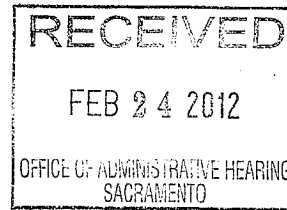


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8
9 **BEFORE THE**
10 **DENTAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Interim Suspension
14 Order Against:

15 **DAVID MILTON LEWIS, D.M.D.**
16 **4350 Marconi Ave # 100**
17 **Sacramento, CA 95821**

18 **Dental License No. 31489**

19 Respondent.

DBC Case No. **01-2010-1305**
OAH Case No. **2012020853**

20 **MEMORANDUM OF POINTS AND**
21 **AUTHORITIES IN SUPPORT OF PETITION**
22 **FOR INTERIM SUSPENSION ORDER**

23 Date: February 24, 2012
24 Time: 1:30 p.m.
25 Location: OAH – Sacramento

26
27 Petitioner, Richard DeCuir, Executive Officer of the Dental Board of California,
28 Department of Consumer Affairs, State of California ("Petitioner") hereby submits this
Memorandum of Points and Authorities in support of this Petition for an Interim Suspension
Order. For all the reasons set forth herein below, the requested Interim Order of Suspension
should issue against David Milton Lewis, D.M.D. and California Dental Certificate No. 31489
(hereinafter "Respondent").

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STATEMENT OF FACTS

Respondent David Milton Lewis was issued Dental License No. 31489 by the Dental Board of California ("Board") on July 14, 1983. (Decl. Clanton, Exh. 1). This license will expire on October 31, 2013, unless renewed. (Id.) Respondent was issued Oral Conscious Sedation Certification No. 1548 by the Board on September 16, 2008 and Fictitious Name Permit No. 2130 was issued by the Board on September 28, 1998 (Id.)

On or about December 1, 2010, NR, former Insurance Claims Manager for Respondent's dental practice for about nine (9) years was interviewed by Board Investigator Kyle Clanton and issued a complaint with the Board that Respondent was performing unnecessary and excessive treatment on patients' healthy and natural teeth and subsequently billing insurance companies for the services. (Decl. Clanton, ¶ 2-3). NR explained that around the time the economy started to get worse in 2008, DR. LEWIS began pursuing patients who worked for United Parcel Service (UPS), because their dental insurance (Delta Health Systems) covered 100% of dental treatments, with no maximum dollar limit, and no co-pay. (Decl. Clanton, ¶ 3). NR stated that DR. LEWIS would send his employees to UPS warehouse locations with food and drinks to solicit UPS employees. (Id.) NR explained that DR. LEWIS' employees would pass out referral flyers and food to UPS employees and explain that they could receive \$200.00 for referring a fellow UPS employee for treatment at DR. LEWIS' office. (Id.) Additionally, the patient who was referred for treatment would also receive approximately \$30.00 and a free Sonicare. (Id.) NR stated DR. LEWIS' office maintained a log of the cash referrals given to UPS patients. (Id.) NR explained that DR. LEWIS would use this referral tactic to attract UPS patients to his practice and proceed to conduct excessive and unnecessary treatments on the UPS patients because of their exceptional dental insurance coverage. (Id.)

Investigator Clanton obtained a spreadsheet from Delta Health Systems for the claims paid to DR. LEWIS for each year during the period of 2006 to 2011, that indicates a significant increase in payments starting in 2009, from an average of \$154,000 per year in claims prior to 2009 to a pro-rated average of \$870,000 per year in claims after 2009, which corroborated the statements provided by NR, indicating DR. LEWIS began to solicit UPS patients in 2008 (Decl.

1 Clanton, ¶ 4-5). This information was also corroborated by Delta Health Systems that they paid
2 dental claims to DR. LEWIS totaling \$2,738,499.08. (Decl. Clanton, ¶ 5).

3 On June 15, 2011, Investigator Clanton obtained a cash referral flyer from the UPS
4 warehouse supervisor that was being distributed by Respondent's employees at the UPS
5 warehouse in West Sacramento. (Decl. Clanton, ¶ 6 and See Exh. 2). This flyer was an exact
6 match of the copy which NR had provided to Investigator Clanton earlier. (Id.)

