

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

**WEST VIRGINIA BOARD OF
DENTISTRY,**

Complainant,

v.

Case No.: 2014-DB-0014-DA

MARIA RITA ZAPANTA BERNARDO, DDS,

Respondent.

CONSENT DECREE AND ORDER

The West Virginia Board of Dentistry (hereinafter referenced as the Board) has initiated a complaint against Dr. Maria Rita Zapanta Bernardo, (hereinafter referenced as Dr. Bernardo or the Respondent) and investigated whether she has engaged in conduct, practices, and acts that do not meet professional standards and that may pose a risk to members of the public.

The Board and the Respondent have reached an agreement as to an appropriate disposition of the complaint, with consideration to appropriate safeguards for protection of the public.

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

WHEREAS, the parties have reached an understanding concerning the proper disposition of the matter in controversy, the Board 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.* and is empowered to regulate the practice of dentistry.
2. That the Respondent, Dr. Bernardo, is a licensee of the Board with license No. 3285, and is subject to the jurisdiction of this Board.

3. WomenCare, Inc. d/b/a FamilyCare HealthCenter ("FamilyCare") provides dental services to school-aged children through a School-Community Partnership for Children's Oral Health ("Partnership"). FamilyCare partners with schools in Boone and Putnam Counties in West Virginia. As part of the Partnership, FamilyCare offers services to children who do not have dentists and for whom parents of the children desire to obtain dental services for those children at the school. FamilyCare provides these services through a mobile office that travels from school to school. Dr. Bernardo is the dental director of this program for FamilyCare.

4. Brookview Elementary School in Boone County, West Virginia ("Brookview") participated in the Partnership.

5. At the beginning of the 2013 school year, FamilyCare provided forms to Brookview for parents to review and sign, which would authorize FamilyCare to provide basic dental care, limited to "exams, x-rays, cleanings, fluoride treatments, sealants, fillings, and the extraction of baby teeth that cannot be saved." ("Consent Form").

6. On or about August 28, 2013, the parent or guardian of a particular fourth grade child (for privacy reasons, this child will be referred to as the "Fourth Grade DH") at Brookview, signed and returned the Consent Form.

7. On or about March 20, 2014, FamilyCare provided a screening, conducted x-rays, and provided fluoride to Fourth Grade DH. X-rays revealed that Fourth Grade DH had a cavity that needed filling. FamilyCare representatives scheduled a filling for Fourth Grade DH on March 27, 2014.

8. Pursuant to standard protocols, FamilyCare returned to Brookview to provide services to students on March 27, 2014. A representative from FamilyCare provided a list of students, by name and grade level, to a representative of Brookview. Fourth Grade DH was on the list to receive

services on March 27, 2014. Under normal procedures, a representative of Brookview would retrieve and present the student to FamilyCare for treatment.

9. A second grade student with the same exact first name and the phonetically same last name, with the exception of one letter, as Fourth Grade DH, also attended Brookview ("Second Grade DH").

10. Instead of presenting Fourth Grade DH for services on March 27, 2014, Brookview presented Second Grade DH to FamilyCare. A representative of FamilyCare asked Second Grade DH to confirm his name. Second Grade DH confirmed his name. Because the names of Fourth Grade DH and Second Grade DH were so similar, and because the representative of FamilyCare was unaware that there was a different student with an almost identical name, the representative of FamilyCare believed that the correct student – Fourth Grade DH – had been retrieved and was ready for treatment.

11. Dr. Harry Keith Jackson was the dentist present working on behalf of FamilyCare on March 27, 2014. Dr. Jackson proceeded to begin the filling procedure on Second Grade DH. Dr. Jackson did not find a cavity, and so he halted the process, filled the part of the tooth that had been disturbed, and sent Second Grade DH back to Brookview.

12. Representatives of FamilyCare later discovered that it had performed services on Second Grade DH instead of the Fourth Grade DH. FamilyCare did not have a Consent Form from the parent or guardian of Second Grade DH.

13. The Board alleges that Dr. Bernardo, in failing to ensure that FamilyCare and Dr. Jackson properly identified Fourth Grade DH, failed to obtain appropriate consent and therefore engaged in activity that is "is likely to endanger the health, welfare or safety of the public" by filling a tooth on a child

without consent. W. Va. Code §30-4-19(g)(7). Dr. Bernardo disputes this charge, asserting that the incident was an unfortunate accident caused by a unique, rare set of circumstances.

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 Dentistry and is subject to license requirements of the Board.

CONSENT OF LICENSEE

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

1. Respondent has been given the opportunity to consult with counsel and executes this Consent Decree and Order voluntarily, freely, without compulsion or duress and 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 this Consent Decree and Order other than as set forth herein.
3. Respondent acknowledges that she is aware that she may pursue this matter through appropriate administrative and/or court proceedings, and is aware of her legal rights regarding this matter, but intelligently, knowingly and voluntarily waives such rights.
4. Respondent acknowledges that she 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.

5. Respondent waives any defense of laches, statute of limitations, estoppel and waiver that she may have otherwise claimed as a condition of this Consent Decree and Order.

6. The Respondent 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.

7. The Respondent, by affixing her 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, Dr. Bernardo, as follows:

1. That the Respondent shall receive a reprimand.
2. Within one year of the date of this Consent Order, the Respondent shall enroll in and successfully complete a two hour course in record keeping and one hour course concerning informed consent, as pre-approved by the Board. The Respondent shall submit written verification to the Board of her enrollment and shall submit proof of having successfully completed the courses. Completion of these course hours shall be over and above the regular continuing education hours required by the rules and regulations of the Board.
5. The Respondent shall reimburse the Board costs associated with this case in the amount of two thousand five hundred dollars ("2,500") Said payment shall be paid to the Board in full within ninety (90) days of the date of entry of this Order.
6. The Respondent shall pay a fine in the amount of five hundred dollars ("500") to be paid in full within ninety (90) days of the date of entry of this Order.

7. The Respondent shall adhere to any new policy implemented through her employer, FamilyCare to safeguard children/patients and to appropriately identify the correct patient prior to administration of any dental treatment or procedures.

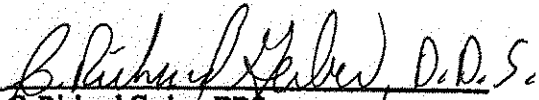
8. That the Respondent shall at all times cooperate with the Board, any of its agents or employees.

9. That the Respondent's failure to fully comply with the terms and conditions of this Consent Order hereby imposed shall be deemed a violation of this Consent Order, and that if the Respondent violates any of the terms of this Consent Order, the Board may immediately suspend the Respondent's license without prior notice.

10. 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.

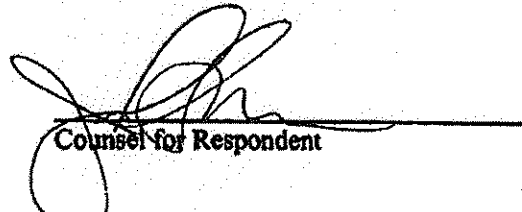
Entered this 16th day of July 2015.

West Virginia Board of
Dentistry:


C. Richard Gerber, DDS
President

Inspected and Agreed to by:


Maria Rita Zapanta Bernardo, DDS
Respondent


Counsel for Respondent