

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

**WEST VIRGINIA BOARD OF
DENTISTRY,**

COMPLAINANT,

v.

CASE NO. 2022-DB-0013D

**TIMOTHY R. RAY, DDS,
LICENSE NO. 4531,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Dentistry ("Board") and Timothy R. Ray, DDS ("Respondent") for the purpose of agreeing to disciplinary action which shall be taken against Respondent in the above-referenced matter. As a means of compromise, the Board and Respondent hereby agree to resolve this matter by and through a voluntary agreement and consent to disciplinary action, with consideration given to appropriate safeguards for protection of the public.

WHEREAS, Respondent acknowledges that the Board may file a Statement of Charges alleging that he has violated certain provisions of W. Va. Code §§ 304-1 *et seq.* and W. Va. Code R. §§ 5-1-1 *et seq.*, and proceed to a hearing and seek disciplinary action in this matter.

WHEREAS, Respondent hereby waives the filing of a formal Statement of Charges and the parties mutually desire to settle this matter without further prosecution and a formal hearing.

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

THEREFORE, 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, and the Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT

1. Respondent is a licensee of the Board, holding License No. 4531, and at all times relevant, practiced dentistry in Fairmont, West Virginia.

2. On April 13, 2022, the Board received a written complaint from an individual identified herein as "C.L." regarding the dental care that her daughter received from Respondent in March, 2022. "C.L." alleged that her daughter was referred to the office where Respondent works "specifically for my daughter to be put to sleep to get her tooth pulled, and they did not put her to sleep." "C.L." reported that she waited in her car for forty minutes until a hygienist came out and told C.L. her daughter "needs three fillings, a cap, and a tooth pulled, okay." "C.L." stated that she agreed because she was told her daughter would be asleep for this procedure. "C.L." asserted that her daughter received "a shot that made her loopy," but that she was awake throughout the procedure and very upset. "C.L." stated that her daughter received three fillings, a root canal (as opposed to a cap), and had her tooth pulled.

3. By letter dated April 21, 2022, the Board transmitted a copy of "C.L.'s" complaint and requested that Respondent file a written response thereto within thirty (30) days.

1. The Board received a response from Respondent along with a copy of the patient records on or about May 5, 2022. The response stated that the patient was seen in "our office for a conscious sedation due to the patient having pain with tooth #1 and we were asked to address any other dental treatment deemed necessary." Respondent maintained that an initial exam was completed in "C.L.'s" presence, after which the sedation process and all the different treatment possibilities were discussed with "C. L." Respondent asserted:

[P]arents are told what medications are used and their purpose. They are told that it is a conscious sedation and that the patient may or may not sleep, that it is our goal for the patient to not remember the dental work but in some cases they do remember, and that we use a papoose board to keep the patients from moving and potentially hurting themselves. Parents are also advised that a lot of the time patients will cry because they do not like the papoose board.

Respondent added that parents are also advised that once the patient is medicated and in the papoose board, parents are asked to leave the room and wait outside so that radiographs may be taken, which could change the treatment plan based on the results. Respondent maintained that once the above information had been discussed with "C.L.," she was given the opportunity to ask questions. Respondent stated that after "C.L.'s" questions were answered, she was advised that she needed to sign various consent forms and if she had additional questions, the staff would ask Dr. Linda Ray, DDS, when she arrived to administer the sedation medication. Respondent asserted that the consent forms are reviewed with parents before the parents sign, that he has never promised a parent that their child will sleep through the entire procedure, and that the office's assistants know not to promise the same.

4. The patient records Respondent provided noted that he completed "C.L.'s" daughter's treatment. The Anesthesia Record lists Respondent as the surgeon and that the following drugs were administered at 9:23 a.m.: 4.5 of midazolam and 6 of nalbuphine. Respondent discharged the patient at 10:31 am.

5. The Board sent a subpoena to Respondent and to Dr. Linda L. Ray, dated August 5, 2022, requesting "[s]chedules or like documents, dated March 28, 2022 to April 8, 2022, showing patient appointments and procedures scheduled/performed at your practice. If color coding is used on your schedules, please provide documents in color."

6. On or about August 16, 2022, the Board received the responsive documents from Respondent and Dr. Linda Ray, along with correspondence signed by them dated August 11, 2022, in which Respondent and Dr. Linda Ray addressed their office's sedation schedule and procedures. Thereafter, by subpoena dated August 25, 2022, the Board requested the original patient records for specific patients selected from the schedules previously received.

7. On or about September 12, 2022, the Board received the responsive documents from the Respondent and Dr. Linda L. Ray via counsel.

8. The Board's records provide that, at the time Respondent treated "C.L.'s" daughter, Respondent held Qualified Monitor number QM-0653 and Dr. Linda Ray held 3B permit number 076, a parenteral conscious sedation permit.

