

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

**WEST VIRGINIA BOARD
OF DENTISTRY,**

Complainant,

v.

Case No. 2011-DB-0200D

Case No. 2013-DB-0018D

TIMOTHY M. SPEARS, DDS,

Respondent.

CONSENT DECREE AND ORDER

The West Virginia Board of Dentistry (“the Board”) commenced an investigation involving Timothy Spears, DDS (“Respondent”) following the receipt of two complaints alleging that Respondent’s conduct, practices and acts may have failed to meet professional standards and, therefore, were in violation of the West Virginia Dental Practice Act, W. Va. Code §§ 30-4-1, *et seq.* Respondent, by counsel, Troy N. Giatras, Esquire, has disputed the allegations. The parties have reached an agreement as to the appropriate disposition of these matters, with consideration given to necessary safeguards for protection of the public, as follows:

WHEREAS, the Respondent acknowledges that the Board may file a Complaint and/or Statement of Charges against his license, alleging 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 and a departure from, and failure to conform to, 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 matters in controversy. The Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT:

1. The West Virginia Board of Dentistry is the state entity created by W. Va. Code §§ 30-4-1, *et seq.*, that is empowered to regulate the practice of dentistry in West Virginia.
2. The Respondent, at all times relevant to this matter, was a licensee of the Board, possessiong License No. 2555, and is subject to the licensing requirements of the Board.
3. The Board alleges that it received complaints from two patients concerning endodontic treatment in 2011 and 2013 and that these complaints were referred to one of the Board's complaint committees for review.
4. The Complaint Committee referred certain patient case files to a Board Certified Endodontist for a review assessment over concerns regarding, *inter alia*, endodontic protocol and treatment and appropriate recordkeeping.
5. As a result of the review assessment, and as a result of its own review of various patient records, the Board is of the opinion that probable cause exists to establish that the

Respondent may have engaged in conduct, practices or acts constituting professional negligence or departed from accepted standards of professional conduct.

6. The Respondent denies any and all allegations of professional negligence and/or departure from accepted standards of professional care and conduct.

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, restrict a license, reprimand a licensee or take other disciplinary action for violation of the applicable laws, rules, and regulations.

3. The Respondent is a licensee of the Board and is subject to its licensing requirements.

4. While the Respondent disputes the Board's allegations, 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.*, with regard to the complaints at issue in this matter.

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.

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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. The Respondent waives any defense of laches, statute of limitations, waiver, and estoppel 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:

ACCEPTANCE BY THE BOARD:

This Consent Decree and Order will not be submitted for Board consideration until after it 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 member of the Board.

ORDER

The Board agrees to forego further prosecution of the complaints pursuant to the Consent Decree entered between the Board and Respondent, Timothy Spears, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand.
2. The Respondent shall pay a fine in the amount of Five Thousand Dollars (\$5,000.00) within ninety (90) days of the date of entry of this Consent Decree and Order.
3. Within one (1) year of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete eighteen (18) hours of professional education in endodontic examination and treatment (root canal therapy) pre-approved by the Board. The Respondent has provided the Board with completed, signed and dated copies of Continuing Education Credit Forms from the West Virginia School of Dentistry, showing that on the dates indicated below he completed 32 hours of continuing education in the area of endodontic examination and treatment as follows:

<u>Course</u>	<u>Hours</u>	<u>Date</u>
(1) Endodontic Access & Instrument/Prod. Trg	8	04/13/2013
(2) Obturating the Root Canal System	8	06/01/2013

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(3) Endodontic Dilemmas/Product Trg	8	10/26/2013
(4) Advanced Endodontic Treatment	8	11/16/2013

The Board recognizes that these courses were taken after the events giving rise to the complaints filed in this case. The Respondent has provided the Board with documentation establishing that he has successfully completed all regular continuing education requirements for the period 2012 to 2014. Accordingly, the Board will accept these endodontic credits as fulfilling Respondent's obligation to enroll in and successfully complete eighteen (18) hours of professional education in endodontic examination and treatment, over and above his regular continuing education requirements.

4. Within one (1) year of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete six (6) hours of professional education in antibiotic therapy pre-approved by the Board. The Respondent shall submit written verification to the Board of his enrollment and shall submit proof of having successfully completed the coursework.

5. Within one (1) year of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete three (3) hours of professional education in patient recordkeeping pre-approved by the Board. The Respondent shall submit written verification to the Board of his enrollment and shall submit proof of having successfully completed the coursework.

6. Within one year of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete three (3) hours of professional education in ethics pre-approved by the Board. The Respondent shall submit written verification to the Board of his enrollment and shall submit proof of having successfully completed the coursework.

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7. The professional education requirements outlined above are in addition to the Board biennial continuing education requirements for licensed dentists as set forth in W. Va. Code R. § 5-11-3 (2013).

8. The Respondent shall be restricted from practicing endodontic root canal therapy if he has not successfully completed the additional professional education requirements outlined in paragraphs 3, 4, 5 and 6, and submitted proof thereof to the Board within ninety (90) days of entry of this Order. If the Respondent does not complete the professional education requirements set forth in paragraphs 3, 4, 5 and 6 within 90 days of entry of this Order, the Respondent shall be restricted from the practice of endodontic root canal therapy until such time as he has taken the additional professional education courses and received written authorization from the Board that he may resume such endodontic practice.

9. The Respondent shall reimburse the Board the sum of \$ 6,427.32 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.

10. The Respondent shall at all times cooperate with the Board and any of its agents or employees, in the monitoring or investigation of the Respondent's compliance with the terms and conditions of this Consent Decree and Order. The Respondent shall be responsible for any expense associated with the monitoring of his practice during this restriction period, including any expense associated with written reports, records or verification of actions that may be required by the Board to ensure compliance.

11. 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,

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and that if the Respondent violates any of the terms of this Consent Decree and Order, the Board may immediately suspend the Respondent's license.

12. 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.

13. The Respondent shall neither direct nor permit employees under his supervision to violate any provisions of the West Virginia Dental Practice Act and its rules and regulations.

14. This Consent Decree and Order shall remain in effect until the fine and costs set forth in paragraphs 2 and 9 are paid, and until the professional education obligations set forth in paragraphs 3, 4, 5 and 6 of the Order are fulfilled.

Entered this 23rd of October, 2015.

WEST VIRGINIA BOARD OF DENTISTRY:

By: C. Richard Gerber, D.D.S.
C. RICHARD GERBER, President

Inspected and Agreed to by:

Timothy M. Spears, DDS
Timothy M. Spears, DDS
Respondent

Troy N. Giatras
Troy N. Giatras, Esquire
Counsel for the Respondent