

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2018-DB-0022D

GERALD A. CLARK, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter referred to as “the Board”) and Gerald A. Clark, DDS (hereinafter referred to as “the Respondent”), by counsel, 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 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/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;

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 W. Va. 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. 3372. As a result, the Respondent is subject to the Board's rules and regulations.
3. In May 2018, the Board initiated an investigation of the Respondent after receiving a complaint from a patient who allegedly aspirated a tooth during a dental procedure performed by the Respondent in May 2015.
4. At the time the Respondent did not believe the tooth had been aspirated and did not refer the patient for any procedures to determine if the tooth was in her lung.
5. When the patient reported to the Respondent a few days later that she was having trouble breathing, the Respondent directed the patient to seek further medical attention. An x-ray confirmed that the patient had indeed aspirated the tooth fragment. It was surgically removed and the Respondent agreed to pay the patient's medical costs associated with removal of the tooth fragment.
6. For reasons not fully known to the Board, the patient's medical costs had not been paid as of the date she filed her complaint with the Board in May 2018, approximately three years

after the removal of the aspirated tooth. However, the Respondent negotiated the costs with the hospital and paid them in full in or around June 2018.

7. Aspiration of a tooth fragment into the lung can be a life threatening or serious injury, which the Respondent failed to notify the Board of within 72 hours of becoming aware of it.

CONCLUSIONS OF LAW:

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

2. The Board has jurisdiction to take disciplinary action against the Respondent.

3. It is a violation of the Dental Practice Act for a licensee to do the following:

(a) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public, that is, by violating the standard of care within the practice of dentistry by failing to immediately refer the patient for x-rays, tests or other procedures to determine if she had in fact aspirated the tooth, in violation of W. Va. Code § 30-4-19(g)(7); and

(b) Failing to report a life threatening or serious injury to the Board, that is, the patient's aspiration of a tooth fragment, within 72 hours of becoming aware of it, in violation of W. Va. Code § 30-4-19(g)(18).

4. The Respondent does not contest that the Board has established probable cause to charge him with one or more violations of the Dental Practice Act with regard to the complaint at issue in this matter.

5. 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 to take disciplinary action against, any licensees, certificate holder or permittee for violations of the Dental Practice Act, including violations of the ADA principles of ethics and professional conduct.

6. 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 to pay the costs of the proceeding. W. Va. Code § 30-4-19(h).

7. In addition to any other sanctions 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 provided 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 the 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 government agencies, professional boards or other organizations.

6. 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.

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

8. 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, Gerald A. Clark, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand.
2. The Respondent shall pay a fine in the amount of One Thousand Dollars (\$1,000.00) within sixty (60) days of the date of entry of this Consent Decree and Order.

3. Within six months of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete three (3) hours of professional education on the topic of oral surgery/tooth extractions, and an additional three (3) hours on the topic of recognizing oral surgery emergencies and proper treatment modalities of such.

4. All of the professional education requirements referenced in paragraph 3 above must be preapproved by the Board. The Respondent shall submit written verification to the Board of his enrollment in and successful completion of the coursework. Such professional education courses shall be in addition to the Board's biennial continuing education requirements for licensed dentists as set forth in W. Va. Code R. § 5-11-3.

5. The Respondent shall reimburse the Board for all costs it has incurred in the investigation and disposition of this case, not to exceed the sum of \$1,000, which shall be paid within sixty (60) days of the date of entry of this Consent Decree and Order, or within such additional time as may be authorized in writing by the Board.

6. 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 take to suspend the Respondent's license.

7. 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.

8. This Consent Decree and Order shall remain in effect until all its terms have been completed, the fine and costs set forth in paragraphs 2 and 5 are paid, and the professional education obligations set forth in paragraphs 3 and 4 of this Order are fulfilled.


ENTERED this 2nd day of November, 2018.

WEST VIRGINIA BOARD OF DENTISTRY

By: 
C. RICHARD GERBER, President

INSPECTED AND AGREED TO BY:


GERALD A. CLARK, DDS
Respondent


EDWARD C. MARTIN, Esquire
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