9. The Board's Complaint Committee reviewed "C.L.'s" complaint, Respondent's response thereto, and the medical records and other documents requested and submitted therewith and obtained during investigation.

10. Upon recommendation of the Complaint Committee, the Board, by majority vote at its meeting on April 1, 2023, found probable cause to believe that Respondent failed to meet the applicable standard of care by not having an appropriate dental anesthesia permit in violation of W. Va. Code § 30-4-19(g)(19), W. Va. Code § 30-4A-1(a), W. Va. Code § 30-4A-6, W. Va. Code R. § 5-5-4, and *American Dental Association Principles of Ethics & Code of Professional Conduct* § 2. Accordingly, the Board determined there was sufficient evidence to warrant further proceedings and that further action should be taken against Respondent.

CONCLUSIONS OF LAW

1. Respondent is a licensee of the Board, holding License No. 4531, and is therefore subject to the license requirements and disciplinary rules of the Board.
2. The Board is a state entity created and governed by W. Va. Code §§ 30-4-1 *et seq.* and is empowered to regulate the practice of dentistry in the State of West Virginia.
3. In order to carry out its regulatory duties, the Board may suspend, revoke, or otherwise discipline an individual's license to practice dentistry under the authority granted to it by W. Va. Code §§ 30-4-5 and 30-4-19 and W. Va. Code R. §§ 5-1-4, 5-4-1 *et seq.*, and 5-5-1 *et seq.*
4. The Board acknowledges that Respondent's agreement to enter into this Consent Agreement is not an admission of guilt or liability and Respondent acknowledges the Findings of Fact set forth above, admits that there is probable cause to conclude that the violations set forth above, in the Conclusions of Law, may have occurred, and consents to the following Order.
5. While disputed by Respondent, the Board finds that the conduct described in the above *Findings of Fact* would, if proven, constitute violations of W. Va. Code § 30-4-19, W. Va., Code § 30-4A-1(a), W. Va. Code § 30-4A-6, W. Va. Code R. § 5-5-4, and the *American Dental Association Principles of Ethics & Code of Professional Conduct*. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Timothy R. Ray, DDS, by signing this *Consent Agreement and Order*, acknowledge the following:

1. After having had the opportunity to consult with an attorney of my choice, I sign this Consent Agreement and Order voluntarily, freely, without compulsion or duress, and understand that my signature has legal consequences.
2. The entire agreement is contained in this Consent Agreement and Order, and no person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth in this document.
3. I am aware that I may pursue this matter through appropriate administrative and/or court proceedings. I am aware of my legal rights regarding this matter, but I have chosen to waive those rights intelligently, knowingly, and voluntarily.
4. I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.
5. I acknowledge that the execution of this document constitutes disciplinary action by the Board and is therefore considered to be public information.

The Respondent, Timothy R. Ray, DDS, by affixing his signature hereto, agrees to the following Order:

ORDER

Based on the foregoing, and in lieu of further prosecution of this matter, the Board does hereby ORDER and DECREE as follows:

1. Respondent is hereby REPRIMANDED for his actions in this matter.
2. Within sixty (60) days from the date of entry of this Order, Respondent shall pay a fine in the amount of Five Hundred Dollars (\$500.00).

3. Within sixty (60) days from the date of entry of this Order, Respondent shall reimburse the Board the costs of this proceeding, including, but not limited to, the administrative and legal expenses incurred by the Board in the investigation and disposition of this case.

4. Respondent shall, at all times, cooperate with the Board and any of its agents or employees.

5. Respondent shall comply with the West Virginia Dental Practice Act, W. Va. Code §§ 30-4-1 *et seq.*, and the rules and regulations promulgated thereunder.

6. This Consent Agreement and Order shall remain in effect until all of its terms have been completed and the obligations set forth herein have been fulfilled.

7. Any failure to comply with all provisions in this Consent Agreement and Order may result in additional disciplinary action, up to and including the suspension or revocation of Respondent's license to practice dentistry in the State of West Virginia.

8. This document is a public record available for inspection by the public in accordance with the provisions of 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.

9. This Consent Agreement and Order constitutes the entire agreement between the parties.

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In recognition of this *Consent Agreement and Order*, we hereby affix our signatures.

WEST VIRGINIA BOARD OF DENTISTRY

By: *John E. Bogers*
John E. Bogers, DDS, President

Entered: 09/13/2023
Date

REVIEWED AND AGREED TO BY:

Timothy R. Ray
Timothy R. Ray, DDS
Respondent

7/21/2023
Date

This day personally appeared before me, Timothy R. Ray, DDS, whose name is signed to the foregoing document and who is known to me, having acknowledged before me that the statements in the foregoing document are complete, true and correct, to the best of his knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the 21st day of July, 2023.

My Commission expires: June 28th, 2027

Cody Hilde
Notary Public

