

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0055D-02

JAMES C. MILLER, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter "the Board") and James C. Miller, DDS, *pro se* (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 served the Respondent with a Statement of Charges against his license, alleging certain acts in violation of 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. 2127, with his practice located in Hinton, Summers County, West Virginia. As a result, the Respondent is subject to the Board's licensing 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 licensee XXXXXXXXXXXX, by a former patient hereinafter referred to as KP. Dr. XXXX was an employee of the Respondent in August 2014 at the time XXX extracted two teeth from KP, one of which resulted in a perforated sinus cavity.

4. Soon after extracting KP's teeth, Dr. XXXX abruptly left the Respondent's practice on November 17, 2014, and ultimately opened XXX own practice in Hinton on January 19, 2015. Several of the Respondent's staff left his practice and went with Dr. XXXX to XXX new practice.

5. At some point following his teeth extractions, KP began having complications and discovered he had a perforated sinus cavity. Sometime between November 17, 2014, and January 19, 2015, KP contacted the Respondent's office to schedule an appointment to see Dr. XXXX and was told by the Respondent's staff that Dr. XXXX was no longer working there. The Respondent's staff did not offer KP an opportunity to schedule an appointment with the Respondent.

The Respondent alleges that neither he nor his remaining staff initially knew where Dr. XXXX went after XXX left his practice or how to get ahold of XXX.

6. Shortly thereafter, KP allegedly located Dr. XXXX's new office in Hinton, West Virginia, after seeing a sign advertising it while he was driving down the street. KP allegedly contacted Dr. XXXX at XXX new office on several occasions to get some assistance, advice and/or treatment of his perforated sinus cavity. KP was told by Dr. XXXX and XXX staff on multiple occasions to leave it alone and it would heal on its own.

7. After approximately one year of making multiple calls to Dr. XXXX and waiting for the sinus cavity to heal, KP became frustrated and returned to the Respondent's practice on August 26, 2015, for assistance. After examining KP, the Respondent immediately located an oral surgeon who successfully repaired KP's perforated sinus cavity.

8. Based upon the foregoing, the Complaint Committee found that probable cause existed to establish that the Respondent had abandoned KP, in violation of W. Va. Code § 30-4-1 9(g)(12) and *American Dental Association Code* § 2.F, by failing to have procedures in place for when an associate dentist leaves his practice, to address issues involving the retention of patients, notification of patients that the associate dentist has left the practice and affording patients an opportunity to decide whether to stay with the Respondent, go with the associate dentist or seek another dentist. Once the Respondent's employee undertook a course of treatment of KP, such treatment should not have been discontinued by the Respondent or his employee without giving the patient adequate notice and opportunity to obtain the services of another dentist. While it does not appear to have been intentional, the Respondent's failure to have such procedures in place resulted in KP being abandoned for a period of approximately one year and thereby placing his oral health in jeopardy.

9. The Complaint Committee further found that probable cause existed to establish that the Respondent, as the employer of Dr. XXXX, was responsible as the principle for any professional negligence or willful departure from accepted standards of care committed by Dr. XXXX during the course of XXX employment and particularly with regard to the patient, KP. W. Va. Code § 30-4-19(g)(3) and W. Va. Code R. § 5-5-4. The Board found that Dr. XXXX was negligent and willfully departed from accepted standards of care when XXX failed to properly and timely diagnose and treat the perforated sinus cavity and resulting infection suffered by KP as a result of XXX extraction of KP's teeth.

**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 him 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 his 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 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 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 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, James C. Miller, 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 thirty (30) days of the date of entry of this Consent Decree and Order.
3. The Respondent shall reimburse the Board the sum of Five Hundred Dollars (\$500.00) for all costs incurred by the Board in the investigation and disposition of this case, which shall be paid within thirty (30) days of the date of entry of this Consent Decree and Order.
4. The Respondent shall have established procedures in place with his 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.

5. Should the Respondent choose to retire and close his practice, the Respondent shall, at a minimum, advertise his retirement or practice closing date in the newspaper and his practice website if applicable, at least 30 days in advance, advising patients how they or their new dentist may obtain a copy of their patient records; send all patients active within the previous 24 months a letter advising of the impending closure and how they or their new dentist may obtain a copy of their records; and post a sign in a conspicuous place in his office of the impending closure and how to obtain a copy of their patient records. Additionally, the Respondent is encouraged to consult the resources section of the American Dental Association's website for guidance on closing a dental practice

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 immediately 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 the fine and costs set forth in paragraphs 2 and 3 are paid.

Entered this 21 of July, 2016.

WEST VIRGINIA BOARD OF DENTISTRY:

By:

  
STAN KACZKOWSKI, President

**ORDER PREPARED BY:**

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Counsel to the WV Board of Dentistry

**INSPECTED AND AGREED TO BY:**

  
JAMES C. MILLER, DDS, *pro se*  
Respondent