

AMENDED PARAGRAPH 3

3. On February 6, 1987, Houseman fixed two teeth for minor patient, [REDACTED], as if the two were one tooth. He restored the mesial-occlusal of tooth A and the distal-occlusal of tooth B with one mass of composite without leaving an interproximal freeway between the teeth. He made no subsequent effort to separate the teeth, nor did he advise the patient to have that work done elsewhere.

AMENDED PARAGRAPH 6

6. The infection was caused by the improper techniques employed by Dr. Houseman in the course of his placement of the composite restoration, including:

- a. His failure to remove all decay from the tooth/teeth, and
- b. His failure to utilize a base liner between the composite and the remaining dentin.

Dr. Houseman treated the patient on three occasions after placement of the composite, but failed to take steps to correct the deficiencies causing the infection and failed to make further appointments to correct the deficiencies or to warn the patient's parent to obtain such treatment elsewhere.

At the hearing the Petitioner was present and represented by Assistant Attorney General James Forbes. Dr. Houseman was present and represented by Kathleen A. Weeks, Attorney at law.

The Petitioner presented the testimony of [REDACTED] [REDACTED] (the patient's father), Dr. Tony Paden, D.D.S. (Expert), Dr. Paul Buxton, D.D.S. (Expert).

Dr. Houseman presented his own testimony as well as that of Denys Tripp (his receptionist) and Dr. James Case

(expert). Dr. Houseman also called Dorothy Hanson (Division of Occupational Licensing) and Gary Dodson (Division of Occupational Licensing) as witnesses.

The following exhibits were admitted on behalf of the Petitioner:

- 1-A Houseman Records/[REDACTED] (2/16/87)
- 1-B Article-ABA Accepts Posterior Composite etc.
- 1-C Letter from [REDACTED]
- 1-D Houseman Records/[REDACTED] (2/23/87)
- 2 Paden Records/[REDACTED]
- 3 Dentist License-Houseman
- 4 Audio Tape-[REDACTED] Deposition
- 5 Sketch by Paden
- 6 Sketch by Buxton

The following exhibits were admitted on behalf on Dr. Houseman:

- A Case Records. Houseman-[REDACTED]
- A-1 Houseman x-rays-[REDACTED]
- B Houseman Case Chronology-[REDACTED]
- C Paden case records-[REDACTED]
- C-1 Paden x-ray-[REDACTED]
- D Werner case records-[REDACTED]
- E 10/1/87 letter-[REDACTED]
- F McCavit case records-[REDACTED]
- F-1 McCavit x-rays-[REDACTED]
- G Synopsis-[REDACTED] case
- H Sketch by case at deposition
- I "Pathways of the Pulp"-xiii; pp 654-5
- J "Pathways of the Pulp" pp 379-402
- K "Pathways of the Pulp" pp 750-754, 756-767, 770-774, 776-778, 781
- L Table of Contents-
Investigations Procedures Manual
- M Form letter to Houseman Patients
- N Investigations Manual pp 53-56
- O (1-3) Teeth Models-Houseman (3)

The Hearing Officer, having heard the testimony, and having considered the evidence, argument, and briefing hereby makes the following Findings of Fact, Conclusions of Law, and Recommendation, to wit:

FINDINGS OF FACT

1. Dale A. Houseman holds license number AA0471 issued by the Alaska Board of Dental Examiners.

2. On four occasions, Houseman saw and treated patient [REDACTED] (the patient). These office visits took place on February 6, 1987, February 23, 1987, April 3, 1987, and July 16, 1987. The patient was born on October 17, 1979, and was therefore seven years old at the time of each visit.

3. At the time of the first office visit on February 6, 1987, the patient had significant decay in the mesial-occlusal area of tooth A and the distal-occlusal area of tooth B. these were deciduous or baby teeth.

4. On February 6, 1987, Houseman repaired these cavities referred to in the paragraph above with one mass composite filling bridging the two teeth together. This procedure is contrary to the generally accepted standards of restorative dentistry. Houseman testified that he followed this procedure because the patient was physically resisting the placement of metal "matrix" bands around the individual teeth. Placement of matrix bands around the individual teeth is necessary to facilitate the placement of composite filling material in the teeth. Houseman testified that the patient was uncooperative in that the patient refused to open his mouth to permit treatment and grabbed at Houseman's hands when he attempted to place the bands on the individual teeth.

