

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-05195

Raymond Della Porta Sr., DMD,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Dentistry against Respondent, Raymond Della Porta Sr., DMD and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of dentistry pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 466, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed dentist within the State of Florida, having been issued license number DN 4552.

3. Respondent's address of record is 1300 36th St., Suite F, Vero Beach, FL 32960.
4. The Respondent performed root canal treatment using the Sargenti method. The Sargenti method uses Sargenti paste as a filler or cement for root canal treatment (endodontic therapy).
5. Sargenti Cement's active ingredient is paraformaldehyde.
6. Paraformaldehyde that escapes the root canal can cause irreversible damage to tissue, bone and nerves.
7. During root canal treatment, the dentist drills an access hole into the tooth. The dentist removes the pulp, decayed nerve tissue and cleans bacteria out of the canal.
8. After the canal is cleaned, the dentist fills the canal with an endodontic filler.
9. The access hole is closed with an endodontic filler or cement.
10. The Respondent was interviewed on or about May 7, 2009 by a Department investigator concerning his use of Sargenti Cement. The Respondent stated that he used a diluted formula of Sargenti Cement to clean the root canals. The Respondent would then mix Sargenti Cement with gutta percha to cement the canal.

Patient KS

11. Respondent provided dental treatment to Patient KS from on or about December 16, 2003, through on or about August 9, 2010.

12. On or about July 22, 2008, the Respondent performed root canal treatment on Patient KS's tooth number 19. The Respondent used Sargenti Cement as an endodontic filling material or cement.

Patient CZ

13. Respondent provided dental treatment to Patient CZ from on or about October 25, 2006, through on or about March 13, 2008.

14. On or about March 13, 2008, the Respondent performed endodontic treatment on tooth number 27. The Respondent used Sargenti Cement as an endodontic filling material or cement.

Sargenti Cement Does Not Meet the Minimum Standard of Performance

15. Recognizing the risks of harm posed to patients through the use of Sargenti Cement and the harm that has been caused by Sargenti Cement, the Board prohibited its use in root canal treatment and declared that using Sargenti Cement in root canal treatment to be below the minimum standard of performance.

16. Rule 64B5-17.012, Florida Administrative Code :

The Board of Dentistry has determined pursuant to Sections 466.001, and 466.028(1)(y)(gg), F.S., that the use of "Sargenti Cement" (e.g., N2, RC2B, or RC2W or essentially similar compounds) as an endodontic filling material or cement does not meet the minimum standards of performance for competent dental practice in Florida. The Board specifically finds that "Sargenti Cement" containing paraformaldehyde, when used as an endodontic filling material or cement, can cause severe and irreversible damage to patients. "Sargenti Cement" that is improperly used or which escapes beyond the root canal is much more likely to cause significant damage than incorrectly performed endodontic procedures using alternative filling materials or cements. Most licensed dentists in Florida do not use "Sargenti Cement" in endodontic therapy. Therefore, the use of "Sargenti Cement" as an endodontic filling material does not meet the existing minimum standard of performance for competent dental practice in Florida.

17. Section 466.028(1)(x), Florida Statutes (2007-2008), provides that being guilty of incompetence or negligence by failing to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance, including, but not limited to, the undertaking of diagnosis and treatment for which the dentist is not qualified by training or experience or being guilty of dental malpractice constitutes grounds for disciplinary action by the Board of Dentistry.

18. Respondent failed to meet the minimum standards of

performance in diagnosis and treatment when measured against generally prevailing peer performance in one or more of the following ways:

- a. By using Sargenti Cement as an endodontic filling material in Patient CZ's tooth number 27 on or about March 13, 2008;
- b. a By using Sargenti Cement as an endodontic cement in Patient CZ's tooth number 27 on or about March 13, 2008;
- c. By using Sargenti Cement as an endodontic filling material in Patient KS's tooth number 19 on or about July 22, 2008; and/or,
- d. By using Sargenti Cement as an endodontic cement in Patient KS's tooth number 19 on or about July 22, 2008.

19. Based on the foregoing, Respondent has violated Section 466.028(1)(x), Florida Statutes (2007-2008), by being guilty of incompetence or negligence by failing to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance, including, but not limited to, the undertaking of diagnosis and treatment for which the dentist is not qualified by training or experience or being guilty of dental malpractice.

WHEREFORE, Petitioner respectfully requests that the Board of Dentistry enter an order imposing one or more of the following penalties:

permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 11 day of February, 2011.

State Surgeon General

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PCP: *2/11/11*
PCP Members: *CM, JT, WR*

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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

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