7 On October 13, 2011, Investigator Clanton interviewed RF, a former Registered Dental
8 Assistant (RDA) for DR. LEWIS' office during the time period of January 2009 through February
9 2010. (Decl. Clanton, ¶ 10). RF stated that she had firsthand knowledge of the solicitation of
10 UPS patients by Dr. Lewis' employees. (Id.) They would go to the UPS warehouse located in
11 West Sacramento on a weekly or bi-weekly basis to pass out referral flyers to UPS employees.
12 (Id.) RF also went to the UPS warehouse in West Sacramento to represent DR. LEWIS' office at
13 a UPS Health Fair. (Id.) RF reviewed a copy of the referral flyer provided to Investigator Clanton
14 by the UPS warehouse supervisor and she confirmed it was an exact copy of the flyer
15 Respondent's employees would pass out to UPS employees. (Id.) RF stated that the UPS
16 employees would receive \$30.00 on their first visit to DR. LEWIS' office and \$200.00 on their
17 second visit after receiving treatment. (Id.) RF stated that DR. LEWIS' office typically treated
18 between one (1) and four (4) UPS patients per day. RF stated that UPS patients were the "main
19 focus" of DR. LEWIS' office because they had 100% dental coverage with no maximum limit of
20 coverage, and with such excellent coverage DR. LEWIS' mentality was, why not treat everything
21 in the UPS patients' mouth, thus creating a high number of full-mouth reconstructions. (Id.)

22 On October 14, 2011, Investigator Clanton interviewed LM, a RDA who worked for DR.
23 LEWIS' office during the time period of March 2010 through April 2010. (Decl. Clanton, ¶ 11).
24 LM stated during the time period she worked at DR. LEWIS' office, UPS patients were the
25 "target." (Id.) LM explained that DR. LEWIS knew exactly what the UPS patients' dental
26 insurance (Delta Health Systems) covers (such as inlay/onlay versus crowns), and he knows that
27 their insurance does not have an annual maximum dental coverage limit. (Id.) LM stated DR.
28 LEWIS' office typically treated five (5) to six (6) UPS patients per day, and one (1) UPS patient's

1 treatment lasted approximately four (4) to five (5) hours. (Id.) LM stated she first discovered DR.
2 LEWIS was soliciting UPS employees during the "Morning Huddle" meeting conducted at the
3 beginning of everyday at DR. LEWIS' office. (Id.) In these meeting DR. LEWIS would also
4 discuss his expectations of the staff in order to increase treatment production and discuss the
5 patient treatments for the day. (Id; See also Exh. 16, p. 2.) LM stated that Respondent's
6 employees would visit UPS warehouses and pass out referral flyers. (Id.) Investigator Clanton
7 showed LM a copy of the referral flyer (See Decl. Clanton, Exhibit 2) and she confirmed it was
8 an exact copy of the flyer that Respondent's employees would pass out to UPS employees. (Id)

9 On October 7, 2011, Investigator Clanton obtained and executed a Search Warrant
10 (#11SW00964), that authorized the Dental Board to search Respondent's Dental Practice and
11 seize the records of 123 different UPS employees and/or their dependents. (Decl. Clanton, ¶ 7,
12 Exh. 4). These 123 names were based on the names given to Investigator Clanton by Delta
13 Health Systems from dental claims submitted by Respondent. (Id.) The search resulted in the
14 seizure of 11 computers, 1 laptop, patient records (pre-treatment x-rays in the form of the original
15 bite wing and original panoramic x-rays, digital color photographs taken of the patients' mouth,
16 and post-operative x-rays), insurance claims, a binder of UPS patient cash referral receipts,
17 employment records, financial statements and billings, and other documents relating to
18 Respondent's dental practice. (Id.)

19 A binder of UPS patient cash referral receipts from DR. LEWIS' office indicating patient
20 names and dates of those patients who were reimbursed the \$200.00 cash referral was also seized
21 pursuant to the search warrant executed on October 7, 2011. (Decl. Clanton, ¶ 8, Exh. 4). A flyer
22 entitled "Urgent UPS Employees!!!!!" and a business plan entitled "DR. DAVE'S BONUS
23 PLAN FOR EXCEPTIONALLY TALENTED STAFF" was obtained from the computers seized
24 from Respondent's office pursuant to warrant No. 11SW00964. (Decl. Clanton, ¶ 13, Exh. 16).

25 The Board's Expert Witness, David Graham, completed a tooth-by-tooth analysis of 17 of
26 the 123 UPS patients, by reviewing the pre-treatment condition of each tooth, the diagnosis made
27 by Respondent (if any), clinical notes (e.g., progress notes) made by Respondent and his staff, the
28 treatment plan, the dental treatments provided by Respondent, the procedures billed to the

1 insurance company, and the actual treatment delivered. (See Decl. Graham.) On or about January
2 30, 2012, Dr. Graham performed dental examinations of several of these 17 patients at the Dental
3 Board's Sacramento Office. (Id., Decl. Clanton, ¶ 7).

