

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2016-DB-0016D

CHARLES E. MCELFISH, DDS,

Respondent.

CONSENT AGREEMENT AND ORDER

After due investigation, the West Virginia Board of Dentistry ("Board") initiated a complaint, having determined that there is probable cause to believe that Charles E. McElfish, DDS ("Respondent") engaged in conduct, practices and acts that are in violation of W. Va. Code § 30-4-1, *et seq.*, and W. Va. Code R. § 5-5-1, *et seq.* The Respondent was provided with written notice of allegations against him pursuant to the rules of the Board and the laws of the State.

Now, in lieu of a hearing, the parties have reached an agreement for the resolution of Case No.: 2016-DB-00016D and the parties agree to the entry of the following Order in disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. That the Board is a regulatory board created for the purpose of regulating the practice of dentistry in the State of West Virginia. W. Va. Code §§ 30-4-1, *et seq.*
2. That in order to carry out its regulatory duties under the authority granted to it by W. Va. Code §§ 30-4-1, *et seq.*, and W. Va. Code R. § 5-5-4, the Board is empowered to refuse to

renew a license, suspend or revoke any license of a licensee upon satisfactory proof that a licensee is or has, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct, in violation of W. Va. Code §§ 30-4-1, *et seq.*, 30-4A-1, *et seq.*, including the principles of ethics and code of professional conduct of the *American Dental Association* (ADA).

3. That Respondent is a licensee of the Board, possessing License No. 2191, and is subject to the Board's licensing requirements.

4. That on or about April 2016, the Board initiated an investigation into the basis for a lawsuit that had been filed against the Respondent in Putnam County, West Virginia which alleged sexual harassment.

5. That the investigation revealed that the Respondent had been involved in an incident on May 14, 2016, which resulted in his arrest and subsequent convictions of one count of Domestic Battery and one count of Obstructing Officer on October 14, 2016.

6. That Respondent failed to reveal these criminal convictions when answering Question numbered three (3) on his Application for his 2017 license renewal.

7. That Question numbered three (3) asked "[s]ince you last renewed your license, have you been arrested, charged or convicted, pled guilty or pled nolo contendere for violations of any federal, state, or local law other than a minor traffic violation? (DUIs are not minor traffic violations. Although a conviction may have been expunged from the records by order of the court, it nevertheless must be disclosed in your answer). You must attach the court disposition." Respondent answered "no" and this is incorrect.

8. That the investigation further revealed from interviews with the Respondent's office

staff, the victim of the Domestic Battery conviction, Carolyn Dickens, and a review of court documents, including deposition transcripts from the civil action styled *Brenda Perry and Gregory Perry v. Charles E. McElfish, DDS*; Civil Action No: 16-C-88 that the Respondent has a substance abuse problem.

9. That the Board initiated a complaint against the Respondent based upon this information on August 16, 2017, pursuant to W. Va. Code § 30-4-19(a). Respondent responded to the Board initiated complaint on October 3, 2017, by and through his counsel, James D. McQueen after two extensions of time were given by the Board to answer the Board initiated complaint.

10. That Respondent admitted in his *Response to Complaint Letter Dated August 16, 2017 ("Response")* that he is an alcoholic.

11. That Respondent admits in his *Response* that on May 15, 2016, he was "heavily intoxicated" during an argument with his live-in girlfriend at the time, Carolyn Dickens, and that he was "physically and mentally abusive toward Ms. Dickens." Respondent further admits that he knocked the phone out of Ms. Dickens' hand when she was attempting to make an emergency call.

12. That Respondent admits in his *Response* that as part of his sentence for the two criminal convictions he was required to attend a 33-week domestic violence program (BIPPS program). During the time of his participation in this program Respondent was under the care and treatment of Dr. Martin Kommor, M.D. for depression. Respondent went on to further state that he now is under the care and treatment of William Webb, Phd, who is an addictionologist.

13. That by admitting being treated by Dr. Martin Kommor, Respondent has revealed that he did not truthfully answer Questions numbered five or seven on the Application for his 2017 license renewal.

14. That Question numbered five asks “[s]ince you last renewed your license, have you been treated for any physical, mental or emotional condition that might interfere with your ability to competently and safely perform the essential function of practice? If you are under contract with WV Dental Recovery Network, you may answer No to this question.” Respondent answered “No” and this is incorrect.

15. That Question numbered seven asks “[s]ince you last renewed your license, have you developed any disease or condition, physical, mental or emotional, that might interfere with your ability to competently and safely perform the essential functions of practice? If you are under contract with the WV Dental Recovery Network, you may answer No to this question.” Respondent answered “No” and this is incorrect.

16. That Respondent admits in his *Response* that he did indeed make inappropriate statements to one of the Plaintiffs, Brenda Perry, but “attributes most of his bad conduct in her presence to his alcohol dependency.”

17. That Respondent admits in his *Response* to falsely answering Question number three on the Application for his 2017 license renewal; although, he states that his Office Manager, Kim Browning, completed the application for him. Moreover, Respondent states he attempted to have his mistake corrected with the Board once he discovered it.

18. That Respondent admits in his *Response* his actions “have been influenced by his addict personality and his abuse of alcohol.”