5. Houseman's dental assistant in the treatment of this patient was Denys Tripp. Ms. Tripp testified that the patient reached for Houseman's hand when Houseman was attempting to place the matrix band around the teeth. Tripp also testified that [REDACTED] was in the treatment room when Houseman attempted to place the matrix bands around the teeth. The father testified that he was in the treatment room for part of the procedure and did not observe any difficulty that Houseman was having with the patient other than that the patient was crying. Tripp testified that the father had made an appointment for the February 6 visit. This contradicts Houseman's testimony that the patient showed up on an emergency "walk in" basis without an appointment. The father confirmed Tripp's testimony that the appointment was scheduled in advance by telephone.

6. The father was concerned that Houseman not use silver fillings on the patient due to the father's concern with possible mercury poisoning. It appears that some of the father's anxiety and apprehension were transmitted to the patient.

7. While the patient's behavior necessitated a treatment varying from the normal procedure, Houseman made no entry in his chart whatsoever regarding the behavior of the patient on February 6, 1987. Houseman's charted entry for that visit reflects that procedure number "2340" was performed on teeth A and B. Procedure number "2340" is the number used to

designate a finished, permanent filling, not a temporary filling. If a patient's behavior prevents the completion of a normal restoration, the standard in the profession calls for that behavior to be clearly noted in the chart. This is necessary to explain why the original intended procedure was not followed, to refresh the dentist's recollection as to the behavior of the patient at the time of subsequent visits, and to alert other dentists as to the status of the patient.

8. The testimony of the patient's father and Houseman were of insufficient accuracy and detail upon which to base any finding in regard to statements made by Houseman to the father. The only reliable evidence of what took place in regard to the treatment plan is the dental records. In regard to the patient's behavior, however, the testimony of Denys Tripp appeared clear and credible.

9. The mass composite filling between teeth A and B appeared to be "finished" according to Dr. Paden. This meant that Houseman had to contour the composite material after he placed it between the teeth to prevent it from interfering with the opposing teeth. It was also necessary to finish the filling to seal the margins around the filling. In order to "finish" a composite filling, a significant degree of cooperation from the patient is necessary. The patient must open his mouth to permit the finishing work to take place, and the patient must follow the dentist's instructions in biting

down so that the dentist can see if the filling is coming into contact with teeth on the opposite side of the mouth.

10. Placement of the composite filling bridging teeth A and B together, in the case of deciduous teeth, poses a number of risks. It is not possible to clean accumulated plaque from the space between the teeth. It could also result in an infection. Because these were deciduous teeth, there was some risk of injury to the patient in view of the fact that the teeth would, in all probability, be pushed out at different times by erupting adult teeth. When this occurred, the composite material between the teeth might have fractured, the composite in the tooth adjacent to the erupting tooth might be torn out, or the erupting tooth could conceivably change course and come out at a different angle due to its inability to move the tooth above it, due to the bonding between the deciduous teeth caused by the single composite filling.

11. A second appointment was made for the patient for February 23, 1987, but Houseman had no treatment plan during that office visit, nor any future office visit, to separate the composite restoration.

12. On February 23, 1987, the patient returned to Houseman for a prophylaxis, an exam and x-rays. (Exhibit A-1, Testimony of Houseman.)

13. On April 3, 1987, the patient returned to Dr. Houseman for treatment of teeth S and I. These teeth had some decay that required restorative treatment.

14. Some time after the April 3, 1987, visit, the patient developed an infection on the gum between teeth A and B. The family tried various means of dealing with this infection. On July 16, 1987, the patient returned to Houseman. Houseman performed a pulpectomy on tooth B, but took no action to separate, or schedule the separation of, the composite between teeth A and B.

15. Between the end of July and mid-September of 1987, the father noticed that the patient's gums between teeth A and B were continually sore, inflamed and occasionally infected looking. On September 29, 1987, the father took the patient to Dr. Tony Paden in Palmer. This was an emergency walk in visit, and Dr. Paden did not have time on his schedule to treat the patient. A appointment was made for the following day.