4 In general, Dr. Graham observed many unnecessary procedures, including root canals, to
5 perfectly sound, healthy teeth on most, if not all, of the 17 patients. (Decl. Graham, ¶ 3).
6 Respondent Lewis performed restorative procedures to numerous teeth that had no decay, or
7 incipient decay that did not require any dental restoration work. In addition, Respondent Lewis
8 also billed the dental insurance company (Delta Health Systems) for work or procedures that were
9 not performed, and presented numerous false claims to the insurance company. (Id.) Dr. Graham
10 then presented a detailed tooth-by-tooth analysis of the following five (5) patients selected from
11 these 17 patients: DJ, ER, ER, Jr., MM, and CM: (Decl. Graham, ¶¶ 6-37)

12 Patient DJ first visited Respondent's practice on December 8, 2008 as a 22 year old male
13 patient employed by UPS for five years. (Decl. Graham, ¶ 6) The records indicate that the patient
14 had no prior dental problems, other than sensitivity to sweets with an upper molar. (Id.) The
15 initial pre-operative bite-wing and panorex x-rays taken by Respondent demonstrate that the
16 patient had no prior restorations, no evidence of decay. (Id.) Over a 23- month period
17 Respondent claimed to have performed 28 restorative procedures to 19 different teeth, billing
18 Delta Health Systems insurance \$19,333 for this patient. (Id.) None of these procedures were
19 necessary. (Decl. Graham ¶¶ 7-9) Respondent justified many of these procedures on the dental
20 claim form by falsely stating that many teeth had old alloy fillings with decay underneath, when,
21 in fact, these teeth neither had any prior fillings nor any evidence of decay. (Id.) Respondent also
22 claimed to have performed five-surface metal onlay restorations to most of DJ's teeth on dental
23 claim forms, however, the review of the patient's mouth revealed that he only actually received a
24 one or two-surface restoration to these teeth. (Id.)

25 Patient ER first presented to Respondent on June 29, 2009, as a 19-year-old female
26 employee of UPS, with three teeth with decay and two teeth with three pre-existing small
27 amalgam restorations with no recurrent decay or other evidence for the need of further dental
28 restoration. (Decl. Graham, ¶ 10). In an 18 month period, Respondent claimed to have

1 performed 27 restorative procedures to 18 different teeth, billing Delta Health Systems insurance
2 \$21,516 for this patient. (Id.) All this patient needed was a small one or two surface restoration to
3 three teeth. (Id.) Instead, Respondent performed unnecessary root canals, and a total full-mouth
4 restoration to numerous teeth with no prior cavities that appeared from the radiographic evidence
5 to be perfectly sound and healthy teeth. Respondent justified many of these procedures on the
6 dental claim form by falsely stating that many teeth had old alloy fillings with decay underneath,
7 when, in fact, many of these teeth neither had any prior fillings nor any evidence of decay. (Decl.
8 Graham, ¶¶ 10-15) Respondent also claimed to have performed five-surface metal onlay
9 restorations or full crowns to most of ER's teeth on dental claim forms, however, the review of
10 the patient's mouth revealed that she only actually received a one, two, or three-surface
11 restoration to these teeth. (Id.) The patient's chart also demonstrates that ER received a cash
12 payment from Respondent in the amount of \$200 for a new patient referral. (Decl. Graham, ¶ 16)

13 Patient ER, Jr. first presented to Respondent on March 9, 2009, as a 32 year old male
14 employed by UPS for the past 13 years. (Decl. Graham, ¶17) During a 14 month period,
15 Respondent billed for 28 different restorative procedures to 21 different teeth in the amount of
16 \$25,215. Respondent performed unnecessary root canals, and a total full-mouth restoration to
17 perfectly sound and healthy teeth. (Id.) Respondent justified many of these procedures on the
18 dental claim form by falsely stating that many teeth had old alloy fillings with decay underneath,
19 when, in fact, many of these teeth neither had any prior fillings nor any evidence of decay. (Decl.
20 Graham, ¶¶ 18-23) Respondent also claimed to have performed five-surface metal onlay
21 restorations or full crowns to most of ER, Jr.'s teeth on dental claim forms, however, the review
22 of the patient's mouth revealed that he only actually received a one or two-surface unnecessary
23 restoration to these teeth. (Id.)

