

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0045D

DAVID M. ROSS, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter “the Board”) and David M. Ross, DDS, *pro se* (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 certain acts in violation 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; and

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. 2582, with his practice located in Barboursville, Cabell County, West Virginia. As a result, the Respondent is subject to the Board's licensing requirements.

3. From approximately January 3, 2012, through 2013, the Respondent performed orthodontic treatment on an adult female patient (hereinafter referred to as "BB"). During the course of treatment, the Respondent extracted at least three of BB's otherwise healthy teeth due to overcrowding and in preparation for placing braces on her teeth.

4. After BB wore braces for approximately one year, the Respondent removed them and provided BB with a plastic retainer, however, BB still had large gaps between her teeth from where the Respondent extracted the three teeth. Two of the gaps are in the front of BB's mouth and are visible.

5. BB returned to the Respondent's office in late 2013 to see what could be done about the gaps between her teeth. The Respondent's staff made molds, took pictures of her mouth and told BB that these items would be sent to a lab. BB was told to call the office four weeks later to make an appointment if she hadn't heard from the office by that time.

6. After four weeks had elapsed, BB called the Respondent's office twice in an attempt to schedule an appointment and was told by the staff that there was nothing the Respondent could do to assist her.

7. Following the complaint filed by BB with the Board over this matter, the Board directed the Respondent to provide BB's complete patient file/treatment records to the Board. Due to a computer crash that occurred in 2014 and no backup of his computer patient files, the Respondent was unable to produce complete copies of BB's treatment records.

8. The Board provided what records it could obtain from the Respondent to an expert in the field of orthodontics for an opinion as to the course of treatment undertaken by the Respondent with regard to BB. The expert opinion found multiple deficiencies by the Respondent in his orthodontic treatment of BB.

9. Based upon the foregoing, the Complaint Committee found that probable cause existed to charge the Respondent with the following violations:

(a) Professional negligence and/or a willful departure from accepted standards of care in the dental profession, with regard to the diagnosis and treatment of BB's orthodontic issues and for failing to properly maintain and backup computer patient records, in violation of W. Va. Code § 30-4-19(g)(3) and W. Va. Code R. § 5-5-4;

(b) Failing to keep knowledge and skills current or to consult with or make referrals to appropriate professionals having special skills, knowledge and experience for the patient's condition, in violation of *ADA Code* §§ 2A and 2B, and W. Va. Code § 30-4-19(g)(12); and

(c) Abandoning the patient, by undertaking a course of orthodontic treatment of BB and discontinuing such treatment without giving BB adequate notice and the opportunity to

obtain the services of another dentist, in violation of *ADA Code* § 2.F and W. Va. Code § 30-4-19(g)(12).

CONCLUSIONS OF LAW:

1. The Board has jurisdiction to take disciplinary action against the Respondent.
2. The Respondent is a licensee of the Board and is subject to its licensing requirements.
3. The Respondent does not contest that the Board has probable cause to issue a Complaint and/or Statement of Charges against him for one or more violations of the West Virginia Dental Practice Act, W. Va. Code §§ 30-4-1, *et seq.*, and any regulations promulgated thereunder, with regard to the complaint at issue in this matter.
4. 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.
5. 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).
6. 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 waives any defenses of laches, statute of limitations, estoppel and waiver that he may have otherwise claimed as a condition of this Consent Decree and Order.

7. 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.

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

9. 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, David M. Ross, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand.
2. The Respondent agrees that he will provide a full refund to BB of the funds paid by her for the dental services provided by the Respondent, which sum is Five Thousand One Hundred Twelve Dollars and Sixteen Cents (\$5,112.16).
3. The Respondent agrees that he will make this refund pursuant to a cashier's check made payable in the patient's name, and shall mail the checks to the Board office no later than 30 days from the date of entry of this Consent Decree and Order, to the following address: West Virginia Board of Dentistry, 1319 Robert C. Byrd Drive, Crab Orchard, West Virginia, 25827. The Board will then transfer the check to BB.
4. The Respondent shall not begin any new orthodontic treatment on any new patients, nor on any of his existing patients, in any form or degree until such time as the Respondent has enrolled in and successfully completed no less than sixteen (16) hours of continuing education in orthodontics for the general dental practitioner. The courses comprising these continuing education hours must be preapproved by the Board and shall be over and above the regular continuing education hours required by the rules and regulations of the Board. The

Respondent shall submit to the Board written verification of his enrollment and proof of having successfully completed the course work. Until such time that the Respondent successfully completes this additional continuing education requirement, the Respondent shall not practice in the area of orthodontics in any form or degree, except as provided in paragraph 5 below.

5. To the extent the Respondent has existing patients who are currently undergoing orthodontic treatment by him, the Respondent shall provide the Board with a list of all such patients with a description of the current status of the orthodontic treatment and the anticipated date of completion. Additionally, until such time as the Respondent has successfully completed the orthodontics continuing education mandated in paragraph 5 above, any orthodontic procedures and/or treatment performed by the Respondent on such existing patients already in orthodontic treatment shall be supervised by an orthodontist and any procedures performed on such patients from this date forward shall be overseen and signed off on by such orthodontist. Within three (3) days of receipt of this signed Consent Order the Respondent shall provide the Board with the name and contact information for the orthodontist who has agreed to supervise the Respondent's orthodontics procedures on existing patients who are currently undergoing such treatment.

6. Within one year of the date of this Consent Order, the Respondent shall enroll in and successfully complete a three (3) hour course in ethics preapproved by the Board. The Respondent shall submit to the Board written verification of his enrollment and proof of having successfully completed the course. Completion of these course hours shall be over and above the regular continuing education hours required by the rules and regulations of the Board.

7. Within one year of the date of this Consent Order, the Respondent shall enroll in and successfully complete a minimum of six (6) hours of course work in record keeping

preapproved by the Board. The Respondent shall submit to the Board written verification of his enrollment and proof of having successfully completed the course work. Completion of these course hours shall be over and above the regular continuing education hours required by the rules and regulations of the Board.

8. The Respondent shall forthwith ensure that all patient files and records maintained by his practice in electronic format are properly secured and backed up on a regular basis, to ensure the existence of a duplicate copy in the event of any future computer malfunctions.

9. The Respondent shall pay a fine in the amount of Three Thousand Dollars (\$3,000.00) within sixty (60) days of the date of entry of this Consent Decree and Order.

10. The Respondent shall reimburse the Board the sum of Two Thousand Nine Hundred Eighty Five Dollars (\$2,985.00) for all costs incurred by the Board in the investigation and disposition of this case, which shall be paid within sixty (60) days of the date of entry of this Consent Decree and Order.

11. The payments referenced in paragraphs 9 and 10 above shall be made by separate cashier's checks made payable to the West Virginia Board of Dentistry and mailed to the Board office within the time frame specified.

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

13. The 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 or take other further disciplinary action as provided by the Dental Practice Act.

14. 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.

15. This Consent Decree and Order shall remain in effect until all continuing education requirements have been met and all required monetary payments have been made.

Entered this 20th of January, 2017.

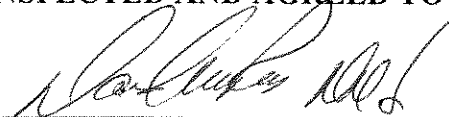
WEST VIRGINIA BOARD OF DENTISTRY:

By: 
STANLEY W. KACZKOWSKI, President

ORDER PREPARED BY:

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INSPECTED AND AGREED TO BY:


DAVID M. ROSS, DDS, pro se
Respondent