16. On September 23, Paden performed a pulpotomy on tooth A. In drilling a hole through the mesial composite, Paden encountered significant decayed tooth material under the mesial composite. Paden noticed no deficiency in the margins of the composite filling, and did not see any portal or entry within which the decay could have entered the tooth subsequent to Houseman's treatment of tooth A. Given the location of the

decay as shown by the yellow markings on Exhibit 5, and given the lack of a portal for entry of decay, the decay was left behind by Houseman at the time he placed the composite material between teeth A and B on February 6, 1987. Additionally, Paden noted that Houseman had failed to utilize a base liner between the composite and the remaining dentin in tooth A. Houseman testified that he "could not recall" having placed a base liner between the composite and the remaining dentin. Testimony was introduced that it would be necessary to place a base liner of calcium hydroxide material between the remaining dentin and the composite material in order to protect the dentin and possibly the pulp from irritation introduced through the use of etching material applied prior to the installation of the composite, and the irritation caused by the composite material itself. There was no base liner visible on any of the x-rays.

17. Subsequent to the September 23 pulpotomy, Paden scheduled an additional appointment with the patient to correct the improperly placed composite filling. Paden's objective was to allow the infection in tooth A to resolve prior to making a permanent correction in the improper composite filling.

18. Paden initially attempted to persuade the father to return to Dr. Houseman to have the improper work corrected. The father declined to do so due to his dissatisfaction with Houseman's treatment.

19. After the September 23 treatment by Paden, the infection between teeth A and B subsided. On October 1, 1987, the patient returned to Paden. Paden separated the composite fillings, recontoured tooth B and placed a stainless steel crown on tooth A. (Exhibit 6, Testimony of Paden.)

20. Subsequent to Houseman's and Paden's treatment of the patient, teeth A and B survived until the eruption of the permanent teeth.

21. Paden and Buxton offered their expert opinions that Houseman's treatment of the patient was below the minimum standards in the dental profession in the following respects:

- a. That placement of the composite filling bridging teeth A and B together was inappropriate dental care. It is contrary to the principles of restorative dentistry. The procedure can only be justified as an emergency measure given extraordinary conduct by a patient who was resisting treatment;
- b. Even if the initial placement of the composite bridging the two teeth together was justifiable as an emergency measure, it would not be appropriate to allow that type of joint composite filling to remain in place for an extended period of time due to the inability to clean between the teeth and due to the inevitability of those teeth being subsequently replaced by adult teeth;

c. The subsequent infection in teeth A and B was most likely caused by improper techniques employed by Houseman in the course of his placement of the composite restoration, including:

1. His failure to remove all decay from the tooth/teeth, and
2. His failure to utilize a base liner between the composite and the remaining dentin;
3. The failure to take steps to correct the deficiencies causing the infection and the failure to develop a treatment plan to separate the composite, constitute conduct that was below the minimum standards of the profession. (Testimony of Buxton, Paden.)

The Respondent's expert, Dr. Case, testified that it would be inappropriate to leave the joint composite filling in place for an indefinite time. Inability to clean between the teeth could result in additional decay, and the filling would inevitably fail when the adult teeth erupted beneath either of the deciduous teeth.

22. The testimony of Dr. Case, a Board Certified Specialist in Children's Dentistry, was that the subsequent abscess of these teeth was probably inevitable regardless of treatment by Houseman and Paden. This, however, does not excuse performance below professional standards by Houseman.

23. Houseman testified that he had not made plans to separate the composite filling between the teeth, and that he did not advise the father to have that work done elsewhere. Houseman testified that, after he last saw the patient on July 16, 1987, he did not think about the patient or the condition he had created in the patient again until a subpoena was served on his office (which had been approved for issuance by the board) in November 1988.

CONCLUSIONS OF LAW

1. Under AS 08.36.315(5), the board may revoke or suspend the license of a dentist, or may reprimand, censure or discipline a dentist if the board finds that the dentist engaged in the performance of patient care that does not conform to minimum professional standards of dentistry, regardless of whether actual injury to the patient occurred.

