

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

COMPLAINANT,

v.

CASE NO. 2023-DB-0034D

**DAVID M. ROSS, DDS,
LICENSE NO. 2582,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Dentistry (“Board”) and David M. Ross, DDS (“Respondent”) for the purpose of agreeing to resolution and dismissal of this action. 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 has filed a Statement of Charges alleging that he has violated certain provisions of W. Va. Code §§ 30-4-1 *et seq.* and W. Va. Code R. §§ 5-1-1 *et seq.*, and may proceed to a hearing and seek disciplinary action in this matter.

WHEREAS, the parties mutually desire to settle this matter without further prosecution and a formal hearing.

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. 2582, and at all times relevant, practiced dentistry in Huntington, West Virginia.

2. On November 13, 2023, the Board received a written complaint from an individual identified herein as "I.J." regarding the dental care that she received from Respondent on numerous occasions, including her appointment in or around April 2023, and her appointment on or about October 24, 2023. I.J. reported that Respondent refused to wear gloves or a mask when examining her, and that she never observed Respondent wash his hands or sanitize prior to performing her dental exams.

3. By letter dated November 13, 2023, the Board transmitted a copy of I.J.'s complaint to Respondent and requested that he provide a written response, as well as I.J.'s patient records, within thirty (30) days.

4. On December 13, 2023, the Board received a written response from Respondent, but no patient records were included. In his response, Respondent asserted "I always clean my hands before every trip to the mouth and glove up if I anticipate placing my fingers in the patient's mouth. I may not wear gloves if I am only looking with a mirror, held at the end of the handle." Respondent added that he is in a wheelchair, and it is possible that a patient may not see him clean his hands, as his hygiene station is behind and to the right of the patient. Respondent stated that he "will try to wear a mask more often now that [Respondent has] found larger surgical masks."

5. The Board's Complaint Committee appointed Dina Agnone Vaughan, BSDH, MS, as an investigator in this matter. Ms. Vaughan conducted an infection control inspection at Respondent's dental office on March 27, 2024, and submitted her Report of Investigation to the Board that same day. As part of her investigation, Ms. Vaughan spoke with Respondent, who granted Ms. Vaughan permission to take photos. Ms. Vaughn also spoke to some members of Respondent's staff.

6. During her discussion with Respondent, Ms. Vaughan noted that Respondent only does an "in-depth examination if his hygienist sees a crack or a lesion, he needs to look at." Respondent understands that his hygienist "can't diagnose...but tells him what he needs to know." Respondent believes that "if a patient doesn't have dental needs, then there is no reason to look in the mouth."

7. Additionally, Ms. Vaughan observed that many of the emergency medications kept in the office were expired.

8. With regard to sterilization, during her investigation Ms. Vaughan discovered that handpieces and endodontic files were not properly sterilized, merely "wiped between patients."

9. After providing a detailed discussion of her findings, Ms. Vaughan noted that "[t]he office needs major updates and documentation," and that she recommended a re-inspection of the office. Ms. Vaughan further provided several recommendations including, but not limited to, the following: that Respondent wear gloves with every patient; that Respondent perform a thorough examination on hygiene patients; that Respondent create a basic first aid kit; that the Respondent create an emergency drug kit; that handpieces, and other endodontic instruments, be sterilized between patients; and that Respondent document all biological testing.

10. The Board's Complaint Committee reviewed I.J.'s complaint, Respondent's response thereto, and the investigator's report and other documents submitted therewith and obtained during the investigation.

11. Upon recommendation of the complaint committee, the Board, by majority vote at its meeting on April 5, 2024, found probable cause to believe that Respondent was neglectful in the practice of dentistry, engaged in conduct, while acting in a professional capacity, which was likely to endanger the health, welfare, or safety of the public, and failed to observe or adhere to regulations, standards, or guidelines regarding infection control, disinfection, or sterilization, or otherwise applicable to dental care settings, in violation of West Virginia Code §§ 30-1-8(a), 30-4-19(g)(3), (7), and (20), West Virginia Code of State Rules § 5-5-4. 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. 2582, 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. Respondent does not contest that the Board has probable cause to charge him with one or more violations of the Board's governing statutes and rules based upon its investigation and findings in this matter.

5. The conduct described in the above *Findings of Fact*, if proven, would constitute violations of W. Va. Code § 30-4-19, W. Va. Code R. § 5-5-4, and the *American Dental Association Principles of Ethics & Code of Professional Conduct*. Such conduct, if proven, is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, David M. Ross, DDS, by signing this *Consent Agreement and Order*, acknowledges the following:

1. After having had the opportunity to consult with an attorney of my choice, I am signing 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, David M. Ross, 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's license is hereby SUSPENDED for ten (10) business days of Respondent's normal practice schedule for his actions in this matter. Respondent's suspension shall begin on or before November 15, 2024, and Respondent shall notify the Board the date the suspension commences no later than that same date.

2. Within six (6) months from the date of entry of this Order, Respondent shall pay a fine to the Board, made payable by check, in the amount of Six Thousand Dollars (\$6,000.00), as per West Virginia Code § 30-1-8(a).

3. Within six (6) months from the date of entry of this Order, Respondent shall reimburse the Board, made payable by check, the costs of this proceeding in the amount of Six Hundred Ninety-Three Dollars and Eighty-Six Cents (\$693.86).

4. Respondent shall at all times cooperate with the Board and any of its agents or employees. Additionally, within one (1) year from the date of entry of this Order, Respondent agrees to have his dental office inspected for infection control by a Board appointed investigator two (2) times.

5. Within six (6) months from the date of entry of this Order, Respondent shall successfully complete a minimum of four (4) hours of professional education in the area of infection control, which must be pre-approved by the Board. The aforementioned four (4) hours of professional education are in addition to the Board's biennial continuing education

requirements for licensed dentists as set forth in W. Va. Code R. § 5-11-3. Additionally, within six (6) months from the date of entry of this Order, Respondent provide, to the Board, proof of infection control training for his staff.

6. 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.

7. This Consent Agreement and Order shall remain in effect until all its terms have been completed.

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

9. 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.

10. 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: William A. Klenk DDS
William A. Klenk, DDS, President

Entered: 10/15/24
Date

REVIEWED AND AGREED TO BY:

David M. Ross DDS
David M. Ross, DDS
Respondent

October 14, 2024
Date

This day personally appeared before me, David M. Ross, 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 14th day of October, 2024.

My Commission expires: October 13, 2028

Kimberly L. Kearns
Notary Public

