistry by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services" for the eight deficiencies found during the inspection. Ex. 1, at p. 3. At the hearing, Dr. Evans acknowledged some of the deficiencies found, but denied others, and he argued that none are material enough to justify any Board disciplinary action.

More specifically, Dr. Evans acknowledged his practice failed to maintain employee immunization records at his office, failed to develop or obtain a written exposure prevention and post-exposure management program, and failed to develop or obtain a written policy for work-related illnesses and work restrictions in violation of CDC guidance. See Dr. Evans' Opening Statement PowerPoint presentation. For clarity and as discussed below, each of these deficiencies has been proved by a preponderance of the evidence given the admission and the inspections report, and Dr. Evans' only claim is they are mere "administrative/paper violations" that should not warrant discipline, particularly since the immunization records were available at a nearby hospital and individuals could be sent to the hospital if there were an infection control issue. Id.; see also Ex. 5, at pp. 39-40 (CDC requirements and recommendations)

Dr. Evans also acknowledged a failure existed to allow packages to completely dry in the sterilizer and to have colored coded or labeled containers that prevented leakage to contain non-sharp regulated medical waste in violation of CDC guidance. See Dr. Evans' Opening Statement PowerPoint presentation. Again, the State has carried its burden of proof to show both violations given the admission and the inspections report, and Dr. Evans' argument is that these deficiencies are immaterial because they only present a "theoretical risk" of harm, particularly since medical waste could go into the available sharps container. Id.; see also Ex. 5, at pp. 131, 154.

Dr. Evans further acknowledged not having utility gloves for operatory and instrument cleaning tasks involving contact with blood or other potentially infectious material. See Dr. Evans' Opening Statement PowerPoint presentation. He claims, however, this is not a deficiency because the CDC allows clinical judgment in deciding whether to have utility gloves and his judgment indicated the potential for cross-contamination outweighed the potential benefits. Id.; see also Ex. 3, at p. 6 ("He addressed not having utility gloves by saying that they are uncomfortable and likely a good way to have cross contamination. He said he would rather double glove. He then added 'People in Washington don't have all the answers.'"). Dr. Evans' argument is not persuasive as the CDC guidelines for dental practitioners specifically recommends the use of "appropriate gloves (e.g., puncture- and chemical-resistant utility gloves) when cleaning instruments and performing housekeeping tasks involving contact with blood or IPIM." Ex. 5, at p. 42. In fact, the CDC repeatedly articulates this recommendation, stating in another

portion: "To avoid injury from sharp instruments, DHCP should wear puncture resistant, heavy-duty utility gloves when handling or manually cleaning contaminated instruments and devices." Id., at p. 21; see also Exs. 6, at p. 8; 7, at p. 2. As such, the State has carried its burden of proof to show a lack of utility gloves in Dr. Evans' practice and this violated CDC guidelines for the practice of dentistry.

While acknowledging the use of, effectively, bleach wipes, Dr. Evans' argues this does not violate the requirement for an EPA-registered hospital disinfectant with a low-to-intermediate-level activity for clinical surface cleaning because these wipes were later given enhanced labels in 2019 by the EPA, which shows either directly or indirectly he complied with all requirements. See Dr. Evans' Opening Statement PowerPoint presentation. This is not persuasive because CDC recommends non-barrier surfaces, such as some of those in Dr. Evans' office, "should be cleaned and disinfected between patients by using an EPA-registered hospital disinfectant with an HIV, HBV claim (i.e., low-level disinfectant) or a tuberculocidal claim (i.e., intermediate-level disinfectant). Intermediate-level disinfectant should be used when the surface is visibly contaminated with blood or OPIM." Ex. 5, at p. 26. As of the date of the inspection, Dr. Evans' office had for cleaning these types of surfaces Clorox and Member Mark disinfectant wipes, isopropyl alcohol, and Asepti-phene spray. Hearing Recording, at 46:30-:47, 51:54-53:35. Ex. 3, at pp. 16 (checklist of what was being used); 21-22 (pictures of products). However, Asepti-phene's EPA-registration lapsed in 2017, and it did "not have any label claims for HIV or HBV." Hearing Recording, at 1:07:40-:50; Ex. 3, at p. 57 (Investigator notes). Likewise, isopropyl alcohol is not sufficient, and the bleach wipes were not on the list at the time of the inspection, as evidence in part by the EPA later updating their labeling in 2019. Hearing Recording, at 48:00-:11 ("For the products I saw there, they did not have language that would make them be compliant with the CDC requirements."), 1:05:40-1:07:25 (noting the bleach wipes found were not on the 2018 list of acceptable EPA-registered products); Exs. 3, at p. 62 (EPA discussing the products), 8 (2018 EPA list), 9 (2018 EPA list); Dr. Evans Exs., at p. 37 (new EPA label); As dental practitioners must follow the current list of approved EPA products and not substitute their judgment about what should be approved, the failure to use EPA-registered products is a violation. Thus, the State has proven this deficiency by a preponderance of the evidence.

