

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0008H

BROOKE BARMORE, RDH,

Respondent.

CONSENT DECREE AND ORDER

The West Virginia Board of Dentistry (“the Board”) commenced an investigation involving Brook Barmore, RDH (hereinafter referred to as “the Respondent”) after she notified the Board that she had been indicted for perjury by a federal grand jury in the United States District Court for the Northern District of West Virginia. The Respondent has since been convicted of the perjury offense. Being guilty of a crime of moral turpitude, *i.e.*, perjury, constitutes a violation of the West Virginia Dental Practice Act, W. Va. Code §§ 30-4-1, *et seq.* The parties have reached an agreement as to the appropriate disposition of this matter, with consideration given to necessary safeguards for protection of the public, as follows:

WHEREAS, on November 3, 2015, the Board served the Respondent with a Statement of Charges against her license and Notice of Hearing, alleging that the Respondent had violated certain provisions of W.Va. Code §§ 30-4-1, *et seq.*, and W.Va. Code R. §§ 5-5-1, *et seq.*, which acts, if proven to be true, would constitute a willful departure from accepted standards of professional conduct, which would be grounds for disciplinary action.

WHEREAS, after being served with the Statement of Charges and Notice of Hearing, the Respondent advised the Board, through its legal counsel, that she was sentenced to probation for

her federal conviction, that she is the sole means of support for herself and her minor child and that should her license to practice dental hygiene be suspended or revoked, she will be unable to support herself and her child, or be extremely limited in doing so, and requested consideration from the Board to allow her to maintain her license.

WHEREAS, after a review of the pleadings on file in Case No. 5:14-CR-00041-FPS-JES in the United States District Clerk's Office for the Northern District of West Virginia, other investigation conducted by and on behalf of the Board in this matter, and giving due consideration to the Respondent's position and request, the Board agrees to forego further prosecution of the complaint, subject to certain terms and conditions, to which the Respondent hereby agrees.

WHEREAS, the Respondent hereby admits the following:

(1) That she was charged in three felony counts of a 14-count Second Superseding Indictment filed on May 5, 2015, in *United States v. LeDon Gaither and Brooke Barmore*, Criminal No. 5:14-0041-FPS-JES (USDC NDWV) (Count One – drug conspiracy; Count 11 – maintaining a drug house; and Count 14 – perjury);

(2) That she pled guilty on August 4, 2015, to the felony perjury charge (Count 14) pursuant to a plea agreement with the United States. As a result of her guilty plea, the drug conspiracy and maintaining a drug house charges were subsequently dismissed;

(3) That she was sentenced on November 3, 2015, to a two-year term of probation;

(4) That the conditions of her probation were modified by the Court on December 1, 2015, to permit the Respondent, after receiving prior approval from her supervising probation officer, to have contact with her child's father, LeDon Gaither, who is incarcerated for his

conviction in the same case, for the sole purpose of coordinating and supervising visits between Gaither and their daughter, or communicating by mail or telephone with Gaither; and

(5) That should the Respondent violate any of the terms of her probation, the federal court could revoke her probation and sentence her to a term of imprisonment.

WHEREAS, the Board and the Respondent agree that any violation by the Respondent of the terms of her federal probation, which results in its revocation and her being sentenced to a term of imprisonment, will be grounds for immediate revocation of her license to practice dental hygiene in the State of West Virginia.

WHEREAS, the Board and the Respondent further agree that any violation by the Respondent of any provision of the West Virginia Dental Practice Act, which is established by probable cause, shall be grounds for immediate suspension and possible revocation of her license to practice dental hygiene in the State of West Virginia.

WHEREAS, the Board and the Respondent agree that no later than ten (10) days from the date of entry of this Consent Decree, the Respondent shall submit herself to the West Virginia Dental Recovery Network (WVDRN)¹ for an initial evaluation, regardless that the federal court suspended drug testing as a condition of her probation. Should the WVDRN determine that the Respondent needs substance abuse treatment, the Respondent agrees to submit to whatever treatment plan is established and recommended by the WVDRN for its duration and agrees to abide by all terms and conditions of the recommended treatment plan.

IT IS HEREBY STIPULATED and AGREED between the undersigned parties that this matter be settled and resolved, the parties having reached an understanding concerning the

¹The West Virginia Dental Recovery Network was created in 2014 by Legislative Rule to provide a substance abuse treatment program for dentists and dental hygienists. W. Va. Code R. §§ 5-15-1, *et seq.*

proper disposition of the matters in controversy. The Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT:

1. The West Virginia Board of Dentistry is the state entity created by W. Va. Code §§ 30-4-1, *et seq.*, that is empowered to regulate the practice of dentistry in West Virginia.

2. The Respondent, at all times relevant to this matter, was a licensee of the Board, possessing License No. 3049 as a Registered Dental Hygienist, and is subject to the licensing requirements of the Board.

3. In her application to renew her license to practice dental hygiene for 2015 which was filed with the Board on or about January 27, 2015, the Respondent notified the Board that she was under indictment by a federal grand jury for perjury. In her explanation accompanying her application, the Respondent advised the Board that she testified as to what she remembered and that it was the truth.

4. Records from the United States District Clerk's Office for the Northern District of West Virginia confirm that the Respondent was under indictment for a felony perjury charge in a 44-count Superseding Indictment filed against seven defendants (including the Respondent). *United States v. LeDon Gaither, et al.*, Criminal No. 5:14-00041-FPS-JES. At the time Respondent notified the Board of the pending indictment, the Respondent's case was scheduled for trial on May 19, 2015.

