

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0062D

IGNACIO Z. BERNARDO, JR., DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter "the Board") and Ignacio Z. Bernardo, Jr., DDS, by counsel, Trent A. Redman, Esquire (hereinafter "the Respondent"), for the purpose of agreeing to disciplinary action which shall be taken against the Respondent by the Board.

WHEREAS, the Respondent acknowledges that the Board has served the Respondent with a Statement of Charges against his license, alleging that he has violated certain acts 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 professional negligence and/or a willful departure from accepted standards of professional conduct in the dental profession, which would be grounds for disciplinary action.

WHEREAS, the parties mutually desire to settle the issues without further prosecution and a formal hearing.

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of claims disputed by the Respondent.

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

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

FINDINGS OF FACT:

1. The Board is a state entity created by West Virginia Code §§ 30-4-1, *et seq.* (Dental Practice Act), and is empowered to regulate the practice of dentistry in the State of West Virginia.

2. At all times relevant to this investigation, the Respondent was a licensee of the Board, holding License No. 3257. As a result, the Respondent is subject to the Board's licensing requirements.

3. On or about January 5, 2016, the Board initiated an investigation into the Respondent's conduct based on a complaint filed with the Board by the Respondent's former spouse (hereinafter referred to as "ERT"). The complaint alleged that the Respondent unlawfully accessed ERT's pharmaceutical records with the West Virginia Board of Pharmacy (WVBOP) and further unlawfully disclosed them to four separate parties in legal proceedings involving child abuse and neglect charges filed against the Respondent which were then pending in Kanawha County Circuit Court, Charleston, West Virginia.

4. During the course of its investigation into the matter, the Board obtained a User Activity Report from the WVBOP's Controlled Substance Monitoring Program, showing the history of the Respondent's access of pharmaceutical records for the period January 1, 2015, through August 31, 2015. The Report indicated that on August 31, 2015, the Respondent accessed the pharmaceutical records of ERT by conducting at least three searches under three separate derivatives of her name.

5. The investigation further revealed that at the time the Respondent accessed ERT's pharmaceutical records, ERT was not the Respondent's patient and had not received any dental treatment from him since at least April 2010.

6. The investigation further revealed that the WVBOP had no record of being served with a subpoena or otherwise receiving any court order issued by the Kanawha County Circuit Court directing the WVBOP to provide the court with ERT's pharmaceutical records in any court proceedings.

7. ERT's complaint alleges that the Respondent scanned the records onto four zip drives and that on September 1, 2015, the Respondent then distributed the zip drives to the Kanawha County Prosecutor, the court-appointed Guardian ad Litem for their son, the Respondent's appointed lawyer and ERT's appointed lawyer. The Respondent distributed the zip drives on the day following when the WVBOP records show that he accessed ERT's pharmaceutical records.

8. Further, during the course of the Board's investigation, the Respondent filed a response with the Board, to ERT's complaint, alleging that ERT had filed a "frivolous complaint" in her "continued campaign of harassment" against him, alleging that ERT had filed false allegations and praying that the Board would dismiss "this groundless and frivolous complaint filed against me by my ex-wife." As established in part by the records of the WVBOP, the complaint filed by ERT was not false, groundless or frivolous as the Respondent represented.

9. Based upon the foregoing, the Board found that probable cause existed to establish that the Respondent (1) willfully and unlawfully accessed and disclosed ERT's protected health information, i.e., her pharmaceutical history, on at least four occasions, in

violation of W. Va. Code §§ 60A-9-7(e), (f), and 30-4-19(g)(12)(B) and (14); and (2) obstructed the Board's investigation by providing false information to the Board, in violation of W. Va. Code § 30-4-19(g)(16).

CONCLUSIONS OF LAW:

1. The Respondent is a licensee of the Board and is subject to its licensing requirements.
2. The Board has jurisdiction to take disciplinary action against the Respondent.
3. It is a violation of the Dental Practice Act for a licensee to unlawfully and without authorization use or disclose protected health information, W. Va. Code § 30-4-19(g)(14) and (g)(12)(B).
4. It is a violation of the Dental Practice Act for a licensee to obstruct an investigation by the Board by providing false information to the Board, W. Va. Code § 30-4-19(g)(16).
5. The Respondent does not contest that the Board has established probable cause to issue a Complaint and/or Statement of Charges against him for one or more violations of the Dental Practice Act with regard to the complaint at issue in this matter.
6. Pursuant to W. Va. Code § 30-4-19(g), the Board may deny, refuse to renew, suspend, restrict, or revoke a license, certificate or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for violations of the Dental Practice Act, including violations of the ADA principles of ethics and professional conduct.
7. Disciplinary action may include (1) reprimand; (2) probation; (3) restrictions; (4) suspension; (5) revocation; (6) administrative fine, not to exceed \$1,000 per day per violation;

(7) mandatory attendance at continuing education seminars or other training; (8) practicing under supervision or other restrictions; or (9) requiring the licensee or permittee to report to the Board for periodic interviews for a specified period of time. W. Va. Code § 30-4-19(h).