As for the failure to use a sporicidal chemical for cold sterilization, Dr. Evans claims this is factually untrue because he has not used cold sterilization for some time. However, the October 17, 2018 email Dr. Evans' sent to the investigator indicates cold sterilization was discontinued after the inspection, with the email again reading: "Effective today October 17, 2018 we have discontinued use of cold sterilization in our office. All items will be autoclaved or disposed of." Ex. 3, Attachment E. Given "effective today" indicates the practice just stopped and given Dr. Evans did not testify as to what he meant by his statement or provide any other material evidence to indicate cold sterilization had ceased prior to the inspection, the State has again met its burden by a preponderance of the evidence that this violation occurred. Indeed, the only other material evidence is from the photographs of the office, and they also suggest ongoing use of cold sterilization at the time. Ex. 3, at pp. 20, 24; see also Hearing Recording, at 1:02:05-:16. In sum, the State has proven the existence of each of the eighth deviations from CDC guidelines alleged in the statement of charges, and the issue now turns on the legal significance of such factual findings.

CONCLUSIONS OF LAW AND DECISION

A.

Pursuant to Iowa law, the Board was created to regulate the practice of dentistry, dental hygiene, and dental assisting. Iowa Code § 147.13(8). Its authority includes the power to "initiate and prosecute disciplinary proceedings" and "impose licensee discipline." Id. § 272C.3(e), (f). The statutory ground

allowing discipline at issue here is for "willful or repeated violations of this chapter, this subtitle, or the rules of the board." Id. § 153.34(4).

The rules of the Board allowing discipline include the failure "to comply with standard precautions for preventing and controlling infectious diseases and managing personnel health and safety concerns related to infection control, as required or recommended for dentistry by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services." 650 I.A.C. § 30.4(35) (2018).[1] If a ground for discipline is found, then the Board has the authority to sanction a licensee with one or more of the following:

> 1. Revocation of license or registration.
> 2. Suspension of license or registration until further order of the [B]oard or for a specified period.
> 3. Nonrenewal of license or registration.
> 4. Prohibit permanently, until further order of the [B]oard or for a specified period, the engaging in specified procedures, methods or acts.
> 5. Probation.
> 6. Require additional education or training.
> 7. Require clinical or written examination.
> 8. Order a physical, mental, or clinical evaluation.
> 9. Impose civil penalties not to exceed $10,000 [as allowed by rule in this matter]
> 10. Issue citation and warning.

Id. §§ 30.2, .4. The burden of proof in a disciplinary action is on the State by a preponderance of the evidence. See, e.g., Eaves v. Bd. of Med. Examiners, 467 N.W.2d 234, 237 (Iowa 1991) (discussing the issue).

B.

In this case, little doubt exists Dr. Evans violated CDC guidelines and recommendations, and the fighting issue between the parties is primarily on what the appropriate sanction should be. On one hand, Dr. Evans argues that the various violations he does acknowledge exist warrant little or no discipline because of their trivial nature and because he has since remedied the deficiencies. On the other hand, the State argues the Board should use a similar case as a guide and find probation with certain requirements and a fine is appropriate due to the number and severity of the violations. See, e.g., Ex. 12 (settlement agreement in another case with the same charge). On balance, the State's suggested remedy is more appropriate given the facts of this case with some modifications.[2]

[1]Since the inception of this matter, the governing Board rule has been moved to section 650-30.4(6)(b).

[2] In his opening presentation, Dr. Evans attempted to raise a variety of issues, which generally appear to have been resolved prior to the hearing to the extent they were properly raised. The record will speak for itself on the resolution of these claims, and the Board will only pause to note the various allegations about the reason for the initial complaint to the Board, Dr. Evans' counsel's interpersonal difficulty with the Board's prior executive director, and the unsubstantiated claims Investigator Schultz was attempting to more or less bribe Dr. Evans' staff for incriminating information distorts the issue in this case. This case turns on what was found in an inspection and what the consequences of such should be. As Dr. Evans admits to the factual predicate of everything found except the use of cold sterilization (reserving his arguments that what was found is insignificant or not in violation of CDC recommendations) and as the evidence of ongoing use of cold sterilization comes primarily from his statements made to the investigator in an email that was admitted into the record, the claimed grievances have no material bearing.