2. Under the amended accusation, Houseman is charged with practicing dentistry beneath the minimum standards of the profession in the following respects:

- a. That on February 6, 1987, he restored the mesial-occlusal of tooth A and the distal-occlusal of tooth B with one mass composite without leaving an interproximal freeway between the teeth;

b. He made no subsequent effort to separate the teeth, nor did he develop a treatment plan to have the work done;

c. That the subsequent infections developed by the patient were the result of Houseman's techniques employed in the course of placing the composite restoration including,

1. His failure to remove all decay from the tooth/teeth, and
2. His failure to utilize a base liner between the composite and the remaining dentin.

d. Houseman treated the patient on three occasions after placement of the composite, but failed to take steps to correct the deficiencies causing the infection and failed to note his utilization of an emergency procedure and develop a treatment plan to correct the deficiencies.

3. The expert testimony establishes that, in the case of an seriously agitated patient, it may be proper to temporarily repair teeth in the manner that Houseman did with respect to teeth A and B, but only if such restoration is done on a temporary basis and steps are taken to ensure that the patient will have the deficiency in the treatment corrected at

a later date. Houseman's chart notes fail to indicate that Houseman encountered difficulty treating the patient as a result of the patient's behavior. It is necessary to chart this occurrence. The fact that Houseman did not chart difficulty with this patient's behavior fails to alert Houseman and other dentists of a condition which must be changed. Evidence supporting the fact that Houseman did not plan to correct his work is found in the fact that Houseman contoured and otherwise "finished" the composite filling between teeth A and B.

4. Houseman's subsequent failure to either separate the composite himself or take steps to develop a treatment plan to correct the situation constitutes work that is below the minimum standards of the profession. Houseman himself testified that he made no effort on any of the subsequent three visits of the patient to separate the fillings. He did not deny that he did not discuss the need to separate the fillings with the father, not did he deny that he did not advise the father to have that work performed elsewhere. In fact, Houseman testified that subsequent to the July 16, 1987, appointment, he did not think about the patient and the improper composite filling until a subpoena was served on him in November 1988, approximately 16 months later.

5. There is disagreement between the experts as to what Houseman should have done on the February 6, 1987 visit. Dr. Buxton expressed a preference for performing the pulpotomy immediately, given the deep decay that was encountered in the teeth. Other professionally acceptable techniques could have been employed, however. Dr. Paden testified that he believed Houseman should have installed a temporary filling if he truly had encountered behavioral difficulties with the patient. A temporary filling would have been a different color than the permanent filling, thereby signaling Houseman and any subsequent treating dentist, that the work was temporary and had to be corrected.

6. The evidence does not support a finding that Houseman's treatment of the patient on February 6, 1987 was improper, but does support a finding that his subsequent failure to separate the composite fillings were below the minimum standards of the profession. Leaving a permanent restoration in the patient's mouth that does not provide an interproximal freeway for cleaning the teeth is in direct contradiction to the basic principles of restorative dentistry. It would have been impossible for the patient to clean between the teeth which could result in the build up of plaque eventually leading to additional decay. Secondly, since these were deciduous teeth, it was inevitable that the filling would ultimately fail due to the eruption of permanent teeth. This failure could have taken the form of a fracture in the composite material from the remaining tooth, or it

could have destabilized the remaining tooth. In any event, the principles of restorative dentistry were contradicted. A finding is therefore supported that Houseman engaged in the performance of patient care that did not conform to the minimum professional standards of dentistry, even though actual physical injury to the patient may not have occurred as a result. Financial damages did result since the patient had to pay another dentist, Dr. Paden, to correct the defective filling. Sanctions may therefore be imposed under AS 08.36.315(5).

7. The evidence also shows that Houseman did not remove all of the decay from tooth A on February 6, 1987. Dr. Paden encountered a significant amount of decay under the mesial composite, when he performed his pulpotomy on September 23, 1987. The evidence supports a finding that this decay was left behind by Houseman because it appeared that the margins of the filling were still intact and no portals of entry for new decay were detected. In addition, the location of the decay suggests that it was left in place and did not spread into the teeth. Had it done so, the decay would have been closer to the edge, since decay tends to start outside the teeth and expand as it moves within the tooth. Expert testimony supports a finding that decay within a tooth is not caused by an infected or damaged nerve, instead, the decay within the tooth has the potential to infect the nerve within the pulp. Testimony was introduced that, under certain

