

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0047D

WILLIAM H. MASON, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter referred to as the Board) and William H. Mason, DDS (hereinafter referred to as 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 may file a Statement of Charges against his license alleging, *inter alia*, 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 as well as a departure from and a failure to conform to the standards of acceptable and prevailing dental practice and the ethics of 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 here by FIND and ORDER as follows:

FINDINGS OF FACT:

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

2. The Respondent, at all times relevant to this investigation, was a licensee of the Board, possessing license no. 3677, and is subject to the licensing requirements of the Board.

3. The Board conducted an investigation into the dental practices of the Respondent after being notified by legal counsel for the Bank foreclosing on the Respondent's office building, in the course of a pending bankruptcy proceeding,¹ that the Respondent had apparently ceased practicing dentistry and had abandoned all his patient files by leaving the same unsecured in the office being foreclosed on. The Respondent purportedly told the foreclosing Bank to dispose of his patient files, thereby causing or risking the unauthorized disclosure of his patients' protected health information to the Bank, its employees and any contractors and subcontractors, in violation of W. Va. Code § 30-4-19(g)(14), and the Principles and Code of Professional Conduct of the American Dental Association, W. Va. Code § 30-4-19(g)(12)(Section 1.B relating to safeguarding the confidentiality of patient records).² The Respondent failed to obtain authorization from his patients to allow their files, and hence their protected health information, to be disclosed to the third party Bank and its employees, contractors and subcontractors.

4. Due to alleged serious health issues, the Respondent presently is not practicing dentistry in the State of West Virginia and cannot or is unable to practice dentistry in this State for the unforeseeable future, although he still holds an active license.

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, reprimand a licensee or take other disciplinary action for violation of the rules and regulations of the Board.

¹*In re: William Howard Mason, et al.*, Bankruptcy Case No. 2:14-bk-20382 (USBC SDWV).

²Unauthorized disclosure of protected health information may also constitute a violation of the federal Health Insurance Portability And Accountability Act (HIPAA).

3. The Respondent neither admits nor denies that his actions resulted in the unauthorized disclosure of his patients' protected health information to third parties, in violation of W. Va. Code §§ 30-4-19(g)(14), 30-4-19(g)(12). However, the Board and the Respondent have agreed to resolve this matter by and through a voluntary agreement and consent to disciplinary action.

CONSENT OF LICENSEE

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

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

2. The Respondent 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.

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

4. Further, the entire agreement between the Respondent and the Board 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. This Consent Decree and Order is a public document, available for inspection at any time by any member of the public pursuant to 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 defenses of laches, statute of limitations, estoppel and waiver that he may have otherwise claimed, as they may apply to the Board action that is the subject of this Consent Decree and Order.

7. This Consent Decree and Order will be presented to the Board for consideration at its next regularly scheduled meeting upon the Complaint Committee's recommendation for approval,

provided the Consent Decree has been agreed to and executed by the Respondent. The Consent Decree shall not become effective until it has been approved by a majority of the Board and endorsed by a representative of the Board.

8. The Respondent consents to the entry of the following Order affecting his license in the State of West Virginia.

ORDER

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

1. The Respondent presently holds a license to practice dentistry in the State of West Virginia. Respondent's license number is 3677.

2. Under the terms of this Consent Decree, the Respondent has agreed to voluntarily surrender said license to the Board.

3. Inasmuch as the Respondent has voluntarily surrendered his license to practice dentistry in the State of West Virginia, the Respondent's license is hereby NULL and VOID.

4. The Respondent shall not practice nor engage in the profession of dentistry in the State of West Virginia.

5. Should the Respondent desire to resume the practice of dentistry in the State of West Virginia, he shall submit an application for licensure and/or reinstatement and comply with all licensure requirements of W. Va. Code §§ 30-4-1, *et seq.*, and any applicable legislative rules promulgated thereunder.

6. Further, in the event that the Respondent applies for licensure and/or reinstatement, the Board reserves the right to review, consider and use any and all materials relating to his qualifications for practice including, but not limited to, all documents, statements and complaints currently contained within the Board's file on the Respondent. The Board