24 Patient MM first presented to Respondent on April 30, 2009, as a 46 year old male patient,
25 employed by UPS for seven years. (Decl. Graham, ¶ 24) During the course of a 20-month time
26 period, Respondent billed the insurance company for 30 restorative procedures to 24 different
27 teeth, claiming \$25,153.11 in dental procedures. (Id.) In fact, Respondent signed an insurance
28 claim form under the penalty of perjury for services allegedly provided on June 29, 2010, for two

1 porcelain-baked-to-metal (PBM) crowns on teeth # 5 and # 12, at a cost of \$1,042 each for teeth
2 that did not exist in the patient's mouth. (Decl. Graham, ¶ 29) With regard to many teeth that did
3 exist, Respondent performed unnecessary single-surface composite resin fillings, then one year
4 later, removed these single-surface composite fillings, and replaced them with full gold crowns,
5 without any evidence of any decay or other justification for either procedure. (Decl. Graham, ¶¶
6 25-29.) Respondent justified many of these procedures on the dental claim form by falsely
7 stating that many teeth had old alloy fillings with decay underneath, when, in fact, many of these
8 teeth neither had any prior fillings nor any evidence of decay. (Id.) Respondent also claimed to
9 have performed five-surface metal onlay restorations or full crowns to most of MM's teeth on
10 dental claim forms, however, Respondent only provided a one or two-surface unnecessary
11 restoration to these teeth. (Id.) Respondent also submitted two different claims for two crowns on
12 the same tooth (# 10) which the initial x-rays demonstrated that it had no decay and no evidence
13 to support any dental restoration work. (Decl. Graham, ¶ 29.)

14 Patient CM first visited Respondent's practice on June 25, 2009, as a 24-year old male
15 dependent of a UPS employee who first presented for teeth cleaning and an examination, with no
16 prior dental problems. (Decl. Graham, ¶ 30) A review of the patient's dental chart and x-rays
17 indicate there was no need for any restorative dental treatments to this patient on June 25, 2009,
18 except possibly to one tooth. (Id.) During a two-year period, Respondent claimed to have
19 performed 19 restorative procedures to 14 different teeth, billing Delta Health Systems insurance
20 \$15,877 for this patient. (Id.) In doing so, Respondent performed unnecessary dental restoration
21 to sound, healthy teeth. (Id.) Respondent submitted false dental claim forms by falsely stating
22 that many teeth had decay, when, in fact, there was no evidence of decay in the pre-operative x-
23 rays. (Decl. Graham, ¶¶ 31-37) Respondent also claimed to have performed five-surface metal
24 onlay restorations or full crowns to most of CM's teeth on dental claim forms, when, in fact, the
25 patient only actually received a one or two-surface restoration to these teeth, which restorations
26 were unnecessary. (Id.)

27 **I. THIS COURT HAS AUTHORITY TO ISSUE THE REQUESTED ORDER**

28 Business and Professions Code section 494 states, in relevant part:

1 (a) A board or an administrative law judge sitting alone, as provided in subdivision
2 (h), may, upon petition, issue an interim order suspending any licentiate or imposing
3 license restrictions, including, but not limited to, mandatory biological fluid testing,
supervision, or remedial training. The petition shall include affidavits that
demonstrate, to the satisfaction of the board, both of the following:

4 (1) The licentiate has engaged in acts or omissions constituting a violation of
5 this code or has been convicted of a crime substantially related to the licensed
activity.

6 (2) Permitting the licentiate to continue to engage in the licensed activity, or
7 permitting the licentiate to continue in the licensed activity without restrictions,
would endanger the public health, safety, or welfare.

8 This court may issue an interim suspension on an ex parte basis, without prior notice to
9 respondent, pursuant to section 494 (b), which states: "No interim order provided for in this
10 section shall be issued without notice to the licentiate unless it appears from the petition and
11 supporting documents that serious injury would result to the public before the matter could be
12 heard on notice." The standard of proof required for issuance of an interim suspension order
13 pursuant to Code section 494 is preponderance of the evidence. (Code section 494, subd. (e))

14
15 **II. RESPONDENT IS SUBJECT TO DISCIPLINE FOR UNPROFESSIONAL**
16 **CONDUCT IN VIOLATION OF THE BUSINESS AND PROFESSIONS CODE**

17 The first element that must be proven in order to issue an ISO is that Respondent has
18 engaged in acts or omissions constituting a violation of this code or has been convicted of a crime
19 substantially related to the licensed activity. Based on the declarations and exhibits attached
20 thereto in support of this petition, Petitioner has clearly shown that Respondent has engaged in a
21 pattern of acts and omissions that constitute violations of the Business and Professions Code.
22 Respondent has violated Business and Professions Code sections 650, 810(a), 1670, and 1680(a).