19. That those acts described above, demonstrate that the Respondent failed to answer questions on his Application for the 2017 license renewal truthfully and that the Respondent abused substances, such as alcohol, which placed the public at risk. If those events are proven to be true, the

actions would constitute conduct, practices or acts in violation of W. Va. Code § 30-4-19(g)(1), (3), and (12)(C) and W. Va. Code R. § 5-5-4.

20. That upon recommendation of the Complaint Committee, after reviewing the Board initiated complaint, subpoenaed documents, and other information obtained during its investigation, the Board, by unanimous vote, at its Board meeting on November 3, 2017, did find probable cause in violation W. Va. Code § 30-4-19(g)(1), (3), and (12)(C) and W. Va. Code R. § 5-5-4 and that there was sufficient evidence to warrant further proceedings and action against the Respondent.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of answering untruthfully on his Application for the 2017 license renewal and his substance abuse problem as set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice dentistry, pursuant to W. Va. Code § 30-4-19.
3. That the Board has defined unprofessional conduct by adopting the standards of practice at W. Va. Code § 30-4-19(g)(12) and violations of these standards of practice may be grounds for disciplinary action by the Board.
4. That the Board served a *Statement of Charges* upon the Respondent pursuant to the laws and regulations of West Virginia.
5. The Respondent's actions as outlined in the *Findings of Fact* constitute conduct, practices or acts in violation of W. Va. Code § 30-4-19(g)(1), (3), and (12)(C) and W. Va. Code R. § 5-5-4.

CONSENT OF LICENSEE

I, Charles E. McElfish, by affixing my signature hereto, acknowledge the following:

1. That I have had the opportunity to consult with counsel and execute this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.
2. That no person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth herein.
3. That I acknowledge that I am aware that I may pursue this matter through appropriate administrative and/or court proceedings, and I am aware of my legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.
4. That I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.
5. That I admit that my actions were a violation of the Board's governing statute and rules.

The Respondent, Charles E. McElfish, by affixing his signature hereon, agrees to the following:

ORDER

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Respondent is hereby REPRIMANDED for his actions in this case matter.
2. Respondent is hereby SUSPENDED for a period of fifteen (15) days. During this period of suspension the Respondent is required to perform the following:

a. Respondent shall complete and provide proof of successful completion of three (3) hours of Board approved continuing education hours in Ethics. These three (3) hours are in addition to the required continuing education hours needed to maintain Respondent's dental license.

b. Respondent shall submit himself to the WV Dental Recovery Network ("WVDRN") for an initial evaluation no later than ten (10) days from the entry of this Order. Should the WVDRN determine that the Respondent needs substance abuse treatment, the Respondent shall submit to whatever recommended treatment plan is established by the WVDRN for its duration and shall abide by all terms and conditions of the recommended treatment plan established by the WVDRN. Respondent shall submit proof of the initial evaluation to the Board within the suspension period.

c. Respondent shall reimburse the Board the costs of this proceeding, including but not limited to, the administrative and legal expenses incurred by the Board in the investigation and disposition of this case.

d. Respondent shall pay a fine in the amount of three-thousand dollars (\$3,000.00) to the state of West Virginia.

4. Any violation of this *Consent Agreement and Order*, or failure to adhere to its terms may result in further disciplinary action against the Respondent.

5. Respondent shall at all times cooperate with the Board, any of its agents or employees, in the monitoring of the Respondent's compliance with the terms and conditions of this *Consent Agreement and Order*.

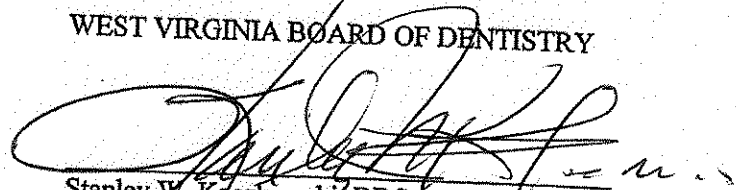
6. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting in the National Practitioner Data Bank, the WV Secretary of State's Office, and the American Association of Dental Boards.

7. This document is a public record as defined in W. Va. Code § 29B-1-2(4).

8. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

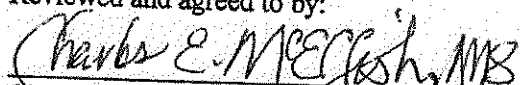
In recognition of this *Consent Agreement and Order* and these terms, we hereby affix our signatures.

WEST VIRGINIA BOARD OF DENTISTRY

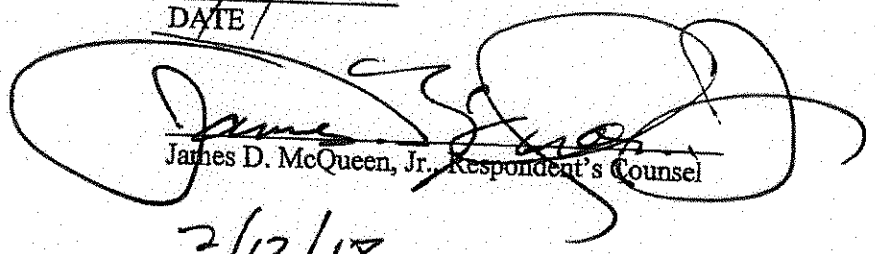

Stanley W. Kaczkowski, DDS,
President

Entered: 4/13/2018
DATE

Reviewed and agreed to by:


Charles E. McElfish, DDS, Respondent

2/9/18
DATE


James D. McQueen, Jr., Respondent's Counsel

2/12/18
DATE