

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA BOARD OF
DENTAL EXAMINERS,

Complainant,

v.

Case No.: 2011-DB-00015D

ROBERT S. BATES, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dental Examiners (hereinafter referenced as the Board) and Robert S. Bates, DDS, (hereinafter referenced as the Respondent), for the purpose of agreeing to disciplinary action which shall be taken against the Respondent by the Board.

As reflected in this Consent Decree, the parties have 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. That the Board is the State entity created by West Virginia Code § 30-4-1 *et seq.* (Dental Practice Act) and is empowered to regulate the practice of dentistry.

2. That the Respondent is a licensee of the Board, possessing license number 3655 and is subject to the license requirements of the Board.

3. That if a disciplinary hearing were to take place, the Board anticipates receiving evidence upon which the Board asserts it could conclude that the Respondent has violated certain acts of West Virginia Code § 30-4-1 *et seq.*, and West Virginia Code R. § 5-5-1 *et seq.*, specifically patient abandonment and failure to provide for reasonable continuity of care for numerous patients in continued need of treatment, such conduct is unethical and unprofessional and a departure from, and a failure to conform to, the standards of acceptable and prevailing dental practice and the ethics of the dental profession, as is required by the Dental Practice Act and the rules and regulations of the Board.

4. That the Respondent was the President of Allcare Dental Management, LLC and Dr. Bates, DDS, Inc. (collectively, "Allcare"), which closed its West Virginia office on or about January 1, 2011 without prior notice to any of the existing patients. Respondent denies that he engaged in professional misconduct or conduct in violation of West Virginia Code § 30-4-1 *et seq.*, and West Virginia Code R. § 5-5-1 *et seq.*, but he acknowledges that the alleged misconduct or conduct, if proven, could constitute grounds upon which the Board could take action with respect to his license to practice dentistry in the State of West Virginia.

CONCLUSION OF LAW

1. That the Board has jurisdiction to take disciplinary action against the Respondent.
2. That pursuant to West Virginia 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.
3. The Respondent is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board.
4. Based on the investigation conducted, the Complaint Committee of the Board believes that if a disciplinary hearing were to take place, there is substantial evidence to demonstrate that the Respondent has engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of the Dental Practice Act, West Virginia Code § 30-4-1 *et seq.*

CONSENT OF LICENSEE

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

1. That he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Dental Examiners; the right to reasonable

notice of said hearing; the right to be represented by counsel at his own expense; and the right to cross examine witnesses against him.

2. That he waives all rights to such a hearing.

3. That he has had the opportunity to consult with counsel and executes this Consent Decree and Order voluntarily, freely, without coercion or duress and mindful that it has legal consequences.

4. That no person or entity has made any promise or given any inducement whatsoever to encourage him to enter into this Decree other than as set forth herein.

5. That he acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and he is aware of his legal rights regarding this matter, but intelligently, knowingly and voluntarily waives such rights.

6. That he waives any defenses including, but not limited to, laches, statute of limitations, and estoppel, that he may have otherwise claimed as a condition of this Decree.

7. That he acknowledges that the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Consent Decree have been met to the satisfaction of the Board.

8. That he acknowledges that he is aware that this Consent Decree and Order is a public document, available for inspection at any time by any member of the public under Chapter 29B *et seq.*, of the West Virginia Code, Freedom of Information Act and may be reported to other governmental, professional Boards or organizations.

9. That he acknowledges that this Consent Decree and Order shall be presented to the Board as soon as practical but no later than next scheduled meeting of the Board, with a recommendation for approval from the Complaint Committee.

10. The Respondent, by affixing his signature hereon, consents and agrees to the following terms and conditions.

ORDER

That the Board agrees to forego further prosecution of the complaint pursuant to the Consent Decree between the Board and Respondent, Robert S. Bates, DDS and hereby ORDERS as follows:

1. That the license of the Respondent to practice dentistry in the State of West Virginia shall be SUSPENDED for a period of one year, with all but ninety (90) working days STAYED, the Suspension shall commence upon entry of this Consent Decree and Order.

2. Within one year of the date of this Consent Order, the Respondent shall enroll in and successfully complete a course 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 course.

3. Within one year of the date of this Consent Order, the Respondent shall enroll in and successfully complete a course in Dental Practice Management 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 course.

4. The Respondent shall successfully complete the Jurisprudence, Ethics and Risk Management (JERM) Examination administered by the North East Regional Board of Dental Examiners, Inc. and the Dental law examination given by the West Virginia Board of Dental Examiners.

5. The Respondent shall pay a fine in the amount of Five Hundred Dollars, (\$500.00), which shall be paid within ninety (90) days of the entry of this order.

6. The Respondent shall reimburse the Board in this case the sum of Three Thousand Two Hundred Fifty Dollars (\$3,250.00) for all costs incurred by the Board in the investigation and disposition of this case which shall be paid within ninety (90) days of the entry of this order.

7. The Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions.

8. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations. All matters in controversy related to the instant complaint are hereby resolved and closed, pending full compliance with the terms mandated herein; and

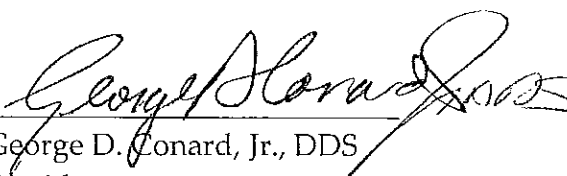
9. That the Respondent's failure to fully comply with the terms and conditions of this Consent Decree and Order hereby imposed shall be deemed a violation of this Consent Decree and Order, and that if the Respondent violates any of the terms of this Consent Decree and Order, the Board may immediately suspend the Respondent's license.

10. That, except as provided herein, this Consent Decree and Order shall bar the commencement of further disciplinary action by the Board based upon either: a) the misconduct described above; or b) action(s) taken against Respondent's license(s), certification(s) or credential(s) in any other states, based upon misconduct similar to what is described, above stemming from the closure of Allcare offices in other states where Respondent holds or held license(s), certification(s) or credential(s). However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the

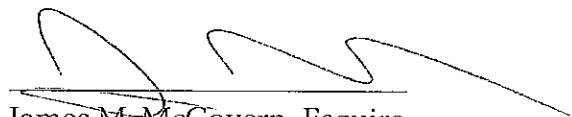
Board may consider the fact that discipline was imposed by this Consent Decree and Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

Entered this 6th day of January 2012.

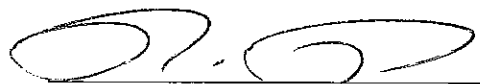
West Virginia Board of
Dental Examiners:


George D. Conard, Jr., DDS
President

Inspected and Agreed to by:



James M. McGovern, Esquire
GRAFF & MCGOVERN, L.P.A.
Counselors and Attorneys at Law
604 East Rich Street
Columbus, Ohio 43215-5341



Robert S. Bates, DDS
Respondent