As an initial matter, the law authorizes the Board to impose discipline for willful or repeated violations of the Board's rules, which includes failure of a licensee to adhere to the CDC recommendations and requirements for dental practices. Iowa Code § 153.34(4), 650 I.A.C. § 30.4(35) (2018). Here, Dr. Evans admitted he failed to follow the CDC recommendations concerning immunization records, a written exposure prevention and post-exposure management program, a written policy for work-related illnesses and work restrictions, drying of items in the sterilizer, and color coded medical waste containers. Further, the record shows he violated the CDC guidelines concerning the lack of utility gloves—which he acknowledges were not at his practice—and having the appropriate EPA-registered chemicals—as his were not registered at least at the time of the inspection. Finally, he violated the cold sterilization rules as, although he now claims this was not in use, his email to the Investigator indicates to the contrary. Given the sheer number of these violations, it is clear Dr. Evans' repeatedly violated the Board rules, and the grounds for discipline exist.

Turning to the sanction, the Board believes probation with certain conditions and a limited fine of $2,500.00 is appropriate. While the Board agrees with Dr. Evans' claim that conceptually some violations are more significant than others given the differentiated risk to the public associated with ignoring different types of CDC recommendations, the Board disagrees these violations at issue here were inconsequentially "administrative." For example, having a written exposure prevention and post-exposure management program and written policy for work-related illnesses and work restrictions is foundational in disease prevention and management. Such policies reveal a licensee's understanding of all the issues involved and an appreciation for the current practices, as well as provide a reliable guide to staff and the dentist who may not either remember all the nuisance of any policy governing an infrequent situation or think clearly about the appropriate response during an emergency. Dr. Evans' apparent practice of sending staff to the hospital for guidance on an issue is not sufficient in part because there may need to be an immediate response prior to an individual going to the hospital and those not going to the hospital may still need to engage in mitigation. See generally, Ex. 3, at p. 3 (staff stating during an interview: "She is not aware of a policy on exposures or exposure management and said she had a needle stick and reported it to Dr. Evans. He directed her to the emergency department at the hospital (Ottumwa Regional). She is not aware of any policies in the office for reporting an exposure or exposure prevention.").

The seriousness of the conduct at issue is also illustrated when considering the failure to have the appropriate cold sterilization chemicals or the EPA-registered chemicals. Neither was in short supply during the inspection, which was pre-pandemic, and whatever limited cost savings may have existed by not following the guidelines belie the public health danger associated with failure to have appropriate cleaning practices. While Dr. Evans is correct to note the record is devoid of any evidence of a patient contracting HIV, tuberculosis, or another infectious disease from his failure to follow the CDC recommendations, the Board does not have to have proof of such to know a substantial danger exists. Further, while Dr. Evans may be correct that at least some of his cleaning supplies were later listed by the EPA as able to kill more diseases, this does not change much as dentists are not allowed to substitute their own judgment on cleaning products for the EPA's decision. The CDC recommendations are not an a la carte menu that dentists can choose from, and even the failure to have the utility gloves is gravely concerning. Apart from the fact such is meant to avoid or mitigate needle sticks (which has occurred in his office), the practice is concerning because Dr. Evans' statement about "[p]eople in Washington [not having] all the answers" and using his own judgment on the issue reveals an awareness of the rule and a willful choice to disregard the rule. Absent unusual circumstances not present here, an intentional disregard for known rules evidences a mentality that is inconsistent with the safe practice of dentistry. This is not acceptable.

Dr. Evans' claim about the theoretical risks associated with his various deficiencies carries no weight even considering the remainder of the violations. In addition to the foregoing, the failure to ensure packages are allowed to dry in a sterilizer before being handled is not some trivial, technical matter, as wet materials tend to wick contagions from surfaces on which they are placed and wet packaging is more susceptible to tearing. Likewise, having the appropriate, color-coded medical waste containers is pivotal in ensuring medical waste, which may contain a variety of contagions, is properly disposed of. The specific counterargument that this issue does not matter because "most kids keep their teeth" and all the medical waste was placed "into the sharp container" is facially untenable in part because it ignores all the types of medical waste and disposal requirements in a dental office. Dr. Evans' Opening Statement PowerPoint presentation, at p. 3. Even the failure to maintain employee immunization records in their personnel file at the office, as opposed to relying on hospital records, cannot be ignored since having the records in the file make them immediately accessible in an emergency and serves to verify the immunizations occurred. Moreover, hospitals do purge their records in accord with their respective record-retention policies, and their records are not always immediately accessible. In short, the requirement exist because it matters, and skirting the requirement by relying on hospital records once again shows a mentality that is inconsistent with the safe practice of dentistry.

