

**BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY**

**WEST VIRGINIA BOARD OF DENTISTRY,**

**Complainant,**

**v.**

**CASE NO. 2015-DB-0055D-01**

**CHRISTY KENNA FOX, DDS,**

**Respondent.**

**CONSENT DECREE AND ORDER**

Now comes the West Virginia Board of Dentistry (hereinafter "the Board") and Christy Kenna Fox, DDS (hereinafter "the Respondent"), by counsel, G. Todd Houck, Esquire, for the purpose of resolving a disciplinary action initiated against the Respondent by the Board based on a complaint from one of her patients.

WHEREAS, the Respondent acknowledges that the Board has served the Respondent with a Statement of Charges against her license, alleging certain acts in violation 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 West Virginia 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. 3333, with her practice located in Hinton, Summers County, West Virginia. As a result, the Respondent is subject to the Board's licensing and regulatory requirements.

3. On or about October 16, 2015, the Board initiated an investigation as a result of a complaint being filed with the Board against the Respondent by a former patient hereinafter referred to as KP.

4. In August 2014 and while employed as an associate of another dentist, the Respondent performed dental procedures on KP including, but not limited to, extracting an upper molar.

5. On or about November 17, 2014, the Respondent informed her employer that she intended to open her own practice, at which time her employer abruptly terminated her employment and directed the Respondent to leave the premises which she did.

6. There was a lull of approximately two (2) months between the time the Respondent left her employer and when she opened her new office on January 19, 2015. During this time, the Respondent was not practicing dentistry, had no coverage for any dental emergencies for her patients, and had no protocol in place for the referral of patients before her

new office opened. The Respondent alleges that the reason for this was because her former employer asked her to leave immediately after she informed him that she would be opening her own practice.

7. The Respondent opened her new practice in Hinton on January 19, 2015. Several of the staff from the Respondent's former employer went with her to her new practice.

8. At some point following his teeth extractions, KP began having complications with the site where the upper molar was removed and discovered he had a perforated sinus cavity. Sometime between November 17, 2014, and January 19, 2015, KP has alleged that he attempted to schedule an appointment with the Respondent at her former employer's office but discovered she was no longer working there. KP has further alleged that staff at the Respondent's former employer told him they did not know where she had gone.<sup>1</sup>

9. Shortly thereafter, KP allegedly located the Respondent's new office in Hinton, West Virginia, and contacted or attempted to contact the Respondent there on several occasions to get some assistance, advice and/or treatment of his perforated sinus cavity. KP has alleged that he was told by the Respondent and/or her staff on multiple occasions to leave it alone and it would heal on its own. The Respondent has denied these allegations.

10. Ultimately, KP returned to the Respondent's former employer on August 26, 2015, for assistance. After examining KP, the Respondent's former employer referred KP to an oral surgeon who successfully repaired KP's perforated sinus cavity.

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<sup>1</sup>The Board has taken disciplinary action against the Respondent's former employer for patient abandonment based on his conduct with regard to KP. *WV Board of Dentistry v. James C. Miller*, Case No. 2015-DB-0055-02 (July 2016).

11. Based upon the foregoing, the Complaint Committee found that probable cause existed to establish that the Respondent had, *inter alia*, abandoned KP, in violation of W. Va. Code § 30-4-19(g)(12) and *American Dental Association Code* § 2.F.

12. The Respondent denies the allegations contained within the Statement of Charges but wishes to resolve this matter without a formal hearing.

#### 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 applicable laws, rules, and regulations.

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

4. The Respondent does not contest that the Board has probable cause to issue a Complaint and/or Statement of Charges against her for one or more violations of the West Virginia Dental Practice Act, W. Va. Code §§ 30-4-1, *et seq.*, and any regulations promulgated thereunder, 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 take disciplinary action against, any licensee, 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 interviews for a specified period of time. W. Va. Code § 30-4-19(h).

7. In addition to any other sanction 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 her 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.

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 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 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. 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 her license in the State of West Virginia.

8. Respondent, by affixing her 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, Christy Kenna Fox, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand, for patient abandonment. W. Va. Code § 30-4-19(g)(12) and ADA Code § 2.F. The remaining allegations contained within the Statement of Charges are hereby dismissed.

2. The Respondent shall pay a fine in the amount of Three Thousand Dollars (\$3,000.00) within sixty (60) days of the date of entry of this Consent Decree and Order. Should the Respondent make any restitution to KP before the deadline for paying the fine, either directly or through any settlement independent of this administrative proceeding, the Board may, in its discretion, reduce the fine by an amount up to Two Thousand Dollars (\$2,000), upon written proof thereof submitted to the Board by the Respondent prior to the 60 day deadline for paying the fine.

3. Within six months of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete six (6) hours of professional education in oral

surgery/extractions, and an additional three (3) hours of professional education in recognizing oral surgery emergencies and proper treatment modalities of such, all of which must be pre-approved by the Board. The Respondent shall submit written verification to the Board of her enrollment in and successful completion of the coursework.

4. The professional education requirements outlined in paragraph 3 above 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.

5. The Respondent shall reimburse the Board the sum of Four Thousand Seven Hundred Dollars (\$4,700.00) for 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.

6. The fine and costs referenced in paragraphs 2 and 5 above shall be paid by separate cashier's checks (not personal checks) made payable to the West Virginia Board of Dentistry and mailed to the Board's office at P. O. Box 1447, Crab Orchard, West Virginia, 25827.

7. The Respondent shall have established procedures in place with her practice and staff, for patients to be notified of any event occurring within the practice that might affect their ability to obtain prompt and complete dental care, emergency or otherwise, such events including but are not limited to, the Respondent being on vacation, having an emergency, suffering an illness or death, or retirement. The Respondent shall further have another dental professional available and on-call to provide continued and emergency dental care if and when the Respondent is unable or no longer doing so.

8. 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 immediately suspend the Respondent's license.

9. 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.

10. This Consent Decree and Order shall remain in effect until the fine and costs set forth in paragraphs 2 and 5 are paid and the continuing education requirements set forth in paragraphs 3 and 4 have been satisfied.

Entered this 20<sup>th</sup> of January, 2017.

**WEST VIRGINIA BOARD OF DENTISTRY:**

By:

  
STANLEY W. KACZKOWSKI, President

**ORDER PREPARED BY:**

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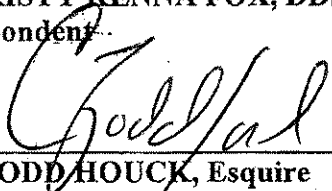


**INSPECTED AND AGREED TO BY:**



**CHRISTY KENNA FOX, DDS**

**Respondent**



**G. TODD HOUCK, Esquire**

**WV State Bar No. 5674**

**Counsel for the Respondent**