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ROBERT LOUGY
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

By: Swang Oo
Deputy Attorney General
Attorney for State Board of Dentistry
(973) 648-7457

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF DENTISTRY

IN THE MATTER OF : Administrative Action
: :
Joseph J. Portale, D.M.D. : CONSENT ORDER
License No. 22DI00945900 :
: :
LICENSED TO PRACTICE DENTISTRY :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon receipt of patient G.D.'s complaint alleging that Joseph J. Portale, D.M.D. ("respondent"), failed to treat within the standard of care, and that respondent's patient and financial records do not accurately reflect the treatment rendered. On November 19, 2015, respondent appeared with Joseph K. Cooney, Esq., at an investigative inquiry.

Respondent testified that he did not properly sequence and execute the treatment because the patient was anxious about dental procedures. Proper diagnostics would have revealed the patient's periodontal condition. Further, respondent billed for two surgical extractions which respondent acknowledged were

simple extractions. Respondent's patient and financial records do not accurately reflect the treatment rendered.

Respondent's treatment of G.D. included extractions and placement of a six-unit acrylic temporary splint on teeth #6-11 with sedation. The record reviewed by the Board did not contain adequate diagnostic radiographs nor was there any periodontal charting. Similarly, there was no treatment plan to address the patient's periodontal condition and evident bone loss prior to extractions and placement of the six-unit splint. Finally, the record did not reveal that respondent offered clinically acceptable alternatives, costs and risks relative to the treatment rendered.

Having reviewed the record as to patient G.D., including the testimony of respondent at the investigative inquiry, the patient complaint, patient record including financial ledgers and diagnostic images as maintained by respondent, it appears to the Board that if proven at a formal hearing, respondent's treatment of patient G.D. would constitute deviations from generally accepted dental standards and failure to maintain an adequate patient record. If proven, the allegations would form bases for disciplinary action pursuant to N.J.S.A. 45:1-21(d) for engaging in repeated acts of negligence, malpractice or incompetence; N.J.S.A. 45:1-21(e) for engaging in professional misconduct for upcoding the extractions; and N.J.S.A. 45:1-21(h) for failing to maintain an appropriate patient record consistent with N.J.A.C.

13:30-8.7. Respondent denies these allegations and being desirous of resolving this matter without the necessity of further formal proceedings, and agreeing to waive any right to same, and the Board finding the within disposition to be adequately protective of the public health, safety and welfare and for other good cause shown, and all parties agreeing to the terms of this order;

IT IS ON THIS 7th DAY OF June, 2016

HEREBY ORDERED AND AGREED THAT:

1. Respondent shall fully attend and successfully complete fourteen (14) hours of continuing education in diagnosis and treatment planning of complex restorative cases within six (6) months of the entry of this Consent Order. Documentation of full attendance and successful completion of the course shall be provided to the Board within thirty (30) days of completion of the course. "Successful completion" means that respondent has attended all sessions of the course, fully participated, and received a final evaluation of an unconditional pass. Respondent shall be entirely responsible for any and all costs or expenses relating to the courses. The indicated course work shall be in addition to the regularly required continuing education hours, and must be approved by the Board in writing prior to attendance.

2. Within three (3) months of the filing date of this Order, respondent shall successfully complete the ProBE (Professional Problem Based Ethics) course offered by The Ethics Group, 89 Summit Avenue, Suite 185, Summit, New Jersey 07901 or another

ethics course of similar content and length that is pre-approved by the Board. Documentation of successful completion of the course shall be provided to the Board within thirty (30) days of completion of the course. Respondent shall be entirely responsible for any and all costs or expenses relating to the course.

3. Respondent shall correct the financial ledger to reflect the fee for extraction and fully reimburse G.D., by separate certified check or money order made payable to G.D., in the amount of three thousand dollars (\$3,000.00) which shall be sent contemporaneously with the signing of this Consent Order to Jonathan Eisenmenger, Executive Director, Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

4. Respondent without making any admission of wrongdoing, agrees to pay civil penalties, pursuant to N.J.S.A. 45:1-25 of ten thousand dollars (\$10,000.00) for repeated acts of negligence, five thousand dollars (\$5,000.00) for professional misconduct in upcoding of the extractions and ten thousand dollars (\$10,000.00) for poor recordkeeping in violation of N.J.S.A. 45:1-21(h) and N.J.A.C.13:30-8.7 for a total of \$25,000.00. \$15,000.00 of the penalty shall be stayed provided that respondent has no further instances of repeated acts of negligence, professional misconduct or recordkeeping violations for a period of two (2) years. If during that 2 year period

respondent is found to have engaged in additional violations the entire stayed amount (\$15,000.00) will be due immediately. Payment of the civil penalty of \$10,000 shall be submitted by bank check, money order, wire transfer or credit card made payable to the State of New Jersey and shall be sent to Jonathan Eisenmenger, Executive Director, Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101 no later than thirty (30) days from the entry of this Consent Order. Subsequent violations will subject Respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

5. Failure to remit any payment as required by this Order will result in the filing of a certificate of debt and shall constitute a violation of this consent order.

6. Failure to comply with any of the terms of this Consent Order may result in further disciplinary action and any additional relief determined by the Board to be appropriate based on the conduct found.

NEW JERSEY STATE BOARD OF DENTISTRY

By:

Emil G. Cappetta
Emil G. Cappetta, D.D.S.
Board President

I have read and understand this Consent Order and agree to be bound by its terms. I consent to the entry of this Order.

Joseph J. Portale
Joseph J. Portale, D.M.D.

Date: 6/6/16

Consent as to form and entry.

Joseph K. Cooney
Joseph K. Cooney, Esq.
Attorney for Dr. Portale

Date: 6/6/16

[Handwritten mark]