Accordingly, given the sheer number of significant violations, 2 years of probation is minimally acceptable to address the matter and ensure no other deficiencies in the practice reemerge. The fine of $2,500.00 also is necessary and sufficient given the number and gravity of the various violations as offset by Dr. Evans' willingness to remedy the matters when identified. The following terms of probation are also necessary to ensure Dr. Evans adheres to all CDC guidance and not have such lapses again.

ORDER

Dr. Evans' license to practice dentistry in the state of Iowa shall immediately be placed on probation for a period of two (2) years from the date of this Order subject to the following terms:

a. Within thirty (30) days of this Order, Dr. Evans shall submit the name and credentials of a proposed infection control monitor to the Board for approval. To receive approval, the proposed infection control monitor must be a licensee or registrant of the Board, be objective, have sufficient expertise in the area of infection control, and have the ability to perform inspections as required by this Order.

b. Once approved, the infection control monitor shall conduct an infection control inspection at Dr. Evans' office on a monthly basis during office hours when Dr. Evans is scheduled to see patients. No less than half of the inspections shall be unannounced. The goal of each inspection is to ensure appropriate protocols for the prevention of infectious diseases are being consistently met. Each inspection shall utilize a Board-approved inspection form.

c. Dr. Evans shall ensure the infection control monitor submits a monthly report to the Board following each inspection. The infection control monitor shall immediately report to the Board any deficiencies in the infection control protocols, if any.

d. The infection control monitor shall make recommendations for changes in protocols if necessary. Dr. Evans' shall comply with any recommendation made by any infection control monitor regarding infection control protocols within two weeks.

e. Dr. Evans shall be solely responsible for the costs associated with infection control monitoring. Respondent shall promptly reimburse the infection control monitor the customary fee for the service.

f. The Board may, in its discretion, decrease the frequency of the required inspections based on satisfactory performance by Dr. Evans.

g. Within ninety (90) days of the date of this Order, Dr. Evans shall successfully complete no less than 6 hours of Board-approved courses in the area of infection control, that shall not be counted towards continuing education hours. At least three of the hours must be completed in-person in Dr. Evan's office, with all staff in his practice attending. It must have prior approval by the Board, and proof of attendance must be submitted. Any report generated by the in-house training must be submitted to the infection control monitor.

h. Within thirty (30) days of the date this Order and then throughout the term of probation, Dr. Evans must employ a registered dental assistant to assist with infection control responsibilities and to serve as a worksite monitor. Dr. Evans must notify the Board of the name of the individual and that person's credentials, and the individual must be Board approved. The worksite monitor is responsible for identifying and addressing any infection control deficiencies. Any unwillingness to correct or address deficiencies by Dr. Evans shall be reported to the Board by the worksite monitor. Dr. Evans cannot retaliate or take any adverse action against the worksite monitor for reporting information to the Board or performing any action required by this Order, and the worksite monitor shall submit monthly reports to the Board. Each report shall utilize a Board-approved inspection form provided to the worksite monitor by the Board upon request.

i. Dr. Evans shall be responsible for all costs incurred in complying with this Order. Dr. Evans shall be responsible for the costs incurred by the Board in monitoring Respondent's probationary period. Respondent shall promptly remit payment in the amount of three hundred dollars ($300.00) on or before the 1st of January, April, July, and October of each year for such costs while on probation.

In addition, within ninety (90) days of the date of this Order, Dr. Evans shall submit a civil penalty in the amount of two thousand five hundred dollars ($2,500.00) to the Board made payable to Treasurer, State of Iowa.

Pursuant to Iowa Code section 272C.6, the Respondent is ordered to pay $75.00 for fees associated with this disciplinary hearing and $82.50 for the court reporter fees. The total fees of $ 157.50 shall be paid within thirty (30) days of receipt of this decision.

IT IS SO ORDERED.

Dated this 1st day of October, 2021.

Monica Foley

Monica Foley, D.D.S., Chair
Dental Board of the State of Iowa

cc: Laura Steffensmeier, Assistant Attorney General
Thomas Evans, Attorney for Respondent
Joe Fraioli, Legal Director, Iowa Board of Medicine on behalf of the Iowa Dental Board
(All parties served by mail and email)

NOTICE

Pursuant to Iowa Code section 17A.19, 153.33(3)(g)(h) (2021) and Iowa Administrative Code Rule 650-51.31, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 650-51.24.