emergency circumstances, it may be appropriate to leave a certain amount of decay behind in performing an emergency restoration, but it is mandatory that plans be made to rectify the situation by removing the decay expeditiously. The testimony in this case, however, reveals that Houseman did not deliberately leave any decay behind as a "judgment call" incident to an emergency circumstance. Instead, the evidence shows that Houseman intended the composite filling to be a permanent filling and, by his own testimony, Houseman believed that he had removed all the decay from the tooth. The fact that Dr. Paden was under the false impression that Houseman had performed the work only one month previously is of little consequence. The degree of decay Paden encountered, and the fact that there was no evidence the decay was generated elsewhere, is indicative of the fact that significant decay was left behind by Houseman on February 6, 1987. The testimony supports a finding that Houseman's failure to remove all of the decay constitutes performance of patient care that does not conform to the minimum professional standards of dentistry. In this case, it is likely that the subsequent infection in the patient's tooth developed as a result of the decay being left behind. Accordingly, grounds for discipline exist under AS 08.36.315(5).

8. Finally, the evidence indicates that Houseman installed the composite restoration without first insulating the remaining dentin with a base liner, either calcium hydroxide or otherwise. Houseman himself does not deny

failing to apply a base liner. His testimony was that he simply did not remember having done so. Paden did not observe any base liner material in the tooth when he performed the pulpotomy on September 23, 1987. Additionally, the x-rays do not show that the base liner was installed. The evidence supports a finding that failure to install the base liner was below the minimum standards of the profession in that the tooth was not protected from the introduction of additional irritants such as the etching material applied prior to the installation of the composite material, or the composite material itself. The evidence supports a finding that the failure to utilize a "base liner" could have led to subsequent injury to the patient, and may have done so in this case, in view of the fact that the pulp in teeth A and B both became infected and had to be partially removed. Grounds for discipline therefore exist AS 08.36.315(5) in that failure to install a base liner prior to installing the composite restoration amounts to performance of patient care not conforming to the minimum professional standards of dentistry.

RECOMMENDED SANCTIONS

The options available to the board under AS 08.36.315 include an order that the license may be revoked or suspended, or the board may reprimand, censure or otherwise discipline a dentist. The substandard care that has been shown to exist in

this case appears to be the result of a case of slipshod or careless work, as shown by Dr. Houseman's failure to remove all of the decay prior to filling the teeth and his inattention to the future needs of the patient in terms of having the mass composite separated at some future date.

Dr. Houseman's attitude and demeanor indicated he does not appreciate the seriousness of this case. He appears to know the appropriate procedures, but was careless in his work and inattentive and careless in regard to documentation and follow up work.

A reprimand and a short suspension are required to affirm professional norms and standards of practice and to deter similar future misconduct by Dr. Houseman. A requirement that Houseman obtain additional training is also in order for rehabilitative purposes. In addition, a short period of probation is appropriate to ensure that Houseman complete the additional training requirement and to ensure that he perform patient care more carefully in the future. Accordingly, the following sanctions are proposed to the Board of Dental Examiners:

1. Suspension: Dr. Houseman's license shall be suspended for two weeks (10 working days) from the effective date of this order.

2. Probation: Dr. Houseman's license shall be on probation for six months from the effective date of this order. If Dr. Houseman fully complies with all of the terms and conditions of his license probation, the license shall be reinstated as conditioned under this order. The six month probationary period will not be reduced by the following periods of time:

- a. Any absence from the state in excess of 30 continuous days;
- b. Any absence from the state in excess of 60 aggregate days in a single year;
- c. Any period during which Houseman is not a resident of the State of Alaska.

3. Continuing Education. Dr. Houseman must, within six months, from the effective date of this order, as a condition of probation, complete an operative procedures update course of approximately one week in duration. This course will be taken at Dr. Houseman's expense and Dr. Houseman must provide proof of completion of this course to the board promptly upon completion.

as approved by the board designated
4/14/97

4. Reprimand. The decision and order in this case will serve as a public record of the reason for the issuance of the reprimand in this case.

