

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA BOARD  
OF DENTAL EXAMINERS,

Complainant,

CASE No.: 2008-DB-0011H

v.

CINDY J. MARCUM-CLARK, RDH,

Respondent.

**CONSENT DECREE AND ORDER**

Now comes the West Virginia Board of Dental Examiners (hereinafter referenced as the Board) and Cindy J. Marcum-Clark, RDH, (hereinafter referenced as the Respondent), for the purpose of agreeing to disciplinary action which shall be taken against the Respondent by the Board.

As reflected in this Consent Decree, the parties have 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. That the Board is the State entity created by West Virginia Code § 30-4-1 *et seq.* (Dental Practice Act) and is empowered to regulate the practice of dentists and dental hygienists.

2. That the Respondent has a dental hygiene license with the Board, Respondent's License No. is 1895 and she is subject to the license requirements of the

Board.

3. The Dental Practice Act requires that a dental hygienist may practice only under the direct supervision of a licensed dentist. This means that a dentist must be “**physically present** in the dental office” in order for a dental hygienist to practice.

4. The Board alleges that for several years, while employed by Charles Rhodes, DDS, the Respondent provided dental services without any supervision or the physical presence of any dentist.

#### **CONCLUSION OF LAW**

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

2. That pursuant to West Virginia Code § 30-4-1 *et seq.*, the Board may revoke a license, suspend a license, reprimand a licensee or take other disciplinary action for violation of the rules and regulations of the Board.

3. The Respondent is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board.

4. Based on the investigation conducted, the Complaint Committee of the Board believes that there is substantial evidence to demonstrate that the Respondent has engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of the Dental Practice Act, West Virginia Code § 30-4-1 *et seq.*

#### **CONSENT OF LICENSEE**

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

1. That she has the following rights, among others: the right to a formal hearing before the West Virginia Board of Dental Examiners; the right to reasonable notice of said hearing; the right to be represented by counsel at her own expense; and the right to cross examine witnesses against her.

2. That she waives all rights to such a hearing.

3. That she has had the opportunity to consult with counsel and executes this Consent Decree and Order voluntarily, freely, without coercion or duress and mindful that it has legal consequences.

4. That no person or entity has made any promise or given any inducement whatsoever to encourage her to enter into this Decree other than as set forth herein.

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

6. That she waives any defenses including, but not limited to, laches, statute of limitations, and estoppel, that she may have otherwise claimed as a condition of this Decree.

7. That she acknowledges that the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Consent Decree have been met to the satisfaction of the Board.

8. That she acknowledges that she is aware that this Consent Decree and Order is a public document, available for inspection at any time by any member of the public under Chapter 29B *et seq.*, of the West Virginia Code, Freedom of Information Act and may

be reported to other governmental, professional Boards or organizations.

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

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

### ORDER

That the Board agrees to forego further prosecution of the complaint pursuant to the Consent Decree between the Board and Respondent, Cindy J. Marcum-Clark, RDH and hereby ORDERS as follows:

1. The Board shall issue a written reprimand to the Respondent.
2. The Respondent shall pay a fine of Two Thousand Dollars (\$2,000.00) to the Board;
3. The Respondent shall reimburse the Board in the amount of Five Hundred Dollars (\$500.00) for all costs incurred by the Board in the investigation and disposition of this case.
4. All matters in controversy related to the instant complaint are hereby resolved and closed, pending full compliance with the terms mandated herein; and
5. That the Respondent's failure to fully comply with the terms and conditions of this Consent Order hereby imposed shall be deemed a violation of this Consent Order, and that if the Respondent violates any of the terms of this Consent

Order, the Board may immediately suspend the Respondent's license.

Entered this 11<sup>th</sup> day of July 2008.  
~~4<sup>th</sup>~~  
~~June~~

West Virginia Board of  
Dental Examiners:



~~James W. Vargo, DDS~~ David G. Edwards, DDS  
President

Inspected and Agreed to by:

Cindy Marcum-Clark, RDH  
Cindy Marcum-Clark, RDH  
Respondent