5. On May 5, 2015, the Respondent was charged in three felony counts of a 14-count Second Superseding Indictment filed in Criminal No. 5:14-00041-FPS-JES against only her and LeDon Gaither. The Respondent was charged with drug conspiracy (Count One), aiding and abetting the maintaining of a drug house (Count 11), and perjury (Count 14).

6. On August 4, 2015, the Respondent pled guilty to the felony perjury charge, pursuant to a plea agreement with the United States, and the charges contained in Counts One and 11 were ultimately dismissed.

7. On November 3, 2015, the Respondent was sentenced to two years' probation, the conditions of which were modified by the federal court on December 1, 2015, as previously set forth herein.

CONCLUSIONS OF LAW:

1. The Board has jurisdiction to take disciplinary action against the Respondent.

2. Pursuant to W. Va. Code §§ 30-4-1, *et seq.*, the Board may revoke a license, suspend a license, restrict a license, reprimand a licensee or take other disciplinary action for violation of applicable laws, rules, and regulations.

3. The Respondent is a licensee of the Board and is subject to its licensing requirements.

4. Based upon the factual findings set forth herein, which have been admitted by the Respondent, the Board hereby finds probable cause to establish that the Respondent is guilty of a crime of moral turpitude, *i.e.*, perjury, in violation of the Dental Practice Act, W. Va. Code §§ 30-4-19(g)(2). However, in light of the Respondent's circumstances and her request for consideration, and the Board's resulting investigation into the matter, the Board agrees to forego further prosecution of the complaint against the Respondent, provided the Respondent abides by certain terms and conditions as more fully set forth herein.

CONSENT OF LICENSEE:

The Respondent, by affixing her signature hereto, acknowledges the following:

1. Respondent has been given the opportunity to consult with counsel and executes this negotiated Consent Decree and Order voluntarily, freely, without compulsion or duress and is mindful that it has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to enter into this negotiated Consent Decree and Order other than as set forth herein.

3. Respondent acknowledges that she is aware that she may pursue this matter through appropriate administrative and/or court proceedings, and is aware of her legal rights regarding this matter, but intelligently, knowingly and voluntarily waives such rights.

4. Respondent expressly acknowledges that the entire agreement is contained in this Consent Decree and Order and no representations, promises, or inducements have been made by or to Respondent other than as appear in this Consent Decree and Order.

5. Respondent acknowledges that this Consent Decree and Order is a public document available for inspection by the public in accordance with the provisions set forth in the West Virginia Freedom of Information Act (W. Va. Code §§ 29B-1-1, *et seq.*), and may be reported to other governmental agencies, professional boards or other organizations.

6. The Respondent waives any defense of laches, statute of limitations, waiver, and estoppel that she may have otherwise claimed as a condition of this Consent Decree and Order.

7. Respondent acknowledges that this Consent Decree and Order will be presented to the Board as soon as practical but no later than the next scheduled meeting of the Board, with a recommendation for approval from the Complaint Committee.

8. Respondent consents to the entry of this Order affecting her license in the State of West Virginia.

9. Respondent, by affixing her signature hereon, consents and agrees to the following terms and conditions:

ORDER

The Board agrees to forego further prosecution of the complaint pursuant to the Consent Decree entered between the Board and Respondent, Brooke Barmore, RDH, and hereby ORDERS as follows:

1. The Respondent shall submit herself to the WVDRN for an initial evaluation no later than ten (10) days from the date of entry of this Order. Should the WVDRN determine that the Respondent needs substance abuse treatment, the Respondent shall submit to whatever treatment plan is established and recommended by the WVDRN for its duration and shall abide by all terms and conditions of the recommended treatment plan established by the WVDRN.

2. In consideration of the foregoing, the Board will forego the imposition of any fine or costs or other disciplinary action against the Respondent. However, the Respondent's failure to comply with the terms and conditions of this Consent Decree and Order hereby imposed shall be deemed a violation of this Consent Decree and Order. Should the Respondent fail to submit herself to the WVDRN and follow and successfully complete any treatment recommendations made by the WVDRN, the Board may immediately pursue any appropriate disciplinary action against the Respondent, as set forth in W. Va. Code § 30-4-19, for the charges contained in the Statement of Charges and for any additional conduct committed by the Respondent that violates the West Virginia Dental Practice Act, its rules and regulations promulgated thereunder, and the principles of ethics and code of professional conduct of the American Dental Association

including, but not limited to, suspending or revoking the Respondent's license and imposing a fine and costs.

3. Should the Respondent violate the terms of her federal probation, resulting in its revocation and the Respondent being sentenced to a term of imprisonment, such action shall be grounds for immediate revocation of the Respondent's license to practice dental hygiene in the State of West Virginia and for the imposition of any other authorized disciplinary action deemed appropriate by the Board.

4. Should the Respondent violate any provisions of the West Virginia Dental Practice Act, as established by a finding of probable cause, such violation shall be grounds for immediate suspension and possible revocation of her license to practice dental hygiene in the State of West Virginia and for the imposition of any other authorized disciplinary action deemed appropriate by the Board..

5. The Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations.

6. This Consent Decree and Order shall remain in effect until the Respondent has been evaluated by the WVDRN and successfully completed any recommended treatment plan, or until the Respondent has successfully completed her federal probation in *United States v. Brooke Barmore*, Criminal No. 5:14-00041-FPS-JES (USDC NDWV), whichever completion date occurs last.

Entered this 22 of January, 2016.

WEST VIRGINIA BOARD OF DENTISTRY:

By: C. Richard Gerber, D.D.S.
C. RICHARD GERBER, President

ORDER PREPARED BY:

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INSPECTED AND AGREED TO BY:


Brooke Barmore, RDH
Brooke Barmore, RDH
Respondent

Counsel for the Respondent