

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2013-DB-0028D

BRETT Z. GODLEWSKI, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter "the Board") and Brett Z. Godlewski, DDS, by counsel, George J. Cosenza, Esquire (hereinafter "the Respondent"), 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 may file a Statement of Charges against his license, alleging that he has violated certain acts of West Virginia Code §§ 30-4-1, *et seq.*, and West Virginia CSR §§ 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, the 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 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 §§ 30-16-1, *et seq.* (Dental Practice Act), and is empowered to regulate the practice of dentistry in the State of West Virginia.
2. The Respondent, at all times relevant to this investigation, was a licensee of the Board, possessing License No. 4017, and is subject to the licensing requirements of the Board.
3. The Respondent is currently licensed to practice dentistry in West Virginia and Pennsylvania, but resides in the Pennsylvania. His West Virginia license is set to expire on February 1, 2016.
4. The Board conducted an investigation into the dental practices and conduct of the Respondent pursuant to a complaint by a former employer.
5. The Board alleges that its investigation revealed that the Respondent may have a substance abuse problem involving pharmaceutical drugs/controlled substances and that the substance abuse problem may be of such an extent as to likely interfere with or pose a

threat to his ability or fitness to competently practice dentistry. The Respondent denies this allegation.

6. The Board alleges that the Respondent failed to disclose his substance abuse problem to the Board on his 2015 license renewal application. Specifically, the Respondent failed to disclose, in response to Question No. 4, that he was "...currently under investigation ..." by the Drug Enforcement Administration (DEA); and in response to Question No. 7, that he had "...developed any disease or condition, physical, mental or emotional, that might interfere with [his] ability to competently and safely perform the essential functions of practice." The Respondent's position is that his failure to report was because he believed the investigation was terminated and that no further action would be taken. Further when the Respondent answered Question No. 7, at that time he was unaware that he had developed any disease or condition.

7. The Board alleges that the Respondent failed to disclose on any of his dental and specialty license applications, in response to specific questions regarding the same, that he had been arrested for driving under the influence (DUI) in New York during his specialty training. It was the Respondent's understanding that said records were expunged and didn't disclose same pursuant to advice of his attorney.

8. The Board further alleges that a review of the Respondent's controlled substance pharmaceutical prescription writing practices, along with various patient records and statements of certain witnesses, show that he engaged in conduct, practices or acts constituting professional negligence or a departure from accepted standards of

professional conduct in the prescribing of controlled substances. The Respondent denies this allegation.

9. The Board further alleges that the Respondent prescribed various Schedule II drugs and controlled substances, as defined under West Virginia Code §§ 60A-2-206 and 208, respectively, without treatment records to support the need for the quantity or frequency of the controlled substances prescribed during the period of time beginning in November 2012 through on or about July 17, 2013, when he was employed as a dentist/oral surgeon with Drs. Glenn Greene, DDS, and Lewis Gilbert, DDS, of Beckley, West Virginia. The Board further alleges that most of these prescriptions were written by the Respondent under his own DEA registration number while some were written by him using the DEA registration number of one of his employers without the employer's knowledge and consent. The Respondent denies this allegation and further states that the disputed prescriptions were called into respective pharmacies by employees without the Respondent's knowledge.

10. The Board further alleges that its investigation has revealed that on May 11, 2015, the Respondent was indicted by a Raleigh County Grand Jury on eight felony counts relating to the acquisition of a controlled substance (i.e., hydrocodone) by misrepresentation, fraud, forgery, deception or subterfuge, and conspiracy thereof, between January 2013 and July 2013. *State of West Virginia v. Brett Zygun Godleski (sic), et al.*, Case No. 15-F-243-H (Circuit Court of Raleigh County, West Virginia). The Board further alleges that the charges contained in the indictment are the same or similar to those uncovered by the Board during its investigation, involving the same employer

and occurring within substantially the same time period. However, that indictment was the result of a miscommunication between the Raleigh County Prosecuting attorney and Respondent's counsel and was subsequently dismissed.

11. The Respondent alleges that he has reached a resolution with the Raleigh County Prosecutor's Office, such resolution being that the Respondent plead guilty to a misdemeanor obstruction of justice charge and agreed to enter into a substance abuse treatment program.