23 The payment of money to patients, staff, or the public for patient referrals by Respondent
24 and/or his staff is a violation of section 650. The issuance of insurance claims by Respondent for
25 services for procedures that were not performed, or for services that were performed only in part,
26 such as billing for a five-surface onlay, but providing only one, two, or three-surface onlay/inlay
27 restorations, is a false insurance claim in violation of Business and Professions Code section
28 810(a). The restoration to teeth that had no evidence of any need for dental restoration work by

1 Respondent is an extreme departure from the standard of care, and constitutes gross negligence,
2 in violation of Code section 1670. The issuance of insurance claims for services for procedures
3 that were not performed, or for services that were performed only in part, such as billing for a
4 five-surface onlay, but providing only one, two, or three-surface onlay/inlay restorations, is a
5 false insurance claim in violation of Business and Professions Code section 1680(a).

6
7 **III. PERMITTING RESPONDENT TO CONTINUE TO ENGAGE IN THE LICENSED**
8 **ACTIVITY WOULD ENDANGER THE PUBLIC HEALTH, SAFETY, OR WELFARE.**

9 Turning to the second factor, Petitioner must show that permitting the licentiate to continue
10 to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity
11 without restrictions, would endanger the public health, safety, or welfare. Based on the above
12 facts and the evidence presented with this Petition, it is clear that Respondent is performing
13 unnecessary and excessive treatment on patients' healthy and natural teeth and issuing false
14 dental claims for payment of these services, some of which were never performed or were only
15 performed in part. Respondent has clearly engaged and continues to engage in a pattern of
16 mayhem to perfectly sound and healthy teeth and fraud by making false and/or misleading
17 statements on dental claim forms, and other wrongful conduct by targeting UPS employees with
18 offers of cash payments for referrals. This conduct is not mere negligence or oversight, but
19 intentional acts of physical injury to his patients and fraud. There is no evidence that this pattern
20 will stop without the immediate intervention by this court. Petitioner's paramount duty is to
21 protect the People of California. (Bus. & Prof. Code section 1601.2). Petitioner is not required to
22 wait until patients or the public are actually harmed, or further harm is incurred, before taking
23 action. (Griffiths v. Superior Court (2002) 96 Cal.App.4th 757, 772) In that Respondent has
24 demonstrated an unwillingness or inability to comply with the laws relating to professional
25 conduct, he must be suspended from the practice of dentistry now, or further serious injury will
26 result.

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28

1 IV. SERIOUS INJURY WILL RESULT TO THE PUBLIC IF RESPONDENT'S
2 LICENSE IS NOT IMMEDIATELY SUSPENDED

3 Finally, suspension of Respondent's license on an ex parte basis is appropriate since serious
4 injury to the public will result if Respondent's license is not immediately suspended. The issue is
5 not the speed within which governmental bureaucratic agencies can gather the necessary evidence
6 to present to this court. The standard is whether, based on Respondent's past conduct, serious
7 injury to the public will result if Respondent's license is not immediately suspended. This court
8 should look to the gravity of the harm in order to determine whether to grant this Petition on an *ex*
9 *parte* basis. In this case, Respondent's conduct has violated his most sacred trust – harm to his
10 patients. Respondent's conduct demonstrates a careless disregard to the sound healthy teeth of
11 his patients that justifies the immediate suspension of Respondent's license on an *ex parte* basis.

12 CONCLUSION


13 Respondent poses a real and immanent threat to the safety of the public based on his
14 careless acts of mayhem and harm to his patients and fraud perpetrated against Delta Health
15 Systems. Performing unnecessary dental procedures to sound healthy teeth, and then submitting
16 fraudulent dental claims under the penalty of perjury is the worst kind of evil a dentist can engage
17 in. Respondent's license must be immediately suspended until an administrative action can be
18 held to determine whether he should be allowed to ever practice dentistry again. For these and all
19 other reasons stated above, and in furtherance of Petitioner's legislative mandate to protect the
20 public, Petitioner respectfully requests that an interim order be issued immediately suspending
21 California Dental Certificate No. 31489 issued to David Milton Lewis.

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23 //

1 Dated: February 24, 2012

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