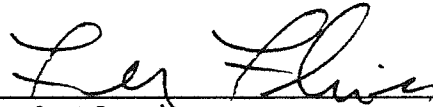
5. Standard Terms of Probation. Dr. Houseman agrees that he will abide by the following standard conditions of probation:

- a. Obey all laws of the United States, State of Alaska, and all laws pertaining to the practice of dentistry in this state;
- b. Fully comply with the probation program established by the board and cooperate with representatives of the board;
- c. Notify the board in writing of the dates of departure and return or any absence in excess of 30 consecutive days or 60 aggregate days in one calendar year;
- d. Report in person at meetings of the board or to its designated representatives during the period of probation, as directed by the board; and
- e. Submit written reports and verifications of actions as are required by the board during the period of probation.

6. Violation of Probation: Discipline. If the board finds after notice and hearing that Houseman violated any term or condition of his license probation, the board may either revoke probation and enter an appropriate disciplinary order in view of the violation, or may modify or extend Houseman's probation in its discretion. No such action will be taken without notice and opportunity for a full hearing as provided in the Administrative Procedures Act. If any violation of

probation poses a clear and immediate danger to the public health and safety, Dr. Houseman's license may be summarily suspended before a final hearing is held pursuant to the terms of AS 08.01.075(c) in addition to any other grounds for summary suspension available under that statute. In addition, a summary suspension may be imposed in the event that Houseman fails to complete the continuing education requirement of this probation.

Dated at Anchorage, Alaska this 24th day of May, 1990.



Frank Flavin
Administrative Hearing Officer

Paula Rae Sullivan PA-C, (ME 89-L22) the Respondent physician's assistant was placed on five years probation (stipulation) for alcohol abuse and the injection of the wrong drug into a patient which caused the patient difficulty in breathing. In Bagwell, the Respondent was involved with nitrous oxide and category IV drugs and was found to have committed acts below minimum professional standards. He was placed on three years probation and his license was suspended for 6 months.

In Charles H. Moseley, M.D. (ME 88L-58) the Respondent physician received a 15 day suspension and three year probation (stipulation) for substance abuse by the Respondent, overprescription of controlled substances to a patient, prescription violations and unfitness to practice medicine. The sanction in Moseley was mitigated by a finding that the violations occurred under circumstances of extreme stress caused by severe and chronic pain associated with a degenerative and irreversible bone disease suffered by Moseley.

Bagwell differed from Moseley in that Moseley recognized his substance abuse and related problems and reached a stipulated settlement. In Bagwell, the Respondent failed to recognize his problems and their effect on his practice. Bagwell's conduct was mitigated by personal problems that generated considerable stress.

Alaska cases involving conduct below minimum professional standards are Storrs v. State Medical Board, 664 P.2d 547 (Alaska 1983), Clarence P. Jaeger, D.D.S. (DE 81-09), and

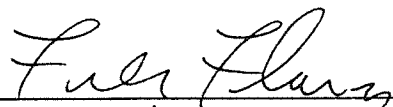
Dale C. Grier, D.D.S., (DE 81-09). These cases all involved much more serious instances of malpractice than that involved in the instant proceeding. The revocation of Storrs, (serious injury, death), the stipulated license surrender in Jaeger, and the refusal to renew the Respondent's license in Grier (infection, serious illness, great pain, loss of teeth, double billing) are more egregious than the conduct in the instant proceeding.

Unlike the foregoing cases, the Respondent's conduct here did not lead to death, or an extremely serious injury or disease.

The Respondent's conduct in the instant case justifies the imposition of a short suspension to affirm professional minimum standards and professional norms and a short probationary period for training and rehabilitation purposes.

The preceding analysis should be incorporated into the Proposed Decision dated May 24, 1990.

Dated at Anchorage, Alaska this 8th day of June, 1990.



Frank Flavin
Administrative Hearing Officer

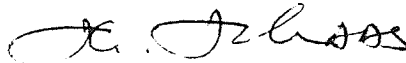
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FINAL ORDER

The Board of Dental Examiners for the State of Alaska, having examined the proposed orders dated ^{Jan} MAY 24, 1990 ^{and June 8, 1990}, by Hearing Officer Frank Flavin, hereby adopts ~~rejects~~ or modifies the proposed decision and order as its FINAL ORDER in this matter.

Dated at Anchorage, Alaska this 14TH day of ^{JUNE} ~~May~~, 1990.

STATE BOARD OF DENTAL EXAMINERS



Chairperson

2086h