12. The acts described in paragraphs 7 through 10 above, if true, demonstrate that the Respondent violated the West Virginia Dental Practice Act and its legislative rules, as follows:

- (a) By obtaining Board authorization by fraud, misrepresentation or concealment of material facts, from failing to disclose his substance abuse problem on his dental and specialty license applications, in violation of W. Va. Code § 30-4-19(g)(1);
- (b) By 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, in violation of W. Va. Code § 30-4-19(g)(7);
- (c) By having an incapacity that prevents a licensee from engaging in the practice of dentistry with reasonable skill, competence and safety to the public, in violation of W. Va. Code § 30-4-19(g)(8);
- (d) By committing fraud in connection with the practice of dentistry, by using or authorizing the use of the DEA registration number of another dentist, in violation of W. Va. Code § 30-4-19(g)(9); and

(e) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct including, but not limited to, (1) any fraud or deception, committing a criminal operation, and (2) abusing alcohol or drugs, in violation of W. Va. Code § 30-4-19(g)(12)(A) and (C).

CONCLUSIONS OF LAW:

1. The Board has jurisdiction to take disciplinary action against Respondent.
2. 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. While the Respondent disputes the Board's allegations, the Respondent does not contest that the Board has probable cause to issue a Statement of Charges against him for one or more of the violations referenced above. The Respondent has alleged that he wishes to resolve this matter without formal charges. The Respondent has represented to the Board that he has no plans to practice dentistry in the State of West Virginia and that he is desirous of voluntarily surrendering to the Board his license to practice dentistry in the State of West Virginia, effective immediately upon approval of this Consent Decree by the Board. The Respondent represents that he has enrolled in, or will be enrolling in in the immediate future, a program of substance abuse rehabilitation which has been approved by the Pennsylvania Board of Dentistry where he now resides, is currently licensed to practice and is actively practicing dentistry.

4. As a means of compromise, the Board and the Respondent have hereby agreed to resolve this matter by and through a voluntary agreement and consent to disciplinary action, with consideration given to appropriate safeguards for protection of the public.

CONSENT OF LICENSEE

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

1. The Respondent has been given the opportunity to consult with counsel and executes this 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 the Respondent to enter into this Consent Decree and Order, other than as set forth herein.
3. The 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. The 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. The Respondent acknowledges 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 agencies, professional Boards or other organizations.

6. The Respondent waives any defense of laches, statute of limitations, estoppel and waiver that he may have otherwise claimed, as they may apply to the Board action that is the subject of this Consent Decree and Order.

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

9. The 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 complaint pursuant to the Consent Decree between the Board and the Respondent, and hereby ORDERS as follows:

1. The Respondent presently holds a license to practice dentistry in the State of West Virginia. Respondent's license number is 4017.
2. Inasmuch as the Respondent has voluntarily surrendered his license to practice dentistry in the State of West Virginia, the Respondent's license is hereby NULL and VOID.
3. The Respondent shall not practice nor engage in the profession of dentistry in the State of West Virginia.
4. Should the Respondent desire to practice dentistry in the State of West Virginia, he shall submit an application for licensure and/or reinstatement and comply with all licensure requirements of W. Va. Code §§ 30-4-1, *et seq.*, and any applicable legislative rules promulgated thereunder.
5. Further, in the event that the Respondent applies for licensure and/or reinstatement, the Board reserves the right to review, consider and use any and all materials relating to his qualifications for practice including, but not limited to, all documents, statements and complaints currently contained within the Board's file on the Respondent. The Board specifically reserves the right to consider the facts, statements and allegations relating to the above-styled complaint number, including the entry of this Consent Decree, in any future determination of the Respondent's fitness for practice.
6. The Respondent shall pay a fine of Seven Thousand Five Hundred Dollars (\$7,500.00) to the Board as a penalty for the violations described herein.

7. The Respondent shall reimburse the Board the sum of Two Thousand Four Hundred Dollars (\$2,400.00) for the costs incurred by the Board associated with the investigation and prosecution of this matter.

8. The fine and costs of investigation shall be paid to the Board in full within thirty (30) days of the date of entry of this Order; and

9. Should the Respondent fail to comply with any part of this Consent Decree and Order, the Board may issue a Statement of Charges against the Respondent and take such further action as may be deemed necessary to effect disciplinary proceedings against the Respondent including, but not limited to, vacating this Consent Decree and Respondent's voluntary surrender of his license.

ENTERED this 23rd day of October, 2015.

By: *C. Richard Gerber, D.D.S.*
C. RICHARD GERBER, DDS, President
WEST VIRGINIA BOARD OF DENTISTRY

Reviewed and Approved by:

Brett Z. Godlewski
BRETT Z. GODLEWSKI, DDS
Respondent

George J. Cosenza
GEORGE J. COSENZA, Esquire
Counsel for Respondent