8. In addition to any other sanction imposed, the Board may require a licensee or permittee to pay the costs of the proceeding. W. Va. Code § 30-4-19(i).

CONSENT OF LICENSEE:

The Respondent, by affixing his 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 he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his 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. 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.

7. Respondent consents to the entry of this Order affecting his license in the State of West Virginia.

8. Respondent, by affixing his 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, Ignacio Z. Bernardo, Jr., DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand..
2. The Respondent's license to practice dentistry in the State of West Virginia shall be suspended for a period of ninety (90) days, all but 15 days of which shall be stayed. The 15-day suspension shall begin on July 23, 2016, and shall continue uninterrupted for a period of fifteen (15) days, i.e., through and including August 6, 2016. If during the 15-day suspension the Respondent should violate any federal, state or local law, including but not limited to the Dental Practice Act and any regulations promulgated thereunder, the Board may lift the stay, based on a finding of probable cause that the violation occurred, and suspend the Respondent for the remaining 75 days of the suspension period.
3. During the period of suspension, the Respondent's office shall be covered for emergencies by a licensed dentist, whom the Respondent has informed the Board will be his sister, Maria Rita Bernardo, DDS. Any of the Respondent's dental hygienists, who have current

general supervision permits and are in good standing with the Board, may provide preventive dental hygiene services to patients, during the Respondent's period of suspension, as authorized by the permits and in compliance with W. Va. Code § 30-4-11, and W. Va. Code R. §§ 5-13-1, *et seq.*, including but not limited to W. Va. Code R. § 5-13-6. Any procedures performed by such dental hygienists outside the scope of the guidelines set forth in the West Virginia Code shall be deemed a violation of this Consent Decree and may subject the Respondent, and the dentist covering for him, to disciplinary action.

4. Following the successful completion of any suspension referenced immediately above, the Respondent shall thereafter be placed on probation for a period of ninety (90) days. If at any time during his probation period the Respondent violates any federal, state or local law, including but not limited to the Dental Practice Act and its regulations, the Board may take action to further suspend and/or revoke the license of the Respondent, by filing a new Statement of Charges and proceeding as it would with any Statement of Charges.

5. The Respondent shall pay a fine in the amount of Five Thousand Dollars (\$5,000.00) within thirty (30) days of the date of entry of this Consent Decree and Order.

6. Within six months of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete three (3) hours of professional education in the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and/or similar professional education governing confidentiality of protected health information/patient confidentiality, and three (3) hours of professional education in ethics, all of which must be pre-approved by the Board. The Respondent shall submit written verification to the Board of his enrollment in and successful completion of the coursework.

7. The professional education requirements outlined in paragraph 5 above are in addition to the Board's biennial continuing education requirements for licensed dentists as set forth in W. Va. Code R. § 5-11-3.

8. The Respondent shall reimburse the Board the sum of One Thousand Five Hundred Dollar (\$1,500.00) for all costs incurred by the Board in the investigation and disposition of this case, which shall be paid within thirty (30) days of the date of entry of this Consent Decree and Order.

9. 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. If the Respondent violates any of the terms of this Consent Decree and Order, the Board may immediately suspend the Respondent's license.

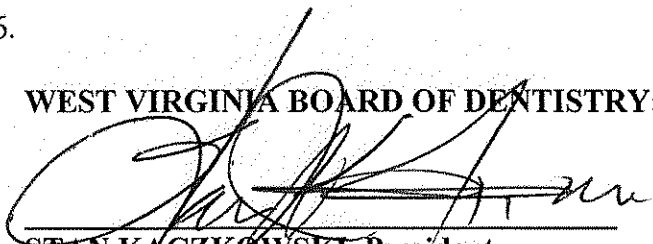
10. The Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations.

11. This Consent Decree and Order shall remain in effect until all terms of suspension and probation are completed, the fine and costs set forth in paragraphs 4 and 7 are paid, and the professional education obligations set forth in paragraphs 5 and 6 of this Order are fulfilled.

Entered this 21 of July, 2016.

WEST VIRGINIA BOARD OF DENTISTRY:

By:

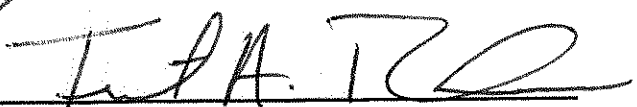


STAN KACZKOWSKI, President

INSPECTED AND AGREED TO BY:



IGNACIO Z. BERNARDO, JR., DDS
Respondent



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