

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA BOARD
OF DENTAL EXAMINERS,

Complainant,

v.

CASE NO.: 2007-DB-0034D

TONTRA P. LOWE, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dental Examiners (hereinafter the Board) and Tontra P. Lowe, DDS, (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 has filed a Statement of Charges against her license alleging that she has violated certain acts of West Virginia Code § 30-4-1 *et seq.*, and West Virginia Code R. § 5-5-1 *et seq.* which acts, if proven to be true, would constitute professional negligence as well as a departure from, and a 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 issue 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 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, at all times relevant to this investigation, was a licensee of the Board, possessing license number 3734 and is subject to the license requirements of the Board.
3. The Board conducted an investigation into the dental practices of the Respondent pursuant to a patient complaint.
4. The Respondent has not renewed her dental license as she is no longer employed, or practicing dentistry in the State of West Virginia.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against 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 Board and Respondent disagree as to whether the allegations made in this matter regarding Respondent's care would constitute a violation of West Virginia Code § 30-4-20(a)(3), which include, among other things, professional incompetence, professional negligence in the performance of services, or a departure from accepted standards of professional conduct.

4. Based on the investigation conducted, the Board believes that there is evidence to demonstrate that the Respondent has engaged in conduct, practices or acts constituting professional negligence, or deviations from the accepted dental standard of care with regard to the subject patient in violation of the West Virginia Dental Practice Act, W.Va. Code § 30-4-1 *et seq.*

5. As a means of compromising a disputed claim, the Board and the Respondent have hereby agreed to resolve this matter by and through a voluntary agreement and consent to disciplinary action.

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 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 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 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. 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.

7. Respondent acknowledges that this Consent Decree and Order shall 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. Respondent consents to the entry of the following Order.

9. Respondent, by affixing her 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

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

1. The Respondent has not renewed her license to practice or engage in the profession of dentistry in the State of West Virginia.
2. The Respondent's license to practice dentistry in the State of West Virginia is hereby NULL and VOID.
3. The Respondent shall not practice or engage in the profession of dentistry in the State of West Virginia.
4. That should the Respondent desire to practice dentistry in the State of West Virginia then she shall submit an application for licensure and comply with all the licensure requirements of West Virginia Code § 30-4-1 *et seq.* and/or the legislative rules promulgated thereunder.
5. Further, in the event that the Respondent applies for licensure, the Board reserves the right to review and consider any and all materials relating to her 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 qualification for practice.

6. That the Respondent shall reimburse the Board the sum of Two Thousand Five Hundred Dollars (\$2,500.00) for the costs incurred by the Board associated with the investigation and disposition of this matter. Such payment shall be paid to the Board in full within thirty (30) days of the date of entry of this Order; and

7. Should the Respondent fail to comply with any part of the Consent Decree and Order, the Board may reinstate its Statement of Charges against Respondent.

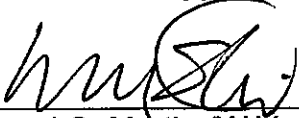
Entered this 16th day of July, 2010.

Richard D. Smith, DDS

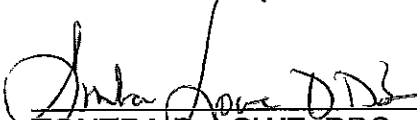


David G. Edwards, DDS, President
WEST VIRGINIA BOARD OF
DENTAL EXAMINERS

Reviewed and Approved by:



Edward C. Martin (W.Va. Bar #4635)
FLAHERTY SENSABAUGH BONASSO PLLC
Counsel for Respondent



TONTRA P. LOWE, DDS
Respondent