

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0040D

MELISSA WARNICK, DDS,

Respondent.

CONSENT DECREE AND ORDER

The West Virginia Board of Dentistry (“the Board”) commenced an investigation involving Melissa Warnick, DDS (“Respondent”) following the receipt of a complaint alleging that Respondent’s conduct, practices and acts may have failed to meet professional standards and, therefore, were in violation of the West Virginia Dental Practice Act, W. Va. Code §§ 30-4-1, *et seq.* The parties have reached an agreement as to the appropriate disposition of this matter, with consideration given to necessary safeguards for protection of the public, as follows:

WHEREAS, on November 16, 2015, the Board served the Respondent with a Statement of Charges against her license and Notice of Hearing, alleging that the Respondent has violated certain provisions 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 a willful departure from accepted standards of professional conduct in a 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 parties further agree that this agreement shall not constitute an admission by either party as to the substance and/or merit, or lack thereof, of any of the allegations contained within the Statement of Charges.

IT IS HEREBY STIPULATED and AGREED between the undersigned parties that this matter be settled and resolved, the parties having reach an understanding concerning the proper disposition of the matters in controversy. The Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT:

1. The West Virginia Board of Dentistry is the state entity created by W. Va. Code §§ 30-4-1, *et seq.*, that is empowered to regulate the practice of dentistry in West Virginia.
2. The Respondent, at all times relevant to this matter, was a licensee of the Board, possessing License No. 3586, and is subject to the licensing requirements of the Board.
3. The Board alleges that it received a complaint from one of Respondent's patients that Respondent had disclosed the patient's protected health information to an attorney representing the opposing side of litigation in which the patient was involved, without the patient's authorization, and that the Respondent refused to cooperate with the patient's attorney and made disparaging remarks about the patient to her attorney when the attorney was seeking her cooperation in the litigation. The complaint was referred to one of the Board's complaint committees for review.
4. The Complaint Committee caused subpoenas to be issued to attorneys for both sides of the litigation, for purposes of obtaining the recorded voice messages left or made by the Respondent regarding the matter.

5. The Complaint Committee reviewed the recorded voice messages and found that they corroborated the allegations made by the patient in her complaint.

6. Based upon the foregoing, the Complaint Committee further found that probable cause existed to establish that the Respondent used or disclosed protected health information in an unauthorized or unlawful manner, and was guilty of unprofessional conduct as contained within the American Dental Association principles of ethics and code of professional conduct including, but not limited to, failing to protect the confidentiality of a patient's records, failing to engage in fair dealings with a patient and society, i.e., the legal profession, and insulting, degrading or humiliating a patient physically, verbally or through other form of communication, in violation of W. Va. Code §§ 30-4-19(g)(14), 30-4-19(g)(12)(F).

7. The Respondent neither admits nor denies the allegations of the Board.

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.

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:

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 entered between the Board and Respondent, Melissa Warnick, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand.
2. The Respondent shall pay a fine in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) within sixty (60) days of the date of entry of this Consent Decree and Order.
3. Within six months of the date of this Consent Decree and Order, the Respondent shall enroll in and successfully complete three (3) hours of professional education in the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and/or similar professional education governing confidentiality of protected health information/patient confidentiality, and three (3) hours of professional education in ethics, 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 (2013).

5. The Respondent shall reimburse the Board the sum of \$2,500.00 for all 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. 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. The Respondent shall ensure that all of her employees and/or staff receive education and training on the requirements of HIPAA and patient confidentiality laws under both HIPAA and the West Virginia Dental Practice Act and its rules and regulations.

9. 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 professional education obligations set forth in paragraphs 3 and 4 of this Order are fulfilled.

Entered this 22 of January, 2016.

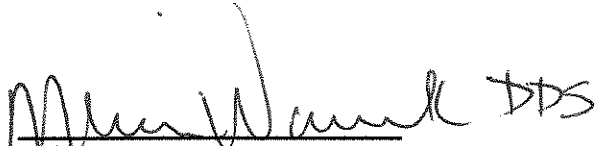
WEST VIRGINIA BOARD OF DENTISTRY:

By: 
C. RICHARD GERBER, President

ORDER PREPARED BY:

Betty A. Pullin
Assistant Attorney General
WV Bar No. 5590
Office of the West Virginia Attorney General
Education, Arts & Boards Division
812 Quarrier Street, Second Floor
Charleston, WV 25301
(304) 558-8989
Email: Betty.A.Pullin@wvago.gov
Counsel to the WV Board of Dentistry

INSPECTED AND AGREED TO BY:

Handwritten signature of Melissa Warnick in cursive, with the letters 'DDS' written to the right of the signature.

Melissa Warnick, DDS
Respondent

Handwritten signature of Darla A. Mushet in cursive, underlined.

Darla A. Mushet, Esquire
WV Bar No. 9786
Burns White, LLC
32 – 20th Street, Suite 200
Wheeling, WV 26003
(304) 231-1007
Email: damushet@burnswhite.com
Counsel for the Respondent