

**BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY**

**WEST VIRGINIA BOARD OF DENTISTRY,**

**Complainant,**

v.

**CASE NO. 2017-DB-0037D**

**JACK R. CHAMBERS II, DDS,**

**Respondent.**

**CONSENT DECREE AND ORDER**

Now comes the West Virginia Board of Dentistry (hereinafter referred to as “the Board”) and Jack R. Chambers II, DDS (hereinafter referred to as “the Respondent”), *pro se*, 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 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 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 reach 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 W. Va. 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. 2724. As a result, the Respondent is subject to the Board's rules and regulations.

3. On or about November 20, 2017, the Board initiated an investigation after a complaint was filed with the Board against the Respondent and one of his employees alleging that the complainant's protected health information, contained within the West Virginia Board of Pharmacy's Controlled Substance Monitoring Program (CSMP) database, was unlawfully accessed and then published to third parties, in violation of federal and state law protecting such information. The complainant was not a current or former patient of the Respondent.

4. During the course of its investigation, the Board obtained a User Activity Report from the Board of Pharmacy for the Respondent's profile. The User Activity Report indicated that on August 23, 2017, the complainant's name was searched eight times, in various ways.

5. The investigation revealed that Respondent's employee is the former spouse of the complainant's husband and that there appeared to be an ongoing domestic dispute between those parties regarding the child or children born of the marriage between the employee and the

complainant's husband. The employee admitted to accessing the complainant's protected health information using the Respondent's user name and password, admitted to conducting the search without the Respondent's knowledge, and stated she would do it again due to the circumstances.

6. The eight searches of the complainant's information conducted on August 23, 2017, were not related to a specific patient since the complainant has never been a patient of the Respondent, were not searches seeking specific data related to the Respondent's DEA controlled substance registration number, and were not conducted for the purpose of providing treatment to a patient, in violation of W. Va. Code § 60A-9-5(a)(1).

7. The Respondent has admitted giving his employee access to his user name and password to the Board of Pharmacy database for work-related purposes but has denied having any knowledge of or involvement in the unlawful search of the complainant's records. The Respondent has since changed his password and instructed the employee in the manner of safeguarding protected health information.<sup>1</sup>

8. Based upon the foregoing, probable cause exists to establish that the Respondent failed to adequately protect and safeguard his user name and password for the Board of Pharmacy database and failed to ensure that the employee to whom he gave access to that information was properly trained and had knowledge of the appropriate uses and safeguards involving the protected health information stored within that database and restrictions against further disclosure, thereby placing the public at risk, in violation of W. Va. Code §§ 30-4-19(g)(3), and (g)(14).

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<sup>1</sup>It is permissible for a prescribing practitioner to allow an "authorized agent" to have access to the records in the CSMP database, however, the practitioner must identify the authorized agent with the Board of Pharmacy on a form provided by that Board. Furthermore, it is the practitioner's responsibility to ensure that the authorized agent maintain the confidentiality of the information in the database. W. Va. Code R. § 15-8-7.6.

### 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 or his authorized agent to engage in unprofessional conduct placing the public at risk by using or disclosing protected health information in an unauthorized or unlawful manner. W. Va. Code §§ 30-4-19(g)(3) and (g)(14).

4. The Respondent does not contest that the Board has established probable cause to charge him with one or more violations of the Dental Practice Act with regard to the complaint at issue in this matter.

5. 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 to take disciplinary action against, any licensees, certificate holder or permittee for violations of the Dental Practice Act, including violations of the ADA principles of ethics and professional conduct.

6. 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 to pay the costs of the proceeding. W. Va. Code § 30-4-19(h).

7. In addition to any other sanctions 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 provided 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 the 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 government 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, Jack R. Chambers II, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand.
2. The Respondent shall pay a fine in the amount of One Thousand Dollars (\$1,000.00) within thirty (30) days of the date of entry of this Consent Decree and Order.
3. 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, at least two hours of which shall be 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 at least one hour of which shall be related to the purpose and appropriate use of the WVBOP Controlled Substance Monitoring Program and the Respondent's profile information.
4. All of the professional education requirements referenced in paragraph 3 above must be preapproved by the Board. The Respondent shall submit written verification to the Board of his enrollment in and successful completion of the coursework. Such professional education courses shall be in addition to the Board's biennial continuing education requirements for licensed dentists as set forth in W. Va. Code R. § 5-11-3.

5. The Respondent shall reimburse the Board the sum of Three Thousand Three Hundred Eighty-Four Dollars (\$3,384), 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, or within such additional time as may be authorized in writing by the Board.

6. 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 take to suspend the Respondent's license.

7. 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.


8. This Consent Decree and Order shall remain in effect until all its terms have been completed, the fine and costs set forth in paragraphs 2 and 5 are paid, and the professional education obligations set forth in paragraphs 3 and 4 of this Order are fulfilled.

ENTERED this 2nd <sup>CRG</sup> day of September <sup>November</sup> <sup>CRG</sup>, 2018.

**WEST VIRGINIA BOARD OF DENTISTRY**

By:  DDS  
**C. RICHARD GERBER, DDS, President**

INSPECTED AND AGREED TO BY:

  
JACK R. CHAMBERS II, DDS, *pro se*  
Respondent